
STATUTORY INSTRUMENTS

1996 No. 1076 (S.116)

ENVIRONMENTAL PROTECTION

The Statutory Nuisance (Appeals) (Scotland) Regulations 1996

<i>Made</i>	- - - -	<i>9th April 1996</i>
<i>Laid before Parliament</i>		<i>11th April 1996</i>
<i>Coming into force</i>	- -	<i>2nd May 1996</i>

The Secretary of State, in exercise of the powers conferred upon him by paragraph 1A(3) of Schedule 3 to the Environmental Protection Act 1990(1), sections 70(2) and (3) and 104(1) of the Control of Pollution Act 1974(2) and of all other powers enabling him in that behalf, hereby makes the following Regulations:

Citation, commencement, interpretation and extent

1.—(1) These Regulations may be cited as the Statutory Nuisance (Appeals) (Scotland) Regulations 1996, shall come into force on 2nd May 1996 and shall extend to Scotland only.

(2) In these Regulations—

“the 1974 Act” means the Control of Pollution Act 1974;

“the 1990 Act” means the Environmental Protection Act 1990; and

“the 1993 Act” means the Noise and Statutory Nuisance Act 1993(3).

Appeals under section 80(3) of the 1990 Act

2.—(1) The provisions of this regulation apply in relation to an appeal brought by any person under section 80(3) of the 1990 Act (appeals to the sheriff)(4) against an abatement notice served upon him by a local authority.

(2) The grounds on which a person served with such notice may appeal under section 80(3) of the 1990 Act are such one or more of the following grounds as are appropriate in the circumstances of the particular case:—

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- (1) 1990 c. 43; paragraph 1A of Schedule 3 was inserted by the Environment Act 1995 (c. 25) (“the 1995 Act”), Schedule 17, paragraph 7.
- (2) 1974 c. 40; section 104(1) was amended by the Water Act 1989 (c. 15), Schedule 23, paragraph 7 and repealed in part by the 1995 Act, Schedule 22, paragraph 29(34) and Schedule 24.
- (3) 1993 c. 40.
- (4) Section 80 was amended by the Noise and Statutory Nuisance Act 1993 (c. 40) (“the 1993 Act”), section 3 and by the 1995 Act, Schedule 17, paragraph 3. See Schedule 24 to the 1995 Act as to the application of sections 79 to 82 of the Environmental Protection Act 1990 (“the 1990 Act”) to Scotland by virtue of the repeal of section 83(1) of the 1990 Act.

- (a) that the abatement notice is not justified by section 80 of the 1990 Act (summary proceedings for statutory nuisances);
- (b) that there has been some informality, defect or error in, or in connection with, the abatement notice, or in, or in connection with, any copy of the abatement notice served under section 80A(3) of the 1990 Act (certain notices in respect of vehicles, machinery or equipment)(5);
- (c) that the authority have refused unreasonably to accept compliance with alternative requirements, or that the requirements of the abatement 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 abatement notice are to be complied with is not reasonably sufficient for the purpose;
- (e) where the nuisance to which the notice relates—
 - (i) is a nuisance falling within section 79(1)(a), (d), (e), (f) or (g) of the 1990 Act(6) and arises on industrial, trade, or business premises; or
 - (ii) is a nuisance falling within section 79(1)(b) of the 1990 Act and the smoke is emitted from a chimney; or
 - (iii) is a nuisance falling within section 79(1)(ga) of the 1990 Act and is noise emitted from or caused by a vehicle, machinery or equipment being used for industrial, trade or business purposes,
 that the best practicable means were used to prevent, or to counteract the effects of, the nuisance;
- (f) that, in the case of a nuisance under section 79(1)(g) or (ga) of the 1990 Act, the requirements imposed by the abatement notice by virtue of section 80(1)(a) of the 1990 Act 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 of the 1974 Act (control of noise on construction sites and from certain premises); or
 - (ii) any consent given under section 61 or 65 of the 1974 Act (consent for work on construction sites and consent for noise to exceed registered level in a noise abatement zone)(7); or
 - (iii) any determination made under section 67 of the 1974 Act (noise control of new buildings);
- (g) that, in the case of a nuisance under section 79(1)(ga) of the 1990 Act, the requirements imposed by the abatement notice by virtue of section 80(1)(a) of the 1990 Act are more onerous than the requirements for the time being in force, in relation to the noise to which the notice relates, of any condition of a consent given under paragraph 1 of Schedule 2 to the 1993 Act (loudspeakers in streets or roads);
- (h) that the abatement notice should have been served on some person instead of the appellant, being—
 - (i) the person responsible for the nuisance; or
 - (ii) the person responsible for the vehicle, machinery or equipment; or

(5) Section 80A was inserted by the 1993 Act, section 3(6).

(6) Section 79(1) was amended by the 1993 Act, section 2 and the 1995 Act, Schedule 17, paragraph 2.

(7) Sections 61 and 65 were amended by the 1990 Act, Schedule 15, paragraph 15(3) and (4) and repealed in part by the 1995 Act, Schedule 24.

- (iii) in the case of a nuisance arising from any defect of a structural character, the owner of the premises; or
- (iv) in the case where the person responsible for the nuisance cannot be found or the nuisance has not yet occurred, the owner or occupier of the premises;
- (i) that the abatement notice might lawfully have been served on some person instead of the appellant being—
 - (i) in the case where the appellant is the owner of the premises, the occupier of the premises; or
 - (ii) in the case where the appellant is the occupier of the premises, the owner of the premises,and that it would have been equitable for it to have been so served;
- (j) that the abatement notice might lawfully have been served on some person in addition to the appellant, being—
 - (i) a person also responsible for the nuisance; or
 - (ii) a person who is also owner of the premises; or
 - (iii) a person who is also an occupier of the premises; or
 - (iv) a person who is also the person responsible for the vehicle, machinery or equipment,and that it would have been equitable for it to have been so served.

(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 abatement notice, or in, or in connection with any copy of the notice served under section 80A(3) of the 1990 Act, the court shall dismiss the appeal if it is satisfied that the informality, defect or error was not a material one.

(4) Where the grounds upon which an appeal is brought include a ground specified in paragraph (2)(i) or (j) above, the appellant shall serve a copy of his notice of appeal on any other person referred to, and in the case of any appeal to which this regulation applies he may serve a copy of his notice of appeal on any other person having an interest in the premises, vehicle, machinery or equipment in question.

- (5) On the hearing of the appeal the court may—
- (a) quash the abatement notice to which the appeal relates; or
 - (b) vary the abatement notice in favour of the appellant in such manner as it thinks fit; or
 - (c) dismiss the appeal,

and an abatement notice that 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 an appeal the court may make such order as it 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 authority under Part III of the 1990 Act are to be borne by the appellant and by any other person.

(7) In exercising its powers under paragraph (6) above the court—

- (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 it 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.

Suspension of notice

3.—(1) Where—

- (a) an appeal is brought against an abatement notice served under section 80 or section 80A of the 1990 Act; and
- (b) either—
- (i) compliance with the abatement notice would involve any person in expenditure on the carrying out of works before the hearing of the appeal; or
 - (ii) in the case of a nuisance under section 79(1)(g) or (ga) of the 1990 Act, the noise to which the abatement notice relates is noise necessarily caused in the course of the performance of some duty imposed by law on the appellant; and
- (c) either paragraph (2) below does not apply, or it does apply but the requirements of paragraph (3) below have not been met,

the abatement notice shall be suspended until the appeal has been abandoned or determined by the court.

(2) This paragraph applies where—

- (a) the nuisance to which the abatement notice relates—
- (i) is injurious to health; or
 - (ii) is likely to be of a limited duration such that suspension of the notice would render it 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 abatement notice before any appeal has been decided would not be disproportionate to the public benefit to be expected in that period from such compliance.

(3) Where paragraph (2) above applies the abatement notice—

- (a) shall include a statement that paragraph (2) above applies, and that as a consequence it shall have effect notwithstanding any appeal to the sheriff which has not been determined by the sheriff; and
- (b) shall include a statement as to which of the grounds set out in paragraph (2) above apply.

Amendment of the Control of Noise (Appeals) (Scotland) Regulations 1983

4. In the Control of Noise (Appeals) (Scotland) Regulations 1983(8)—

- (a) in regulation 2(1) (interpretation), in the definition of “local authority” , for the words “an islands or district council” , substitute the words “a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994” (9);
- (b) regulation 4 (appeals under section 58(3) of the 1974 Act) shall be omitted; and
- (c) in regulation 10(1) (suspension of notices), the word “58,” shall be omitted.

(8) S.I. 1983/1455.

(9) 1994 c. 39.

St Andrew's House,
Edinburgh
9th April 1996

Lindsay
Parliamentary Under Secretary of State, The
Scottish Office

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision as regards Scotland with respect to appeals to the sheriff against abatement notices served under section 80 of the Environmental Protection Act 1990 (as amended by the Noise and Statutory Nuisance Act 1993) and those served under section 80A of the 1990 Act (as inserted by the 1993 Act).

Regulation 2 sets out grounds on which such appeals may be made, 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 court may take to give effect to its decision on an appeal.

Regulation 3 prescribes the cases in which an abatement notice is to be suspended pending the decision of a sheriff on an appeal or until the abandonment of such an appeal.

Regulation 4 amends the Control of Noise (Appeals) (Scotland) Regulations 1983 firstly to refer to new unitary local authorities and secondly to revoke references to appeals under section 58 of the Control of Pollution Act 1974 which section has now been repealed.