
 STATUTORY INSTRUMENTS

1983 No. 1455 (S.133)

PUBLIC HEALTH, SCOTLAND

The Control of Noise (Appeals) (Scotland) Regulations 1983

<i>Made - - - -</i>	15th September 1983
<i>Laid before Parliament</i>	11th October 1983
<i>Coming into Operation</i>	1st December 1983

In exercise of the powers conferred on me by sections 70(2) and (3) and 104(1) of the Control of Pollution Act 1974 (a) and of all other powers enabling me in that behalf, I hereby make the following regulations:—

PART I

INTRODUCTORY

Citation, commencement and extent

1. These regulations may be cited as the Control of Noise (Appeals) (Scotland) Regulations 1983 and shall come into operation on 1st December 1983 and shall apply to Scotland only.

Interpretation

- 2.—(1) In these regulations, unless the context otherwise requires —
- “the Act” means the Control of Pollution Act 1974, and any reference in these regulations to a numbered section shall be construed as a reference to the section bearing that number in the Act;
 - “best practicable means” shall be construed in accordance with section 72;
 - “interest” in relation to premises includes any right therein, whether the right is exercisable by virtue of the ownership thereof or of a right therein, or by virtue of a licence, lease or agreement;
 - “local authority” means an islands or district council;
 - “person responsible” has the meaning given to it by section 73(1).

(2) Any reference in these regulations to a numbered regulation shall be construed as a reference to the regulation bearing that number in these regulations.

PART II

APPEALS TO THE SHERIFF

Interpretation of Part II

3. This part of these regulations relates only to appeals made to the sheriff

(a) 1974 c.40.

under Part III of the Act, and any reference in this part to an appeal or an appellant shall be construed accordingly.

Appeals under section 58(3)

4.—(1) The provisions of this regulation shall apply to an appeal made by any person under subsection (3) of section 58 (summary proceedings by local authorities) against a notice served upon him by a local authority under that section.

(2) The grounds on which a person served with such a notice may appeal under the said subsection (3) may include any of the following grounds which are appropriate in the circumstances of the particular case:—

- (a) that the notice is not justified by the terms of section 58;
- (b) that there has been some informality, defect or error in, or in connection with, the notice;
- (c) that the local authority have refused unreasonably to accept compliance with alternative requirements, or that the requirements of the notice are otherwise unreasonable in character or extent, or are unnecessary;
- (d) that the time, or, where more than one time is specified, any of the times, within which the requirements of the notice are to be complied with is not reasonably sufficient for the purpose;
- (e) where the noise to which the notice relates is noise caused in the course of a trade or business, that the best practicable means have been or are being used for preventing, or for counteracting the effect of, the noise;
- (f) that the requirements imposed by the notice are more onerous than the requirements for the time being in force, in relation to the noise to which the notice relates, of—
 - (i) any notice served under section 60 or 66, or
 - (ii) any consent given under section 61 or 65, or
 - (iii) any determination made under section 67;
- (g) that the notice should have been served on some person instead of the appellant, being the person responsible for the noise;
- (h) that the notice might lawfully have been served on some person in addition to the appellant, being a person also responsible for the noise;
- (i) that the notice might lawfully have been served on some person instead of or in addition to the appellant, being the owner or occupier of the premises from which the noise is emitted or would be emitted.

(3) If and so far as an appeal is based on the ground of some informality, defect or error in, or in connection with, the notice, the sheriff shall dismiss the appeal if he is satisfied that the informality, defect or error was not a material one.

(4) Where the grounds upon which an appeal is made include a ground specified in paragraph (2)(g), (h) or (i) above, the appellant shall serve a copy of his notice of appeal on any other person named therein.

(5) On the hearing of the appeal the sheriff may —

- (a) recall the notice to which the appeal relates, or
- (b) vary the notice in favour of the appellant, in such manner as he thinks fit, or

- (c) dismiss the appeal;
- and a notice which is varied under sub-paragraph (b) above shall be final and shall otherwise have effect, as so varied, as if it had been so made by the local authority.
- (6) Subject to paragraph (7) below, on the hearing of the appeal the sheriff may make such order as he thinks fit—
- (a) with respect to the person by whom any work is to be executed and the contribution to be made by any person towards the cost of the work, or
- (b) as to the proportions in which any expenses which may become recoverable by the local authority under Part III of the Act are to be borne by the appellant and by any other person.
- (7) In exercising his powers under paragraph (6) above, the sheriff—
- (a) shall have regard, as between an owner and an occupier, to the terms and conditions, whether contractual or statutory, of any relevant tenancy and to the nature of the works required, and
- (b) shall be satisfied, before he imposes any requirement thereunder on any person other than the appellant, that that person has received a copy of the notice of appeal in pursuance of paragraph (4) above.

Appeals under section 60(7)

5.—(1) The provisions of this regulation shall apply to an appeal made by any person under subsection (7) of section 60 (control of noise on construction sites) against a notice served upon him by a local authority under that section.

(2) The grounds on which a person served with such a notice may appeal under the said subsection (7) may include any of the following grounds which are appropriate in the circumstances of the particular case:—

- (a) that the notice is not justified by the terms of section 60;
- (b) that there has been some informality, defect or error in, or in connection with, the notice;
- (c) that the local authority have refused unreasonably to accept compliance with alternative requirements, or that the requirements of the notice are otherwise unreasonable in character or extent, or are unnecessary;
- (d) that the time, or, where more than one time is specified, any of the times, within which the requirements of the notice are to be complied with is not reasonably sufficient for the purpose;
- (e) that the notice should have been served on some person instead of the appellant, being a person who is carrying out or going to carry out, the works, or is responsible for, or has control over, the carrying out of the works;
- (f) that the notice might lawfully have been served on some person in addition to the appellant, being a person who is carrying out, or going to carry out, the works, or is responsible for, or has control over, the carrying out of the works;
- (g) that the local authority have not had regard to some or all of the provisions of section 60(4).
- (3) If and so far as an appeal is based on the ground of some informality, defect or error in, or in connection with the notice, the sheriff shall dismiss

the appeal if he is satisfied that the informality, defect or error was not a material one.

(4) Where the grounds upon which an appeal is made include a ground as specified in paragraph (2)(e) or (f) above, the appellant shall serve a copy of his notice of appeal on any other person named therein.

(5) On the hearing of the appeal the sheriff may —

(a) recall the notice to which the appeal relates, or

(b) vary the notice in favour of the appellant in such manner as he thinks fit, or

(c) dismiss the appeal;

and a notice which is varied under sub-paragraph (b) above shall be final and shall otherwise have effect, as so varied, as if it had been so made by the local authority.

Appeals under section 61(7)

6.—(1) The provisions of this regulation shall apply to an appeal made by any person under subsection (7) of section 61 (prior consent for work on construction sites) in relation to a conditional consent given by a local authority under that section or in relation to a local authority's refusal or failure to give a consent within the period specified in subsection (6) of that section.

(2) In this regulation, 'conditional consent' means a consent given by a local authority under section 61 in respect of which the authority have attached any condition or imposed any limitation or qualification in pursuance of section 61(5)(a), (b) or (c); and 'conditions' includes any limitation or qualification so imposed.

(3) The grounds on which a person to whom a local authority give a conditional consent may appeal under the said subsection (7) may include any of the following grounds which are appropriate in the circumstances of the particular case:—

(a) that any condition attached or imposed in relation to the consent (in this regulation referred to as 'a relevant condition') is not justified by the terms of section 61;

(b) that there has been some informality, defect or error in, or in connection with, the consent;

(c) that the requirements of any relevant condition are unreasonable in character or extent, or are unnecessary;

(d) that the time, or, where more than one time is specified, any of the times, within which the requirements of any relevant condition are to be complied with, is not reasonably sufficient for the purpose.

(4) If and so far as an appeal is based on the ground of some informality, defect or error in, or in connection with, the consent, the sheriff shall dismiss the appeal, if he is satisfied that the informality, defect or error was not a material one.

(5) Where the appeal relates to a conditional consent given by a local authority, on the hearing of the appeal the sheriff may—

(a) vary the consent or any relevant condition in favour of the appellant, in such manner as he thinks fit, or

(b) quash any relevant condition, or

(c) dismiss the appeal;

and a consent or condition which is varied under sub-paragraph (a) above shall be final and shall otherwise have effect as so varied, as if it had been given, attached or imposed in that form by the local authority.

(6) Where the appeal relates to a local authority's refusal or failure to give a consent within the period specified in section 61(6), on the hearing of the appeal the sheriff shall afford to the appellant and to the authority an opportunity of making representations to him concerning the application under section 61(1) to which the appeal relates and concerning the terms and conditions of any consent which they consider to be appropriate thereto, and thereafter the sheriff shall either—

(a) adjourn the appeal to enable the appellant to submit to the local authority a new application under section 61(1) relating to the matters which are the subject of the appeal, or

(b) make an order giving consent to the application either unconditionally or subject to such conditions as he thinks fit, having regard to the provisions of section 61(4), (5) and (9), and any other matters which appear to him to be relevant;

and any consent given by an order made under sub-paragraph (b) above shall be final and shall otherwise have effect for the purpose of Part III of the Act as if it were a consent given by the local authority under section 61.

Appeals under section 66(7)

7.—(1) The provisions of this regulation shall apply to an appeal made by any person under subsection (7) of section 66 (reduction of noise levels) against a noise reduction notice served upon him by a local authority under that section.

(2) The grounds on which a person served with such a notice may appeal under the said subsection (7) may include any of the following grounds which are appropriate in the circumstances of the particular case:—

(a) that the notice is not justified by the terms of section 66;

(b) that there has been some informality, defect or error in, or in connection with, the notice;

(c) that the local authority have refused unreasonably to accept compliance with alternative requirements, or that the requirements of the notice are otherwise unreasonable in character or extent, or are unnecessary;

(d) that the time, or, where more than one time is specified, any of the times, within which the requirements of the notice are to be complied with is not reasonably sufficient for the purpose;

(e) where the noise to which the notice relates is noise caused in the course of a trade or business, that the best practicable means have been or are being used for preventing, or for counteracting the effect of, the noise;

(f) that the notice should have been served on some person instead of the appellant, being the person responsible for the noise;

(g) that the notice might lawfully have been served on some person in addition to the appellant, being a person also responsible for the noise.

(3) If and so far as an appeal is based on the ground of some informality, defect or error in, or in connection with the notice, the sheriff shall dismiss the appeal if he is satisfied that the informality, defect or error was not a material one.

(4) Where the grounds upon which an appeal is made include a ground specified in paragraph (2)(f) or (g) above, the appellant shall serve a copy of his notice of appeal on any other person named therein.

(5) On the hearing of the appeal the sheriff may—

(a) recall the notice to which the appeal relates, or

(b) vary the notice in favour of the appellant, in such manner as he thinks fit, or

(c) dismiss the appeal;

and a notice which is varied under sub-paragraph (b) above shall be final and shall otherwise have effect, as so varied, as if it had been so made by the local authority.

(6) Subject to paragraph (7) below, on the hearing of the appeal, the sheriff may make such order as he thinks fit—

(a) with respect to the person by whom any work is to be executed and the contribution to be made by any person towards the cost of the work, or

(b) as to the proportions in which any expenses which may become recoverable by the local authority under Part III of the Act are to be borne by the appellant and by any other person.

(7) In exercising his powers under paragraph (6) above, the sheriff shall be satisfied, before he imposes any requirement thereunder on any person other than the appellant, that that person has received a copy of the notice of appeal in pursuance of paragraph (4) above.

PART III

APPEALS TO THE SECRETARY OF STATE

Interpretation of Part III

8. This part of these regulations relates only to appeals made to the Secretary of State under Part III of the Act, and any reference in this part to an appeal or an appellant shall be construed accordingly.

Appeals under sections 64(3), 65(4) and 67(3)

9.—(1) Any person making an appeal under section 64(3), 65(4) or 67(3) shall give notice of appeal in writing, stating the grounds of the appeal to the Secretary of State, and shall within 14 days of giving that notice (or such longer period as the Secretary of State may at any time allow) send to him a copy of the following documents:—

(a) the application, if any, made to the local authority;

(b) any relevant plans and particulars submitted to them;

(c) any relevant record, consent, determination, notice or other notification issued by the authority;

(d) all other relevant correspondence with the authority;

(e) a plan of the premises concerned (unless such a plan is included in the documents mentioned above).

(2) The Secretary of State shall send to the local authority a copy of the notice of appeal and of every other document submitted by the appellant under this regulation.

(3) The Secretary of State may, if he thinks fit, require the appellant or the local authority to submit within a specified period a further statement in writing in respect of the matters to which the appeal relates, and if, after considering the grounds of the appeal and any such further statement, the Secretary of State is satisfied that he is sufficiently informed for the purpose of reaching a decision as to the matters to which the appeal relates, he may decide the appeal without further investigation; but if he does not so decide it the Secretary of State shall (except in a case where he causes a local inquiry to be held under section 96), if either party so desire, afford to each of them an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for that purpose.

(4) When he determines the appeal, the Secretary of State may allow or dismiss the appeal, or may reverse or vary any part of any record, consent, determination or decision of the local authority to which the appeal relates, or may deal with the application, if any, made by the appellant to the local authority as if it had been made in the first instance to the Secretary of State, and he may give the authority such directions as he thinks fit for giving effect to his determination.

(5) At any time before the appeal is determined, the appellant may abandon it by giving notice in writing to the Secretary of State and as soon as may be after he gives any such notice, he shall send a copy thereof to the local authority.

PART IV

SUSPENSION OF NOTICES

10.—(1) Subject to paragraph (2) of this regulation, where an appeal is made against a notice served under section 58, 60, or 66 and—

- (a) the noise to which the notice relates is noise caused in the course of the performance of some duty imposed by law on the appellant, or
- (b) compliance with the notice would involve any person in expenditure on the carrying out of works before the hearing of the appeal,

the notice shall be suspended until the appeal has been abandoned or decided by the sheriff.

(2) A notice to which this regulation applies shall not be suspended if in the opinion of the local authority—

- (a) the noise to which the notice relates—
 - (i) is injurious to health, or
 - (ii) is likely to be of limited duration, such that suspension of the notice would render the notice of no practical effect, or
- (b) the expenditure which would be incurred by any person in the carrying out of works in compliance with the notice before any appeal has been decided would not be disproportionate to the public benefit to be expected in that period from such compliance,

and the notice includes a statement that it shall have effect notwithstanding any appeal to the sheriff which has not been decided by the sheriff.

(3) Save as provided in this regulation a notice under Part III of the Act shall not be suspended by reason only of the bringing of an appeal to the sheriff or to the Secretary of State.

PART V

REVOCATIONS

11. The Control of Noise (Appeals) (Scotland) Regulations 1976 (a) are hereby revoked.

George Younger,
One of Her Majesty's Principal
Secretaries of State.

New St Andrew's House,
Edinburgh.
15th September 1983.

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

These regulations re-enact the Control of Noise (Appeals) (Scotland) Regulations 1976 with amendments to take account of the commencement of the remaining provisions of Part III of the Control of Pollution Act 1974. The principal changes are to make provision with respect to the making of appeals to the sheriff under sections 60, 61 or 66 in addition to section 58 and to the Secretary of State under sections 64, 65 or 67 of that Act. Part II sets out grounds on which appeals may be made to the sheriff, prescribes the procedure to be followed in certain cases in which the appellant claims that a notice should have been served on some other person, and the action which the sheriff may take to give effect to his decision on an appeal. Part III prescribes the procedure to be followed in appeals to the Secretary of State and confers powers on the Secretary of State to give effect to his decision on any appeal. Part IV prescribes the cases in which a notice under sections 58, 60 or 66 is to be suspended pending an appeal, whether to the sheriff or to the Secretary of State.

(a) 1976/945.

SI 1983/1455
ISBN 0-11-037455-X



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