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*Changes to legislation: Environmental Protection Act 1990, Cross Heading: Statutory nuisances . . . is up to date with all changes known to be in force on or before 27 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*



# Environmental Protection Act 1990

## 1990 CHAPTER 43

### PART III **E+W+S**

#### STATUTORY NUISANCES AND CLEAN AIR

##### *Statutory nuisances*<sup>F1</sup> . . .

#### Textual Amendments

**F1** Words in heading immediately preceding s. 79 repealed (1.4.1996) by 1995 c. 25, s. 120(3), **Sch.24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art.3**

#### **79** Statutory nuisances and inspections therefor. **E+W+S**

(1) [<sup>F2</sup>Subject to subsections (2) 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;
- (g) noise emitted from premises so as to be prejudicial to health or a nuisance;
- [<sup>F3</sup>(g) noise that is prejudicial to health or a nuisance and is emitted from or caused by a vehicle, machinery or equipment in a street [<sup>F4</sup>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

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under section 80 below [<sup>F5</sup>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.

- (2) Subsection (1)(b) 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.
- (6) Subsection (1)(g) above does not apply to noise caused by aircraft other than model aircraft.
- [<sup>F6</sup>(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;

[<sup>F7</sup>“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

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of any treatment or process as well as where they are used for the purposes of manufacturing;

“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) [<sup>F8</sup>in England and Wales] outside Greater London, a district council; <sup>F9</sup> . . .
- (bb) [<sup>F10</sup>in Wales, a county council or county borough council;]
- (c) the Council of the Isles of Scilly; [<sup>F11</sup>and
- (d) in Scotland, a district or islands council or a council constituted under section 2 of the <sup>M1</sup>Local Government etc (Scotland) Act 1994;]

“noise” includes vibration;

[<sup>F12</sup>“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 [<sup>F13</sup>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 and, subject to subsection (12) [<sup>F14</sup>and [<sup>F15</sup>, 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;

[<sup>F16</sup>“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;

[<sup>F17</sup>“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 [<sup>F18</sup>the Clean Air Act 1993] have the same meaning in this section as in that Act and [<sup>F18</sup>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.

- (8) Where, by an order under section 2 of the <sup>M2</sup>Public Health (Control of Disease) Act 1984, a port health authority has been constituted for any port health district, [<sup>F19</sup>or in Scotland where by an order under section 172 of the <sup>M3</sup>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 [<sup>F20</sup>, 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 (g) [<sup>F21</sup>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—

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- (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 <sup>M4</sup>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) or (e) [<sup>F22</sup>and, in relation to Scotland, paragraph (g) or (ga),] of subsection (1) above if proceedings in respect thereof might be instituted under Part I of the <sup>M5</sup>Alkali &c. Works Regulation Act 1906 or section 5 of the <sup>M6</sup>Health and Safety at Work etc. Act 1974.
- (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) [<sup>F14</sup>and [<sup>F23</sup>, 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.

#### 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**

#### Textual Amendments

- F2** Words in s. 79(1) substituted (5.1.1994) by 1993 c. 40, **ss. 2(2)(a)**, 12(1)
- F3** S. 79(1)(ga) inserted (5.1.1994) by 1993 c. 40, **ss. 2(2)(b)**, 12(1)
- F4** 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**
- F5** Words in s. 79(1) inserted (5.1.1994) by 1993 c. 40, **ss. 2(2)(c)**, 12(1)
- F6** S. 79(6A) inserted (5.1.1994) by 1993 c. 40, **ss. 2(3)**, 12(1)
- F7** Definition of "equipment" in s. 79(7) inserted (5.1.1994) by 1993 c. 40, **ss. 2(4)(a)**, 12(1)
- F8** Words "in England and Wales" in para. (b) in definition of 'local authority' in s. 79(7) 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**

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- F9** Word in s. 79(7) in 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**
- F10** 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**
- F11** 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**
- F12** Definition of "person responsible" in s. 79(7) substituted (5.1.1994) by 1993 c. 40, **ss. 2(4)(b)**, 12(1)
- F13** 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))
- F14** Words in s. 79(7)(11) inserted (5.1.1994) by 1993 c. 40, **ss. 10(1)**, 12(1)
- F15** 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**
- F16** 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**
- F17** Definition of "street" in s. 79(7) inserted (5.1.1994) by 1993 c. 40, **ss. 2(4)(c)**, 12(1)
- F18** Words in s. 79(7) substituted (27.8.1993) by 1993 c. 11, s. 67(1), **Sch. 4 para. 4**
- F19** Words in 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**
- F20** 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**
- F21** Words in s. 79(8) inserted (5.1.1994) by 1993 c. 40, **ss. 2(5)**, 12(1)
- F22** 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**
- F23** 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)

- C1** S. 79 applied (with modifications) (17.12.1996) by 1996 c. ix, **ss. 1(1)**, 24(1)

#### 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.

## 80 Summary proceedings for statutory nuisances. **E+W+S**

- (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—
- requiring the abatement of the nuisance or prohibiting or restricting its occurrence or recurrence;
  - 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) [<sup>F24</sup>Subject to section 80A(1) below, the abatement notice] shall be served—
- except in a case falling within paragraph (b) or (c) below, on the person responsible for the nuisance;

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- (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) [<sup>F25</sup>A person served with an abatement notice] may appeal against the notice to a magistrates' court [<sup>F26</sup>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) or (g) of section 79(1) above except where the nuisance arises on industrial, trade or business premises;
  - [<sup>F27</sup>(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) [<sup>F28</sup>or (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 <sup>M7</sup>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

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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.

#### Extent Information

**E2** 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**

#### Textual Amendments

**F24** Words in s. 80(2) substituted (5.1.1994) by 1993 c. 40, **ss. 3(2)**, 12(1)

**F25** Words in s. 80(3) substituted (5.1.1994) by 1993 c. 40, **ss. 3(3)**, 12(1)

**F26** 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**

**F27** S. 80(8)(aa) inserted (5.1.1994) by 1993 c. 40, **ss. 3(4)**, 12(1)

**F28** Words in s. 80(9) inserted (5.1.1994) by 1993 c. 40, **ss. 3(5)**, 12(1)

#### Modifications etc. (not altering text)

**C2** S. 80(4) restricted (E.) (13.4.2001) by **S.I. 2001/1478, reg. 3(b)**

#### Marginal Citations

**M7** 1974 c. 40.

VALID FROM 26/01/2009

#### <sup>F29</sup>**80ZA**Fixed penalty notice: supplemental **S**

- (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;
  - (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.

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- (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.]

#### **Textual Amendments**

**F29** S. 80ZA inserted (S.) (26.1.2009) by [Public Health etc. \(Scotland\) Act 2008 \(asp 5\)](#) {ss. 113(3)}, 128(2) (with s. 127); [S.S.I. 2009/9, art. 2\(a\)](#), Sch. 1



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[<sup>F30</sup>**80A Abatement notice in respect of noise in street.** **E+W+S**]

- (1) In the case of a statutory nuisance within section 79(1)(ga) above that—
  - (a) has not yet occurred, or
  - (b) arises from noise emitted from or caused by an unattended vehicle or unattended machinery or equipment,the abatement notice shall be served in accordance with subsection (2) below.
- (2) The notice shall be served—
  - (a) where the person responsible for the vehicle, machinery or equipment can be found, on that person;
  - (b) where that person cannot be found or where the local authority determines that this paragraph should apply, by fixing the notice to the vehicle, machinery or equipment.
- (3) Where—
  - (a) an abatement notice is served in accordance with subsection (2)(b) above by virtue of a determination of the local authority, and
  - (b) the person responsible for the vehicle, machinery or equipment can be found and served with a copy of the notice within an hour of the notice being fixed to the vehicle, machinery or equipment,a copy of the notice shall be served on that person accordingly.
- (4) Where an abatement notice is served in accordance with subsection (2)(b) above by virtue of a determination of the local authority, the notice shall state that, if a copy of the notice is subsequently served under subsection (3) above, the time specified in the notice as the time within which its requirements are to be complied with is extended by such further period as is specified in the notice.
- (5) Where an abatement notice is served in accordance with subsection (2)(b) above, the person responsible for the vehicle, machinery or equipment may appeal against the notice under section 80(3) above as if he had been served with the notice on the date on which it was fixed to the vehicle, machinery or equipment.
- (6) Section 80(4) above shall apply in relation to a person on whom a copy of an abatement notice is served under subsection (3) above as if the copy were the notice itself.
- (7) A person who removes or interferes with a notice fixed to a vehicle, machinery or equipment in accordance with subsection (2)(b) above shall be guilty of an offence, unless he is the person responsible for the vehicle, machinery or equipment or he does so with the authority of that person.
- (8) A person who commits an offence under subsection (7) above shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.]

**Extent Information**

**E3** 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**

**Textual Amendments**

**F30** S. 80A inserted (5.1.1994) by 1993 c. 40, **ss. 3(6), 12(1)**

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#### Modifications etc. (not altering text)

- C3 S. 80A applied (with modifications)(17.12.1996) by 1996 c. ix, ss. 1(1), 24(2)
- C4 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. 2006/167, art. 2, Sch. 2

### 81 Supplementary provisions. **E+W+S**

(1) [<sup>F31</sup>Subject to subsection (1A) below, where] more than one person is responsible for a statutory nuisance section 80 above shall apply to each of those persons whether or not what any one of them is responsible for would by itself amount to a nuisance.

[<sup>F32</sup>(1A) In relation to a statutory nuisance within section 79(1)(ga) above for which more than one person is responsible (whether or not what any one of those persons is responsible for would by itself amount to such a nuisance), section 80(2)(a) above shall apply with the substitution of “any one of the persons” for “the person”.

(1B) In relation to a statutory nuisance within section 79(1)(ga) above caused by noise emitted from or caused by an unattended vehicle or unattended machinery or equipment for which more than one person is responsible, section 80A above shall apply with the substitution—

- (a) in subsection (2)(a), of “any of the persons” for “the person” and of “one such person” for “that person”,
- (b) in subsection (2)(b), of “such a person” for “that person”,
- (c) in subsection (3), of “any of the persons” for “the person” and of “one such person” for “that person”,
- (d) in subsection (5), of “any person” for “the person”, and
- (e) in subsection (7), of “a person” for “the person” and of “such a person” for “that person”.]

(2) Where a statutory nuisance which exists or has occurred within the area of a local authority, or which has affected any part of that area, appears to the local authority to be wholly or partly caused by some act or default committed or taking place outside the area, the local authority may act under section 80 above as if the act or default were wholly within that area, except that any appeal shall be heard by a magistrates’ court [<sup>F33</sup>or in Scotland, the sheriff] having jurisdiction where the act or default is alleged to have taken place.

(3) Where an abatement notice has not been complied with the local authority may, whether or not they take proceedings for an offence [<sup>F34</sup>or, in Scotland, whether or not proceedings have been taken for an offence,] under section 80(4) above, abate the nuisance and do whatever may be necessary in execution of the notice.

(4) Any expenses reasonably incurred by a local authority in abating, or preventing the recurrence of, a statutory nuisance under subsection (3) above may be recovered by them from the person by whose act or default the nuisance was caused and, if that person is the owner of the premises, from any person who is for the time being the owner thereof; and the court [<sup>F35</sup>or sheriff] may apportion the expenses between persons by whose acts or defaults the nuisance is caused in such manner as the court consider [<sup>F35</sup>or sheriff considers] fair and reasonable.

(5) If a local authority is of opinion that proceedings for an offence under section 80(4) above would afford an inadequate remedy in the case of any statutory nuisance, they may, subject to subsection (6) below, take proceedings in the High Court [<sup>F36</sup>or,

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in Scotland, in any court of competent jurisdiction,] for the purpose of securing the abatement, prohibition or restriction of the nuisance, and the proceedings shall be maintainable notwithstanding the local authority have suffered no damage from the nuisance.

(6) In any proceedings under subsection (5) above in respect of a nuisance falling within paragraph (g) [<sup>F37</sup> or (ga)] of section 79(1) above, it shall be a defence to prove that the noise was authorised by a notice under section 60 or a consent under section 61 (construction sites) of the <sup>M8</sup>Control of Pollution Act 1974.

(7) The further supplementary provisions in Schedule 3 to this Act shall have effect.

#### Extent Information

**E4** 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**

#### Textual Amendments

**F31** Words in s. 81(1) substituted (5.1.1994) by 1993 c. 40, **ss. 4(2)**, 12(1)(2)

**F32** S. 81(1A)(1B) inserted (5.1.1994) by 1993 c. 40, **ss. 4(3)**, 12(1)(2)

**F33** Words in s. 81(2) inserted (1.4.1996) by 1995 c. 25, s. 107, **Sch. 17 para. 4(a)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art.3**

**F34** Words in s. 81(3) inserted (1.4.1996) by 1995 c. 25, s. 107, **Sch. 17 para. 4(b)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art.3**

**F35** Words in s. 81(4) inserted (1.4.1996) by 1995 c. 25, s. 107, **Sch. 17 para. 4(c)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art.3**

**F36** Words in s. 81(5) inserted (1.4.1996) by 1995 c. 25, s. 107, **Sch. 17 para. 4(d)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art.3**

**F37** Words in s. 81(6) inserted (5.1.1994) by 1993 c. 40, **ss. 4(4)**, 12(1)(2)

#### Modifications etc. (not altering text)

**C5** S. 81(3) extended (19.9.1996) by 1996 c. 37, **s. 10(7)**; S.I. 1996/2219, **art.2**

#### Marginal Citations

**M8** 1974 c. 40.

### [<sup>F38</sup>81A Expenses recoverable from owner to be a charge on premises. **E+W**

(1) Where any expenses are recoverable under section 81(4) above from a person who is the owner of the premises there mentioned and the local authority serves a notice on him under this section—

- (a) the expenses shall carry interest, at such reasonable rate as the local authority may determine, from the date of service of the notice until the whole amount is paid, and
- (b) subject to the following provisions of this section, the expenses and accrued interest shall be a charge on the premises.

(2) A notice served under this section shall—

- (a) specify the amount of the expenses that the local authority claims is recoverable,

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- (b) state the effect of subsection (1) above and the rate of interest determined by the local authority under that subsection, and
  - (c) state the effect of subsections (4) to (6) below.
- (3) On the date on which a local authority serves a notice on a person under this section the authority shall also serve a copy of the notice on every other person who, to the knowledge of the authority, has an interest in the premises capable of being affected by the charge.
- (4) Subject to any order under subsection (7)(b) or (c) below, the amount of any expenses specified in a notice under this section and the accrued interest shall be a charge on the premises—
- (a) as from the end of the period of twenty-one days beginning with the date of service of the notice, or
  - (b) where an appeal is brought under subsection (6) below, as from the final determination of the appeal,
- until the expenses and interest are recovered.
- (5) For the purposes of subsection (4) above, the withdrawal of an appeal has the same effect as a final determination of the appeal.
- (6) A person served with a notice or copy of a notice under this section may appeal against the notice to the county court within the period of twenty-one days beginning with the date of service.
- (7) On such an appeal the court may—
- (a) confirm the notice without modification,
  - (b) order that the notice is to have effect with the substitution of a different amount for the amount originally specified in it, or
  - (c) order that the notice is to be of no effect.
- (8) A local authority shall, for the purpose of enforcing a charge under this section, have all the same powers and remedies under the <sup>M9</sup>Law of Property Act 1925, and otherwise, as if it were a mortgagee by deed having powers of sale and lease, of accepting surrenders of leases and of appointing a receiver.
- (9) In this section—
- “owner”, in relation to any premises, means a person (other than a mortgagee not in possession) who, whether in his own right or as trustee for any other person, is entitled to receive the rack rent of the premises or, where the premises are not let at a rack rent, would be so entitled if they were so let, and
  - “premises” does not include a vessel.

<sup>F39</sup>(10) [ This section does not apply to Scotland. ]

#### Textual Amendments

**F38** Ss. 81A, 81B inserted (E.W.) (5.1.1994) by 1993 c. 40, ss. 10(2), 12(1)

**F39** S. 81A(10) inserted (1.4.1996) by 1995 c. 25, s. 107, Sch. 17 para.5 (with ss. 7(6), 115, 117); S.I. 1996/186, art.3

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#### Marginal Citations

M9 1925 c. 20.

### <sup>F40</sup>81B Payment of expenses by instalments. **E+W**

- (1) Where any expenses are a charge on premises under section 81A above, the local authority may by order declare the expenses to be payable with interest by instalments within the specified period, until the whole amount is paid.
- (2) In subsection (1) above—
  - “interest” means interest at the rate determined by the authority under section 81A (1) above, and
  - “the specified period” means such period of thirty years or less from the date of service of the notice under section 81A above as is specified in the order.
- (3) Subject to subsection (5) below, the instalments and interest, or any part of them, may be recovered from the owner or occupier for the time being of the premises.
- (4) Any sums recovered from an occupier may be deducted by him from the rent of the premises.
- (5) An occupier shall not be required to pay at any one time any sum greater than the aggregate of—
  - (a) the amount that was due from him on account of rent at the date on which he was served with a demand from the local authority together with a notice requiring him not to pay rent to his landlord without deducting the sum demanded, and
  - (b) the amount that has become due from him on account of rent since that date.

[<sup>F41</sup>(6) This section does not apply to Scotland.]

#### Textual Amendments

**F40** Ss. 81A, 81B inserted (E.W.) (5.1.1994) by 1993 c. 40, ss. 10(2), 12(1)

**F41** S. 81B(6) inserted (1.4.1996) by 1995 c. 25, s. 107, Sch. 17 para.5 (with ss. 7(6), 115, 117); S.I. 1996/186, art.3

### 82 Summary proceedings by persons aggrieved by statutory nuisances. **E+W+S**

- (1) A magistrates’ court may act under this section on a complaint [<sup>F42</sup>or, in Scotland, the sheriff may act under this section on a summary application,] made by any person on the ground that he is aggrieved by the existence of a statutory nuisance.
- (2) If the magistrates’ court [<sup>F43</sup>or, in Scotland, the sheriff] is satisfied that the alleged nuisance exists, or that although abated it is likely to recur on the same premises [<sup>F44</sup>or, in the case of a nuisance within section 79(1)(ga) above, in the same street][<sup>F43</sup>or, in Scotland, road], the court [<sup>F43</sup>or the sheriff] shall make an order for either or both of the following purposes—
  - (a) requiring the defendant [<sup>F43</sup>or, in Scotland, defender] to abate the nuisance, within a time specified in the order, and to execute any works necessary for that purpose;

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- (b) prohibiting a recurrence of the nuisance, and requiring the defendant [<sup>F43</sup>or defender], within a time specified in the order, to execute any works necessary to prevent the recurrence;
- and [<sup>F43</sup>, in England and Wales,] may also impose on the defendant a fine not exceeding level 5 on the standard scale.
- (3) If the magistrates' court [<sup>F45</sup>or the sheriff] is satisfied that the alleged nuisance exists and is such as, in the opinion of the court [<sup>F45</sup>or of the sheriff], to render premises unfit for human habitation, an order under subsection (2) above may prohibit the use of the premises for human habitation until the premises are, to the satisfaction of the court [<sup>F45</sup>or of the sheriff], rendered fit for that purpose.
- (4) Proceedings for an order under subsection (2) above shall be brought—
- (a) except in a case falling within [<sup>F46</sup>paragraph (b), (c) or (d) below], against the person responsible for the nuisance;
  - (b) where the nuisance arises from any defect of a structural character, against the owner of the premises;
  - (c) where the person responsible for the nuisance cannot be found, against the owner or occupier of the premises.
- [<sup>F47</sup>(d) in the case of a statutory nuisance within section 79(1)(ga) above caused by noise emitted from or caused by an unattended vehicle or unattended machinery or equipment, against the person responsible for the vehicle, machinery or equipment.]
- (5) [<sup>F48</sup>Subject to subsection (5A) below, where] more than one person is responsible for a statutory nuisance, subsections (1) to (4) above shall apply to each of those persons whether or not what any one of them is responsible for would by itself amount to a nuisance.
- [<sup>F49</sup>(5A) In relation to a statutory nuisance within section 79(1)(ga) above for which more than one person is responsible (whether or not what any one of those persons is responsible for would by itself amount to such a nuisance), subsection (4)(a) above shall apply with the substitution of “each person responsible for the nuisance who can be found” for “the person responsible for the nuisance”.
- (5B) In relation to a statutory nuisance within section 79(1)(ga) above caused by noise emitted from or caused by an unattended vehicle or unattended machinery or equipment for which more than one person is responsible, subsection (4)(d) above shall apply with the substitution of “any person” for “the person”.]
- (6) Before instituting proceedings for an order under subsection (2) above against any person, the person aggrieved by the nuisance shall give to that person such notice in writing of his intention to bring the proceedings as is applicable to proceedings in respect of a nuisance of that description and the notice shall specify the matter complained of.
- (7) The notice of the bringing of proceedings in respect of a statutory nuisance required by subsection (6) above which is applicable is—
- (a) in the case of a nuisance falling within paragraph (g) [<sup>F50</sup>or (ga)] of section 79(1) above, not less than three days' notice; and
  - (b) in the case of a nuisance of any other description, not less than twenty-one days' notice;

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but the Secretary of State may, by order, provide that this subsection shall have effect as if such period as is specified in the order were the minimum period of notice applicable to any description of statutory nuisance specified in the order.

- (8) A person who, without reasonable excuse, contravenes any requirement or prohibition imposed by an order under subsection (2) above shall be guilty of an offence and 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.
- (9) Subject to subsection (10) below, in any proceedings for an offence under subsection (8) 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.
- (10) The defence under subsection (9) 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;
  - <sup>F51</sup>(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;
  - (c) in the case of a nuisance falling within paragraph (c) or (h) of section 79(1) above; and
  - (d) in the case of a nuisance which is such as to render the premises unfit for human habitation.
- (11) If a person is convicted of an offence under subsection (8) above, a magistrates' court <sup>F52</sup>or the sheriff may, after giving the local authority in whose area the nuisance has occurred an opportunity of being heard, direct the authority to do anything which the person convicted was required to do by the order to which the conviction relates.
- (12) Where on the hearing of proceedings for an order under subsection (2) above it is proved that the alleged nuisance existed at the date of the making of the complaint <sup>F53</sup>or summary application, then, whether or not at the date of the hearing it still exists or is likely to recur, the court <sup>F53</sup>or the sheriff shall order the <sup>F54</sup>defendant or defender (or defendants or defenders) in such proportions as appears fair and reasonable) to pay to the person bringing the proceedings such amount as the court <sup>F53</sup>or the sheriff considers reasonably sufficient to compensate him for any expenses properly incurred by him in the proceedings.
- (13) If it appears to the magistrates' court <sup>F55</sup>or to the sheriff that neither the person responsible for the nuisance nor the owner or occupier of the premises <sup>F56</sup>or (as the case may be) the person responsible for the vehicle, machinery or equipment can be found the court <sup>F55</sup>or the sheriff may, after giving the local authority in whose area the nuisance has occurred an opportunity of being heard, direct the authority to do anything which the court <sup>F55</sup>or the sheriff would have ordered that person to do.

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### Extent Information

- E5** 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**

### Textual Amendments

- F42** Words in s. 82(1) inserted (1.4.1996) by 1995 c. 25, s. 107, **Sch. 17 para. 6(a)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F43** Words in s. 82(2) inserted (1.4.1996) by 1995 c. 25, s. 107, **Sch. 17 para. 6(b)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F44** Words in s. 82(2) inserted (E.W.) (5.1.1994) by 1993 c. 40, **ss. 5(2)**, 12(1)
- F45** Words in s. 82(3) inserted (1.4.1996) by 1995 c. 25, s. 107, **Sch. 17 para. 6(c)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F46** Words in s. 82(4)(a) substituted (E.W.) (5.1.1994) by 1993 c. 40, **ss. 5(3)(a)**, 12(1)
- F47** S. 82(4)(d) added (E.W.) (5.1.1994) by 1993 c. 40, **ss. 5(3)(b)**, 12(1)
- F48** Words in s. 82(5) substituted (E.W.) (5.1.1994) by 1993 c. 40, **ss. 5(4)**, 12(1)
- F49** S. 82(5A)(5B) inserted (E.W.) (5.1.1994) by 1993 c. 40, **ss. 5(5)**, 12(1)
- F50** Words in s. 82(7)(a) inserted (E.W.) (5.1.1994) by 1993 c. 40, **ss. 5(6)**, 12(1)
- F51** S. 82(10)(aa) inserted (E.W.) (5.1.1994) by 1993 c. 40, **ss. 5(7)**, 12(1)
- F52** Words in s. 82(11) inserted (1.4.1996) by 1995 c. 25, s. 107, **Sch. 17 para. 6(d)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F53** Words in s. 82(12) inserted (1.4.1996) by 1995 c. 25, s. 107, **Sch. 17 para. 6(e)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F54** Words in s. 82(12) substituted (1.4.1996) by 1995 c. 25, s. 107, **Sch. 17 para. 6(e)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F55** Words in s. 82(13) inserted (1.4.1996) by 1995 c. 25, s. 107, **Sch. 17 para. 6(f)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F56** Words in s. 82(13) inserted (E.W.) (5.1.1994) by 1993 c. 40, **ss. 5(8)**, 12(1)

### Modifications etc. (not altering text)

- C6** S. 82 restricted (1.4.2000) by S.I. 2000/823, **art. 3**
- C7** S. 82(1) excluded (conditionally) (20.8.1999) by S.I. 1999/2336, **art. 23(1)**
- C8** S. 82(2) restricted (18.12.1996) by 1996 c. 61, **s. 30(1)**  
S. 82(2) restricted (18.7.2001) by S.I. 2001/2870, **art. 22(1)**  
S. 82(2) restricted (9.11.2001) by S.I. 2001/3682, **art. 31(1)**  
S. 82(2) restricted (28.4.2003) by The Network Rail (West Coast Main Line) Order 2003 (S.I. 2003/1075), **art. 35(1)** (with **art. 40**)  
S. 82(2) restricted (4.3.2004) by The Network Rail (West Coast Main Line) Order 2004 (S.I. 2004/389), **art. 33(1)** (with **art. 38**)  
S. 82(2) restricted (2.4.2004) by The Docklands Light Railway (Woolwich Arsenal Extension) Order 2004 (S.I. 2004/757), **art. 50(1)** (with **art. 50(3)**)  
S. 82(2) restricted (4.5.2005) by The Telford Railfreight Terminal (Donnington) Order 2005 (S.I. 2005/1163), **art. 20(1)** (with **art. 30**)  
S. 82(2) restricted (25.11.2005) by The Docklands Light Railway (Capacity Enhancement) Order 2005 (S.I. 2005/3105), **art. 48(1)** (with arts. 3(5), 15(3))
- C9** S. 82(2) excluded (30.4.2002) by The Docklands Light Railway (Silvertown and London City Airport Extension) Order 2002 (S.I. 2002/1066), **art. 43(1)**
- C10** S. 82(8) restricted (13.4.2001) by S.I. 2001/1478, **reg. 3(b)**



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