

Principal statutes and statutory instruments

<p>Environmental Protection Act 1990, s.79 as amended by Clean Neighbourhoods and Environment Act 2005 s101 and 102</p>	<p>S.79 of the Act establishes certain occurrences or conditions which constituting <i>statutory nuisances</i>. Local authorities are under a duty both to inspect their areas from time to time to detect statutory nuisances and to investigate any complaints of statutory nuisance. Where an authority is satisfied that a statutory nuisance exists, or is likely to occur or reoccur, they must serve an abatement notice under s.80 of the Act. Where a process causing a statutory nuisance is authorised or permitted under Part I of the Act (IPC) or permitted under the Pollution Prevention and Control Act 1999 (IPPC), the local authority cannot institute summary proceedings without the consent of the Secretary of State where the nuisance is caused by smoke, dust, steam, smell, effluvia, accumulation of waste, noise, light or insects emanating from "relevant industrial, trade or business premises" and being prejudicial to health or a nuisance – see E key facts No.1 (IPC) and No.17 (IPPC). In addition, any matter shall not constitute a statutory nuisance if it consists of, or is caused by, any land that is contaminated land within the meaning of s.78A of the Environmental Protection Act 1990 on contaminated land (see E key facts No.8 – Contaminated Land)</p>
<p>Environmental Protection Act 1990, s.80</p>	<p>Where an authority is satisfied as to the existence of a statutory nuisance, they must serve an <i>abatement notice</i> on the person causing the nuisance, or in certain cases on the owner of the property where the nuisance is a structural defect or the person causing or likely to cause the nuisance cannot be found. There are rights of appeal to a magistrates’ court within 21 days. Except in specified circumstances, it is a defence to prove that the best practicable means is used to prevent, or counteract the effects, of the nuisance.</p>
<p>Environmental Protection Act 1990, s.81, s.81A and s.81B</p>	<p>Contain provisions for local authorities to take action themselves to abate a nuisance and do whatever is necessary to ensure compliance with the terms of an abatement notice and seek to recover the expenses reasonably incurred from the person by whom the nuisance was caused. A local authority can also take proceedings to the High Court for the purpose of securing abatement, prohibition or restriction of the nuisance.</p>
<p>Environmental Protection Act 1990, s.82</p>	<p>Establish the right of a person aggrieved by a statutory nuisance to complain directly to a magistrates’ court and if the court is satisfied that such a nuisance exists or likely to recur, they may serve an order on the person responsible for causing the nuisance. This is similar to the effect of an abatement notice under s.80 above.</p>
<p>Noise Act 1996</p>	<p>The Act gives local authorities the option of imposing restrictions on noise emitted from dwellings between the hours of 11pm and 7am. If having resolved to apply the Act to their area the authority is satisfied that noise exceeds the permitted level, warning notices can be served upon the person causing the noise non-compliance with which may render a person liable to a fine not exceeding £1,000. There are also powers to serve a fixed-penalty notice requiring payment of £100 within 14 days to discharge any liability to conviction for an offence. An authorised officer can also enter a dwelling to seize noise-making equipment.</p>
<p>The Noise and Statutory Nuisance Act 1993</p>	<p>The Act makes noise in the street arising from vehicles (car alarms, repair work on vehicles, etc), loudspeakers and burglar alarms a statutory nuisance open to the same powers for a local authority to serve notice, as under s.80A of the Environmental Protection Act 1990. Traffic noise, noise caused by military forces, or from campaigning demonstrations is excluded.</p>
<p>Control of Pollution Act 1974, Part III</p>	<p>Under s.60 of the Act local authorities can serve a notice imposing requirements as to how construction works should be carried out to minimise noise and setting noise limits, taking into account the character of the local area. Anyone intending to carry out construction works may apply in advance for consent. Compliance with the terms of a notice or consent does not rule out proceedings by an individual on the grounds of noise nuisance under s.82 of the Environmental Protection Act. There are rights of appeal against a notice within 21 days to a magistrates’ court. S.61 provides for a person to gain prior consent for work on construction sites. A local authority can issue consent with or without conditions.</p>
<p>The Noise Emission in the Environment by Equipment for use Outdoors Regulations 2001 SI 2001/1701</p>	<p>The Regulations apply to 57 specified types of equipment for use outdoors ranging from construction machinery to lawnmowers. They require noise measurements to be taken and the manufacturer to affix labels showing the guaranteed noise emission levels of each machine. For certain equipment maximum noise limits have also been set. From 3 January 2002 all equipment for use outdoors within the scope of the Regulations first placed on the market or put into service in UK has had to comply with the Regulations</p>
<p>Environmental Noise (England) Regulations 2006 SI 2238 and Environmental Noise (Wales) Regulations 2006 SI 2629</p>	<p>Provide for the requirement to prepare strategic noise maps around for agglomerations, major roads, major railways and major airports. Actions plans must be prepared by the SoS for agglomerations, major roads and railways and by airport operators for airports.</p>

Criminal penalties and remedies

<p>Environmental</p>	<p>If a person contravenes, without reasonable excuse, any requirement or prohibition imposed by an abatement</p>
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Protection Act 1990, s.80 and s.82	notice under s.80 or order under s.82, they shall be liable on summary conviction to a fine not exceeding £5,000 and a continuing fine of up to £500 per day that the nuisance continues, except where the nuisance is caused by an industrial, trade or business premises when contravening a notice under s.80 would render a person liable to a maximum fine of £20,000.
Control of Pollution Act 1974, s.60 and s.61	If a person contravenes any requirement of a notice under s.60, or a consent under s.61, without reasonable excuse, they shall be liable to a fine not exceeding £5,000 with a further daily fine of up to £50 per day on which the offence continues.

What is a Statutory Nuisance?

Every local authority is under a duty to inspect its area from time to time to detect any statutory nuisances, these being defined in s.79, as a situation specified below which the authority determines is prejudicial to health or a nuisance:

Premises in an unsatisfactory state	Smoke emitted from premises	Fumes or gases emitted from premises
Any dust, steam, smell or other effluvia arising on industrial, trade or business premises	Noise or vibration emitted from or caused by a vehicle, machinery, or equipment in a street	Any animal kept in such a place or manner
Any accumulation or deposit	Noise or vibration emitted from premises	Any other matter declared by any enactment to be a statutory nuisance which now includes light and insects ⁺

⁺ Introduced through the **Clean Neighbourhood and Environment Act 2005, s. 101 and s. 103.**

Prejudicial to health means injurious, or likely to cause injury, to health.

The general defence to summary proceeding under s.80 that the *best practicable means* were used to prevent, or to counteract the effects of, the nuisance, is interpreted according to the following tests:

- 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;
- The means to be employed include the design, installation, maintenance and the manner and periods of operation of plant and machinery, and the design, construction and maintenance of buildings and structures;
- The test is to apply only in so far as compatible with any duty imposed by law;
- The test is to be applied only in so far as compatible with safety and safe working conditions, and in the exigencies of any emergency or unforeseen circumstances.

There is a close linkage between the statutory nuisance provisions, which are enforced by local authorities through the criminal system, and the common law Tort of nuisance (both public and private nuisance), which is available as a remedy for persons affected by nuisance. In many cases, nuisance will meet the definitions above and be judged by the local authority to be a statutory nuisance (for example an abrasive dust fallout from a factory chimney which damages a neighbour's car). If the authority determines the existence of statutory nuisance, the person causing the nuisance would be open to punishment through criminal proceedings. If convicted, this would not provide for compensation to the neighbour for the damage to the car, but they would have the option to pursue the factory owner for damages through a civil action based in nuisance (see **E key facts No.9 - Common Law and Civil Liability**).

How is industrial noise nuisance assessed?

BS4142: 1997 "Method for rating industrial noise affecting mixed residential and industrial areas" is primarily intended as a planning tool. However, it is widely adopted as a tool for assessing complaints of noise nuisance of an industrial nature. This is because BS4142 contains a systematic evaluation protocol, which indicates whether a defined level of industrial noise *is likely to give rise to complaints* when compared with background levels.

BS4142 generally requires measurement of the *specific noise level* arising from the source under investigation (L_{AeqT}) and the *residual noise level* (L_{AeqT}) in the absence of the specific noise. The effect of the residual noise level is then subtracted from the specific noise level and various corrections applied (for tonal and/or impulse

characteristics of the noise source) to obtain the *rating level*. The background level is then subtracted from the rating level and the likelihood of complaint can be determined using the following criteria:

Where rating level minus background > +10 decibels	Complaints likely
Where rating level minus background > +5 but <+10 decibels	Marginal significance
Where rating level minus background < +5 to -10 decibels	Complaints unlikely

In making a final assessment as to whether noise constitutes a statutory nuisance, a local authority may also take into account subjective factors, such as what the reaction of a reasonable person would be taking into account time of day, locality, duration of the noise, intent or purpose of the person causing the noise etc.