

Advice on Taking Private Nuisance Action Section 82 - Environmental Protection Act 1990

We are all affected by nuisance at some point in our lives, the Council can investigate a nuisance on your behalf, however under some circumstances we may not be able to take action, i.e. lack of evidence, type of nuisance etc. If the Council cannot take action, or alternatively you would prefer to take the action yourself, there are alternative options.

Any person affected by any form of nuisance has the right to complain directly to the Magistrates' Court under section 82 of the Environmental Protection Act 1990. The Magistrate will need to be convinced that the problem amounts to a statutory nuisance.

What is a nuisance?

There are various types of nuisance, which range from smell, noise, dust, unhygienic practice etc, they may occur day or night and be continuous or intermittent. A nuisance is something, which materially affects the comfort of your life or has a substantial effect on the quality of your life. You should also bear in mind that you must be reasonable in your expectations, people have different ways of living, it is only when it becomes an unreasonable interference that it is a nuisance.

How to proceed?

Firstly be absolutely sure of where the nuisance is coming from, it is not always entirely obvious if you live in flats etc, you will also need to find out who is responsible for the nuisance. If the property is rented the occupier may not be responsible for any poor soundproofing.

If you are concerned about noise from a neighbouring property, make sure you try to talk to the problem maker first, a Magistrate will expect this to be done before you go to Court and it is always best to try to resolve the problem informally. Make a note of the dates every time you approach the problem maker and them asked to stop. The Court will be more sympathetic to your case if you have demonstrated that you have already taken the necessary steps in a friendly manner.

Make an effort to record the dates and times of the nuisance and how long it lasts. Write down what type of nuisance occurred and how it has affected you (for example disturbed sleep). You may use the monitoring sheets we have sent you (if you have any) in addition to your own. These records will form the basis of your case when you present them to the Court if you decide to pursue the claim.

Before you approach the Clerk to the Magistrates' Court, obtain advice from the Citizens Advice Bureau as they sometimes may be able to offer free legal advice, or a solicitor if you choose to consult one. Also speak to neighbours and find out if they too are affected and if they could attend as witnesses on your behalf, these will add weight to your case.

If you do decide to take action you must legally give notice of your intentions in writing to the person causing the nuisance – at least three days for noise nuisance and 21 days for other types of nuisance, in addition to details of your complaint. You should deliver this notice by post or hand making sure the letter is dated and you have kept a copy.

Approaching the Magistrates'

When you contact the Clerk to the Magistrates' Court tell them you wish to make a complaint under section 82 Environmental Protection Act 1990. You may need to visit the Court where the procedure will be explained further and you may need to present your evidence (monitoring records), this will demonstrate that you have a reasonable case. Please let the Court know at this time if you have notified the Council's Environmental Health Department of the problem.

The Court will then decide if a Summons can be issued on the person responsible for the nuisance (which they may ask you to deliver or post) stating the date and time for the Court hearing.

When the time comes for the hearing, you and any witnesses will have to attend Court to give evidence, the person responsible will probably come to defend themselves, which may involve counter accusations being made. You may be questioned under oath, it is up to you if you decide to present your case yourself or obtain the services of a solicitor.

If you are going to present your own case, the Clerk of the Courts may give you limited guidance. Alternatively you can contact you local citizens Advice Bureau which may be able to offer assistance.

The Outcome

If the Court decides in your favour it will grant an Abatement Order requiring the offender to abide by and may specify measures to be taken to achieve this. The Court may impose a fine of up to £5000 and you may be awarded the costs of bringing the action to Court.

If the person responsible fails to comply with the Abatement Order without reasonable excuse they will be guilty of an offence and the Court may fine them up to £5000, further Court action will be necessary to deal with this. It is

therefore important to continue to record any up-to-date nuisances in case the Abatement Order is ignored and a return to Court is necessary.

If you are unsuccessful your case will be dismissed and you may be asked to pay the defendant's own costs, you may wish to seek specialist advice from a solicitor on this matter. Legal representation is not available for this type of case through the Legal Aid Scheme.

Taking Civil Action

You can take civil action for at common law by seeking either an injunction to restrain the defendant from continuing the nuisance and/or by issuing a claim for damages or loss.

Taking out civil action can be expensive, so it is highly advisable to seek the advice of a solicitor, or the Citizens Advice before going ahead.

Advice from a solicitor may be free to those who are financially eligible under the "Legal Help Scheme". Under this scheme, a solicitor will be able to give you general advice on whether you will be likely to meet the means and merit tests which apply to applications for full public funding (formerly legal aid) in Civil cases.

Example of letter of intention to start action under section 82

Dear Sir/Madam

I write to give notice of my intention to start proceedings under section 82 of the Environmental Protection Act 1990 due to the unreasonable amount of noise (e.g. loud music) coming from your property.

The noise is so bad that it can be clearly heard in my property and is stopping (me)(my family) from getting to sleep at night (or otherwise). I have gathered evidence over the last six weeks to support this and will be presenting this to the Magistrates' Court.

Unless the noise stops or significantly reduces, I shall have no other option than to take my complaint to the Magistrates' Court and apply for an Abatement Order under the above mentioned legislation.

I intend to start this action on ***date*** should the noise continue.

<<date the letter and keep a copy>>

Extract of Section 79 and 82 of the Environmental Protection Act 1990

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(1) Subject to subsections (2) to (6) below, the following matters constitute “statutory nuisances” for the purposes of this Part, that is to say—

- (a) any premises in such a state as to be prejudicial to health or a nuisance;
- (b) smoke emitted from premises so as to be prejudicial to health or a nuisance;
- (c) fumes or gases emitted from premises so as to be prejudicial to health or a nuisance;
- (d) any dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or a nuisance;
- (e) any accumulation or deposit which is prejudicial to health or a nuisance;
- (f) any animal kept in such a place or manner as to be prejudicial to health or a nuisance;
- (g) noise emitted from premises so as to be prejudicial to health or a nuisance;
- (h) any other matter declared by any enactment to be a statutory nuisance;

and it shall be the duty of every local authority to cause its area to be inspected from time to time to detect any statutory nuisances which ought to be dealt with under section 80 below and, where a complaint of a statutory nuisance is made to it by a person living within its area, to take such steps as are reasonably practicable to investigate the complaint.

(2) Subsection (1)(b) and (g) above do not apply in relation to premises—

(a) occupied on behalf of the Crown for naval, military or air force purposes or for the purposes of the department of the Secretary of State having responsibility for defence, or

(b) occupied by or for the purposes of a visiting force;

and “visiting force” means any such body, contingent or detachment of the forces of any country as is a visiting force for the purposes of any of the provisions of the Visiting Forces Act 1952.

(3) Subsection (1)(b) above does not apply to—

(i) smoke emitted from a chimney of a private dwelling within a smoke control area,

(ii) dark smoke emitted from a chimney of a building or a chimney serving the furnace of a boiler or industrial plant attached to a building or for the time being fixed to or installed on any land,

(iii) smoke emitted from a railway locomotive steam engine, or

(iv) dark smoke emitted otherwise than as mentioned above from industrial or trade premises.

(4) Subsection (1)(c) above does not apply in relation to premises other than private dwellings.

(5) Subsection (1)(d) above does not apply to steam emitted from a railway locomotive engine.

(6) Subsection (1)(g) above does not apply to noise caused by aircraft other than model aircraft.

(7) In this Part—

- “chimney” includes structures and openings of any kind from or through which smoke may be emitted;
- “dust” does not include dust emitted from a chimney as an ingredient of smoke;
- “fumes” means any airborne solid matter smaller than dust;
- “gas” includes vapour and moisture precipitated from vapour;
- “industrial, trade or business premises” means premises used for any industrial, trade or business purposes or premises not so used on which matter is burnt in connection with any industrial, trade or business process, and premises are used for industrial purposes where they are used for the purposes of any treatment or process as well as where they are used for the purposes of manufacturing;
- “local authority” means, subject to subsection (8) below,—

(a) in Greater London, a London borough council, the Common Council of the City of London and, as respects the Temples, the Sub-Treasurer of the Inner Temple and the Under-Treasurer of the Middle Temple respectively;

(b) outside Greater London, a district council; and

(c) the Council of the Isles of Scilly;

- “noise” includes vibration;
- “person responsible”, in relation to a statutory nuisance, means the person to whose act, default or sufferance the nuisance is attributable;
- “prejudicial to health” means injurious, or likely to cause injury, to health;
- “premises” includes land and, subject to subsection (12) below, any vessel;
- “private dwelling” means any building, or part of a building, used or intended to be used, as a dwelling;

- “smoke” includes soot, ash, grit and gritty particles emitted in smoke;

and any expressions used in this section and in the [1956 c. 52.] Clean Air Act 1956 or the [1968 c. 62.] Clean Air Act 1968 have the same meaning in this section as in that Act and section 34(2) of the Clean Air Act 1956 shall apply for the interpretation of the expression “dark smoke” and the operation of this Part in relation to it.

(8) Where, by an order under section 2 of the [1984 c. 22.] Public Health (Control of Disease) Act 1984, a port health authority has been constituted for any port health district, the port health authority shall have by virtue of this subsection, as respects its district, the functions conferred or imposed by this Part in relation to statutory nuisances other than a nuisance falling within paragraph (g) of subsection (1) above and no such order shall be made assigning those functions; and “local authority” and “area” shall be construed accordingly.

(9) In this Part “best practicable means” is to be interpreted by reference to the following provisions—

(a) “practicable” means reasonably practicable having regard among other things to local conditions and circumstances, to the current state of technical knowledge and to the financial implications;

(b) the means to be employed include the design, installation, maintenance and manner and periods of operation of plant and machinery, and the design, construction and maintenance of buildings and structures;

(c) the test is to apply only so far as compatible with any duty imposed by law;

(d) the test is to apply only so far as compatible with safety and safe working conditions, and with the exigencies of any emergency or unforeseeable circumstances;

and, in circumstances where a code of practice under section 71 of the [1974 c. 40.] Control of Pollution Act 1974 (noise minimisation) is applicable, regard shall also be had to guidance given in it.

(10) A local authority shall not without the consent of the Secretary of State institute summary proceedings under this Part in respect of a nuisance falling within paragraph (b), (d) or (e) of subsection (1) above if proceedings in respect thereof might be instituted under Part I or the [1906 c. 14.] Alkali &c. Works Regulation Act 1906 or section 5 of the [1974 c. 37.] Health and Safety at Work etc. Act 1974.

(11) The area of a local authority which includes part of the seashore shall also include for the purposes of this Part the territorial sea lying seawards from that part of the shore; and subject to subsection (12) below, this Part shall have effect, in relation to any area included in the area of a local authority by virtue of this subsection—

(a) as if references to premises and the occupier of premises included respectively a vessel and the master of a vessel; and

(b) with such other modifications, if any, as are prescribed in regulations made by the Secretary of State.

(12) A vessel powered by steam reciprocating machinery is not a vessel to which this Part of this Act applies.

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(1) A magistrates' court may act under this section on a complaint made by any person on the ground that he is aggrieved by the existence of a statutory nuisance.

(2) If the magistrates' court is satisfied that the alleged nuisance exists, or that although abated it is likely to recur on the same premises, the court shall make an order for either or both of the following purposes—

(a) requiring the defendant 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, within a time specified in the order, to execute any works necessary to prevent the recurrence;

and may also impose on the defendant a fine not exceeding level 5 on the standard scale.

(3) If the magistrates' court is satisfied that the alleged nuisance exists and is such as, in the opinion of the court, 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, rendered fit for that purpose.

(4) Proceedings for an order under subsection (2) above shall be brought—

(a) except in a case falling within paragraph (b) or (c) 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.

(5) 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.

(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) 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.

(10) The defence under subsection (9) above is not available—

(a) in the case of a nuisance falling within paragraph (a), (d), (e), (f) or (g) of section 79(1) above except where the nuisance arises on industrial, trade or business premises;

(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.

(11) If a person is convicted of an offence under subsection (8) above, a magistrates' court 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, then, whether or not at the date of the hearing it still exists or is likely to recur, the court shall order the defendant (or defendants in such proportions as appears fair and reasonable) to pay to the person bringing the proceedings such amount as the court considers reasonably sufficient to compensate him for any expenses properly incurred by him in the proceedings.

(13) If it appears to the magistrates' court that neither the person responsible for the nuisance nor the owner or occupier of the premises can be found the court 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 would have ordered that person to do.