

Status: Point in time view as at 07/03/2006.

Changes to legislation: Environmental Protection Act 1990, SCHEDULE 3 is up to date with all changes known to be in force on or before 27 July 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)

SCHEDULES

SCHEDULE 3

Section 81.

STATUTORY NUISANCES: SUPPLEMENTARY PROVISIONS

Appeals to magistrates' court

- 1 (1) This paragraph applies in relation to appeals under section 80(3) against an abatement notice to a magistrates' court.
- (2) An appeal to which this paragraph applies shall be by way of complaint for an order and the ^{M1}Magistrates' Courts Act 1980 shall apply to the proceedings.
- (3) An appeal against any decision of a magistrates' court in pursuance of an appeal to which this paragraph applies shall lie to the Crown Court at the instance of any party to the proceedings in which the decision was given.
- (4) The Secretary of State may make regulations as to appeals to which this paragraph applies and the regulations may in particular—
- (a) include provisions comparable to those in section 290 of the ^{M2}Public Health Act 1936 (appeals against notices requiring the execution of works);
 - (b) prescribe the cases in which an abatement notice is, or is not, to be suspended until the appeal is decided, or until some other stage in the proceedings;
 - (c) prescribe the cases in which the decision on appeal may in some respects be less favourable to the appellant than the decision from which he is appealing;
 - (d) prescribe the cases in which the appellant may claim that an abatement notice should have been served on some other person and prescribe the procedure to be followed in those cases.

Marginal Citations

M1 1980 c. 43.

M2 1936 c. 49.

Appeals to Sheriff

- [^{F1}1A (1) This paragraph applies in relation to appeals to the sheriff under section 80(3) against an abatement notice.
- (2) An appeal to which this paragraph applies shall be by way of a summary application.
- (3) The Secretary of State may make regulations as to appeals to which this paragraph applies and the regulations may in particular include or prescribe any of the matters referred to in sub-paragraphs (4)(a) to (d) of paragraph 1 above.]

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Textual Amendments

- F1** Sch. 3 para. 1A inserted (1.4.1996) by 1995 c. 25, s. 107, **Sch. 17 para.7(a)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art.3**.

Powers of entry etc

- 2 (1) Subject to sub-paragraph (2) below, any person authorised by a local authority may, on production (if so required) of his authority, enter any premises at any reasonable time—
- (a) for the purpose of ascertaining whether or not a statutory nuisance exists; or
 - (b) for the purpose of taking any action, or executing any work, authorised or required by Part III.
- (2) Admission by virtue of sub-paragraph (1) above to any premises used wholly or mainly for residential purposes shall not except in an emergency be demanded as of right unless twenty-four hours notice of the intended entry has been given to the occupier.
- (3) If it is shown to the satisfaction of a justice of the peace on sworn information in writing—
- (a) that admission to any premises has been refused, or that refusal is apprehended, or that the premises are unoccupied or the occupier is temporarily absent, or that the case is one of emergency, or that an application for admission would defeat the object of the entry; and
 - (b) that there is reasonable ground for entry into the premises for the purpose for which entry is required,
- the justice may by warrant under his hand authorise the local authority by any authorised person to enter the premises, if need be by force.
- (4) An authorised person entering any premises by virtue of sub-paragraph (1) or a warrant under sub-paragraph (3) above may—
- (a) take with him such other persons and such equipment as may be necessary;
 - (b) carry out such inspections, measurements and tests as he considers necessary for the discharge of any of the local authority's functions under Part III; and
 - (c) take away such samples or articles as he considers necessary for that purpose.
- (5) On leaving any unoccupied premises which he has entered by virtue of sub-paragraph (1) above or a warrant under sub-paragraph (3) above the authorised person shall leave them as effectually secured against trespassers as he found them.
- (6) A warrant issued in pursuance of sub-paragraph (3) above shall continue in force until the purpose for which the entry is required has been satisfied.
- (7) Any reference in this paragraph to an emergency is a reference to a case where the person requiring entry has reasonable cause to believe that circumstances exist which are likely to endanger life or health and that immediate entry is necessary to verify the existence of those circumstances or to ascertain their cause and to effect a remedy.
- [^{F2}(8) In the application of this paragraph to Scotland, a reference to a justice of the peace or to a justice includes a reference to the sheriff.]

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Textual Amendments

F2 Sch. 3 para. 2(8) added (1.4.1996) by 1995 c. 25, s. 107, **Sch. 17 para. 7(b)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art.3**.

Modifications etc. (not altering text)

C1 Sch. 3 para. 2 applied (with modifications) (S.) (26.1.2009) by **Water Services etc. (Scotland) Act 2005 (asp 3)**, s. 26(10A) (as inserted by **Public Health etc. (Scotland) Act 2008 (asp 5)**, s. **115(3)** (with s. 127); S.S.I. 2009/9, **art. 2(a)**, Sch. 1)

- [^{F3}2A (1) Any person authorised by a local authority may on production (if so required) of his authority—
- (a) enter or open a vehicle, machinery or equipment, if necessary by force, or
 - (b) remove a vehicle, machinery or equipment from a street [^{F4}or, in Scotland, road]] to a secure place,
- for the purpose of taking any action, or executing any work, authorised by or required under Part III in relation to a statutory nuisance within section 79(1)(ga) above caused by noise emitted from or caused by the vehicle, machinery or equipment.
- (2) On leaving any unattended vehicle, machinery or equipment that he has entered or opened under sub-paragraph (1) above, the authorised person shall (subject to sub-paragraph (3) below) leave it secured against interference or theft in such manner and as effectually as he found it.
 - (3) If the authorised person is unable to comply with sub-paragraph (2) above, he shall for the purpose of securing the unattended vehicle, machinery or equipment either—
 - (a) immobilise it by such means as he considers expedient, or
 - (b) remove it from the street to a secure place.
 - (4) In carrying out any function under sub-paragraph (1), (2) or (3) above, the authorised person shall not cause more damage than is necessary.
 - (5) Before a vehicle, machinery or equipment is entered, opened or removed under sub-paragraph (1) above, the local authority shall notify the police of the intention to take action under that sub-paragraph.
 - (6) After a vehicle, machinery or equipment has been removed under sub-paragraph (1) or (3) above, the local authority shall notify the police of its removal and current location.
 - (7) Notification under sub-paragraph (5) or (6) above may be given to the police at any police station in the local authority's area or, in the case of the Temples, at any police station of the City of London Police.
 - (8) For the purposes of section 81(4) above, any expenses reasonably incurred by a local authority under sub-paragraph (2) or (3) above shall be treated as incurred by the authority under section 81(3) above in abating or preventing the recurrence of the statutory nuisance in question.

Textual Amendments

F3 Sch. 3 para. 2A inserted (E.W.) (5.1.1994) by 1993 c. 40, **ss. 4(5)**, 12(1)

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- F4** Words in [Sch. 3 para. 2A\(1\)\(b\)](#) inserted (1.4.1996) by [1995 c. 25, s. 107](#), [Sch. 17 para. 7\(c\)](#) (with [ss. 7\(6\), 115, 117](#)); [S.I. 1996/186, art.3](#).

Offences relating to entry

- 3 (1) A person who wilfully obstructs any person acting in the exercise of any powers conferred by paragraph 2 [^{F5}or 2A] above shall be liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.
- (2) If a person discloses any information relating to any trade secret obtained in the exercise of any powers conferred by paragraph 2 above he shall, unless the disclosure was made in the performance of his duty or with the consent of the person having the right to disclose the information, be liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.

Textual Amendments

- F5** Words in [Sch. 3 para. 3\(1\)](#) inserted (E.W.) (5.1.1994) by [1993 c. 40, ss. 4\(6\), 12\(1\)](#)

Modifications etc. (not altering text)

- C2** [Sch. 3 para. 3](#) applied (with modifications) (S.) (26.1.2009) by [Water Services etc. \(Scotland\) Act 2005 \(asp 3\), s. 26\(10A\)](#) (as inserted by [Public Health etc. \(Scotland\) Act 2008 \(asp 5\), s. 115\(3\)](#) (with s. 127); [S.S.I. 2009/9, art. 2\(a\), Sch. 1](#))

Default powers

- 4 (1) This paragraph applies to the following function of a local authority, that is to say its duty under section 79 to cause its area to be inspected to detect any statutory nuisance which ought to be dealt with under section 80 [^{F6}or sections 80 and 80A] and its powers under paragraph 2 [^{F6}or 2A] above.
- (2) If the Secretary of State is satisfied that any local authority has failed, in any respect, to discharge the function to which this paragraph applies which it ought to have discharged, he may make an order declaring the authority to be in default.
- (3) An order made under sub-paragraph (2) above which declares an authority to be in default may, for the purpose of remedying the default, direct the authority (“the defaulting authority”) to perform the function specified in the order and may specify the manner in which and the time or times within which the function is to be performed by the authority.
- (4) If the defaulting authority fails to comply with any direction contained in such an order the Secretary of State may, instead of enforcing the order by mandamus, make an order transferring to himself the function of the authority specified in the order.
- (5) Where the function of a defaulting authority is transferred under sub-paragraph (4) above, the amount of any expenses which the Secretary of State certifies were incurred by him in performing the function shall on demand be paid to him by the defaulting authority.
- (6) Any expenses required to be paid by a defaulting authority under sub-paragraph (5) above shall be defrayed by the authority in like manner, and shall be debited to the

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like account, as if the function had not been transferred and the expenses had been incurred by the authority in performing them.

- (7) The Secretary of State may by order vary or revoke any order previously made by him under this paragraph.
- (8) Any order under this paragraph may include such incidental, supplemental and transitional provisions as the Secretary of State considers appropriate.
- [^{F7}(9) This paragraph does not apply to Scotland.]

Textual Amendments

- F6** Words in Sch. 3 para. 4(1) inserted (E.W.) (5.1.1994) by 1993 c. 40, ss. 4(7)(a)(b), 12(1)
- F7** Sch. 3 para. 4(9) added (1.4.1996) by 1995 c. 25, s. 107, Sch. 17 para. 7(d) (with ss. 7(6), 115, 117); S.I. 1996/186, art.3.

Protection from personal liability

- 5 Nothing done by, or by a member of, a local authority or by any officer of or other person authorised by a local authority shall, if done in good faith for the purpose of executing Part III, subject them or any of them personally to any action, liability, claim or demand whatsoever (other than any liability under [^{F8}section 17 or 18 of the Audit Commission Act 1998] (powers of district auditor and court)).

Textual Amendments

- F8** Words in Sch. 3 para. 5 substituted (E.W.) (11.9.1998) by 1998 c. 18, ss. 54(1), 55(2), Sch. 3 para.21.

Modifications etc. (not altering text)

- C3** Sch. 3 para. 5 applied (with modifications) (S.) (26.1.2009) by Water Services etc. (Scotland) Act 2005 (asp 3), s. 26(10A) (as inserted by Public Health etc. (Scotland) Act 2008 (asp 5), s. 115(3) (with s. 127)); S.S.I. 2009/9, art. 2(a), Sch. 1

Statement of right of appeal in notices

- 6 Where an appeal against a notice served by a local authority lies to a magistrates' court [^{F9}or, in Scotland, the sheriff] by virtue of section 80, it shall be the duty of the authority to include in such a notice a statement indicating that such an appeal lies as aforesaid and specifying the time within which it must be brought.

Textual Amendments

- F9** Words in Sch. 3 para. 6 inserted (1.4.1996) by 1995 c. 25, s. 107, Sch. 17 para. 7(e) (with ss. 7(6), 115, 117); S.I. 1996/186, art.3.

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