



Department
for Environment
Food & Rural Affairs

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Our ref: RFI 6660

Date: 15 July 2014

Dear

REQUEST FOR INFORMATION: on the 'Environmental Permitting Guidance, Statutory Nuisance, s79(10) Environmental Protection Act 1990' and the respective roles of the Environment Agency and local authority.

Thank you for your request for information, which we received on 17 June 2014, about the 'Environmental Permitting Guidance, Statutory Nuisance, s79(10) Environmental Protection Act 1990' and the respective roles of the Environment Agency and local authority. As you know, we have handled your request under the Environmental Information Regulations 2004 (EIRs).

The EIRs apply to requests for environmental information, which is a broad category of information defined in regulation 2 of the EIRs. Public authorities are required to handle requests for environmental information under the EIRs. They give similar access rights to the Freedom of Information Act 2000 (FOIA).

Following careful consideration, we have decided not to disclose some of this information.

For the sake of clarity your questions are listed in the order in which they were posed, followed by our answers or further comments as appropriate.

Questions:

1. *Can you tell me how and when and to whom (personnel and dates please) its guidance was formally disseminated to both the EA and local EH depts of local councils?*

This information is not in our records.

2. *What responsibilities prior to this document, did both the EA and local councils have, to self-inform as to the relevant portions of legislation to which this document addresses itself?*

The 'Environmental Permitting Guidance, Statutory Nuisance, s79(10) Environmental Protection Act 1990' was first published in 2010 and updated in March 2011. I believe that you are asking what legislative responsibilities and corresponding guidance the



Environment Agency and local authorities had before the Environmental Permitting Regulation guidance was first published.

Since 1990, local authorities have had a duty under Part III of the Environmental Protection Act (EPA) to inspect their areas from time to time to detect any statutory nuisances. The EPA also requires local authorities to take reasonably practicable steps to investigate complaints of statutory nuisance and to serve an abatement notice if they find that a statutory nuisance exists or is about to occur or recur. However, s79(10) EPA provides some limits on the powers of the local authority where proceedings might be instituted under Part I of the EPA which covered regulation of industrial processes. Local authorities can serve abatement notices on industrial operators but, in order to avoid operators being subject to double jeopardy, local authorities need to have the Secretary of State's consent before instituting summary proceedings i.e. prosecuting for breach of abatement notices.

The regulation of industrial processes under Part I of the EPA 1990 was replaced by the Pollution Prevention Control (PPC) Regulations 2000. The Environmental Permitting regime (EPR) then came into force in 2007 and replaced both the PPC regime and the waste management licensing regime. Under these changes, the Environment Agency took on responsibilities for regulating the majority of permitted facilities, with local authorities enforcing the rest, depending on the type of industrial activity involved. The Environment Agency also took on responsibility for managing nuisances in relation to the permitted facilities regulated by them. The EPR regime was updated further in 2010.

The 'Environmental Permitting Guidance, Statutory Nuisance, s79(10) Environmental Protection Act 1990' was first published in 2010 to help regulators and others better understand the interrelationship between the then new Environmental Permitting Regulations 2010 and the local authority's statutory nuisance powers under the Environmental Protection Act 1990. The issue of what guidance was available prior to this is covered in the answer to your question 3, below.

- 3. What guidance, prior to the generation of this booklet, did DEFRA give to the EA (and to which specific personnel) and local councils concerning their responsibilities with regard to statutory nuisances, and on what dates please?*

Prior to the publication of the 'Environmental Permitting Guidance, Statutory Nuisance, s79(10) Environmental Protection Act 1990' in 2010, Defra provided general guidance in relation to the responsibilities of local authorities under the statutory nuisance provisions (Part III) of the Environmental Protection Act 1990. For example, in September 2006 Defra worked in collaboration with the Chartered Institute of Environmental Health to publish 'Neighbourhood Noise Policies and Practice for Local Authorities – a Management Guide'. Amongst other things, this document sets out the role and responsibilities of local authorities in relation to noise nuisance. It also touches on the role of external agencies such as the Environment Agency. This document is

available in the Defra archive:

<http://archive.defra.gov.uk/environment/quality/noise/guidance/documents/noisemanagement-localauthorities.pdf>.

In 2007, Defra published the Environmental Permitting Core guidance for those operating, regulating or interested in facilities that were covered by the Environmental Permitting regulations. This included information on the duties local authorities had under the statutory nuisance regime where the premises had a permit under the Environmental Permitting Regulations. The 2007 version of the guidance is no longer available online on the Defra website but is available here:

<http://www.centreforsmart.co.uk/smp/files/Legislation/epcore-guidance.pdf>. (Paragraph A1.14 on page 68 covers the link between environmental permitting and statutory nuisance). The latest version of the Environmental Permitting Core guidance, revised in 2013, is available on the Defra website, here:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/211852/pb13897-ep-core-guidance-130220.pdf (see paragraph A1.19 on page 68).

Our records also indicate that Defra provided additional guidance on the issue of environmental permitting and statutory nuisance, on request from individual local authorities. Our records show that such guidance was given to the Environmental Health departments of the following Councils: South Norfolk, London Borough of Barking & Dagenham, and Bath & North East Somerset. Please find attached the guidance Defra provided, within the covering email.

Names of specific personnel are being withheld under regulations 12(3) and 13(1) (third party personal data) of the EIRs, as the information constitutes personal data relating to third parties. Names of staff are personal data. Regulations 12(3) and 13(1) of the EIRs provide that personal data relating to third parties is exempt information if disclosure would breach the Data Protection Act 1998 (DPA).

We consider that disclosure of this information is likely to breach the first data protection principle in Schedule 1 to the DPA, which relates to the fair and lawful processing of personal data, in two ways. First, disclosure would not constitute 'fair' processing of the personal data, and second, disclosure would not satisfy any of the conditions for data processing set out in Schedule 2 to the DPA. Therefore, we have concluded that this information is exempt from disclosure under regulation 12(3) and 13(1) of the EIRs. Other information has been redacted because it falls outside the scope of your request.

In keeping with the spirit and effect of the EIRs, and in keeping with the government's Transparency Agenda, all information is assumed to be releasable to the public unless exempt. Therefore, the information released to you will now be published on www.gov.uk together with any related information that will provide a key to its wider context. Please note that this will not include your personal data.

I attach Annex A, which explains the copyright that applies to the information being released to you.

I also attach Annex B giving contact details should you be unhappy with the service you have received.

If you have any queries about this letter, please contact me.

Yours

Annex A

Copyright

The information supplied to you continues to be protected by copyright. You are free to use it for your own purposes, including for private study and non-commercial research, and for any other purpose authorised by an exception in current copyright law. Documents (except photographs) can be also used in the UK without requiring permission for the purposes of news reporting. Any other re-use, for example commercial publication, would require the permission of the copyright holder.

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Annex B

Complaints

If you are unhappy with the service you have received in relation to your request you may make a complaint or appeal against our decision under section 17(7) of the FOIA or under regulation 18 of the EIRs, as applicable, within 40 working days of the date of this letter. Please write to Mike Kaye, Head of Information Standards, Area 4D, Nobel House, 17 Smith Square, London, SW1P 3JR (email: requestforinfo@defra.gsi.gov.uk) and he will arrange for an internal review of your case. Details of Defra's complaints procedure are on our [website](#).

If you are not content with the outcome of the internal review, section 50 of the FOIA and regulation 18 of the EIRs gives you the right to apply directly to the Information Commissioner for a decision. Please note that generally the Information Commissioner cannot make a decision unless you have first exhausted Defra's own complaints procedure. The Information Commissioner can be contacted at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF