
STATUTORY INSTRUMENTS

1996 No. 1076

The Statutory Nuisance (Appeals) (Scotland) Regulations 1996

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)(1) 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:—

- (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)(2);
- (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(3) 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—

(1) 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.

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

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

- (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)⁽⁴⁾; 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
 - (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.

(4) 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.

(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.