



# Public Health etc. (Scotland) Act 2008

## 2008 asp 5

### PART 9

#### STATUTORY NUISANCES

#### 109 Insect nuisance

- (1) Section 79 (statutory nuisances and inspections) of the Environmental Protection Act 1990 (c. 43) (the “1990 Act”) is amended as follows.
- (2) In subsection (1), after paragraph (fa), insert—
  - “(faa) any insects emanating from premises and being prejudicial to health or a nuisance;”.
- (3) After subsection (5A), insert—
  - “(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.”.
- (4) In subsection (7), in the definition of “premises”, after “land” insert “(subject to subsection (5AB) above)”.

**110 Artificial light nuisance**

(1) Section 79 of the 1990 Act is further amended as follows.

(2) In subsection (1), after paragraph (fb), insert—

- “(fba) artificial light emitted from—  
 (i) premises;  
 (ii) any stationary object,  
 so as to be prejudicial to health or a nuisance;”.

(3) In subsection (2)—

- (a) after “(1)(b)” insert “, (fba)”;  
 (b) after “premises” insert “(or, in respect of paragraph (fba)(ii) above, a stationary object located on premises)”.

(4) After subsection (5B), insert—

“(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)).”.

**111 Statutory nuisance: land covered with water**

(1) Section 79 of the 1990 Act is further amended as follows.

(2) In subsection (1), after paragraph (e), insert—

- “(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;”.

(3) After subsection (5), insert—

“(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).”.

## **112 Power to make further provision regarding statutory nuisances**

(1) The 1990 Act is further amended as follows.

(2) In section 79—

- (a) in subsection (1), for “(1A)” substitute “(1ZA)”; and
- (b) after subsection (1), insert—

“(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.”.

## **113 Enforcement of statutory nuisances: fixed penalty notice**

(1) The 1990 Act is further amended as follows.

(2) In section 80 (summary proceedings for statutory nuisances), after subsection (4), insert—

“(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.”.

(3) After that section, insert—

### **“80ZA Fixed penalty notice: supplemental**

- (1) This section applies to a fixed penalty notice given under section 80(4A).
- (2) A fixed penalty notice must give reasonable particulars of the circumstances alleged to constitute the offence.
- (3) A fixed penalty notice must also state—
  - (a) the amount of the fixed penalty;

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*Status: This is the original version (as it was originally enacted).*

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- (b) the period within which it may be paid;
  - (c) the—
    - (i) person to whom; and
    - (ii) address at which,payment may be made;
  - (d) the method or methods by which payment may be made;
  - (e) the consequences of not making a payment within the period for payment.
- (4) The amount of the fixed penalty under section 80(4A) is—
- (a) in the case of a nuisance relating to industrial, trade or business premises, £400;
  - (b) in any other case, £150.
- (5) The period for payment of the fixed penalty is 14 days beginning with the day after the day on which the notice is given.
- (6) The local authority may extend the period for paying the fixed penalty in any particular case if they consider it appropriate to do so by sending notice to the person to whom the fixed penalty notice was given.
- (7) No proceedings for an offence under section 80(4) may be commenced before the end of the period for payment of the fixed penalty.
- (8) In proceedings for an offence under section 80(4), a certificate which—
- (a) purports to be signed by or on behalf of a person having responsibility for the financial affairs of the local authority; and
  - (b) states that payment of the amount specified in the fixed penalty notice was or was not received by the expiry of the period within which that fixed penalty may be paid,
- is sufficient evidence of the facts stated.
- (9) Where proceedings for an offence in respect of which a fixed penalty notice has been given are commenced, the notice is to be treated as withdrawn.
- (10) Any sum received by a local authority under section 80(4A) accrues to that authority.
- (11) The Scottish Ministers may, by regulations—
- (a) provide that fixed penalty notices may not be given in such circumstances as may be prescribed;
  - (b) provide for the form of a fixed penalty notice;
  - (c) provide for the method or methods by which fixed penalties may be paid;
  - (d) modify subsection (4)(a) or (b) above so as to substitute a different amount (not exceeding level 2 on the standard scale) for the amount for the time being specified there;
  - (e) provide for the amount of the fixed penalty to be different in different cases or descriptions of case;
  - (f) modify subsection (5) above so as to substitute a different period for the period for the time being specified there;

- (g) provide for the keeping of accounts, and the preparation and publication of statements of account relating to fixed penalties under section 80(4A).
- (12) Before making regulations under subsection (11) above, the Scottish Ministers must consult, in so far as it is reasonably practicable to do so, the persons mentioned in subsection (13) below.
- (13) Those persons are—
  - (a) such associations of local authorities; and
  - (b) such other persons,as the Scottish Ministers consider appropriate.”.
- (4) In section 81 (supplementary provisions), for subsection (3), substitute—
  - “(3) Where an abatement notice has not been complied with, the local authority may, whether or not—
    - (a) proceedings have been taken for an offence under section 80(4); or
    - (b) a fixed penalty notice has been given under section 80(4A) in respect of that offence (regardless of whether the fixed penalty notice is accepted),abate the nuisance and do whatever may be necessary in execution of the abatement notice.”.

#### **114 Procedure for regulations**

- (1) Section 161 (regulations, orders and directions) of the 1990 Act is amended as follows.
- (2) In subsection (2), at the beginning insert “Subject to subsection (2B) below,”.
- (3) After subsection (2A), insert—
  - “(2B) No statutory instrument containing regulations made under section 79(1ZA) or 80ZA(11) above may be made unless a draft of it has been laid before, and approved by resolution of, the Scottish Parliament.”.

#### **115 Sewerage nuisance: local authority powers**

- (1) Section 26 of the Water Services etc. (Scotland) Act 2005 (asp 3) is amended as follows.
- (2) In subsection (10), for the words from “nuisance” in the second place where it appears to the end, substitute “nuisance—
  - (a) which constitutes a sewerage nuisance; and
  - (b) in respect of which a sewerage code applies.”.
- (3) After that subsection, insert—
  - “(10A) Paragraphs 2, 3 and 5 of Schedule 3 to the Environmental Protection Act 1990 (c. 43) apply to the exercise of functions by a local authority under this section as they apply to the exercise of functions under Part III of that Act, with the following modifications—
    - (a) in paragraph 2(1)(a), for “statutory nuisance” substitute “sewerage nuisance”;

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- (b) in paragraph 2(1)(b) and (4)(b), for “Part III” substitute “section 26 of the Water Services etc. (Scotland) Act 2005 (asp 3)”;
- (c) in paragraph 3(1), for the words from “, on summary conviction” to the end substitute—
  - “(a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to a fine.”;
- (d) in paragraph 3(2), for the words from “, on summary conviction” to the end substitute—
  - “(a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to a fine.”;
- (e) in paragraph 5—
  - (i) for the words “executing Part III” substitute “exercising functions under section 26 of the Water Services etc. (Scotland) Act 2005”;
  - (ii) the words from “(other” to the end are to be disregarded.”.