

STATUTORY NUISANCE

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INTRODUCTION

1 There is no legal definition of a statutory nuisance. In order for action to be taken the nuisance complained of should either; contain a risk to people's health or interfere with a person's legitimate use or enjoyment of land.

2 The main categories of statutory nuisance are;

- smoke,
- dust,
- light,
- litter,
- odour and
- noise (including vibrations)

3 A statutory nuisance could occur due to; the poor state of your premises, noise, smoke, fumes, gases, dust, steam, smell, effluvia, the keeping of animals, deposits and accumulations of refuse and/or other material, and other escapes from your establishment or premises. A full list of statutory nuisances can be found in Annex A.

4 Environmental Noise is the main issue for the MOD, with the main objects for public complaint being; low-flying military aircraft on exercise and the noise levels associated with 'take off' of military aircraft at flying stations and also increasingly military helicopter operations. There are some concerns too about impulse noise emanating from tanks and artillery guns. Leaflet 4.1 contains further information on Environmental Noise.

5 This leaflet does not cover occupational noise. For information on the effects of occupational noise, please refer to JSP 375 the MOD Health and Safety Handbook (Leaflet 6).

MOD POLICY

6 The MOD has exemptions with regards to Statutory Nuisance – clauses 79(2), (6) & (6A) refer to 79(1)(b), (fb), (g) and (ga) of the EPA 90:

- *Smoke, noise and light emitted from premises so as to be prejudicial to health or a nuisance (this exemption extends to Scotland and Northern Ireland).*

7 This exemption is aimed solely at protecting activities directly related to national security. It is MOD Policy to reduce and where possible avoid, or minimise at best, the causes and effects of statutory nuisance and to comply with all relevant UK environmental legislation.

8 The MOD considers itself to be bound by the noise provision of the EPA 1990 regarding its application to everyday domestic activities. MOD offices, barracks and establishments will not create excessive noise liable to cause a nuisance as part of activities not directly connected with the; operation of equipment, training of personnel or other military operations.

9 Every effort shall be made to keep potential nuisances generated by military activity to a minimum. Activities generating substantial nuisance will be kept at a distance from residential areas. Night time activity will be limited to achieving training objectives which cannot be met during the day.

10 It is MOD Policy to "carry out sustainability appraisals and environmental assessments, as appropriate, for new or revised policies, programmes (including acquisition programmes) office relocations, new projects and training activities". Therefore, to ensure compliance with MOD policy, the Sustainability and Environmental Appraisal Tool should be used; further information can be found on the DE website http://defencestates.cis.r.mil.uk/Organisation/Directorates/Strategy_and_Policy/SusApp.asp

11 Activities which create a potential nuisance may result in public complaints. These will either be directed to the MOD or to the local authority Environmental Health Department. In order to avoid unnecessary nuisances for members of the public (and animals) personnel must avoid causing damage to property, maintain good community relations and avoid potential civil actions for nuisance. It is vital that MOD implements management and assessment measures and procedures, usually as part of the site Environmental Management System (EMS) to minimise and contain potential nuisances generated by its activities.

12 Regardless of Crown Exemption for statutory nuisance, individual members of the public may take civil action under common law against the MOD for nuisance, including noise from vehicles.

RESPONSIBILITIES

13 The Commanding Officer (CO), Head of Establishment (HoE), Project Team Leader and Senior Managers shall ensure that:

- They comply with all relevant UK environmental legislation.
- Local environmental noise management schemes are in place for the relevant activities under their control.
- Through Defence Estates (DE) that MOD premises are not included in any proposed Noise Abatement Zones.
- They will establish a good relationship with their neighbours, particularly in relation to transient effects likely to affect them. Advise neighbours in advance if you believe that a particular operation, such as building work or an installation process for new plant could cause adverse effect.
- The most appropriate person (CO or HOE) at the location treats all complaints sympathetically, comprehensively and promptly. Complaints (other than those about military low flying for which comprehensive arrangements already exist) that cannot be dealt with satisfactorily should be passed up the chain of command, and action should be taken wherever possible to end or abate the disturbance.
- Ministers must be advised in advance of unusual aircraft activity so they can write to MPs whose constituencies are affected before the information is made available to the wider public. The Secretariat representing the branch sponsoring the activity is responsible for informing ministers. Prior notification of exercises or unusual air activity in the local media can significantly reduce the number of complaints. Sponsors should provide the relevant single Service MOD Defence Public Relations staff and command Public Relations staff with details to enable them to devise a PR strategy in consultation with the sponsor and relevant Secretariat branch.

14 Environmental Protection Officers (EPOs) and/or Safety, Health Environment and Fire (SHEF) Advisors should monitor report and advise:

- There is a good level of 'housekeeping' on the site/establishment and that staff are aware of the need to prevent nuisances. Regularly check the site for any waste accumulations, evidence of vermin, noise or smell as applicable.
- Where required Environmental Permits are obtained on behalf of the Commanding Officer/Head of Establishment. Ensure that permits have not expired and that the conditions of the permit are complied with.

- All reasonable steps are taken to prevent or minimise a nuisance or a potential nuisance. It is necessary to establish whether the unit/establishment might cause a nuisance to neighbours by checking noise, odours and other emissions near the boundary of the site during different operating conditions and at different times of the day.
- Even if a complaint does not amount to a statutory nuisance considerations should be given to simple practical measures that can be done to remove sources of potential complaint from the surrounding community.
- Consider where noisy operations are undertaken in relation to site boundaries and relocate them if possible, perhaps further away, or make use of existing buildings/stockpiles/topography as noise barriers.
- Consider replacing noisy equipment and take account of noise emissions when buying new or replacement equipment.

15 Responsibilities of the Job Holder and Contractors working on behalf of the MOD shall ensure that:

- All reasonable steps are taken to prevent or minimise a nuisance or potential statutory nuisance.
- They are competent to carry out their duties and are appropriately trained.
- Reduce noise levels outside buildings by keeping doors and windows closed wherever possible.
- Abatement equipment, such as filters and cyclones are kept in good working order. Maintain fans and refrigeration equipment.
- Boilers, especially oil or solid fuel units, are operating efficiently and do not emit dark smoke
- Authorisations/Permits for any prescribed processes have not expired and that the conditions of the authorisation/permit are complied with.

16 If an installation/process is regulated under the Environmental Permitting Regulations 08 the permit may have conditions that relate to some emissions that could be a potential statutory nuisance. Enforcement action will usually be taken under those regimes for most types of statutory nuisance. However, the unit or establishment could still face statutory nuisance action under Part III of the EPA 1990/Pollution Control and Local Government (NI) Order 1978/Public Health (Ireland) Act 1878 where the nuisance is not covered by a condition of the permit. More information can be obtained in the Pollution Prevention leaflet (leaflet 2).

INTERNATIONAL AND UK LEGISLATION

EU Policy/Legislation

17 EU policy on statutory nuisance in the main, concentrates on environmental noise. The objective of the European Union is to 'define a common approach intended to avoid, prevent or reduce on a prioritised basis the harmful effects due to exposure of environmental noise. This approach is based on the mapping of exposure to noise by means of common methods, on the provision of information to the public and on the implementation of action plans at a local level'.

18 The EU Commission have produced a Green Paper on Noise Pollution (COM(96)540) which targets a number of areas for regulation:

- Mapping to assess noise climate and noise exposure
- Common noise exposure index to be used throughout Europe to enable the comparability of noise data
- Harmonised measurement methods for environmental noise sources
- A framework for the assessment of environmental noise
- Provision of information on noise exposure to the public
- Agreement on a limited number of minimum noise target values, with an obligation to take action to meet them.

19 There are a number of EU directives concerned with statutory nuisance although the majority concentrate on noise pollution (MOD is exempt from the Noise Directive which in UK Legislation is Environmental Noise Regulations 2005 (amended 2008). For the Directives concentrating on smoke pollution please see the Pollution Prevention Leaflet (leaflet 2).

20 Further information on EU environmental noise policy can be located at http://europa.eu.int/pol/env/index_en.htm

UK Policy/Legislation

21 Noise and Nuisance policy for the UK is primarily implemented via the Noise and Nuisance Policy team within Defra who work in collaboration with all the Devolved Administrations throughout the UK. They are currently developing policy on:

- neighbourhood noise (other than in the workplace) and other statutory nuisance (eg. dust and smells/odours, bonfire nuisance)
- ambient noise, including a proposed National Ambient Noise Strategy which aims to deal with excess noise that disturbs people living near major transport or industrial sites.

22 They are also managing noise research including noise mapping, assessing current levels and attitudes to environmental noise and assessing projects connected with the proposed EC Directive on environmental noise and the proposed Ambient Noise Strategy and projects in response to noise and other nuisance issues.

23 More information on any of these issues can be located on the following websites. Please see Annex B for current UK Legislation on Statutory Nuisance

<http://www.defra.gov.uk/environment/noise/index.htm>
<http://www.scotland.gov.uk/Topics/?pageID=112>
<http://wales.gov.uk/topics/environmentcountryside/epq/noiseandnuisance/?lang=en>
<http://www.ehsni.gov.uk/environment/noise/noise.shtml>

REFERENCES

1. <http://www.environment-agency.gov.uk/netregs/275207/275504/?version=1&lang=e>
2. <http://www.osborneclarke.com/publications/pdf/abate.pdf>

ANNEX A

FULL LIST OF STATUTORY NUISANCES

AS IN PART III OF THE ENVIRONMENTAL PROTECTION ACT 1990

- 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.

This does not apply to:

- Smoke emitted from a private chimney in a smoke control area.
 - Dark smoke emitted from a chimney of a building, or chimney serving the furnace of a boiler or industrial plant attached to a building.
 - Smoke emitted from a railway locomotive steam engine.
 - Dark smoke emitted otherwise than as mentioned above from industrial or trade premises.
- c) Fumes or gases emitted from domestic 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 as to be prejudicial to health or a nuisance.
 - h) Noise that is prejudicial to health or a nuisance and is emitted from, or caused by, a vehicle, machinery, or equipment in a street (introduced by the Noise and Statutory Nuisance Act 1993).
 - i) Any other matter declared by any enactment to be a statutory nuisance.

ANNEX B

UK STATUTORY NUISANCE LEGISLATION

The provisions for the control of noise and statutory nuisance are scattered across various pieces of legislation. The main statutes are listed below:

Control of Pollution Act 1974 (COPA 1974)

The COPA 1974, was largely repealed by the Environmental Protection Act 1990 (EPA 1990). However, those sections that remain extant are:

- s.60 gives local authorities wide powers in the control of noise from building sites, defining construction widely to include demolition and other engineering operations associated with construction.
- s.61 a builder can apply to a local authority prior to commencing construction for consent for noise creation, normally at the same time as application for a building warrant is made, and the authority must grant such a consent if it does not anticipate a noise nuisance will be created.
- s.62 deals with noise in built up areas and the noise from loudspeakers in the streets.

This Act also introduced the concept of the Noise Abatement Zone (NAZ) which provides a more sophisticated means of controlling, and, where justified, reducing noise from commercial and industrial premises, particularly in areas of mixed development.

Environmental Protection Act 1990 (EPA 1990)

Under s79 of the EPA 1990, there is a duty on every local authority to inspect its area at appropriate intervals to detect any statutory nuisances that ought to be dealt with. Where a member of the public makes a complaint of a statutory nuisance to the local authority, the authority has to take such steps as are reasonably practicable to investigate the nuisance.

If the Environmental Health Officer assesses that a statutory nuisance exists or is likely to occur, the local authority is duty bound to serve an abatement notice. Such a notice can:

- require you to abate the nuisance (i.e. to lessen or reduce the nuisance)
- prohibit or restrict the nuisance
- require you to carry out works or other steps to abate, restrict or remove the nuisance

Enforcement may not always come through the regulatory bodies. Members of the public can also take legal action against the MOD under the same section of the Act.

An abatement notice is served under s80 and failing to comply with the terms and conditions of the notice is an offence, non-compliance could expose you and/or your CO/HoE to the risk of prosecution. If a unit or establishment believes that an abatement notice has been incorrectly or improperly served, the unit can appeal. Information on appeal procedures should accompany the notice.

Part III of the Environmental Protection Act 1990, as amended contains the main legislation relating to statutory nuisance. It applies in England, Wales and Scotland and is enforced by local authorities.

The Public Health (Ireland) Act 1878, as amended, contains the main legislation relating to statutory nuisances in Northern Ireland. Under Part II of the Pollution Control and Local Government (Northern Ireland) Order 1978, district councils have powers to deal with noise nuisance.

More information on these and the other pieces of environmental legislation relating to statutory nuisances can be found in Annex D

In Northern Ireland this requirement falls under the Pollution Control & Local Government (Northern Ireland) Order 1978 (S.I. 1978/1049)

Noise and Statutory Nuisance Act 1993 (NSNA 1993)

This Act amended Part III of the EPA 1990 by placing additional definitions in the list of statutory nuisances in s.79 of that Act. The definitions related to nuisance caused by vehicles, machinery and equipment in the road and audible intruder alarms.

Noise Act 1996

This Act deals with night-time noise between 2300 hrs - 0700hrs and according to this Act the local authority must appoint an officer who will take reasonable steps to investigate complaints between these hours. If the officer is satisfied that such a noise is being emitted and if measured from within the complainant's dwelling would, or might exceed the permitted level, a warning notice under s.3 may be served. Where a warning notice has been served, any person who is responsible for noise emitted from a dwelling within the period specified by the notice and where this noise exceeds the permitted level as measured within the complainant's dwelling is guilty of an offence and liable to summary conviction.

Finally, the Act clarifies a point of uncertainty that has affected the enforcement of statutory nuisances under Part III of the EPA 1990. Section 10 (7) of the 1996 Act now makes it clear that the power to seize equipment is *included* within the tools available to deal with statutory nuisance.

Clean Neighbourhoods and Environment Act 2005

The Clean Neighbourhoods and Environment Act received Royal Assent in April 2005. This Act deals with a number of more local environmental issues and also extends the list of statutory nuisances at ss.79 of the EPA 1990 to include;

- *Any insect emanating from relevant industrial, trade or business premises and being prejudicial to health or a nuisance.*
- *Artificial light emitted from premises so as to be prejudicial to health or a nuisance.*

Artificial light does not include premises used for Defence Purposes.

Other Relevant Legislation

Health and Safety at Work Act 1974 (HSWA 1974)

This Act contains a range of requirements and obligations for the protection and health and safety and welfare of employees and people visiting workplaces. Both noise and vibration are recognised occupational hazards and can be dealt with using the provisions of this Act. It also requires employers to give regard to the effects of their business on persons not in their employment, which would include neighbours affected by noise or other nuisance should as odour or smoke. For further information please see JSP 375 The MOD Health & Safety Manual.

Noise at Work Regulations 1989 (S.I. 1989/1790)

These regulations are made under s.15 of the HSWA 1974, and apply to all workplaces and situations covered by the Act. The Health and Safety Executive (HSE) has issued a series of guides to the requirements of the regulations, which explain the provisions in some detail.

- Guide 1 - Prevention of Risk to the Hearing of Workers
- Guide 2 - Suppliers and Manufacturers
- Guide 3 - Equipment Procedures for Noise Surveys

For further information please see JSP 375 The MOD Health & Safety Manual.

Town and Country Planning (Assessment of Environmental Effects) Regulations 1988 (S.I. 1988/1199), as amended

These regulations were introduced in response to the Directive on the assessment of effects of certain public and private projects on the environment. It is important to recognise that the environmental impact assessment procedure should incorporate the noise effect of a development during construction as well as final operation.

Town and Country Planning Act 1990

This Act is the main legislative control over planning and development. Some of these controls and requirements relate to noise nuisance.

Conditions relating to planning and noise may include such matters as the method of construction, times of operation and permissible noise limits. More specific guidance on these issues can be found in Planning and Noise Circular 10/73 which sets out liaison requirements between planning and environmental health authorities and specifically mentions noise sources from roads, aircraft, industrial premises and other fixed installations. Guidance is given on methods of measurement and model conditions.

Town & Country Planning (Environmental Impact Assessment) (England & Wales) Regulations 1999 (S.I. 1999/293)

These regulations require an environmental impact assessment (EIA) to be carried out on any new project or construction that requires planning permission, and the inclusion of noise and statutory nuisance provisions.

Codes of Practice

Under CoPA 74 the Secretary of State has the power to prepare and approve Codes of Practice for the purpose of giving guidance on how best to reduce or minimise noise. The one most relevant to MOD has been enacted under:

- The Control of Noise (Codes of Practice for Construction & Open Sites) (England) Order 2002 (S.I. 2002/461)
- The Control of Noise (Codes of Practice for Construction & Open Sites) (Scotland) Order 2002 (S.I. 2002/104)
- The Control of Noise (Codes of Practice for Construction & Open Sites) (Wales) Order 2002 (S.I. 2002/1795)
- The Control of Noise (Codes of Practice for Construction & Open Sites) Order (Northern Ireland) 2002 (S.I. 2002/303)

Miscellaneous

Aircraft noise is regulated under the Civil Aviation Act 1982 and traffic noise under the Road Traffic Act 1988.

ANNEX C

ASSURANCE QUESTIONS

The purpose of these question sets is not for delivery bodies to provide answers to each question. However, they should be useful for the delivery body in stating their assurance level. If full assurance cannot be given, a short explanation of the problem area/s and the actions which are being taken to improve the assurance level is required.

Questions

1. What methods are taken to minimise nuisance and potential nuisances? In what ways are they measured at the boundaries of sites?
2. How are legislative requirements met and updated?
3. Is a process in place to establish good relationships with the general public with relation to statutory nuisances? How is it implemented?
4. Is there a complaints process? How is it managed?
5. How is unusual training activity managed, i.e. night or large scale training?
6. How have the Defra Noise and Statutory Nuisance guidelines been incorporated into your business?
7. What processes are in place to ensure that the defence exemption on statutory nuisances is *only* used when and where it is appropriate?
8. How many sites during the last annual reporting audit period received either no assurance or limited assurance? How is this being remediated?
9. On the basis of your responses to the questions, and the guidance that is provided in JSP 418, what level of assurance do you believe applies for your compliance with this policy area?

DIA Assurance Classifications

- **Full assurance** - The frameworks of governance, risk management and control should ensure effective, efficient and economic achievement of the business objective. Risks that threaten the achievement of that objective are adequately managed.
- **Substantial Assurance** - Weaknesses identified in governance, risk management or control frameworks. Achievement of the business objective is threatened by inadequate management of medium or low category risks.
- **Limited Assurance** - Weaknesses identified in governance, risk management or control frameworks. Achievement of the business objective is threatened by inadequate management of high category risks.
- **No Assurance** - The frameworks of governance, risk management and control do not support effective, efficient and economic achievement of the business objective

