

CLEAN NEIGHBOURHOODS AND ENVIRONMENT ACT 2005

EXPLANATORY NOTES

THE ACT

Commentary on Sections

Part 7: Noise

Chapter 2: General

Noise from premises

Section 82 Noise offences: fixed penalty notices

214. **Section 82** makes various amendments to the provisions in the Noise Act 1996 relating to fixed penalties. The Noise Act 1996 previously permitted a local authority to deal with noise exceeding permitted levels from only dwellings at night-time. An authorised officer of a local authority can, under section 8 of the Act, give a person who he believes has committed an offence under the Act a fixed penalty notice, offering him the opportunity to discharge any liability to conviction for that offence by payment of a fixed penalty.
215. **Section 82(3)** introduces new sections 8A and 8B to the 1996 Act. Section 8A(2)(a) enables a local authority to set the level of the fixed penalty (in lieu of liability to conviction for an offence) in its area. The fixed penalty is set at £100 where no amount is specified by a local authority (which was the amount of the penalty under the previous regime). In either case, a local authority may treat a penalty as having been paid if a lesser amount is paid before the end of such (shorter) period as it may specify.
216. Sections 8A(4) and (5) give powers to the Secretary of State or the National Assembly for Wales (as appropriate) to make regulations governing the power of local authorities to set local fixed penalty rates (e.g. by specifying a range within which the amount must fall or limiting the extent and circumstances in respect of which a local authority may provide for reduced early payment).
217. Section 8B provides an authorised officer of a local authority with the power to require the name and address of a person if the officer proposes to give him a fixed penalty notice, and makes it an offence for that person either to fail to give that information or to give false or inaccurate information.
218. **Section 84** and Schedule 1 (discussed below) amend the Noise Act 1996 by extending its effect to certain licensed premises as well as dwellings. The new sections 8A and 8B will apply equally to fixed penalties given in respect of an alleged offence in relation to licensed premises but Schedule 1 amends section 8A to provide that where the alleged offence relates to licensed premises, the amount of the fixed penalty will be fixed at £500 (with no power for a local authority to set an alternative).

Section 83 Noise offences: use of fixed penalty receipts

219. **Section 83** amends section 9 of the Noise Act 1996, which contains provisions dealing with the use by local authorities of receipts from fixed penalty notices given under section 8 of that Act.
220. The amendments made by *subsection (2)* include in the list of qualifying functions for which a local authority can use those receipts its new functions relating to intruder alarms under Chapter 1 of Part 7 and its functions in relation to noise statutory nuisance under the Environmental Protection Act 1990.
221. *Subsection (3)* makes similar provision to that made by section 8 (*subsection (8)*) as described in paragraph 44 above.

Section 84 and Schedule 1 Extension of Noise Act 1996 to licensed premises etc

222. **Section 84** and Schedule 1 extend the powers under the Noise Act 1996 for a local authority to take action to deal with noise at night (formerly restricted to noise from dwellings) to premises in respect of which there is either a premises licence or a temporary event notice in effect under the Licensing Act 2003 (referred to generally as “licensed premises”).
223. **Schedule 1** amends the Noise Act 1996 in order to give effect to this extension. The new regime for licensed premises to all intents and purposes mirrors the existing one for dwellings.
224. In particular, paragraph 6 of the Schedule inserts a new section 4A into that Act which provides that an offence is committed by the responsible person in respect of the licensed premises where, further to the service of a warning notice under section 3 (as amended by paragraph 4 of the Schedule), noise exceeding the permitted level is emitted from the premises in the period specified in the warning notice. The permitted level for noise from such premises will be determined by the Secretary of State under section 5 of the Noise Act 1996 (as amended by paragraph 7 of the Schedule) in time for the implementation of this provision.
225. The responsible person in respect of the premises is defined in the new *subsection (6)* to be inserted into section 3 of the Noise Act 1996. That person is, broadly speaking, the most senior person present at the premises at the time the offence is committed.
226. The amendments to the Noise Act 1996 in paragraphs 10 to 12 of Schedule 1 extend to licensed premises the provisions which enable a local authority to issue a fixed penalty notice in lieu of liability to conviction for an offence under the Act. The fixed penalty in respect of licensed premises is set at £500 (with no power for a local authority to set an alternative rate in its area).
227. **Paragraphs 13 to 14** of Schedule 1 make amendments extending the 1996 Act’s provisions on powers of entry and seizure to licensed premises.

Section 85 Noise Act 1996: supplementary

228. This section makes some technical amendments to the Noise Act 1996 to account for the transfer of functions of the Secretary of State relating to Wales under that Act to the National Assembly for Wales.

Statutory noise nuisances

Section 86 Deferral of duty to serve abatement notice

229. **Section 86** amends section 80 Environmental Protection Act 1990 so as to enable a local authority to defer the issuing of an abatement notice in respect of noise which it is satisfied constitutes a statutory nuisance for seven days, while it takes any other

*These notes refer to the Clean Neighbourhoods and Environment
Act 2005 (c.16) which received Royal Assent on 7 April 2005*

appropriate steps to persuade the person on whom it would otherwise be serving the notice to abate the nuisance or prohibit or restrict its occurrence or recurrence. There is no obligation on the authority to pursue this alternative route – it may still proceed by issuing an abatement notice straightaway if it so chooses. If the authority does defer and the nuisance is not abated after the seven day period (or if the authority concludes before then that it will not be abated within that period), the authority must proceed to serve an abatement notice under section 80(1).