



Environmental Protection Act 1990

1990 CHAPTER 43

PART III

STATUTORY NUISANCES AND CLEAN AIR

Statutory nuisances: England and Wales

79 Statutory nuisances and inspections therefor

- (1) Subject to subsections (2) to (6) below, the following matters constitute “statutory nuisances” for the purposes of this Part, that is to say—
- (a) any premises in such a state as to be prejudicial to health or a nuisance;
 - (b) smoke emitted from premises so as to be prejudicial to health or a nuisance;
 - (c) fumes or gases emitted from premises so as to be prejudicial to health or a nuisance;
 - (d) any dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or a nuisance;
 - (e) any accumulation or deposit which is prejudicial to health or a nuisance;
 - (f) any animal kept in such a place or manner as to be prejudicial to health or a nuisance;
 - (g) noise emitted from premises so as to be prejudicial to health or a nuisance;
 - (h) any other matter declared by any enactment to be a statutory nuisance;

and it shall be the duty of every local authority to cause its area to be inspected from time to time to detect any statutory nuisances which ought to be dealt with under section 80 below and, where a complaint of a statutory nuisance is made to it by a person living within its area, to take such steps as are reasonably practicable to investigate the complaint.

- (2) Subsection (1)(b) and (g) above do not apply in relation to premises—
- (a) occupied on behalf of the Crown for naval, military or air force purposes or for the purposes of the department of the Secretary of State having responsibility for defence, or

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(b) occupied by or for the purposes of a visiting force;
 and “visiting force” means any such body, contingent or detachment of the forces of any country as is a visiting force for the purposes of any of the provisions of the Visiting Forces Act 1952.

(3) Subsection (1)(b) above does not apply to—

- (i) smoke emitted from a chimney of a private dwelling within a smoke control area,
- (ii) dark smoke emitted from a chimney of a building or a chimney serving the furnace of a boiler or industrial plant attached to a building or for the time being fixed to or installed on any land,
- (iii) smoke emitted from a railway locomotive steam engine, or
- (iv) dark smoke emitted otherwise than as mentioned above from industrial or trade premises.

(4) Subsection (1)(c) above does not apply in relation to premises other than private dwellings.

(5) Subsection (1)(d) above does not apply to steam emitted from a railway locomotive engine.

(6) Subsection (1)(g) above does not apply to noise caused by aircraft other than model aircraft.

(7) In this Part—

“chimney” includes structures and openings of any kind from or through which smoke may be emitted;

“dust” does not include dust emitted from a chimney as an ingredient of smoke;

“fumes” means any airborne solid matter smaller than dust;

“gas” includes vapour and moisture precipitated from vapour;

“industrial, trade or business premises” means premises used for any industrial, trade or business purposes or premises not so used on which matter is burnt in connection with any industrial, trade or business process, and premises are used for industrial purposes where they are used for the purposes of any treatment or process as well as where they are used for the purposes of manufacturing;

“local authority” means, subject to subsection (8) below,—

(a) in Greater London, a London borough council, the Common Council of the City of London and, as respects the Temples, the Sub-Treasurer of the Inner Temple and the Under-Treasurer of the Middle Temple respectively;

(b) outside Greater London, a district council; and

(c) the Council of the Isles of Scilly;

“noise” includes vibration;

“person responsible”, in relation to a statutory nuisance, means the person to whose act, default or sufferance the nuisance is attributable;

“prejudicial to health” means injurious, or likely to cause injury, to health;

“premises” includes land and, subject to subsection (12) below, any vessel;

“private dwelling” means any building, or part of a building, used or intended to be used, as a dwelling;

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“smoke” includes soot, ash, grit and gritty particles emitted in smoke; and any expressions used in this section and in the Clean Air Act 1956 or the Clean Air Act 1968 have the same meaning in this section as in that Act and section 34(2) of the Clean Air Act 1956 shall apply for the interpretation of the expression “dark smoke” and the operation of this Part in relation to it.

- (8) Where, by an order under section 2 of the Public Health (Control of Disease) Act 1984, a port health authority has been constituted for any port health district, the port health authority shall have by virtue of this subsection, as respects its district, the functions conferred or imposed by this Part in relation to statutory nuisances other than a nuisance falling within paragraph (g) of subsection (1) above and no such order shall be made assigning those functions; and “local authority” and “area” shall be construed accordingly.
- (9) In this Part “best practicable means” is to be interpreted by reference to the following provisions—
- (a) “practicable” means reasonably practicable having regard among other things to local conditions and circumstances, to the current state of technical knowledge and to the financial implications;
 - (b) the means to be employed include the design, installation, maintenance and manner and periods of operation of plant and machinery, and the design, construction and maintenance of buildings and structures;
 - (c) the test is to apply only so far as compatible with any duty imposed by law;
 - (d) the test is to apply only so far as compatible with safety and safe working conditions, and with the exigencies of any emergency or unforeseeable circumstances;

and, in circumstances where a code of practice under section 71 of the Control of Pollution Act 1974 (noise minimisation) is applicable, regard shall also be had to guidance given in it.

- (10) A local authority shall not without the consent of the Secretary of State institute summary proceedings under this Part in respect of a nuisance falling within paragraph (b), (d) or (e) of subsection (1) above if proceedings in respect thereof might be instituted under Part I or the Alkali &c. Works Regulation Act 1906 or section 5 of the Health and Safety at Work etc. Act 1974.
- (11) The area of a local authority which includes part of the seashore shall also include for the purposes of this Part the territorial sea lying seawards from that part of the shore; and subject to subsection (12) below, this Part shall have effect, in relation to any area included in the area of a local authority by virtue of this subsection—
- (a) as if references to premises and the occupier of premises included respectively a vessel and the master of a vessel; and
 - (b) with such other modifications, if any, as are prescribed in regulations made by the Secretary of State.
- (12) A vessel powered by steam reciprocating machinery is not a vessel to which this Part of this Act applies.

80 Summary proceedings for statutory nuisances

- (1) Where a local authority is satisfied that a statutory nuisance exists, or is likely to occur or recur, in the area of the authority, the local authority shall serve a notice (“an abatement notice”) imposing all or any of the following requirements—

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- (a) requiring the abatement of the nuisance or prohibiting or restricting its occurrence or recurrence;
 - (b) requiring the execution of such works, and the taking of such other steps, as may be necessary for any of those purposes,
- and the notice shall specify the time or times within which the requirements of the notice are to be complied with.
- (2) The abatement notice shall be served—
 - (a) except in a case falling within paragraph (b) or (c) below, on the person responsible for the nuisance;
 - (b) where the nuisance arises from any defect of a structural character, on the owner of the premises;
 - (c) where the person responsible for the nuisance cannot be found or the nuisance has not yet occurred, on the owner or occupier of the premises.
 - (3) The person served with the notice may appeal against the notice to a magistrates' court within the period of twenty-one days beginning with the date on which he was served with the notice.
 - (4) If a person on whom an abatement notice is served, without reasonable excuse, contravenes or fails to comply with any requirement or prohibition imposed by the notice, he shall be guilty of an offence.
 - (5) Except in a case falling within subsection (6) below, a person who commits an offence under subsection (4) above shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale together with a further fine of an amount equal to one-tenth of that level for each day on which the offence continues after the conviction.
 - (6) A person who commits an offence under subsection (4) above on industrial, trade or business premises shall be liable on summary conviction to a fine not exceeding £20,000.
 - (7) Subject to subsection (8) below, in any proceedings for an offence under subsection (4) above in respect of a statutory nuisance it shall be a defence to prove that the best practicable means were used to prevent, or to counteract the effects of, the nuisance.
 - (8) The defence under subsection (7) above is not available—
 - (a) in the case of a nuisance falling within paragraph (a), (d), (e), (f) or (g) of section 79(1) above except where the nuisance arises on industrial, trade or business premises;
 - (b) in the case of a nuisance falling within paragraph (b) of section 79(1) above except where the smoke is emitted from a chimney; and
 - (c) in the case of a nuisance falling within paragraph (c) or (h) of section 79(1) above.
 - (9) In proceedings for an offence under subsection (4) above in respect of a statutory nuisance falling within paragraph (g) of section 79(1) above where the offence consists in contravening requirements imposed by virtue of subsection (1)(a) above it shall be a defence to prove—
 - (a) that the alleged offence was covered by a notice served under section 60 or a consent given under section 61 or 65 of the Control of Pollution Act 1974 (construction sites, etc); or

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- (b) where the alleged offence was committed at a time when the premises were subject to a notice under section 66 of that Act (noise reduction notice), that the level of noise emitted from the premises at that time was not such as to constitute a contravention of the notice under that section; or
 - (c) where the alleged offence was committed at a time when the premises were not subject to a notice under section 66 of that Act, and when a level fixed under section 67 of that Act (new buildings liable to abatement order) applied to the premises, that the level of noise emitted from the premises at that time did not exceed that level.
- (10) Paragraphs (b) and (c) of subsection (9) above apply whether or not the relevant notice was subject to appeal at the time when the offence was alleged to have been committed.

81 Supplementary provisions

- (1) Where more than one person is responsible for a statutory nuisance section 80 above shall apply to each of those persons whether or not what any one of them is responsible for would by itself amount to a nuisance.
- (2) Where a statutory nuisance which exists or has occurred within the area of a local authority, or which has affected any part of that area, appears to the local authority to be wholly or partly caused by some act or default committed or taking place outside the area, the local authority may act under section 80 above as if the act or default were wholly within that area, except that any appeal shall be heard by a magistrates' court having jurisdiction where the act or default is alleged to have taken place.
- (3) Where an abatement notice has not been complied with the local authority may, whether or not they take proceedings for an offence under section 80(4) above, abate the nuisance and do whatever may be necessary in execution of the notice.
- (4) Any expenses reasonably incurred by a local authority in abating, or preventing the recurrence of, a statutory nuisance under subsection (3) above may be recovered by them from the person by whose act or default the nuisance was caused and, if that person is the owner of the premises, from any person who is for the time being the owner thereof; and the court may apportion the expenses between persons by whose acts or defaults the nuisance is caused in such manner as the court consider fair and reasonable.
- (5) If a local authority is of opinion that proceedings for an offence under section 80(4) above would afford an inadequate remedy in the case of any statutory nuisance, they may, subject to subsection (6) below, take proceedings in the High Court for the purpose of securing the abatement, prohibition or restriction of the nuisance, and the proceedings shall be maintainable notwithstanding the local authority have suffered no damage from the nuisance.
- (6) In any proceedings under subsection (5) above in respect of a nuisance falling within paragraph (g) of section 79(1) above, it shall be a defence to prove that the noise was authorised by a notice under section 60 or a consent under section 61 (construction sites) of the Control of Pollution Act 1974.
- (7) The further supplementary provisions in Schedule 3 to this Act shall have effect.

82 Summary proceedings by persons aggrieved by statutory nuisances

- (1) A magistrates' court may act under this section on a complaint made by any person on the ground that he is aggrieved by the existence of a statutory nuisance.
- (2) If the magistrates' court is satisfied that the alleged nuisance exists, or that although abated it is likely to recur on the same premises, the court shall make an order for either or both of the following purposes—
 - (a) requiring the defendant to abate the nuisance, within a time specified in the order, and to execute any works necessary for that purpose;
 - (b) prohibiting a recurrence of the nuisance, and requiring the defendant, within a time specified in the order, to execute any works necessary to prevent the recurrence;and may also impose on the defendant a fine not exceeding level 5 on the standard scale.
- (3) If the magistrates' court is satisfied that the alleged nuisance exists and is such as, in the opinion of the court, to render premises unfit for human habitation, an order under subsection (2) above may prohibit the use of the premises for human habitation until the premises are, to the satisfaction of the court, rendered fit for that purpose.
- (4) Proceedings for an order under subsection (2) above shall be brought—
 - (a) except in a case falling within paragraph (b) or (c) below, against the person responsible for the nuisance;
 - (b) where the nuisance arises from any defect of a structural character, against the owner of the premises;
 - (c) where the person responsible for the nuisance cannot be found, against the owner or occupier of the premises.
- (5) Where more than one person is responsible for a statutory nuisance, subsections (1) to (4) above shall apply to each of those persons whether or not what any one of them is responsible for would by itself amount to a nuisance.
- (6) Before instituting proceedings for an order under subsection (2) above against any person, the person aggrieved by the nuisance shall give to that person such notice in writing of his intention to bring the proceedings as is applicable to proceedings in respect of a nuisance of that description and the notice shall specify the matter complained of.
- (7) The notice of the bringing of proceedings in respect of a statutory nuisance required by subsection (6) above which is applicable is—
 - (a) in the case of a nuisance falling within paragraph (g) of section 79(1) above, not less than three days' notice; and
 - (b) in the case of a nuisance of any other description, not less than twenty-one days' notice;but the Secretary of State may, by order, provide that this subsection shall have effect as if such period as is specified in the order were the minimum period of notice applicable to any description of statutory nuisance specified in the order.
- (8) A person who, without reasonable excuse, contravenes any requirement or prohibition imposed by an order under subsection (2) above shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale together with a further fine of an amount equal to one-tenth of that level for each day on which the offence continues after the conviction.

- (9) Subject to subsection (10) below, in any proceedings for an offence under subsection (8) above in respect of a statutory nuisance it shall be a defence to prove that the best practicable means were used to prevent, or to counteract the effects of, the nuisance.
- (10) The defence under subsection (9) above is not available—
- (a) in the case of a nuisance falling within paragraph (a), (d), (e), (f) or (g) of section 79(1) above except where the nuisance arises on industrial, trade or business premises;
 - (b) in the case of a nuisance falling within paragraph (b) of section 79(1) above except where the smoke is emitted from a chimney;
 - (c) in the case of a nuisance falling within paragraph (c) or (h) of section 79(1) above; and
 - (d) in the case of a nuisance which is such as to render the premises unfit for human habitation.
- (11) If a person is convicted of an offence under subsection (8) above, a magistrates' court may, after giving the local authority in whose area the nuisance has occurred an opportunity of being heard, direct the authority to do anything which the person convicted was required to do by the order to which the conviction relates.
- (12) Where on the hearing of proceedings for an order under subsection (2) above it is proved that the alleged nuisance existed at the date of the making of the complaint, then, whether or not at the date of the hearing it still exists or is likely to recur, the court shall order the defendant (or defendants in such proportions as appears fair and reasonable) to pay to the person bringing the proceedings such amount as the court considers reasonably sufficient to compensate him for any expenses properly incurred by him in the proceedings.
- (13) If it appears to the magistrates' court that neither the person responsible for the nuisance nor the owner or occupier of the premises can be found the court may, after giving the local authority in whose area the nuisance has occurred an opportunity of being heard, direct the authority to do anything which the court would have ordered that person to do.