PopplestonAllen

O'Neill's

Muswell Hill Broadway, London, N10 3HA

Review of Premises Licence

Evidence on behalf of the premises licence holder

O'Neill's, Muswell Hill Broadway, London, N10 3HA

Review of premises licence – Evidence on behalf of the premises licence holder

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Tab 1

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HEPWORTH ACOUSTICS
Noise and Vibration Consultants

Mr Liam Garvey
Mitchells & Butlers
27 Fleet Street
Birmingham
B3 1JP

Our ref: P15-272-R02
28 September 2015

By email only: Liam.Garvey@mbplc.com

Dear Liam,

Re: O'Neill's, Muswell Hill – Noise Survey 20/9/15

I write to summarise the findings of a noise survey carried out at the above pub, and at the adjacent flat, on the evening of Sunday 20 September 2015, coinciding with a live band performance.

This survey is to evaluate the efficacy of recent noise mitigation works carried out within the pub, and hence to determine the current transmitted music noise levels within the flat, compared to those determined as part of a previous noise survey in May 2015. The survey methodology and equipment was therefore essentially as per that set out in our earlier report reference P15-272-R01.

During the first half of the band's set, the backline amplifier and stage monitor levels were set excessively high, and the front-of-house speakers too low. This situation was corrected, as far as was practicable, during the break in the bands' set, such that backline and monitor levels were reduced and the front-of-house system increased. This resulted in lower noise transfer to the adjacent flat compared to the first half of the set, and also improved the sound within the pub. This was therefore better representative of a preferred situation, however it was considered that further improvements were possible even using the existing systems, not least it terms of the level of the bass guitar backline amplifier.

The measured noise levels for the second half of the bands' set are summarised in Table 1.

Table 1: Summary of Measured Noise Levels

Location	dB L_{eq} Noise Level (logarithmic average)							dB L_{eq} Noise Level	
	Octave Band Centre Frequency H							Range	Log. Average
	63	125	250	500	1k	2k	4k		
O'Neill's Front Ground	95	101	96	94	93	88	82	96-98	97
O'Neill's Rear Balcony	84	92	90	92	87	83	78	92-93	92
Bedroom	45	40	32	22	12	10	11	28-29	28
Bedroom (no music)	35	35	27	19	11	10	11	23-24	23

Based on the above, the music noise transfer level (i.e. the level of sound in the bedroom attributable to the band) has been calculated and compared to the equivalent level measured in May 2015, as set out in Table 2. This is limited to the octave bands ranging from 63Hz to 500Hz, as music noise at higher frequencies was not accurately measurable above the background noise.

Table 2: Calculated Music Noise Transfer Levels

Music Noise Transfer Level	dB L_{eq} Noise Level				dB(A) Noise Level	Noise Rating Level
	Octave Band Centre Frequency Hz					
	63	125	250	500		
May 2015	44	40	31	18	27	NR21
September 2015	45	39	30	20	26	NR20
Change	+1	-1	-1	+2	-1	

Further, the level difference (i.e. the difference between the level in the pub and the level in the flat) has been calculated based on the both the music noise levels within the pub the front at ground level (near to the band) and those on the rear balcony (near to the party wall to the flat), again with comparison to the equivalent level differences measured in May 2015. This is set out in Table 3.

Table 3: Calculated Level Differences; O'Neill's Front Ground → Bedroom

Level Difference	dB L_{eq} Noise Level				dB L_{Aeq} Noise Level
	Octave Band Centre Frequency Hz				
	63	125	250	500	
O'Neill's Front Ground → Bedroom					
May 2015	50	58	63	76	69
September 2015	50	62	66	74	71
Change	0	+4	+3	-2	+2
O'Neill's Rear Balcony → Bedroom					
May 2015	38	47	60	70	65
September 2015	39	53	61	72	66
Change	+1	+6	+1	+2	+1
Average Change	+0.5	+5	+2	0	+1.5

It can be concluded from the above, and from subjective observations, that there has been a slight improvement in music noise transfer as a result of the noise mitigation works carried out at the site, but there is not a significant or clearly perceptible improvement to the overall impact of the music within the flat, which is still clearly audible.

However, it was subjectively considered that the sound of the drums was less pronounced within the flat than was previously the case, with the bass guitar sound now the most pronounced element. Although this may be variable to some extents between bands, this perhaps corresponds to the one frequency band where a notable improvement in level difference appears to have been achieved, i.e. at 125Hz.

It is noted that, whilst the sound insulation upgrade works that have been carried out were relatively modest in scale, it is believed that these works represented the best practicable options to improve the sound insulation between the pub and the flat, accounting for the significant architectural constraints that exist. Given the limited success of these works and the constraints that exist, it is not considered that there is any realistic scope to further improve the sound insulation between the pub and the flat.

However, as has already been recommended by Middlesex Sound, it is considered that further control of the noise level within the pub (and hence within the adjacent flat) may be achieved by eliminating the use of backline amplifiers and introduction of house stage monitors, to be controlled by electronic limiters. This way, virtually all of the music sound level generated will be under the control of the pub, and restricted by use of limiters. It will then only be the acoustic drum kit (and potentially other acoustic instruments that generate high sound levels, e.g. brass) that will not be fully controlled.

As mentioned above, it is considered that some improvement in terms of the transfer of drum noise has been achieved via the noise mitigation works undertaken. However, again as suggested by Middlesex Sound, a little more control may be achieved by using a house drum-kit, incorporating smaller and/or damped drums and cymbals, to prevent bands from bringing in very large kits. The only further option in this regard would be to employ a house electronic drum-kit. This would provide an even greater level of noise control, however it is expected that it would prove problematic for drummers unaccustomed to this type of kit, and hence should be avoided unless it becomes absolutely essential.

I trust that above is clear and acceptable. Please call if you wish to discuss further.

Yours sincerely,
For Hepworth Acoustics Ltd

Graham Bowland BSc MIOA
Chief Consultant

Tab 2

Witness Statement

(CJ Act 1967, S.9 MC Act 1980, ss. 5A(3a) and 5B. MC Rules 1981, R.70)

Statement of: **Mike Olivier**

Age: **Over 18**

Occupation: **Managing Director, Middlesex Sound and Lighting Limited**

This statement (consisting of 1 page each signed by me) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true.

Dated: **28 November 2016**

Signature:

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1. I am making this statement in connection with the Soundweb limiter installed at O'Neill's Muswell Hill.

2. My company, Middlesex Sound and Lighting Limited, set the levels at the time the noise limiter was installed and we are the only company who have a copy of the computer program to adjust the levels. This means that no levels can be altered without access to this program. The levels were set when the limiter was installed and they were adjusted by Dean Osbourne, Sound Installation and Commissioning Engineer, on 5th December 2015 and 18th June 2016.

3. I am led to believe that the resident above the property believe someone is tampering with the levels, however I can confirm that this is impossible to do without access to the program which Middlesex Sound and Lighting Ltd hold.

Signature: ..... Signature witnessed by

Document Ref: 21[illegible]

Tab 3

Witness Statement

(CJ Act 1967, S.9 MC Act 1980, ss. 5A(3a) and 5B. MC Rules 1981, R.70)

Statement of: **Dean Michael Osbourne**

Age: **Over 18** Occupation: **Sound Installation and Commissioning Engineer**

This statement (consisting of 2 pages each signed by me) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true.

Dated: **25 November 2016**

Signature:

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1. My name is Dean Michael Osborne and I am a former Contractor to MSL Middlesex Sound Limited via my company, Intense Entertainment Technology. I am a Sound Installation and Commissioning Engineer with 16 years experience, working as a sub contractor for some of the largest AV installation companies in and around London

2. I have been asked to provide a brief explanation of the sound limiting system installed at O'Neill's Muswell Hill, how this is set and how this controls the levels of the music output.

3. The system controlling the limiting is a BSS Soundweb Blu-100. This is the industry standard unit for Bars, Clubs, Restaurants and Entertainment venues because of it's reliability, Processing power and most importantly it is inherently 'tamper proof'. There are no controls on the unit itself, not even a power switch. When new supplied from BSS the unit does nothing, it has a piece of software that 'programs' it in a WYSIWYG fashion with wires and processing objects within the software mimicking analogue processing tools that engineers are familiar with. These include various EQ's, Limiters, Compressors source selectors etc. the list is huge. Part of any project is not only to install and terminate this but a significant time and effort goes in to the 'Soundweb File' created in BSS Audio London Architect design software.

4. It is very important to both the installation firm, the venue management and the premises licence holder that the unit cannot be tampered with by a third party, as not only could the system exceed the limits imposed by nearby residents, but also it could exceed the maximum level the amplifiers and loudspeakers are able to handle and ruin them. This would cost the installation firm a significant figure if people were tampering and turning up the levels as soon as we left the premises, or at old installations the venue would be constantly buying replacement speakers

5. I re-designed or edited the soundweb file at O'Neill's Muswell Hill when we first attended and then made more changes at the second attendance to reduced it more, and myself and MSL are the only people with the file. Without it the system cannot be adjusted without a complete new file being written (this would take at least a day if you did not install the system)

Signature: ..... Signature witnessed by .....

Document Ref : 2145701860

6. I visited O'Neill's Muswell Hill on 5th December 2015. The changes which were made previously were that everything went through the limiter - so the band bring no 'back line' or amplification of their own, and hear everything through the monitors which like every other speaker go through the BSS Soundweb. Changes made to the soundweb file were extensive limiting and compression.

7. I use a custom designed soft knee compressor so that when levels get close to the maximum the system compresses it subtly, and if the levels get closer to maximum the harder (and worse sounding) limiter kicks in and makes sure the level will not exceed the threshold. These levels were set over a period of hours with an acoustic consultant in the complainants room whilst I was in the venue tweaking the levels on the Soundweb limiters until it was either inaudible or the complainant was happy. It should be noted that the limiting is very complex and there are separate settings for every group of speakers in the venue (each zone) and any bass units are completely separate with their own settings.

8. I attended O'Neill's Muswell Hill again on 18th June 2016 and again there was someone in the complainant's room, and levels were reduced further, although no major changes to the Soundweb file were made, levels were reduced further.

Signature: ..... Signature witnessed by .....

Tab 4

Schedule of works undertaken at O'Neill's Muswell Hill

- Remove existing stud wall of party wall & replace with double skin acoustic insulated wall;
- Encasing extractor ducting with insulated acoustic lined wall;
- Install an additional acoustic skin to existing fire exit staircase wall;
- Move stage to a different position so sound projects in a different direction across pub;
- Build acoustic dissipating wall to side of stairs to mezzanine level (next to the location of the new stage);
- Install acoustic deadening curtain to walls behind the new drums position;
- Adjust speaker & setting off system in conjunction with Middlesex; and
- The speakers on party walls to be separately zoned & turned off during music (live & background).

Tab 5

Environmental Protection Act 1990

Status: There are multiple versions of this provision on screen. These apply to different geographical extents.

Skip to: - England and Wales extent - Scotland extent

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Environmental Protection Act 1990. Any changes that have already been made by the team appear in the content and are referenced with annotations.

View outstanding changes

79 Statutory nuisances and inspections therefor.

(1) [F2 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;

[F3 (fa) any insects emanating from relevant industrial, trade or business premises and being prejudicial to health or a nuisance;]

[F4 (fb) artificial light emitted from premises so as to be prejudicial to health or a nuisance;]

(g) noise emitted from premises so as to be prejudicial to health or a nuisance;

[F5 (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 [F6 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 [F7 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.

[F8 (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.

(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) [F9, (fb)] 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.

[F10 (5A) Subsection (1)(fa) does not apply to insects that are wild animals included in Schedule 5 to the Wildlife and Countryside Act 1981 (animals which are protected), unless they are included in respect of section 9(5) of that Act only.]

[F11(5B) Subsection (1)(fb) does not apply to artificial light emitted from—

(a) an airport;

(b) harbour premises;

(c) railway premises, not being relevant separate railway premises;

(d) tramway premises;

(e) a bus station and any associated facilities;

(f) a public service vehicle operating centre;

(g) a goods vehicle operating centre;

(h) a lighthouse;

(i) a prison.]

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

[F12(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—

[F13"airport" has the meaning given by section 95 of the Transport Act 2000;]

[F14"appropriate person" means—

(a) in relation to England, the Secretary of State;

(b) in relation to Wales, the National Assembly for Wales;]

[F15"associated facilities", in relation to a bus station, has the meaning given by section 83 of the Transport Act 1985;]

[F16"bus station" has the meaning given by section 83 of the Transport Act 1985;]

"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;

[F17"equipment" includes a musical instrument;]

"fumes" means any airborne solid matter smaller than dust;

"gas" includes vapour and moisture precipitated from vapour;

[F18"goods vehicle operating centre", in relation to vehicles used under an operator's licence, means a place which is specified in the licence as an operating centre for those vehicles, and for the purposes of this definition "operating centre" and "operator's licence" have the same meaning as in the Goods Vehicles (Licensing of Operators) Act 1995;]

[F19"harbour premises" means premises which form part of a harbour area and which are occupied wholly or mainly for the purposes of harbour operations, and for the purposes of this definition "harbour area" and "harbour operations" have the same meaning as in Part 3 of the Aviation and Maritime Security Act 1990;]

"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;

[F20"lighthouse" has the same meaning as in Part 8 of the Merchant Shipping Act 1995;]

"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) [F21in England and Wales] outside Greater London, a district council; F22...

(bb) [F23in Wales, a county council or county borough council;]

(c) the Council of the Isles of Scilly; [F24and

(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;

[F25"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 [F26the 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) [F27and [F28, in relation to England and Wales,] section 81A(9)] below, any vessel;

[F29"prison" includes a young offender institution;]

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

[F30"public service vehicle operating centre", in relation to public service vehicles used under a PSV operator's licence, means a place which is an operating centre of those vehicles, and for the purposes of this definition "operating centre", "PSV operator's licence" and "public service vehicle" have the same meaning as in the Public Passenger Vehicles Act 1981;]

[F31"railway premises" means any premises which fall within the definition of "light maintenance depot", "network", "station" or "track" in section 83 of the Railways Act 1993;]

[F32"relevant separate railway premises" has the meaning given by subsection (7A);]

[F33 "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;

[F34 "street" means a highway and any other road, footway, square or court that is for the time being open to the public;

[F35 "tramway premises" means any premises which, in relation to a tramway, are the equivalent of the premises which, in relation to a railway, fall within the definition of "light maintenance depot", "network", "station" or "track" in section 83 of the Railways Act 1993;]]

and any expressions used in this section and in [F36 the Clean Air Act 1993] have the same meaning in this section as in that Act and [F36 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.

[F37 (7A) Railway premises are relevant separate railway premises if—

(a) they are situated within—

(i) premises used as a museum or other place of cultural, scientific or historical interest, or

(ii) premises used for the purposes of a funfair or other entertainment, recreation or amusement, and

(b) they are not associated with any other railway premises.

(7B) For the purposes of subsection (7A)—

(a) a network situated as described in subsection (7A)(a) is associated with other railway premises if it is connected to another network (not being a network situated as described in subsection (7A)(a));

(b) track that is situated as described in subsection (7A)(a) but is not part of a network is associated with other railway premises if it is connected to track that forms part of a network (not being a network situated as described in subsection (7A)(a));

(c) a station or light maintenance depot situated as described in subsection (7A)(a) is associated with other railway premises if it is used in connection with the provision of railway services other than services provided wholly within the premises where it is situated.

In this subsection "light maintenance depot", "network", "railway services", "station" and "track" have the same meaning as in Part 1 of the Railways Act 1993.]

[F38 (7C) In this Part "relevant industrial, trade or business premises" means premises that are industrial, trade or business premises as defined in subsection (7), but excluding—

(a) land used as arable, grazing, meadow or pasture land,

(b) land used as osier land, reed beds or woodland,

(c) land used for market gardens, nursery grounds or orchards,

(d) land forming part of an agricultural unit, not being land falling within any of paragraphs (a) to (c), where the land is of a description prescribed by regulations made by the appropriate person, and

(e) land included in a site of special scientific interest (as defined in section 52(1) of the Wildlife and Countryside Act 1981),

and excluding land covered by, and the waters of, any river or watercourse, that is neither a sewer nor a drain, or any lake or pond.

(7D) For the purposes of subsection (7C)—

"agricultural" has the same meaning as in section 109 of the Agriculture Act 1947;

"agricultural unit" means land which is occupied as a unit for agricultural purposes;

"drain" has the same meaning as in the Water Resources Act 1991;

"lake or pond" has the same meaning as in section 104 of that Act;

"sewer" has the same meaning as in that Act.]

(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, [F39 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 [F40, 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 [F41 (fb),](g) [F42 or (ga)] 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 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) [F43, (e) [F44, (fb)] or (g)][F45 and, in relation to Scotland, [F43 paragraph (ga)],] of subsection (1) above if proceedings in respect thereof might be instituted under Part I [F46 of the M5 Alkali &c. Works Regulation Act 1906 or section 5 of the M6 Health and Safety at Work etc. Act 1974,] [F47 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) [F27 and [F48, 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.

Annotations: ?

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. 63 of this Act by 1995 c. 25, s. 120(3), Sch. 24; S.I. 1996/186, art. 3

E2 This version of this provision extends to England and Wales only, a separate version has been created for Scotland only

Amendments (Textual)

F2 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)

F3 S. 79(1)(fa) inserted (E.W.) (16.3.2006 for certain purposes for W., 6.4.2006 for E. and 30.1.2007 otherwise for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), ss. 101(2), 108; S.I. 2006/768, art. 3; S.I. 2006/795, art. 2(3), Sch. 2; S.I. 2006/2797, art. 6(a) (as amended by S.I. 2007/120, art. 3(c)(d)); S.I. 2007/120

F4 S. 79(1)(fb) inserted (6.4.2006 for E. and 30.1.2007 for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), ss. 102(2), 108, S.I. 2006/795, art. 2(3), Sch. 2; S.I. 2006/2797, art. 7(a) (as amended by S.I. 2007/120, art. 3(h)); S.I. 2007/120

F5 S. 79(1)(ga) inserted (5.1.1994) by 1993 c. 40, ss. 2(2)(b), 12(1)

F6 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

F7 Words in s. 79(1) inserted (5.1.1994) by 1993 c. 40, ss. 2(2)(c), 12(1)

F8 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)

F9 Words in s. 79(2) inserted (6.4.2006 for E. and 30.1.2007 for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), ss. 102(3), 108; S.I. 2006/795, art. 2(3), Sch. 2; S.I. 2006/2797, art. 7(a) (as amended by S.I. 2007/120, art. 3(h)); S.I. 2007/120

F10 S. 79(5A) inserted (E.W.) (16.3.2006 for certain purposes for W., 6.4.2006 for E. and 30.1.2007 otherwise for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), ss. 101(3), 108; S.I. 2006/768, art. 3; S.I. 2006/795, art. 2(3), Sch. 2; S.I. 2006/2797, art. 6(a) (as amended by S.I. 2007/120, art. 3(c)(d)); S.I. 2007/120

F11 S. 79(5B) inserted (E.W.) (6.4.2006 for E. and 30.1.2007 for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), ss. 102(4), 108; S.I. 2006/795, art. 2(3), Sch. 2; S.I. 2006/2797, art. 7(a) (as amended by S.I. 2007/120, art. 3(h)); S.I. 2007/120

F12 S. 79(6A) inserted (5.1.1994) by 1993 c. 40, ss. 2(3), 12(1)

F13 In s. 79(7) definition of "airport" inserted (E.W.) (6.4.2006 for E. and 30.1.2007 for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), ss. 102(5), 108; S.I. 2006/795, art. 2(3), Sch. 2; S.I. 2006/2797, art. 7(a) (as amended by S.I. 2007/120, art. 3(h)); S.I. 2007/120

F14 In s. 79(7) definition of "appropriate person" inserted (E.W.) (16.3.2006 for certain purposes for W., 6.4.2006 for E. and 30.1.2007 otherwise for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), s. 101(4); S.I. 2006/768, art. 3; S.I. 2006/795, art. 2(3), Sch. 2; S.I. 2006/2797, art. 6(a) (as amended by S.I. 2007/120, art. 3(c)(d)); S.I. 2007/120

F15 In s. 79(7) definition of "associated facilities" inserted (E.W.) (6.4.2006 for E. and 30.1.2007 for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), ss. 102(5), 108; S.I. 2006/795, art. 2(3), Sch. 2; S.I. 2006/2797, art. 7(a) (as amended by S.I. 2007/120, art. 3(h)); S.I. 2007/120

F16 In s. 79(7) definition of "bus station" inserted (E.W.) (6.4.2006 for E. and 30.1.2007 for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), s. 102(5); S.I. 2006/795, art. 2(3), Sch. 2; S.I. 2006/2797, art. 7 (as amended by S.I. 2007/120, art. 3(h))

F17 Definition of "equipment" in s. 79(7) inserted (5.1.1994) by 1993 c. 40, ss. 2(4)(a), 12(1)

F18 In s. 79(7) definition of "goods vehicle operating centre" inserted (E.W.) (6.4.2006 for E. and 30.1.2007 for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), ss. 102(5), 108; S.I. 2006/795, art. 2(3), Sch. 2, S.I. 2006/2797, art. 7(a) (as amended by S.I. 2007/120, art. 3(h)); S.I. 2007/120

F19 In s. 79(7) definition of "harbour premises" inserted (E.W.) (6.4.2006 for E. and 30.1.2007 for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), ss. 102(5), 108; S.I. 2006/795, art. 2(3), Sch. 2; S.I. 2006/2797, art. 7(a) (as amended by S.I. 2007/120, art. 3(h)); S.I. 2007/120

F20 In s. 79(7) definition of "lighthouse" inserted (E.W.) (6.4.2006 for E. and 30.1.2007 for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), ss. 102(5), 108; S.I. 2006/795, art. 2(3), Sch. 2; S.I. 2006/2797, art. 7(a) (as amended by S.I. 2007/120, art. 3(h)); S.I. 2007/120

F21 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

F22 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

F23 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

F24 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)(ii)(with ss. 7(6), 115, 117); S.I. 1996/186, art. 3

F25 Definition of "person responsible" in s. 79(7) substituted (5.1.1994) by 1993 c. 40, ss. 2(4)(b), 12(1)

F26 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))

F27 Words in s. 79(7)(11) inserted (5.1.1994) by 1993 c. 40, ss. 10(1), 12(1)

F28 S. 79(7): Words in the definition of "premises" 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

F29 In s. 79(7) definition of "prison" inserted (E.W.) (6.4.2006 for E. and 30.1.2007 for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), ss. 102(5), 108; S.I. 2006/795, art. 2(3), Sch. 2; S.I. 2006/2797, art. 7(a) (as amended by S.I. 2007/120, art. 3(h)); S.I. 2007/120

F30 In s. 79(7) definition of "public service vehicle operating centre" inserted (E.W.) (6.4.2006 for E. and 30.1.2007 for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), ss. 102(5), 108; S.I. 2006/795, art. 2(3), Sch. 2; S.I. 2006/2797, art. 7(a) (as amended by S.I. 2007/120, art. 3(h)); S.I. 2007/120

F31 In s. 79(7) definition of "railway premises" inserted (E.W.) (6.4.2006 for E. and 30.1.2007 for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), ss. 102(5), 108; S.I. 2006/795, art. 2(3), Sch. 2; S.I. 2006/2797, art. 7(a) (as amended by S.I. 2007/120, art. 3(h)); S.I. 2007/120

F32 In s. 79(7) definition of "relevant separate railway premises" inserted (E.W.) (6.4.2006 for E. and 30.1.2007 for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), ss. 102(5), 108; S.I. 2006/795, art. 2(3), Sch. 2; S.I. 2006/2797, art. 7(a) (as amended by S.I. 2007/120, art. 3(h)); S.I. 2007/120

F33 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

F34 Definition of "street" in s. 79(7) inserted (5.1.1994) by 1993 c. 40, ss. 2(4)(c), 12(1)

F35 In s. 79(7) definition of "tramway premises" inserted (E.W.) (6.4.2006 for E. and 30.1.2007 for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), ss. 102(5), 108; S.I. 2006/795, art. 2(3), Sch. 2, S.I. 2006/2797, art. 7(a) (as amended by S.I. 2007/120, art. 3(h)); S.I. 2007/120

F36 Words in s. 79(7) substituted (27.8.1993) by 1993 c. 11, s. 67(1), Sch. 4 para. 4

F37 S. 79(7A)(7B) inserted (E.W.) (6.4.2006 for E. and 30.1.2007 for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), ss. 102(6), 108; S.I. 2006/795, art. 2(3), Sch. 2; S.I. 2006/2797, art. 7(a) (as amended by S.I. 2007/120, art. 3(h)); S.I. 2007/120

F38 S. 79(7C)(7D) inserted (E.W.) (16.3.2006 for certain purposes for W., 6.4.2006 for E. and 30.1.2007 otherwise for W.) by virtue of Clean Neighbourhoods and Environment Act 2005 (c. 16), ss. 101(5), 108; S.I. 2006/768, art. 3; S.I. 2006/795, art. 2(3), Sch. 2; S.I. 2006/2797, art. 6(a) (as amended by S.I. 2007/120, art. 3(c)(d)); S.I. 2007/120

F39 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

F40 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

F41 Words in s. 79(8) inserted (6.4.2006 for E. and 30.1.2007 for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), ss. 102(7), 108; S.I. 2006/795, art. 2(3), Sch. 2; S.I. 2006/2797, art. 7(a) (as amended by S.I. 2007/120, art. 3(h)); S.I. 2007/120

F42 Words in s. 79(8) inserted (5.1.1994) by 1993 c. 40, ss. 2(5), 12(1)

F43 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. 38, Sch. 10 Pt. 1 para. 3(5)

F44 Words in s. 79(10) inserted (6.4.2006 for E. and 30.1.2007 for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), ss. 102(8), 108; S.I. 2006/795, art. 2(3), Sch. 2; S.I. 2006/2797, art. 7(a) (as amended by S.I. 2007/120, art. 3(h)); S.I. 2007/120

F45 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

F46 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

F47 Words in s. 79(10) inserted (21.3.2000 for E.W. and 28.9.2000 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

F48 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)

C6 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.

79 **Statutory nuisances and inspections therefor.**

(1) [F2 Subject to subsections [F49 (1ZA)] 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;

[F50 (ea) any water covering land or land covered with water which is in such a state as to be 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;

[F51 (faa) any insects emanating from premises and being prejudicial to health or a nuisance;]

[F52 (fba) artificial light emitted from—

(i) premises;

(ii) any stationary object,

so as to be prejudicial to health or a nuisance;]

(g) noise emitted from premises so as to be prejudicial to health or a nuisance;

[F5 (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 [F6 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 [F7 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.

[F53 (1ZA) The Scottish Ministers may by regulations—

(a) amend this section so as to—

(i) prescribe additional matters which constitute statutory nuisances for the purposes of this Part;

(ii) vary the description of any matter which constitutes a statutory nuisance;

(b) in relation to an amendment under paragraph (a), amend this Act and any other enactment to make such incidental, supplementary, consequential, transitory, transitional or saving provision as the Scottish Ministers consider appropriate.

(1ZB) Before making regulations under subsection (1ZA) above, the Scottish Ministers must consult, in so far as it is reasonably practicable to do so, the persons mentioned in subsection (1ZC) below.

(1ZC) Those persons are—

(a) such associations of local authorities; and

(b) such other persons,

as the Scottish Ministers consider appropriate.]

[F54 F8 (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.

[F54 (1B) Land is in a "contaminated state" for the purposes of sub section (1A) above if, and only if, it is in such a condition, by reason of substances in, on or under the land, that–

(a) significant harm is being caused or there is a significant possibility of such harm being caused; or

(b) significant pollution of the water environment is being caused or there is a significant possibility of such pollution being caused;

and in this subsection "harm", "pollution" in relation to the water environment, "substance" and "the water environment" have the same meanings as in Part IIA of this Act.]]

(2) Subsection (1)(b) [F55, (fba)] and (g) above do not apply in relation to premises [F56 (or, in respect of paragraph (fba)(ii) above, a stationary object located on 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.

[F57 (5ZA) For the purposes of subsection (1)(ea) above, "land"—

(a) includes structures (other than buildings) in, on or over land;

(b) does not include—

(i) mains or other pipes used for carrying a water supply;

(ii) any part of the public sewerage system;

(iii) any other sewers, drains or other pipes used for carrying sewage;

(iv) the foreshore, that is to say, the land between the high and low water marks of ordinary spring tides;

(v) the seabed.

(5ZB) In subsection (5ZA) above—

"drain", "sewage" and "sewer" have the meanings given by section 59 of the Sewerage (Scotland) Act 1968 (c. 47);

"main" has the meaning given by section 109(1) of the Water (Scotland) Act 1980 (c. 45);

"pipe" includes a service pipe within the meaning of that section of that Act;

"public sewerage system" has the meaning given by section 29 of the Water Services etc. (Scotland) Act 2005 (asp 3).]

[F58 (5AA) Subsection (1)(faa) above does not apply to insects that are wild animals included in Schedule 5 to the Wildlife and Countryside Act 1981 (c. 69).

(5AB) For the purposes of subsection (1)(faa) above, "premises" does not include—

(a) a site of special scientific interest (within the meaning of section 3(6) of the Nature Conservation (Scotland) Act 2004 (asp 6));

(b) such other place (or type of place) as may be prescribed in regulations made by the Scottish Ministers.

(5AC) Before making regulations under subsection (5AB)(b) above, the Scottish Ministers must consult, in so far as it is reasonably practicable to do so, the persons mentioned in subsection (5AD) below.

(5AD) Those persons are—

(a) such associations of local authorities; and

(b) such other persons,

as the Scottish Ministers consider appropriate.]

[F59 (5BA) Subsection (1)(fba) above does not apply to artificial light emitted from a lighthouse (within the meaning of Part 8 of the Merchant Shipping Act 1995 (c. 21)).]

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

[F12 (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;

[F17 "equipment" includes a musical instrument;]

"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, F60 . . . —

(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) [F21 in England and Wales] outside Greater London, a district council; F22 . . .

(bb) [F23 in Wales, a county council or county borough council;]

(c) the Council of the Isles of Scilly; [F24 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;

[F25 "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 [F26 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 [F61 (subject to subsection (5AB) above)] and, subject to subsection (12) [F27 and [F28 , 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;

[F33 "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;

[F34"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 [F36the Clean Air Act 1993] have the same meaning in this section as in that Act and [F36section 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 M2Public Health (Control of Disease) Act 1984, a port health authority has been constituted for any port health district, [F39 F60 . . .] the port health authority [F40 F60 . . .] 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) [F42or (ga)] 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 M4Control 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) [F43, (e) or (g)][F45and, in relation to Scotland, [F43paragraph (ga)].] of subsection (1) above if proceedings in respect thereof might be instituted under Part I [F46of the M5Alkali &c. Works Regulation Act 1906 or section 5 of the M6Health and Safety at Work etc. Act 1974.][F47or 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) [F27and [F48, 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.

Annotations:

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. 63 of this Act by 1995 c. 25, s. 120(3), Sch. 24; S.I. 1996/186, art. 3

E3 This version of this provision extends to Scotland only; a separate version has been created for England and Wales only

Amendments (Textual)

F2 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)

F5 S. 79(1)(ga) inserted (5.1.1994) by 1993 c. 40, ss. 2(2)(b), 12(1)

F6 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

F7 Words in s. 79(1) inserted (5.1.1994) by 1993 c. 40, ss. 2(2)(c), 12(1)

F8 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)

F12 S. 79(6A) inserted (5.1.1994) by 1993 c. 40, ss. 2(3), 12(1)

F17 Definition of "equipment" in s. 79(7) inserted (5.1.1994) by 1993 c. 40, ss. 2(4)(a), 12(1)

F21 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

F22 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

F23 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

F24 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

F25 Definition of "person responsible" in s. 79(7) substituted (5.1.1994) by 1993 c. 40, ss. 2(4)(b), 12(1)

F26 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))

F27 Words in s. 79(7)(11) inserted (5.1.1994) by 1993 c. 40, ss. 10(1), 12(1)

F28 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

F33 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

F34 Definition of "street" in s. 79(7) inserted (5.1.1994) by 1993 c. 40, ss. 2(4)(c), 12(1)

F35 Words in s. 79(7) substituted (27.8.1993) by 1993 c. 11, s. 67(1), Sch. 4 para. 4

F38 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

F40 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

F42 Words in s. 79(8) inserted (5.1.1994) by 1993 c. 40, ss. 2(5), 12(1)

F43 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(b)

F45 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

F46 Words in s. 79(10) repealed (16.12.1998 for E.W. and otherwise prosp.) by 1990 c. 43, ss. 152(2), 164(3), Sch. 16 Pt. I; S.I. 1996/3056, art. 2

F47 Words in s. 79(10) inserted (21.3.2000 for E.W. and 29.9.2000 for S.) by 1999 c. 24, s. 5, Sch. 2 para. 6; S.I. 2000/800, art. 2; S.S.I. 2000/322, art. 2

F48 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

F49 Words in s. 79(1) substituted (S.) (26.1.2009) by Public Health etc. (Scotland) Act 2008 (asp 5) (ss. 112(2)(a)), 128(2) (with s. 127); S.S.I. 2009/9, art. 2(a), Sch. 1

F50 S. 79(1)(ea) inserted (S.) (26.1.2009) by Public Health etc. (Scotland) Act 2008 (asp 5) (ss. 111(2)), 128(2) (with s. 127); S.S.I. 2009/9, art. 2(a), Sch. 1

F51 S. 79(1)(faa) inserted after s. 79(1)(fa) (S.) (26.1.2009) by virtue of Public Health etc. (Scotland) Act 2008 (asp 5), ss. 109(2), 128(2)(with s. 127); S.S.I. 2009/9, art. 2(a), Sch. 1

F52 S. 79(1)(fba) inserted after s. 79(1)(fb) (S.) (26.1.2009) by virtue of Public Health etc. (Scotland) Act 2008 (asp 5), ss. 110(2), 128(2) (with s. 127); S.S.I. 2009/9, art. 2(a), Sch. 1

F53 S. 79(1ZA)-(1ZC) inserted after s. 79(1) (S.) (26.1.2009) by Public Health etc. (Scotland) Act 2008 (asp 5) (s. 112(2)(b)), 128(2) (with s. 127); S.S.I. 2009/9, art. 2(a), Sch. 1

F54 S. 79(1B) substituted (S.) (1.4.2006) by The Contaminated Land (Scotland) Regulations 2005 (S.S.I. 2005/658), regs. 1, 2(12)

F55 Words in s. 79(2) inserted (S.) (26.1.2009) by Public Health etc. (Scotland) Act 2008 (asp 5), ss. 110(3)(a), 128(2) (with s. 127); S.S.I. 2009/9, art. 2(a), Sch. 1

F56 Words in s. 79(2) inserted (S.) (26.1.2009) by Public Health etc. (Scotland) Act 2008 (asp 5), ss. 110(3)(b), 128(2) (with s. 127); S.S.I. 2009/9, art. 2(a), Sch. 1

F57 S. 79(5ZA)-(5ZB) inserted after s. 79(5) (S.) (26.1.2009) by Public Health etc. (Scotland) Act 2008 (asp 5), ss. 111(3), 128(2) (with s. 127); S.S.I. 2009/9, art. 2(a), Sch. 1

F58 S. 79(5AA)-(5AD) inserted (S.) (26.1.2009) by virtue of Public Health etc. (Scotland) Act 2008 (asp 5), ss. 109(3), 128(2) (with s. 127); S.S.I. 2009/9, art. 2(a), Sch. 1

F59 S. 79(5BA) inserted after s. 79(5B) (S.) (26.1.2009) by virtue of Public Health etc. (Scotland) Act 2008 (asp 5), ss. 110(4), 128(2) (with s. 127); S.S.I. 2009/9, art. 2(a), Sch. 1

F60 Words in s. 79(7)(b) repealed (S.) (1.10.2009) by Public Health etc. (Scotland) Act 2008 (asp 5), ss. 126, 128(2), Sch. 3 (with s. 127); S.S.I. 2009/319, art. 2(a), Sch. 1

F61 Words in s. 79(7) inserted (S.) (26.1.2009) by Public Health etc. (Scotland) Act 2008 (asp 5), ss. 109(4), 128(2) (with s. 127); S.S.I. 2009/9, art. 2(a), Sch. 1

Modifications etc. (not altering text)

C6 S. 79 applied (with modifications) (17.12.1996) by 1996 c. ix, ss. 1(1), 24

C7 Ss. 79-81 excluded (S.) (22.4.2006 for certain purposes and otherwise prosp.) by Water Services etc. (Scotland) Act 2005 (asp 3), ss. 26(10), 37(2) (with s. 36); S.S.I. 2006/107, art. 2, Sch. 2

Marginal Citations

M1 1994 c. 39.

M2 1994 c. 22.

M4 1974 c. 40.

M5 1906 c. 14.

M6 1974 c. 37.

Previous: Provision | Next: Provision

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Environmental Protection Act 1990

Status: There are multiple versions of this provision on screen. These apply to different geographical extents.

Skip to: - England and Wales extent - Scotland extent

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Environmental Protection Act 1990. Any changes that have already been made by the team appear in the content and are referenced with annotations.

View outstanding changes

80 **Summary proceedings for statutory nuisances.**

(1) [F2 Subject to subsection (2A)] 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—

(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) [F3 Subject to section 80A(1) below, 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.

[F4 (2A) Where a local authority is satisfied that a statutory nuisance falling within paragraph (g) of section 79(1) above exists, or is likely to occur or recur, in the area of the authority, the authority shall—

(a) serve an abatement notice in respect of the nuisance in accordance with subsections (1) and (2) above; or

(b) take such other steps as it thinks appropriate for the purpose of persuading the appropriate person to abate the nuisance or prohibit or restrict its occurrence or recurrence.

(2B) If a local authority has taken steps under subsection (2A)(b) above and either of the conditions in subsection (2C) below is satisfied, the authority shall serve an abatement notice in respect of the nuisance.

(2C) The conditions are—

(a) that the authority is satisfied at any time before the end of the relevant period that the steps taken will not be successful in persuading the appropriate person to abate the nuisance or prohibit or restrict its occurrence or recurrence;

(b) that the authority is satisfied at the end of the relevant period that the nuisance continues to exist, or continues to be likely to occur or recur, in the area of the authority.

(2D) The relevant period is the period of seven days starting with the day on which the authority was first satisfied that the nuisance existed, or was likely to occur or recur.

(2E) The appropriate person is the person on whom the authority would otherwise be required under subsection (2A)(a) above to serve an abatement notice in respect of the nuisance.]

(3) [F5 A person served with an abatement notice] may appeal against the notice to a magistrates' court [F6 or in Scotland, the sheriff] 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) [F7, (fa)] or (g) of section 79(1) above except where the nuisance arises on industrial, trade or business premises;

[F8 (aza) in the case of a nuisance falling within paragraph (fb) of section 79(1) above except where—

(i) the artificial light is emitted from industrial, trade or business premises, or

(ii) the artificial light (not being light to which sub-paragraph (i) applies) is emitted by lights used for the purpose only of illuminating an outdoor relevant sports facility;]

[F9(aa) in the case of a nuisance falling within paragraph (ga) of section 79(1) above except where the noise is emitted from or caused by a vehicle, machinery or equipment being used for industrial, trade or business purposes;]

(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.

[F10(8A) For the purposes of subsection (8)(aza) a relevant sports facility is an area, with or without structures, that is used when participating in a relevant sport, but does not include such an area comprised in domestic premises.

(8B) For the purposes of subsection (8A) "relevant sport" means a sport that is designated for those purposes by order made by the Secretary of State, in relation to England, or the National Assembly for Wales, in relation to Wales.

A sport may be so designated by reference to its appearing in a list maintained by a body specified in the order.

(8C) In subsection (8A) "domestic premises" means—

(a) premises used wholly or mainly as a private dwelling, or

(b) land or other premises belonging to, or enjoyed with, premises so used.]

(9) In proceedings for an offence under subsection (4) above in respect of a statutory nuisance falling within paragraph (g) [F11or (ga)]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 M1Control of Pollution Act 1974 (construction sites, etc); or

(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 a 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.

Annotations:

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

E2 This version of this provision extends to England and Wales only; a separate version has been created for Scotland only

Amendments (Textual)

F2 Words in s. 80(1) inserted (E.W.) (6.4.2008 for E. and 27.10.2008 for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), ss. 88, 108; S.I. 2006/795, art. 2(3), Sch. 2; S.I. 2006/2797, art. 2(q)

F3 Words in s. 80(2) substituted (5.1.1994) by 1993 c. 40, ss. 3(2), 12(1)

F4 S. 80(2A)-(2E) inserted (E.W.) (6.4.2008 for E. and 27.10.2008 for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), ss. 88, 108; S.I. 2006/795, art. 2(3), Sch. 2; S.I. 2006/2797, art. 2(q)

F5 Words in s. 80(3) substituted (5.1.1994) by 1993 c. 40, ss. 3(3), 12(1)

F6 Words in s. 80(3) inserted (1.4.1996) by 1995 c. 25, s. 107, Sch. 17 para.3 (with ss. 7(6), 115, 117); S.I. 1996/186, art.3

F7 Words in s. 80(8)(a) inserted (E.W.) (16.3.2006 for certain purposes for W., 6.4.2008 for E.and 31.1.2007 in so far as not already in force for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), ss. 103(2)(a), 108; S.I. 2006/768, art. 3; S.I. 2006/795, art. 2(3), Sch. 2; S.I. 2006/2797, art. 6(b) (as amended (30.1.2007) by S.I. 2007/120, art. 3)

F8 S. 80(8)(aza) inserted (E.W.) (16.3.2006 for certain purposes for W., 6.4.2008 for E. and 31.1.2007 in so far as not already in force for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), ss. 103(2)(b), 108; S.I. 2006/768, art. 3; S.I. 2006/795, art. 2(3), Sch. 2; S.I. 2006/2797, art. 7(b) (as amended (30.1.2007) by S.I. 2007/120, art. 3)

F9 S. 80(8)(aa) inserted (5.1.1994) by 1993 c. 40, ss. 3(4), 12(1)

F10 S. 80(8A)-(8C) inserted (E.W.) (16.3.2006 for certain purposes for W., 6.4.2008 for E. and 31.1.2007 in so far as not already in force for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), ss. 103(3), 108; S.I. 2006/768, art. 3; S.I. 2006/795, art. 2(3), Sch. 2; S.I. 2006/2797, art. 7(b) (as amended (30.1.2007) by S.I. 2007/120, art. 3)

F11 Words in s. 80(9) inserted (5.1.1994) by 1993 c. 40, ss. 3(5), 12(1)

Modifications etc. (not altering text)

C6 S. 80(4) restricted (E.) (13.4.2001) by S.I. 2001/1478, reg. 3(b)

Marginal Citations

M1 1974 c. 40.

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—

(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) [F3Subject to section 80A(1) below, 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) [F5A person served with an abatement notice] may appeal against the notice to a magistrates' court [F6or in Scotland, the sheriff] 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.

[F12 (4A) Where a local authority have reason to believe that a person has committed an offence under subsection (4) above, the local authority may give that person a notice (a "fixed penalty notice") in accordance with section 80ZA offering the person the opportunity of discharging any liability to conviction for that offence by payment of a fixed penalty.]

(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 [F13 £40,000].

(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;

[F9 (aa) in the case of a nuisance falling within paragraph (ga) of section 79(1) above except where the noise is emitted from or caused by a vehicle, machinery or equipment being used for industrial, trade or business purposes;]

(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) [F11 or (ga)] of section 79(1) above where the offence consists in contravening requirements imposed by virtue of subsection (1)(e) 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 M1 Control of Pollution Act 1974 (construction sites, etc); or

(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.

Annotations:

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

E3 This version of this provision extends to Scotland only; a separate version has been created for England and Wales only

Amendments (Textual)

F3 Words in s. 80(2) substituted (5.1.1994) by 1993 c. 40, ss. 3(2), 12(1)

F5 Words in s. 80(3) substituted (5.1.1994) by 1993 c. 40, ss. 3(3), 12(1)

F6 Words in s. 80(3) inserted (1.4.1996) by 1995 c. 25, s. 107, Sch. 17 para.3 (with ss. 7(6), 115, 117); S.I. 1996/186, art.3

F9 S. 80(8)(aa) inserted (5.1.1994) by 1993 c. 40, ss. 3(4), 12(1)

F11 Words in s. 80(9) inserted (5.1.1994) by 1993 c. 40, ss. 3(5), 12(1)

F12 S. 80(4A) inserted (S.) (26.1.2009) by Public Health etc. (Scotland) Act 2008 (asp 5) (ss. 113(2)), 128(2) (with s. 127); S.S.I. 2009/9, art. 2(a), Sch. 1

F13 Words in s. 80(6) substituted (S.) (28.10.2004) by Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8), ss. 56, 146(2), Sch. 2 Pt. 1 para. 4(4); S.S.I. 2004/420, art. 3, Sch. 1

Modifications etc. (not altering text)

C6 S. 80(4) restricted (E.) (13.4.2001) by S.I. 2001/1478, reg. 3(b)

C7 S. 79-81 excluded (S.) (22.4.2006 for certain purposes and otherwise prosp.) by Water Services etc. (Scotland) Act 2005 (asp 3), ss. 26(10), 37(2) (with s. 36); S.S.I. 2006/167, art. 2, Sch. 2

Marginal Citations

M1 1974 c. 40.

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Tab 6

Sarah Taylor

From:	Davies, Karen (MAB)
Sent:	04 May 2016 12:13
To:	Falarczyk, Jon (MAB)
Cc:	Read, Darren (MAB); Walsh, Richard (MAB); Williams, Katherine (MAB); Brewer, Christopher (MAB); #232O'Neill's, Muswel Hil (MAB)
Subject:	FW: O'NEILL'S MUSWELL HILL BROADWAY, LONDON N10 3HA

Hi Jon

I have emailed the EHO as requested. I will let you know if Mr Pearce replies.

Kind regards

Karen Davies
Safety Support Manager
Safety Assurance
Direct Tel 0121 498 5548
karen.davies@mbplc.com

From: Safety Team (MAB)
Sent: 04 May 2016 12:09
To: 'enforcement.response@haringey.gov.uk' <enforcement.response@haringey.gov.uk>
Subject: O'NEILL'S MUSWELL HILL BROADWAY, LONDON N10 3HA

Dear Mr Pearce

I write to you further to your recent communication in relation to O'Neill's Muswell Hill Broadway. I would like to outline what has been done further in light of recent complaints. We have removed any entertainment where drums or similar are used and anything that can't be regulated through the limiter in place. We have moved to have solos, duos, trios. These acts mainly play acoustic sets. We are only using entertainment that can be regulated through the noise limiter in use at site. We have contacted our music supplier to come and carry out further tests on the settings.

Upon investigating the recent noise complaints I believe this stems mainly from an isolated incident on the 18th April where music was played at site past the agreed time limit put in place. The GM responsible for this isolated incident no longer works at the business and we as a business have taken appropriate action to ensure this does not happen again.

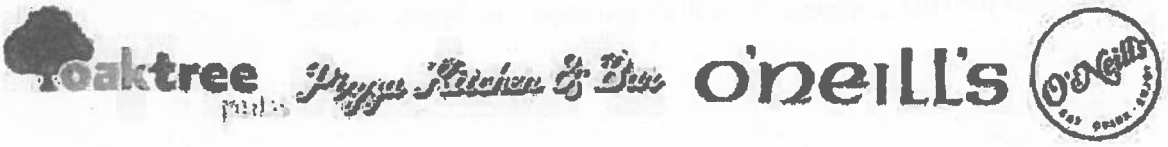
There was also a visit from the council on the 22nd April at 00:15, where it was outlined they had received complaints so were investigating, given the history of the business we took the decision to remove entertainment on Saturday 23rd as we did not want to cause any disturbance for the neighbours, we believe any potential complaints made on the 22nd April may have stemmed from the band we were using that night

being a different variant to what had been used in previous weeks so we have cancelled any upcoming bookings with this particular act.

We are working with our contractors to carry out further testing on the system, we are trying to ensure continuity with contractors and are at present awaiting confirmation from them as to what date they can attend.

Kind regards,

Jon Falarczyk
Retail Business Manager
Mitchells & Butlers | 27 Fleet Street | Birmingham | B3 1JP
☎ - 07808 095227
E Mail: jon.falarczyk@mbplc.com



Sarah Taylor

From:	Safety Team (MAB)
Sent:	13 April 2016 15:58
To:	Mark.Eastwood@haringey.gov.uk
Cc:	Williams, Katherine (MAB)
Subject:	O'Neills Muswell Hill Your Ref WK/000349392

Dear Mr Eastwood

As per your email to us earlier today regarding a fixed penalty notice for the above business. Please find the below receipt of payment for the notice. Please let me know if you require any further information.

Kind regards

Karen Davies
Safety Support Manager
Safety Assurance
Direct Tel 0121 498 5548
karen.davies@mbplc.com

From: #232O'Neill's, Muswel Hil (MAB)
Sent: 13 April 2016 15:43
To: Safety Team (MAB) <safetyteam@mbplc.com>
Subject: FW: Receipt WPSR00247991

Hi Karen,

This is the receipt.

Chris Murray.

From: NOREPLY.London.Borough.of.Haringey.payments@civicaepay.co.uk
Date: 6 April 2016 15:34:46 BST
To: donaghw7@gmail.com
Subject: Receipt WPSR00247991

Receipt Details

Payment made to:
London Borough of Haringey
Civic Centre

High Road
Wood Green
London
N22 8LE

Card holder details:
D S J Wyley
351B Muswell Hill Broadway
London
N10 1EX

Receipt number	WPSR00247991
Authorisation code	005235
Merchant Number	***95411
Terminal ID	****4385

Card type	Delta
Card number	**********0018
	KEYED

Date/Time	06/04/2016 15:33:54

Reference	Account type	Narrative	Amount	VAT
FE000349392	MISCELLANEOUS	Non-domestic sec 80	240.00	0.00
	Total Amount			240.00

Thank you. Your payment for £240.00 has been accepted
Your account will be debited with the above amount.

Please retain this copy for your records.
This is not a VAT receipt

From: Pearce Derek [Derek.Pearce@haringey.gov.uk]
Sent: 09 December 2015 12:57
To: Read, Darren (MAB)
Cc: Graham Bowland; Darrel Olivier; #219O'Neill's, Muswel Hll (MAB); Enforcement Response; Shelley, Toby (MAB); Temple, Paul (MAB); Roberts George; Safety Team (MAB)
Subject: RE: O Neills Muswell Hill - Noise Complaint

Dear Mr Read,

Thank you for your email and for the detailed explanation of action taken.

The complainant is of course at liberty to report any noise she experiences which she finds to be a nuisance. We will make contact with you should we consider that noise levels within a complainant's accommodation are not acceptable either in regard to the noise abatement notice or in regard to Premises Licence conditions.

Derek Pearce
Team Leader Enforcement Response
Tel 020 8489 5264
derek.pearce@haringey.gov.uk

From: Read, Darren (MAB) [mailto:Darren.Read@mbplc.com]
Sent: 08 December 2015 19:06
To: Pearce Derek; Enforcement Response; Roberts George; Safety Team (MAB)
Cc: Graham Bowland; Darrel Olivier; O'Neill's Muselll Hill; Shelley, Toby (MAB); Temple, Paul (MAB)
Subject: O Neills Muswell Hill - Noise Complaint

Derek / George

I write to confirm the outcome of the joint monitoring visit on Saturday night , where noise levels were reviewed using a live band.

At the start of the evening prior to George arriving, the live band began playing using the noise levels previously set by Middlesex sound.

O'Neill's have used these settings for the Rolec background music system and any DJ playing recorded music for several weeks. I understand these levels were witnessed by an Out of Hours officer visiting Alyson's flat in early / mid November and whilst sound was audible the officer did NOT feel it amounted to a Statutory Nuisance. The officer visited O'Neill's the same night to confirm this.

With the live band using the controlled music system but with a drum kit the noise levels were approximately 8db(A) above background in Alyson's flat with an overall level of 28dB(A)Leq being recorded. Further adjustments were made and prior to George's arrival levels were 3-4dB(A) above background in the flat.

At the conclusion of the visit we had further reduced noise levels to a point that the music was inaudible in the flat. This resulting level in the business did adversely affect the atmosphere at this point and we would like to be able to increase slightly from this position if possible.

George advised us that Alyson stated she would be happy with slightly increased noise levels if we could commit to finishing bands by 11pm with background music then following until the close of Business. We are happy with this compromise to allow the manager to begin live music events again and commit to this point. Donagh the GM will now start to re book live acts on the lead up to Christmas. We will be selective in the type of artists booked - clearly solo / acoustic artists without drums will have a lower potential to cause any issues. -however some groups will still be booked to keep a variety of artists.
We will use the final levels agreed on the night with George which Middlesex sound are going to circulate. At this point i feel we are operating the business with resulting noise levels in the flat well below all formal standards used to determine when noise levels may become a Statutory Nuisance.

I understand Alison has been in touch with you on Saturday night immediately following the conclusion of the visit and alleged noise levels were turned up significantly. I am concerned with this inconsistent approach from her, i remained in the building until approximately 11.20pm and can confirm music levels did not change at all from those agreed. Given this situation we will not adjust any noise levels in the immediate future but will commence with live acts as agreed.

As i hope you can appreciate compliance with the Notice is not a simple matter of silencing a noise source. We are operating within a building that is structurally difficult to sound insulate, and by the fact we are an entertainment venue, playing music at a level to create an atmosphere is required. We intend to continue complying with the abatement notice and will use the noise levels agreed with George which were not a Nuisance on Saturday Night. I would hope this will result in no further complaints from Alyson however i offer our continued support to maintain compliance with the Notice and would ask you to contact me directly if you feel further action on our behalf is required.

regards

Darren Read
Fire, Health and Safety Manager
Mitchells & Butlers
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Mob: 07808094392

Sarah Taylor

From:	Sarner, James (MAB) <James.Sarner@mbplc.com>
To:	Thomas, Emma (Security and Licensing) (MAB)
Cc:	Boucher, Stephen (MAB); Hadley, Katherine (MAB)
Subject:	FW: O'Neill's Muswell Hill - Audio Works

From: #219O'Neill's, Muswel Hil (MAB)
Sent: 26 October 2015 12:09
To: derek.pearce@haringey.gov.uk
Subject: FW: O'Neill's Muswell Hill - Audio Works

Good afternoon Derek,
Enclosed is an outline of acoustic works carried out at our venue over the last few months. We have also replaced connecting wall with sound proofing boards, moved the stage & built a new wall in the centre of the room. Is it possible for yourself to come & inspect works carried out & listen to audio check? this would be greatly appreciated as we have spent a lot of time & money trying to get this right. We have also cancelled all live acts over this period and closed half of the venue for two weeks while we carried out structural building work through fairland contractors,
Thanking you in advance
Donagh Wyley
General Manager
O Neill's
Muswell Hill

From: Darrel Olivier [Darrel@middlesexsound.co.uk]
Sent: 23 October 2015 10:49
To: #219O'Neill's, Muswel Hil (MAB)
Cc: Jones, David (MAB); Garvey, Liam (MAB)
Subject: O'Neill's Muswell Hill - Audio Works

Hi Donnagh – please see below report of all works carried out to date with a view of resolving the reported noise issues when live music is on.

04/08/15 - 11/08/15 – Engineers Toby Jones and Callum Toms attended to complete the following works in line with the reposition of the stage position.

- *Extend existing plug in points for bass bin, lighting and Live input to new stage position at low level*
- *Remove 1 x Bose 301 speaker at rear of new stage position to allow for associated acoustic works to rear wall and side staircase balustrade to take place and extend speaker feed to new suitable position in this raised area and refix*
- *Existing F12 speaker on the right hand side as you look at the existing stage position to be removed along with bracket, cable to new position on left hand side of new stage position mounted to staircase balustrade - position to be in line and at same height as other existing f12 speaker that is remaining in its existing location - Reinstall existing F12+ speakers in new position*

16/08/15 - Following engineer Toby Jones evening attendance the following points were noted and changes implemented to improve the situation.

Visited the complainants flat who unfortunately feels the works carried out in her view haven't done anything to sort out the problem. Before any Soundweb adjustments were made audio was noticeable . I then reduced all zones of audio by 3db and reduced the main sub level by 10db. I have added in a live mute on the larger em56 zone facing the stage in ground floor trade area and adjusted the live compressor - after re-visiting the flat again there was a difference in level in her bedroom now, which is an improvement , the

audio now sounds like it's coming from the street rather than her walls. The venue are hanging an acoustic curtain behind the stage later next week which will hopefully assist further. Alison will monitor to see if it helps , I've advised the manager that the bands should not use back line Amps and go through house system, this only adds to the problem and have no way of governing them. All in all an improvement but issue not completely resolved.

20/09/15 - Following engineer Dean Osbourne's evening attendance on 20/09/15 – engineer reported the following and made the following recommendations.

- *Basically the system we installed is fine and cannot really cause a problem with limiters active*
- *The bands backline however and the monitors can easily exceed the levels of our limited FOH PA*
- *The solution is simple and was agreed between myself the manager and acoustic consultant and band seemed happy with the ideas*
- *We provide 3 passive monitors that match the foh f12's I believe 1 for drummer and 2 up front and suitable amplification so these can be set to match what's coming out of the FOH*
- *So the band hear exactly what's coming out the front (maybe with some more bass than from the foh f12's as they are running as tops)*
- *And the band monitors are fed from the Live inputs which are fed through soundweb with limiters*
- *Additionally the band no longer bring any backline kit and EVERYTHING goes through in house PA*
- *We will need to supply a blu3 for the band to adjust their monitor level along with some active di boxes*
- *Works will require a 4 core 1.5 speaker cable and UNI2 from rack to stage and a triple speakon plug in point and with associated cables to connect*
- *Drummer could do with some in ear mons if he can't hear as he may still struggle would be worth costing for a set straight out of mixer don't need to be wireless could just be a set of sennheiser hd25's or some audio technica's and a headphone amp? This may encourage him to play quieter if he can't hear it*
- *Then the only thing then outside our 'control' is the ambient level of the drums*
- *We could recommend an in house drum kit that is smaller and 'damped'*
  - *I.e. Pillow in kick drum*
  - *Tape on snare*
  - *Smaller crash and cymbals with tape etc etc*
  - *Would stop bands bringing in massive loud kits*
  - *And then explain to them they need to play quieter - it can be done*

I think this is definitely the next step if suite wish to continue putting Live music on as sound proofing is not working and ineffective here.

19/10/15 - Engineers attended on 19/10/15 to carry out the supply and installation of the following equipment in line with the recommendations above with exception of those to venues drum kit – reattendnace to set levels and test in live music situation yet to be arranged.

- *3 x Martin Audio F12+ monitor speakers*
- *1 x Yamaha XP5000 amplifier*
- *1 x BSS BLU-BOB output expander*
- *1 x BSS BLU-3*
- *4 x BSS AR133 active DI boxes*
- *8 x TRS jack to jack cables 5m*
- *3 way monitor output wall patch panel and back box c/w 3 x 10m Neutrik speakon to speakon cables*
- *Adjustments to SW file*
- *Labour to carry out the installation of the above included associated cabling works between audio control rack and stage*
- *Installation materials – 4 core speaker cable, UNI2 signal cable, connectors, etc*