

1976 No. 945 (S.81)

PUBLIC HEALTH, SCOTLAND

The Control of Noise (Appeals) (Scotland) Regulations 1976

<i>Made</i> - - - -	14th June 1976
<i>Laid before Parliament</i>	28th June 1976
<i>Coming into Operation</i>	19th July 1976

In exercise of the powers conferred on me by sections 70(2) and (3) and 104(1) of the Control of Pollution Act 1974(a) and of all other powers enabling me in that behalf, I hereby make the following regulations:—

PART I
INTRODUCTORY

Citation and commencement

1. These regulations may be cited as the Control of Noise (Appeals) (Scotland) Regulations 1976 and shall come into operation on 19th July 1976.

Interpretation

2.—(1) The Interpretation Act 1889(b) shall apply for the interpretation of these regulations, as it applies for the interpretation of an Act of Parliament.

(2) In these regulations, unless the context otherwise requires—

“the Act” means the Control of Pollution Act 1974, and any reference in these regulations to a numbered section shall be construed as a reference to the section bearing that number in the Act;

“best practicable means” shall be construed in accordance with section 72;

“interest” in relation to premises includes any right therein, whether the right is exercisable by virtue of the ownership thereof or of a right therein, or by virtue of a licence, lease or agreement;

“local authority” means an islands or district council;

“person responsible” has the meaning given to it by section 73(1).

(3) Any reference in these regulations to a numbered regulation shall be construed as a reference to the regulation bearing that number in these regulations.

(a) 1974 c. 40.

(b) 1889 c. 63.

PART II
APPEALS TO THE SHERIFF

Interpretation of Part II

3. This part of these regulations relates only to appeals made to the sheriff under subsection (3) of section 58 of the Act, and any reference in this part to an appeal or an appellant shall be construed accordingly.

Appeals under section 58(3)

4.—(1) The provisions of this regulation shall apply to an appeal made by any person under subsection (3) of section 58 (summary proceedings by local authorities) against a notice served upon him by a local authority under that section.

(2) The grounds on which a person served with such a notice may appeal under the said subsection (3) may include any of the following grounds which are appropriate in the circumstances of the particular case: —

- (a) that the notice is not justified by the terms of section 58;
- (b) that there has been some informality, defect or error in, or in connection with, the notice;
- (c) that the local authority have refused unreasonably to accept compliance with alternative requirements, or that the requirements of the notice are otherwise unreasonable in character or extent, or are unnecessary;
- (d) that the time, or, where more than one time is specified, any of the times, within which the requirements of the notice are to be complied with is not reasonably sufficient for the purpose;
- (e) where the noise to which the notice relates is noise caused in the course of a trade or business, that the best practicable means have been or are being used for preventing, or for counteracting the effect of, the noise;
- (f) that the notice should have been served on some person instead of the appellant, being the person responsible for the noise;
- (g) that the notice might lawfully have been served on some person in addition to the appellant, being a person also responsible for the noise;
- (h) that the notice might lawfully have been served on some person instead of or in addition to the appellant, being the owner or occupier of the premises from which the noise is emitted or would be emitted.

(3) If and so far as an appeal is based on the ground of some informality, defect or error in, or in connection with, the notice, the sheriff shall dismiss the appeal if he is satisfied that the informality, defect or error was not a material one.

(4) Where the grounds upon which an appeal is made include a ground specified in paragraph (2)(f), (g) or (h) above, the appellant shall serve a copy of his notice of appeal on any other person named therein.

(5) On the hearing of the appeal the sheriff may—

- (a) recall the notice to which the appeal relates, or

(b) vary the notice in favour of the appellant, in such manner as he thinks fit, or

(c) dismiss the appeal;

and a notice which is varied under sub-paragraph (b) above shall be final and shall otherwise have effect, as so varied, as if it had been so made by the local authority.

(6) Subject to paragraph (7) below, on the hearing of the appeal the sheriff may make such order as he thinks fit—

(a) with respect to the person by whom any work is to be executed and the contribution to be made by any person towards the cost of the work, or

(b) as to the proportions in which any expenses which may become recoverable by the local authority under Part III of the Act are to be borne by the appellant and by any other person.

(7) In exercising his powers under paragraph (6) above, the sheriff—

(a) shall have regard, as between an owner and an occupier, to the terms and conditions, whether contractual or statutory, of any relevant tenancy and to the nature of the works required, and

(b) shall be satisfied, before he imposes any requirement thereunder on any person other than the appellant, that that person has received a copy of the notice of appeal in pursuance of paragraph (4) above.

PART III

SUSPENSION OF NOTICES

5.—(1) Subject to paragraph (2) of this regulation, where an appeal is made against a notice served under section 58 and—

(a) the noise to which the notice relates is noise caused in the course of the performance of some duty imposed by law on the appellant, or

(b) compliance with the notice would involve any person in expenditure on the carrying out of works before the hearing of the appeal,

the notice shall be suspended until the appeal has been abandoned or decided by the sheriff.

(2) A notice to which this regulation applies shall not be suspended if in the opinion of the local authority—

(a) the noise to which the notice relates—

(i) is injurious to health, or

(ii) is likely to be of a limited duration such that suspension of the notice would render the notice of no practical effect, or

(b) the expenditure which would be incurred by any person in the carrying out of works in compliance with the notice before any appeal has been decided would not be disproportionate to the public benefit to be expected in that period from such compliance,

and the notice includes a statement that it shall have effect notwithstanding any appeal to the sheriff which has not been decided by the sheriff.

(3) Save as provided in this regulation a notice under section 58 of the Act shall not be suspended by reason only of the bringing of an appeal to the sheriff.

Bruce Millan,
One of Her Majesty's Principal
Secretaries of State.

New St. Andrew's House,
Edinburgh.
14th June 1976.

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

These Regulations make provision with respect to the making of appeals to the sheriff under section 58 of the Control of Pollution Act 1974. Part II sets out grounds on which appeals may be made to the sheriff, prescribes the procedure to be followed in certain cases in which the appellant claims that a notice should have been served on some other person, and the action which the sheriff may take to give effect to his decision on an appeal. Part III prescribes the cases in which a notice under section 58 is to be suspended pending the abandonment of, or a decision by the sheriff on, an appeal.

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