



Environmental Protection Act 1990

1990 CHAPTER 43

PART III

STATUTORY NUISANCES AND CLEAN AIR

Statutory nuisances^{F1} . . .

79 Statutory nuisances and inspections therefor.

(1) [^{F1}Subject to subsections (1A) to (6A) 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;
- [^{F2}(ga) noise that is prejudicial to health or a nuisance and is emitted from or caused by a vehicle, machinery or equipment in a street [^{F3}or in Scotland, road];]
- (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 [^{F4}or sections 80 and 80A 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.

[^{F5}(1A) No matter shall constitute a statutory nuisance to the extent that it consists of, or is caused by, any land being in a contaminated state.

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(1B) Land is in a “contaminated state” for the purposes of subsection (1A) above if, and only if, it is in such a condition, by reason of substances in, on or under the land, that—

- (a) harm is being caused or there is a possibility of harm being caused; or
- (b) pollution of controlled waters is being, or is likely to be, caused;

and in this subsection “harm”, “pollution of controlled waters” and “substance” have the same meaning as in Part IIA of this Act.]

(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
- (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.

[^{F6}(6A) Subsection (1)(ga) above does not apply to noise made—

- (a) by traffic,
- (b) by any naval, military or air force of the Crown or by a visiting force (as defined in subsection (2) above), or
- (c) by a political demonstration or a demonstration supporting or opposing a cause or campaign.]

(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;

[^{F7}“equipment” includes a musical instrument;]

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

“gas” includes vapour and moisture precipitated from vapour;

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“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) [^{F8}in England and Wales] outside Greater London, a district council; ^{F9} . . .
- (bb) [^{F10}in Wales, a county council or county borough council;]
- (c) the Council of the Isles of Scilly; [^{F11}and
- (d) in Scotland, a district or islands council or a council constituted under section 2 of the ^{M1}Local Government etc (Scotland) Act 1994;]

“noise” includes vibration;

[^{F12}“person responsible”—

- (a) in relation to a statutory nuisance, means the person to whose act, default or sufferance the nuisance is attributable;
- (b) in relation to a vehicle, includes the person in whose name the vehicle is for the time being registered under [^{F13}the Vehicle Excise and Registration Act 1994] and any other person who is for the time being the driver of the vehicle;
- (c) in relation to machinery or equipment, includes any person who is for the time being the operator of the machinery or equipment;]

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

“premises” includes land and, subject to subsection (12) [^{F14}and [^{F15}, in relation to England and Wales,] section 81A(9)] below, any vessel;

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

[^{F16}“road” has the same meaning as in Part IV of the New Roads and Street Works Act 1991;]

“smoke” includes soot, ash, grit and gritty particles emitted in smoke;

[^{F17}“street” means a highway and any other road, footway, square or court that is for the time being open to the public;]

and any expressions used in this section and in [^{F18}the Clean Air Act 1993] have the same meaning in this section as in that Act and [^{F18}section 3 of the Clean Air Act 1993] 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 ^{M2}Public Health (Control of Disease) Act 1984, a port health authority has been constituted for any port health district, [^{F19}or in Scotland where by an order under section 172 of the ^{M3}Public Health (Scotland) Act 1897 a port local authority or a joint port local authority has been constituted for the whole or part of a port,] the port health authority [^{F20}, port local authority or joint port local authority, as the case may be] 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) [^{F21}or (ga)] of

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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 ^{M4}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) ^{F22}, (e) or (g) ^{F23} and, in relation to Scotland, ^{F22} paragraph (ga) ^{F24} of subsection (1) above if proceedings in respect thereof might be instituted under Part I ^{F24} of the ^{M5}Alkali &c. Works Regulation Act 1906 or section 5 of the ^{M6}Health and Safety at Work etc. Act 1974 ^{F25} or under regulations under section 2 of the Pollution Prevention and Control Act 1999.]

(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) ^{F14} and ^{F26}, in relation to England and Wales,] section 81A(9) 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.

Extent Information

- E1** Ss. 79-82, which previously extended to England and Wales only, extend to Scotland from 1.4.1996 (except where specified) by virtue of the repeal of s. 83 of this Act by 1995 c. 25, s. 120(3), **Sch. 24**; S.I. 1996/186, **art. 3**

Textual Amendments

- F1** Words in s. 79(1) substituted (1.4.2000 for E., 14.7.2000 for S. and 15.9.2001 for W.) by virtue of 1995 c. 25, s. 120(1), **Sch. 22 para. 89(2)** (with ss. 7(6), 115, 117); S.I. 2000/340, **art. 2(b)** (with art. 3); S.S.I. 2000/180, **art. 2(1)(b)** (with art. 3); S.I. 2001/3211, **art. 2(c)** (with saving in art. 3)
- F2** S. 79(1)(ga) inserted (5.1.1994) by 1993 c. 40, **ss. 2(2)(b)**, 12(1)
- F3** Words in s. 79(1)(ga) inserted (1.4.1996) by 1995 c. 25, s. 107, **Sch. 17 para. 2(a)** (with ss. 7(6), 115), 117; S.I. 1996/186, **art. 3**

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- F4** Words in s. 79(1) inserted (5.1.1994) by 1993 c. 40, **ss. 2(2)(c)**, 12(1)
- F5** S. 79(1A)(1B) inserted (1.4.2000 for E., 14.7.2000 for S. and 15.9.2001 for W.) by 1995 c. 25, s. 120(1), **Sch. 22 para. 89(3)** (with ss. 7(6), 115, 117); S.I. 2000/340, **art. 2(b)** (with art. 3); S.S.I. 2000/180, **art. 2(1)(b)** (with art. 3); S.I. 2001/3211, **art. 2(c)** (with saving in art. 3)
- F6** S. 79(6A) inserted (5.1.1994) by 1993 c. 40, **ss. 2(3)**, 12(1)
- F7** Definition of "equipment" in s. 79(7) inserted (5.1.1994) by 1993 c. 40, **ss. 2(4)(a)**, 12(1)
- F8** Words "in England and Wales" in para. (b) in the definition of "local authority" in s. 79(7)(b) inserted (1.4.1996) by 1995 c. 25, s. 107, **Sch. 17 para. 2(b)(i)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** and words "in England" expressed to be inserted (1.4.1996) by 1994 c. 19, s. 22(3), **Sch. 9 para. 17(5)** (with s. 54(7), **Sch. 17 paras. 22, 23(2)**); S.I. 1996/396, **art. 3, Sch. 1**
- F9** Word in s. 79(7) in the definition of "local authority" repealed (1.4.1996) by 1995 c. 25, ss. 107, 120(3), **Sch. 17 para. 2(b)(i)**, **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F10** S. 79(7): para. (bb) in the definition of "local authority" inserted (1.4.1996) by 1994 c. 19, s. 22(3), **Sch. 9 para. 17(5)** (with s. 54(7), **Sch. 17 paras. 22, 23(2)**); S.I. 1996/396, **art. 3, Sch. 1**
- F11** S. 79(7): Words in the definition of "local authority" inserted (1.4.1996) by 1995 c. 25, s. 107, **Sch. 17 para. 2(b)(i)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F12** Definition of "person responsible" in s. 79(7) substituted (5.1.1994) by 1993 c. 40, **ss. 2(4)(b)**, 12(1)
- F13** Words in s. 79(7) substituted (1.9.1994) by 1994 c. 22, ss. 63, 66(1), **Sch. 3 para. 27** (with s. 57(4))
- F14** Words in s. 79(7)(11) inserted (5.1.1994) by 1993 c. 40, **ss. 10(1)**, 12(1)
- F15** S. 79(7): Words in the definition of "premises" inserted (1.4.1996) by 1995 c. 25, s. 107, **Sch. 17 para. 2(b)(ii)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F16** S. 79(7): Definition of "road" inserted (1.4.1996) by 1995 c. 25, s. 107, **Sch. 17 para. 2(b)(iii)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F17** Definition of "street" in s. 79(7) inserted (5.1.1994) by 1993 c. 40, **ss. 2(4)(c)**, 12(1)
- F18** Words in s. 79(7) substituted (27.8.1993) by 1993 c. 11, s. 67(1), **Sch. 4 para. 4**
- F19** Words in s. 79(8) inserted (1.4.1996) by 1995 c. 25, s. 107, **Sch. 17 para. 2(c)(i)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F20** Words in s. 79(8) inserted (1.4.1996) by 1995 c. 25, s. 107, **Sch. 17 para. 2(c)(ii)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F21** Words in s. 79(8) inserted (5.1.1994) by 1993 c. 40, **ss. 2(5)**, 12(1)
- F22** Words in s. 79(10) substituted (E.W.) (1.8.2000) and (S.) (28.9.2000) by S.I. 2000/1973, **reg. 39, Sch. 10 Pt. 1 para. 7** and S.S.I. 2000/323, **reg. 36, Sch. 10 Pt. 1 para. 3(6)**
- F23** Words in s. 79(10) inserted (1.4.1996) by 1995 c. 25, s. 107, **Sch. 17 para. 2(d)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F24** Words in s. 79(10) repealed (16.12.1996 for E.W. and otherwise prosp.) by 1990 c. 43, ss. 162(2), 164(3), **Sch. 16 Pt. I**; S.I. 1996/3056, **art. 2**
- F25** Words in s. 79(10) inserted (21.3.2000 for E.W. and 29.9.2000 for S.) by 1999 c. 24, s. 6, **Sch. 2 para. 6**; S.I. 2000/800, **art. 2**; S.S.I. 2000/322, **art. 2**
- F26** Words in s. 79(11) inserted (1.4.1996) by 1995 c. 25, s. 107, **Sch. 17 para. 2(e)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

Modifications etc. (not altering text)

- C1** S. 79 applied (with modifications) (17.12.1996) by 1996 c. ix, **ss. 1(1)**, 24

Marginal Citations

- M1** 1994 c. 39.
M2 1984 c. 22.
M3 1897 c. 38.
M4 1974 c. 40.
M5 1906 c. 14.
M6 1974 c. 37.

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