

CLEAN NEIGHBOURHOODS AND ENVIRONMENT ACT 2005

EXPLANATORY NOTES

THE ACT

Commentary on Sections

Part 7: Noise

Chapter 1: Audible Intruder Alarms

Alarm notification areas

196. **Sections 69 to 76** introduce new powers for local authorities to deal with the annoyance caused by audible intruder alarms in their areas. The regime enables a local authority to designate its area (or part of it) as an alarm notification area. The effect of a designation is that the occupier or owner of any premises (residential or non-residential) in the area must notify the local authority of the details of a “key-holder” for the premises. The authority can then turn to that key-holder for assistance in silencing an alarm. Under these provisions it is an offence to fail to nominate or notify the local authority of the details of a key-holder.

Section 69 Designation of alarm notification areas

197. **Section 69** sets out the steps that must be followed by a local authority wishing to designate an area as an alarm notification area. In particular, *subsection (5)* provides that an authority must consider representations on a proposal to make a designation and *subsection (8)* provides that where it decides to make a designation, the authority must send notice of that decision to all premises in the area.

Section 70 Withdrawal of designation

198. **Section 70** enables a local authority to withdraw a designation made under section 69.

Section 71 Notification of nominated key-holders

199. **Section 71** requires that the responsible person in respect of premises with an audible intruder alarm within an alarm notification area must nominate a key-holder for the premises and then notify the local authority of that key-holder’s name, address and telephone number. The responsible person is the occupier of (or a person entitled to occupy) the premises or, where there is no such person, the owner of the premises. Section 71(2) and (4) makes it an offence for the responsible person to fail either to nominate or to notify within the specified time period.

Section 72 Nomination of key-holders

200. **Section 72** (*subsections (3), (4) and (5)*) describes who is eligible to be nominated as a key-holder.
201. *Subsection (6)* provides that where a key-holder ceases to satisfy certain requirements, the responsible person must nominate a replacement. The responsible person then, under section 71, has to notify the details of the new key-holder to the local authority. Again, failure either to nominate or notify is an offence.

Section 73 Offences under section 71:fixed penalty notices

202. **Section 73** (*subsections (1) and (2)*) enables an “authorised officer” of a local authority, to issue a fixed penalty notice where it appears to him that an offence of failing to nominate or notify details of a key-holder has been committed, offering the offender an opportunity to discharge, by payment of a fixed penalty within 14 days, any liability to conviction for the offence. Who qualifies as an authorised officer is described in *subsection (11)*. The rest of the section sets out the effects of the fixed penalty notice, what information such a notice should contain, and procedures for payment.

Section 74 Amount of fixed penalty

203. **Section 74** (*subsections (2) and (3)*) enables a local authority to specify the amount of a fixed penalty for an offence committed in its area. Where no amount is set by a local authority, the penalty amount is £75. 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.
204. *Subsections (4) and (5)* give power 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).

Section 75 Use of fixed penalty receipts

205. **Section 75** (*subsections (1) to (3)*) allows a local authority to retain the receipts arising from fixed penalty notices issued pursuant to section 73, and specifies the functions for which the receipts may be used. These include its new functions in relation to audible intruder alarms, its functions under the Noise Act 1996 and its functions in relation to noise statutory nuisance under the Environmental Protection Act 1990.
206. *Subsections (4) to (7)* make further provision regarding the spending of fixed penalty receipts and include a power for the Secretary of State or the National Assembly for Wales (as the case may be) to make regulations about how local authorities can use their penalty receipts.
207. *Subsection (8)* makes similar provision to that made by section 8 (*subsection (8)*) as described in paragraph 44 above.

Section 76 Fixed penalty notices: power to require name and address

208. **Section 76** 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.

Powers in relation to alarms

Section 77 Power of entry

209. **Section 77** (*subsections (3) and (4)*) provides an authorised officer of a local authority with a power of entry (but not by force) in order to silence an intruder alarm in or on premises in the authority's area where he is satisfied that the conditions described in section 77(2) are met. The use of the power is not limited to premises in an area which has been designated as an alarm notification area, but where the premises are in such an area, one of the conditions that must be satisfied before the power can be used is that reasonable steps have been taken to get the key-holder to silence the alarm.

Section 78 Warrant to enter premises by force

210. **Section 78** provides that an authorised officer may enter premises using reasonable force if necessary to silence an alarm following the issue of a warrant by a justice of the peace. Before issuing a warrant, the justice of the peace must be satisfied certain conditions are met (*subsection (1)*). These include that the officer is unable to enter the premises without the use of force.

Section 79 Powers of entry: supplementary

211. **Section 79** makes supplementary provision where an officer of a local authority enters any premises to silence an alarm either under section 77 or under a warrant issued under section 78.
212. This includes provision allowing a local authority to recover expenses reasonably incurred by it in connection with entering the premises and silencing the alarm (*subsection (7)*) and ensuring that action taken in good faith by the authority under these powers does not subject it to any liability (*subsection (9)*).

Supplementary

Section 80 Orders and regulations

213. **Section 80** provides that orders or regulations made under chapter 1 of this Part of the Act are to be made by statutory instrument by negative resolution.

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.

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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

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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 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).