



# Antisocial Behaviour etc. (Scotland) Act 2004

2004 asp 8

## PART 5

### NOISE NUISANCE

#### *Noise control provisions*

#### **43 Investigation of excessive noise from certain places**

- (1) Where a local authority receives a complaint from an individual that excessive noise is being emitted from relevant property during a noise control period, it shall ensure that an officer of the authority investigates the latter matter.
- (2) A complaint under subsection (1) may be made by any means.
- (3) If in consequence of an investigation under subsection (1) an officer of a local authority is satisfied that—
  - (a) noise is being emitted from relevant property (the “offending property”) during a noise control period; and
  - (b) the noise, if it were measured from a relevant place—
    - (i) would; or
    - (ii) might,exceed the permitted level,the officer may serve a notice about the noise under section 44.
- (4) For the purposes of subsection (3), it is for the officer of the authority dealing with the particular case—
  - (a) to decide whether any noise, if it were measured from a relevant place—
    - (i) would; or
    - (ii) might,exceed the permitted level; and
  - (b) for the purposes of that decision to decide—

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- (i) from what place to assess the noise; and
- (ii) whether to use any device for measuring the noise.

(5) Where—

- (a) a local authority (the “first local authority”) receives a complaint under subsection (1); and
  - (b) the offending property is within the area of another local authority,
- the first local authority may act under the noise control provisions as if the offending property were within its area, and accordingly may so act whether or not the noise control provisions apply to the area of the other local authority.

#### **44 Warning notices**

- (1) A notice under this section (a “warning notice”) shall—
  - (a) state that an officer of the authority considers—
    - (i) that noise is being emitted from the offending property during a noise control period; and
    - (ii) that the noise exceeds, or may exceed, the permitted level, as measured from a relevant place; and
  - (b) state that any person who is responsible for noise which—
    - (i) is emitted from the offending property in the period specified in the notice; and
    - (ii) exceeds the permitted level as measured from a relevant place, may be guilty of an offence.
- (2) The period specified in a warning notice shall be a period—
  - (a) beginning not earlier than 10 minutes after the time when the notice is served; and
  - (b) ending at the relevant time.
- (3) In subsection (2)(b), “relevant time” means the earlier of—
  - (a) the end of the noise control period during which the warning notice is served; and
  - (b) the point (if any) at which the permitted level at the time the notice is served ceases to be applicable.
- (4) Subject to subsection (5), a warning notice shall be served by delivering it to any person present at or near the offending property and appearing to the officer of the authority to be responsible for the noise.
- (5) If it is not reasonably practicable to identify any person present at or near the offending property as being a person responsible for the noise on whom the notice may reasonably be served, a warning notice shall be served by leaving it at the offending property.
- (6) A warning notice shall state the time at which it is served.
- (7) For the purpose of the noise control provisions, a person is responsible for noise emitted from relevant property if the emission of the noise is wholly or partly attributable to the person’s act, failure or sufferance.

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#### **45 Offence where noise exceeds permitted level after service of notice**

- (1) If a warning notice has been served in respect of noise emitted from relevant property, any person who is responsible for noise which—
  - (a) is emitted from the relevant property in the period specified in the notice; and
  - (b) exceeds the permitted level as measured from a relevant place,shall be guilty of an offence.
- (2) A person guilty of an offence under subsection (1) shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (3) It shall be a defence for a person charged with an offence under subsection (1) to show that there was a reasonable excuse for the act, failure or sufferance by reference to which the person was charged.
- (4) A person shall be taken to have shown the matter mentioned in subsection (3) if—
  - (a) sufficient evidence is adduced to raise an issue with respect to it; and
  - (b) the prosecution does not prove the contrary beyond reasonable doubt.
- (5) In proceedings for an offence under this section, a measurement of noise by a device is not admissible as evidence of a level of noise unless the device is an approved device and any conditions subject to which the approval was given are satisfied.

#### **46 Fixed penalty notices**

- (1) Subject to subsection (3), where a relevant officer has reason to believe that a person—
  - (a) is committing; or
  - (b) has just committed,an offence under section 45, the officer may give that person a notice (a “fixed penalty notice”) offering the person the opportunity of discharging any liability to conviction for that offence by payment of a fixed penalty.
- (2) In subsection (1), “relevant officer” means—
  - (a) an officer of the local authority authorised for the purposes of this section; or
  - (b) a constable.
- (3) If a fixed penalty notice is given to a person in respect of noise emitted from relevant property in the period specified in a warning notice, no further fixed penalty notice may be given to that person in respect of noise emitted from the relevant property during that period.
- (4) Subject to subsection (5), a fixed penalty notice may be given to a person by delivering the notice to the person.
- (5) If it is not reasonably practicable to deliver it to the person, a fixed penalty notice shall be given by leaving the notice, addressed to the person, at the offending property.
- (6) A fixed penalty notice shall give such particulars of the circumstances alleged to constitute the offence as are necessary for giving reasonable information of the offence.
- (7) A fixed penalty notice shall state—
  - (a) the period during which, by virtue of paragraph (a) of section 51(2), proceedings will not be taken for the offence;

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- (b) the amount of the fixed penalty; and
  - (c) the person to whom, and the address at which, the fixed penalty may be paid.
- (8) Payment of the fixed penalty may (among other methods) be made by pre-paying and posting to that person at that address a letter containing the amount of the penalty (in cash or otherwise).
- (9) Where a letter containing the amount of the penalty is sent in accordance with subsection (8), payment is to be regarded as having been made at the time at which that letter would be delivered in the ordinary course of post.
- (10) The fixed penalty payable under this section is £100.
- (11) A fixed penalty payable under this section shall be payable to the local authority whose officer issued the warning notice under reference to which the offence was committed.

#### **47 Powers of entry and seizure of equipment used to make noise unlawfully**

- (1) Subsection (2) applies where—
- (a) a warning notice has been served in respect of noise emitted from relevant property; and
  - (b) an officer of the local authority in whose area the relevant property is situated has reason to believe that, at any time in the period specified in the notice, noise emitted from the relevant property has exceeded the permitted level as measured from a relevant place.
- (2) An officer of the local authority, or a person authorised by the authority for the purpose, may seize and remove any equipment which appears—
- (a) to be being; or
  - (b) to have been,
- used in the emission of the noise.
- (3) If required to do so, a person exercising the power conferred by subsection (2) shall produce the person's authority.
- (4) If a sheriff or justice of the peace is satisfied by evidence on oath—
- (a) that a warning notice has been served in respect of noise emitted from relevant property;
  - (b) that, at any time in the period specified in the notice, noise emitted from the relevant property has exceeded the permitted level, as measured from a relevant place; and
  - (c) that—
    - (i) entry of an officer of the local authority, or of a person authorised by the authority for the purpose, to the relevant property has been refused;
    - (ii) such a refusal is apprehended; or
    - (iii) a request by an officer of the authority, or of such a person, for admission would defeat the object of the entry,
- the sheriff or justice may grant a warrant under this subsection.
- (5) A warrant under subsection (4) is a warrant authorising the local authority, by any of its officers or any person authorised by it for the purpose—

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- (a) to enter the relevant property for the purpose of seizing and removing any equipment which appears to be being used or to have been used in the emission of the noise; and
  - (b) for the purpose of exercising the power mentioned in paragraph (a), to open lockfast places on the relevant property.
- (6) A person who enters premises by virtue of a warrant granted under subsection (4)—
  - (a) may be accompanied by such persons, and take such equipment, as may be necessary; and
  - (b) shall, where the relevant property is unoccupied on the person's leaving, leave it as effectively secured against trespassers as it was when the person entered it.
- (7) A person who wilfully obstructs a person—
  - (a) exercising the power conferred by subsection (2); or
  - (b) exercising the power conferred by a warrant granted under subsection (4),shall be guilty of an offence.
- (8) A person guilty of an offence under subsection (7) shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (9) Schedule 1 (which makes further provision in relation to anything seized and removed by virtue of this section) shall have effect.

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