

1990 No. 2276

ENVIRONMENTAL PROTECTION

The Statutory Nuisance (Appeals) Regulations 1990

<i>Made</i> - - - -	<i>13th November 1990</i>
<i>Laid before Parliament</i>	<i>21st November 1990</i>
<i>Coming into force</i>	<i>1st January 1991</i>

The Secretary of State for the Environment, as respects England, and the Secretary of State for Wales, as respects Wales, in exercise of the powers conferred upon them by paragraph 1(4) of Schedule 3 to the Environmental Protection Act 1990(a), sections 70(2) and 104(1) of the Control of Pollution Act 1974(b) and of all other powers enabling them in that behalf, hereby make the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Statutory Nuisance (Appeals) Regulations 1990 and shall come into force on 1st January 1991.

(2) In these Regulations—

“the 1974 Act” means the Control of Pollution Act 1974; and

“the 1990 Act” means the Environmental Protection Act 1990.

Appeals under section 80(3) of the 1990 Act

2.—(1) The provisions of this regulation apply in relation to an appeal brought by any person under section 80(3) of the 1990 Act against an abatement notice served upon him by a local authority.

(2) The grounds on which a person served with such a notice may appeal under section 80(3) are any one or more of the following grounds that are appropriate in the circumstances of the particular case—

- (a) that the abatement notice is not justified by section 80(3) of the 1990 Act;
- (b) that there has been some informality, defect or error in, or in connection with, the abatement notice;
- (c) that the authority have refused unreasonably to accept compliance with alternative requirements, or that the requirements of the abatement notice are otherwise unreasonable in character or extent, or are unnecessary;
- (d) that the time, or, where more than one time is specified, any of the times, within which the requirements of the abatement notice are to be complied with is not reasonably sufficient for the purpose;
- (e) where the nuisance to which the notice relates —

- (i) is a nuisance falling within section 79(1)(a), (d), (e), (f) or (g) of the 1990 Act and arises on industrial, trade or business premises, or
- (ii) is a nuisance falling within section 79(1)(b) of the 1990 Act and the smoke is emitted from a chimney,
that the best practicable means were used to prevent, or to counteract the effects of, the nuisance;
- (f) that, in the case of a nuisance under section 79(1)(g) of the 1990 Act, the requirements imposed by the abatement notice by virtue of section 80(1)(a) of that Act are more onerous than the requirements for the time being in force, in relation to the noise to which the notice relates, of-
 - (i) any notice served under section 60 or 66 of the 1974 Act, or
 - (ii) any consent given under section 61 or 65 of the 1974 Act, or
 - (iii) any determination made under section 67 of the 1974 Act;
- (g) that the abatement notice should have been served on some person instead of the appellant, being -
 - (i) the person responsible for the nuisance, or
 - (ii) in the case of a nuisance arising from any defect of a structural character, the owner of the premises, or
 - (iii) in the case where the person responsible for the nuisance cannot be found or the nuisance has not yet occurred, the owner or occupier of the premises;
- (h) that the abatement notice might lawfully have been served on some person instead of the appellant being -
 - (i) in the case where the appellant is the owner of the premises, the occupier of the premises, or
 - (ii) in the case where the appellant is the occupier of the premises, the owner of the premises,
and that it would have been equitable for it to have been so served;
- (i) that the abatement notice might lawfully have been served on some person in addition to the appellant, being -
 - (i) a person also responsible for the nuisance,
 - (ii) a person who is also an owner of the premises, or
 - (iii) a person who is also an occupier of the premises,
and that it would have been equitable for it to have been so served.

(3) If and so far as an appeal is based on the ground of some informality, defect or error in, or in connection with, the abatement notice, the court shall dismiss the appeal if it is satisfied that the informality, defect or error was not a material one.

(4) Where the grounds upon which an appeal is brought include a ground specified in paragraph (2)(h) or (i) above, the appellant shall serve a copy of his notice of appeal on any other person referred to, and in the case of any appeal to which this regulation applies he may serve a copy of his notice of appeal on any other person having an estate or interest in the premises in question.

- (5) On the hearing of the appeal the court may-
- (a) quash the abatement notice to which the appeal relates, or
 - (b) vary the abatement notice in favour of the appellant in such manner as it thinks fit, or
 - (c) dismiss the appeal;

and an abatement notice that is varied under sub-paragraph (b) above shall be final and shall otherwise have effect, as so varied, as if it had been so made by the local authority.

(6) Subject to paragraph (7) below, on the hearing of an appeal the court may make such order as it thinks fit-

- (a) with respect to the person by whom any work is to be executed and the contribution to be made by any person towards the cost of the work, or

- (b) as to the proportions in which any expenses which may become recoverable by the authority under Part III of the 1990 Act are to be borne by the appellant and by any other person.
- (7) In exercising its powers under paragraph (6) above, the court—
 - (a) shall have regard, as between an owner and an occupier, to the terms and conditions, whether contractual or statutory, of any relevant tenancy and to the nature of the works required, and
 - (b) shall be satisfied before it imposes any requirement thereunder on any person other than the appellant, that that person has received a copy of the notice of appeal in pursuance of paragraph (4) above.

Suspension of notices

3.—(1) Where —

- (a) an appeal is brought against an abatement notice served under section 80 of the 1990 Act, and—
- (b) either —
 - (i) compliance with the abatement notice would involve any person in expenditure on the carrying out of works before the hearing of the appeal, or
 - (ii) in the case of a nuisance under section 79(1)(g) of the 1990 Act, the noise to which the abatement notice relates is noise caused in the course of the performance of some duty imposed by law on the appellant, and
- (c) either paragraph (2) does not apply, or it does apply but the requirements of paragraph (3) have not been met,

the abatement notice shall be suspended until the appeal has been abandoned or decided by the court.

(2) This paragraph applies where —

- (a) the nuisance to which the abatement notice relates —
 - (i) is injurious to health, or
 - (ii) is likely to be of a limited duration such that suspension of the notice would render it of no practical effect, or
- (b) the expenditure which would be incurred by any person in the carrying out of works in compliance with the abatement notice before any appeal has been decided would not be disproportionate to the public benefit to be expected in that period from such compliance.

(3) Where paragraph (2) applies the abatement notice —

- (a) shall include a statement that paragraph (2) applies, and that as a consequence it shall have effect notwithstanding any appeal to a magistrates' court which has not been decided by the court, and
- (b) shall include a statement as to which of the grounds set out in paragraph (2) apply.

Revocations

4.—(1) Regulation 4 of the Control of Noise (Appeals) Regulations 1975 (a) is hereby revoked.

(2) In regulation 10(1) of those Regulations the word "58," shall be omitted.

13th November 1990

Chris Patten
Secretary of State for the Environment

Signed by authority of
the Secretary of State
13th November 1990

Ian Grist
Parliamentary Under Secretary
of State, Welsh Office

(a) S.I. 1975/2116.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision with respect to appeals to magistrates' courts against abatement notices served under section 80 of the Environmental Protection Act 1990. Regulation 2 sets out grounds on which such appeals may be made, describes the procedure to be followed in certain cases in which the appellant claims that a notice should have been served on some other person, and the action which the court may take to give effect to its decision on an appeal. Regulation 3 prescribes the cases in which an abatement notice is to be suspended pending the abandonment of, or a decision by a magistrates' court on, an appeal. Regulation 4 revokes certain provisions of the Control of Noise (Appeals) Regulations 1975.

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