



Environmental Protection Act 1990

1990 CHAPTER 43

PART III

STATUTORY NUISANCES AND CLEAN AIR

^{F1} *Statutory nuisances . . .*

82 Summary proceedings by persons aggrieved by statutory nuisances.

- (1) A magistrates' court may act under this section on a complaint [^{F1}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 [^{F2}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 [^{F3}or, in the case of a nuisance within section 79(1)(ga) above, in the same street][^{F2}or, in Scotland, road], the court [^{F2}or the sheriff] shall make an order for either or both of the following purposes—
 - (a) requiring the defendant [^{F2}or, in Scotland, defender] to abate the nuisance, within a time specified in the order, and to execute any works necessary for that purpose;
 - (b) prohibiting a recurrence of the nuisance, and requiring the defendant [^{F2}or defender], within a time specified in the order, to execute any works necessary to prevent the recurrence;and [^{F2}, 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 [^{F4}or the sheriff] is satisfied that the alleged nuisance exists and is such as, in the opinion of the court [^{F4}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 [^{F4}or of the sheriff], rendered fit for that purpose.
- (4) Proceedings for an order under subsection (2) above shall be brought—

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- (a) except in a case falling within [^{F5}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.
 - [^{F6}(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) [^{F7}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.
- [^{F8}(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) [^{F9}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;
- 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.

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- (10) The defence under subsection (9) above is not available—
- (a) in the case of a nuisance falling within paragraph (a), (d), (e), (f) ^[F10], (fa) or (g) of section 79(1) above except where the nuisance arises on industrial, trade or business premises;
 - ^[F11](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;]
 - ^[F12](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.
- ^[F13](10A) For the purposes of subsection (10)(aza) “relevant sports facility” has the same meaning as it has for the purposes of section 80(8)(aza).]
- (11) If a person is convicted of an offence under subsection (8) above, a magistrates’ court ^[F14]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 ^[F15]or summary application], then, whether or not at the date of the hearing it still exists or is likely to recur, the court ^[F15]or the sheriff shall order the ^[F16]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 ^[F15]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 ^[F17]or to the sheriff that neither the person responsible for the nuisance nor the owner or occupier of the premises ^[F18]or (as the case may be) the person responsible for the vehicle, machinery or equipment] can be found the court ^[F17]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 ^[F17]or the sheriff would have ordered that person to do.

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**

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Textual Amendments

- F1** 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**
- F2** 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**
- F3** Words in s. 82(2) inserted (E.W.) (5.1.1994) by 1993 c. 40, **ss. 5(2)**, 12(1)
- F4** 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**
- F5** Words in s. 82(4)(a) substituted (E.W.) (5.1.1994) by 1993 c. 40, **ss. 5(3)(a)**, 12(1)
- F6** S. 82(4)(d) added (E.W.) (5.1.1994) by 1993 c. 40, **ss. 5(3)(b)**, 12(1)
- F7** Words in s. 82(5) substituted (E.W.) (5.1.1994) by 1993 c. 40, **ss. 5(4)**, 12(1)
- F8** S. 82(5A)(5B) inserted (E.W.) (5.1.1994) by 1993 c. 40, **ss. 5(5)**, 12(1)
- F9** Words in s. 82(7)(a) inserted (E.W.) (5.1.1994) by 1993 c. 40, **ss. 5(6)**, 12(1)
- F10** Words in s. 82(10)(a) inserted (E.W.) (16.3.2006 for certain purposes for W., 6.4.2006 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(4)(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)
- F11** S. 82(10)(aza) inserted (E.W.) (16.3.2006 for certain purposes for W., 6.4.2006 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(4)(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)
- F12** S. 82(10)(aa) inserted (E.W.) (5.1.1994) by 1993 c. 40, **ss. 5(7)**, 12(1)
- F13** S. 82(10A) inserted (E.W.) (16.3.2006 for certain purposes for W., 6.4.2006 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(5)**, 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)
- F14** 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**
- F15** 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**
- F16** 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**
- F17** 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**
- F18** 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)

- C1** S. 82 restricted (1.4.2000) by S.I. 2000/823, **art. 3**
- C2** S. 82(1) excluded (conditionally) (20.8.1999) by S.I. 1999/2336, **art. 23(1)**
- C3** S. 82(2) restricted (23.8.2007) by The Docklands Light Railway (Capacity Enhancement and 2012 Games Preparation) Order 2007 (S.I. 2007/2297), **art. 41(1)** (with arts. 3(6), 12(3), 41(3))
- C4** S. 82(2) restricted (30.5.2007) by The Mersey Docks and Harbour Company (Seaforth River Terminal) Harbour Revision Order 2007 (S.I. 2007/1440), **art. 17(1)** (with art. 20)
- C5** 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))

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- 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))
- S. 82(2) restricted (22.11.2006) by The Docklands Light Railway (Stratford International Extension) Order 2006 (S.I. 2006/2905), **art. 46(1)** (with arts. 43, 46(3))
- S. 82(2) restricted (13.12.2006) by The Network Rail (Thameslink 2000) Order 2006 (S.I. 2006/3117), **art. 36(1)** (with arts. 34, 35(2))
- C6** 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)**
- C7** S. 82(2) restricted (22.7.2008) by Crossrail Act 2008 (c. 18), **s. 21(1)**
- C8** S. 82(2) restricted (14.10.2008) by The Felixstowe Branch Line and Ipswich Yard Improvement Order 2008 (S.I. 2008/2512), **art. 40(1)** (with art. 36(3))
- C9** S. 82(2) restricted (16.5.2008) by The London Gateway Port Harbour Empowerment Order 2008 (S.I. 2008/1261), **art. 27(1)**
- C10** S. 82(2) restricted (9.6.2009) by The Nottingham Express Transit System Order 2009 (S.I. 2009/1300), **art. 78(1)** (with Sch. 16)
- C11** S. 82(2) restricted (18.9.2009) by The London Underground (Victoria Station Upgrade) Order 2009 (S.I. 2009/2364), **art. 38(1)**
- C12** S. 82(2) restricted (27.8.2010) by The Llangollen and Corwen Railway Order 2010 (S.I. 2010/2136), **art. 10(1)** (with art. 10(3))
- C13** S. 82(2) restricted (1.9.2010) by The Port of Bristol (Deep Sea Container Terminal) Harbour Revision Order 2010 (S.I. 2010/2020), **art. 26(1)** (with arts. 18, 19)
- C14** S. 82(2) restricted (1.2.2011) by The River Mersey (Mersey Gateway Bridge) Order 2011 (S.I. 2011/41), arts. 1, **50(1)** (with art. 51, Sch. 10 paras. 68, 85)
- C15** S. 82(2) restricted (21.4.2011) by The Network Rail (Hitchin (Cambridge Junction)) Order 2011 (S.I. 2011/1072), arts. 1, **41(1)**
- C16** S. 82(2) restricted (13.3.2012) by The London Cable Car Order 2012 (S.I. 2012/472), arts. 1, **3(3)** (with art. 3(4)(5))
- C17** S. 82(2) restricted (7.8.2012) by The Ipswich Barrier Order 2012 (S.I. 2012/1867), arts. 1, **52(1)** (with arts. 46-48, Sch. 8 para. 18)
- C18** S. 82(2) restricted (26.9.2012) by The Network Rail (Ipswich Chord) Order 2012 (S.I. 2012/2284), arts. 1, **29(1)** (with art. 26(2))
- C19** S. 82(2) restricted (6.11.2012) by The Network Rail (North Doncaster Chord) Order 2012 (S.I. 2012/2635), arts. 1, **38(1)** (with art. 35(2))
- S. 82(2) restricted (13.11.2012) by The Chiltern Railways (Bicester to Oxford Improvements) Order 2012 (S.I. 2012/2679), arts. 1, **38(1)** (with art. 42(2))
- C20** S. 82(2) restricted (9.4.2013) by The Hinkley Point C (Nuclear Generating Station) Order 2013 (S.I. 2013/648), arts. 1, **12(1)** (with arts. 48, 68, 79)
- C21** S. 82(2) restricted (15.8.2013) by The North Blyth Biomass Power Station Order 2013 (S.I. 2013/1873), arts. 1, **8(1)** (with art. 30)
- C22** S. 82(2) restricted (22.8.2013) by The Leeds Railway Station (Southern Entrance) Order 2013 (S.I. 2013/1933), arts. 1, **40(1)**
- C23** S. 82(2) restricted (21.11.2013) by The Network Rail (Redditch Branch Enhancement) Order 2013 (S.I. 2013/2809), arts. 1, **30(1)** (with arts. 27(2), 39, Sch. 10 para. 4)
- C24** S. 82(2) restricted (9.1.2014) by The National Grid (King's Lynn B Power Station Connection) Order 2013 (S.I. 2013/3200), arts. 1, **15(1)**
- C25** S. 82(2) restricted (9.1.2014) by The Ashton Vale to Temple Meads and Bristol City Centre Rapid Transit Order 2013 (S.I. 2013/3244), arts. 1, **63(1)** (with arts. 57, 58, Sch. 11 para. 19)
- C26** S. 82(2) restricted (11.3.2014) by The Crossrail (Paddington Station Bakerloo Line Connection) Order 2014 (S.I. 2014/310), arts. 1, **25(1)** (with art. 25(3))
- C27** S. 82(2) restricted (21.4.2014) by The Network Rail (Norton Bridge Area Improvements) Order 2014 (S.I. 2014/909), arts. 1, **37(1)** (with art. 34(2))

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- C28** S. 82(2) restricted (7.5.2014) by The National Grid (North London Reinforcement Project) Order 2014 (S.I. 2014/1052), arts. 1, **40(1)**
- C29** S. 82(2) restricted (7.7.2014) by The East Anglia ONE Offshore Wind Farm Order 2014 (S.I. 2014/1599), arts. 1, **7** (with arts. 37, 38, Sch. 9 para. 19)
- C30** S. 82(2) restricted (6.8.2014) by The Rampion Offshore Wind Farm Order 2014 (S.I. 2014/1873), arts. 1, **14(1)** (with arts. 12, 13, Sch. 12 Pt. 1 para. 19, Pt. 2 para. 6, Pt. 3 para. 5, Pt. 4 para. 4, Pt. 5 para. 4)
- C31** S. 82(2) restricted (19.8.2014) by The Network Rail (Huyton) Order 2014 (S.I. 2014/2027), arts. 1, **28(1)** (with arts. 28(3), 31(2))
- C32** S. 82(2) restricted (18.9.2014) by The A556 (Knutsford to Bowdon Improvement) Development Consent Order 2014 (S.I. 2014/2269), arts. 1, **32**
 S. 82(2) restricted (24.9.2014) by The Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 (S.I. 2014/2384), arts. 1, **7(1)**
- C33** S. 82(2) restricted (24.9.2014) by The Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 (S.I. 2014/2384), arts. 1, **7(1)**
- C34** S. 82(2) restricted (2.10.2014) by The North Killingholme (Generating Station) Order 2014 (S.I. 2014/2434), arts. 1, **8(1)** (with art. 13, Sch. 8 Pt. 1 para. 6, Sch. 8 Pt. 3 paras. 4(3), 6, 17, Sch. 8 Pt. 5 para. 9)
- C35** S. 82(2) restricted (2.10.2014) by The Clocaenog Forest Wind Farm Order 2014 (S.I. 2014/2441), arts. 1, **9(1)** (with art. 33)
- C36** S. 82(2) restricted (21.10.2014) by The Central Bedfordshire Council (Woodside Link Houghton Regis) Development Consent Order 2014 (S.I. 2014/2637), arts. 1, **36(1)**
- C37** S. 82(2) restricted (23.10.2014) by The South Hook Combined Heat and Power Plant Order 2014 (S.I. 2014/2846), arts. 1, **8(1)**
- C38** S. 82(2) restricted (31.12.2014) by The Hornsea One Offshore Wind Farm Order 2014 (S.I. 2014/3331), arts. 1, **31(1)** (with arts. 37, 38)
- C39** S. 82(2) restricted (7.1.2015) by The Willington C Gas Pipeline Order 2014 (S.I. 2014/3328), arts. 1, **30(1)**
- C40** S. 82(2) restricted (S.) (10.1.2015) by The Lerwick Harbour Revision Order 2015 (S.S.I. 2015/4), arts. 1(1), **18(1)** (with arts. 22-24)
- C41** S. 82(2) restricted (2.2.2015) by The Northumberland County Council (A1 – South East Northumberland Link Road (Morpeth Northern Bypass)) Development Consent Order 2015 (S.I. 2015/23), arts. 1, **8(1)**
- C42** S. 82(8) restricted (13.4.2001) by S.I. 2001/1478, reg. **3(b)**

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