



# Antisocial Behaviour etc. (Scotland) Act 2004

2004 asp 8

## PART 5

### NOISE NUISANCE

#### *Summary procedure for dealing with noise from certain places*

#### **41 Application of noise control provisions to local authority areas**

- (1) Sections 43 to 47 (the “noise control provisions”) apply to the area of a local authority only if the authority has so resolved.
- (2) A resolution for the purpose of subsection (1) shall specify—
  - (a) a date (being a date at least 2 months after the passing of the resolution) on and after which the noise control provisions are to have effect in the area of the authority (the “commencement date”); and
  - (b) periods of the week during which noise is to be controlled by virtue of those provisions (each such period being a “noise control period”).
- (3) For the purpose of subsection (2)(b), a resolution may specify—
  - (a) the whole week as a noise control period; and
  - (b) different noise control periods for different—
    - (i) areas;
    - (ii) times of year; or
    - (iii) other circumstances.
- (4) For the purpose of subsection (2)(b), a week begins on Monday.
- (5) If a local authority resolves to apply the noise control provisions to its area, it shall—
  - (a) cause a notice to be published (in consecutive weeks with the second notice appearing at least a month before the commencement date) in a local newspaper circulating in its area; and
  - (b) at least a month before the commencement date—

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- (i) give a copy of the resolution to the Scottish Ministers; and
  - (ii) give a copy of the notice mentioned in paragraph (a) to each local authority whose area adjoins its area.
- (6) A notice published under subsection (5)(a) shall—
- (a) state that the resolution has been passed;
  - (b) state the commencement date; and
  - (c) set out—
    - (i) the general effect of the noise control provisions and sections 48, 49 and 51; and
    - (ii) the noise control periods specified in the resolution.
- (7) Where a local authority is given a notice under subsection (5)(b)(ii), it shall take such steps as it considers necessary for the purpose of making persons in its area aware of the contents of the notice.

#### **42      Revocation or variation of resolution under section 41**

- (1) A local authority may by resolution—
- (a) revoke the resolution made for the purpose of section 41(1);
  - (b) revoke any noise control period specified in that resolution; or
  - (c) specify noise control periods—
    - (i) in addition to; or
    - (ii) in substitution for,
 any such noise control period.
- (2) A resolution under subsection (1) shall specify a date (being a date at least 2 months after the passing of the resolution) on which the provision made by the resolution shall come into effect (the “effective date”).
- (3) If a local authority passes a resolution under subsection (1), it shall—
- (a) cause a notice to be published (in consecutive weeks with the second notice appearing at least a month before the effective date) in a local newspaper circulating in its area; and
  - (b) at least a month before the effective date—
    - (i) give a copy of the resolution to the Scottish Ministers; and
    - (ii) give a copy of the notice mentioned in paragraph (a) to each local authority whose area adjoins its area.
- (4) A notice published under subsection (3)(a) shall—
- (a) state that the resolution has been passed;
  - (b) state the effective date; and
  - (c) set out the provision made by the resolution.
- (5) Where a local authority is given a copy of a notice under subsection (3)(b)(ii), it shall take such steps as it considers necessary for the purpose of making persons in its area aware of the contents of the notice.

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### *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—
    - (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,

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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.

#### **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—

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- (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;
    - (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.

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- (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—
- (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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### *The permitted level*

#### **48 Permitted level of noise**

- (1) For the purposes of the noise control provisions, the Scottish Ministers may by regulations prescribe the maximum level of noise (the “permitted level”) which may be emitted from relevant property.
- (2) The permitted level shall be a level for noise as measured from any relevant place by an approved device used in accordance with any conditions subject to which the approval was given.
- (3) Different permitted levels may be prescribed for different—
  - (a) periods of the week;
  - (b) areas or descriptions of areas;
  - (c) times of year; or
  - (d) other circumstances,and the permitted level may be prescribed partly by reference to other levels of noise.

### *Miscellaneous*

#### **49 Approval of measuring devices**

- (1) For the purposes of the noise control provisions, the Scottish Ministers may by regulations approve any type of device used for the measurement of noise.
- (2) An approval under subsection (1) may be given subject to such conditions as to—
  - (a) the purposes for which; or
  - (b) the manner and circumstances in which,devices of the type approved are to be used as may be prescribed in the regulations.

#### **50 Power to provide funds to local authorities**

- (1) The Scottish Ministers may make to a local authority payments in respect of—
  - (a) the whole; or
  - (b) any part,of the expenditure of the authority in relation to the discharge of the functions under this Part of the authority and its officers.
- (2) Payments under this section shall be made at such times, in such manner and subject to such conditions as the Scottish Ministers may determine.

#### **51 Fixed penalty notices: supplementary**

- (1) If a form for a fixed penalty notice is specified in an order made by the Scottish Ministers, a fixed penalty notice shall be given in that form.
- (2) Where a person is given a fixed penalty notice—
  - (a) proceedings for the offence in respect of which the notice was given shall not be instituted before the end of the period of 28 days beginning with the date of the notice;

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- (b) the person cannot be convicted of that offence if the person pays the fixed penalty before the end of that period; and
- (c) the person may be convicted of a further offence under section 45 in respect of noise emitted from the relevant property—
  - (i) after the notice is given; and
  - (ii) before the end of the period specified in the warning notice.
- (3) In proceedings for an offence under section 45, evidence that payment of a fixed penalty was or was not made before the end of any period may be given by the production of a certificate which—
  - (a) purports to be signed by or on behalf of the person having responsibility for the financial affairs of the local authority; and
  - (b) states that payment of a fixed penalty was made on any date or, as the case may be, was not received before the end of that period.
- (4) Subject to subsection (5), the Scottish Ministers may by order amend section 46(10) by substituting an amount specified in the order for the amount that is for the time being mentioned in that section.
- (5) The Scottish Ministers may not specify an amount exceeding level 2 on the standard scale.
- (6) Any sum received by a local authority under section 46 shall [<sup>F1</sup>accrue to that authority].

#### Textual Amendments

- F1** Words in s. 51(6) substituted (10.3.2008) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007](#) (asp 6), ss. 80, 84, **Sch. para. 32(a)**; S.S.I. 2008/42, **art. 3**, Sch. (with arts. 4-6)

## 52 Guidance in relation to this Part

A person (other than a court) shall, in discharging functions by virtue of this Part, have regard to any guidance given by the Scottish Ministers about—

- (a) the discharge of those functions; and
- (b) matters arising in connection with the discharge of those functions.

### *Interpretation*

## 53 Meaning of “relevant place” and “relevant property”

(1) In this Part—

“relevant place” means—

- (a) any place within accommodation (except, in the case of measurement of noise emitted from relevant property which is accommodation, that accommodation); and
- (b) such other place as may be prescribed;

“relevant property” means—

- (a) any accommodation;



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- (b) any land belonging exclusively to, or enjoyed exclusively with, any accommodation;
- (c) any land not falling within paragraph (b)—
  - (i) to which at least two persons have rights in common; and
  - (ii) which is used by those persons as a private garden;
- (d) any common passage, close, court, stair, lift or yard pertinent to any tenement or group of separately owned houses; or
- (e) such other place as may be prescribed.

(2) In subsection (1)—

“accommodation” means a building or other structure (or part of a building or other structure) used or intended to be used as a separate unit of accommodation (whether on a permanent basis or otherwise); and

“prescribed” means prescribed by the Scottish Ministers by order.

## **54 Interpretation of Part 5**

(1) In this Part—

“fixed penalty notice” has the meaning given by section 46(1);

“noise control period” has the meaning given by section 41(2)(b);

“noise control provisions” has the meaning given by section 41(1);

“offending property” has the meaning given by section 43(3)(a);

“permitted level” has the meaning given by section 48(1); and

“warning notice” has the meaning given by section 44(1).

(2) References in this Part to approved devices are references to devices of a type approved by virtue of section 49(1).

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