

PUBLIC HEALTH ETC. (SCOTLAND) ACT 2008

EXPLANATORY NOTES

THE ACT – OVERVIEW

Part 9

Statutory Nuisances

Section 109 Insect nuisance

211. This section amends section 79 of the Environmental Protection Act 1990 (“the 1990 Act”), and in particular, subsection (1) of that section, which specifies the matters which constitute “statutory nuisances” for the purposes of Part III of that Act. Subsection (2) of section 109 inserts new paragraph (faa) into section 79(1), and provides that any insects emanating from premises and being prejudicial to health or a nuisance constitute a statutory nuisance for the purposes of Part III. Subsection (3) inserts new subsections (5AA) (5AB), (5AC) and (5AD) into section 79 to specify the insects and premises which are exempt from the application of the Part III statutory nuisance regime. New section 79(5AB)(a) excludes Sites of Special Scientific Interest, and new section 79(5AB)(b) enables the Scottish Ministers to make regulations specifying places or descriptions of places in respect of which the statutory nuisance provisions in section 79(1)(faa) will similarly not apply. New section 79(5AC) provides that the Scottish Ministers must consult before making regulations under 79(5AB)(b), in so far as it is reasonably practicable to do so. They must consult such associations of local authorities and other persons as they consider appropriate. Subsection (4) amends the definition of “premises” in section 79(7) in consequence of new section 79(5AB).

Section 110 Artificial light nuisance

212. This section amends section 79 of the 1990 Act. Subsection (2) inserts new paragraph (fba) into section 79(1), and provides that artificial light emitted from premises or any stationary object so as to be prejudicial to health or a nuisance constitutes a statutory nuisance for the purposes of Part III. Subsection (3) provides for an exemption from the artificial light statutory nuisance provisions in section 79(1)(fba) in relation to those premises referred to in section 79(2) (namely, premises occupied for naval, military or air force purposes). Subsection (4) inserts new subsection (5BA) into section 79 to exclude artificial light emitted from lighthouses from the scope of the statutory nuisance regime in Part III.

Section 111 Statutory nuisance: land covered with water

213. This section amends section 79 of the 1990 Act. It inserts new paragraph (ea) into section 79(1), and provides that any water covering land or land covered with water which is in such a state as to be prejudicial to health or a nuisance constitutes a statutory nuisance for the purposes of Part III of the 1990 Act. A new subsection (5ZA) is inserted into section 79, which provides a list of specific inclusions and exclusions from the meaning of “land” as it is used in new paragraph (ea). A new subsection (5ZB) is also inserted to define some of the terms used in subsection (5ZA).

Section 112 Power to make further provision regarding statutory nuisances

214. This section further amends the 1990 Act. Subsection (2) inserts new subsection (1ZA) into section 79 of the 1990 Act, and enables the Scottish Ministers to make regulations prescribing additional matters which constitute statutory nuisances for the purposes of Part III, and to enable the statutory nuisance regime to be more generally amended to respond to new or emerging statutory nuisances. This section also introduces new subsections (1ZB) and (1ZC) into section 79 of the 1990 Act. New section 79(1ZB) provides that Scottish Ministers must consult before making regulations under section 79(1ZA), in so far as it is reasonably practicable to do so. They must consult such associations of local authorities and other persons as they consider appropriate.

Section 113 Enforcement of statutory nuisances: fixed penalty notice

215. This section makes provision for the issue of fixed penalty notices (“FPN’s”). Subsection (2) inserts new subsection (4A) into section 80 of the 1990 Act. New subsection (4A) provides that where a local authority believes that a person has committed an offence under section 80(4) (failure to comply with any requirement or prohibition imposed by an abatement notice served under section 80(1)), it may give that person a FPN, thereby offering that person the opportunity of discharging liability to conviction for that offence by payment of the fixed penalty.
216. Subsection (3) inserts new section 80ZA into the 1990 Act after section 80. Section 80ZA makes supplemental provision in relation to FPN’s. Subsection (2) of new section 80ZA requires the FPN to set out the circumstances alleged to constitute the offence so as to give reasonable information about the offence. Subsection (3) of new section 80ZA requires the FPN to state the amount of the fixed penalty, the period in which it may be paid, the person to whom and the address at which the payment may be made, the method of payment and the consequences of not paying within the period for payment specified in the FPN. Subsection (4) sets the fixed penalty, in the case of nuisances relating to industrial, trade and business premises at £400, and at £150 for all other cases. Subsection (5) sets the period for payment of the fixed penalty at 14 days after the day on which the FPN is given and subsection (6) enables that period to be extended by the local authority in circumstances in which it considers it appropriate to do so. Subsection (7) prevents proceedings from being taken under section 80(4) before the end of the period for payment of the fixed penalty and subsection (9) provides that where proceedings have commenced for an offence in which a FPN was given, the FPN is to be considered withdrawn. Subsection (10) provides that any sum which is received by a local authority as a result of a FPN offered under section 80(4A) accrues to that authority.
217. Subsection (11) of new section 80ZA enables the Scottish Ministers to provide in regulations (subject to affirmative procedure) for the circumstances in which FPN’s may not be given, the form of a FPN and the method for payment of fixed penalties. It also enables Scottish Ministers to make regulations to modify the amount of fixed penalty (subject to a maximum of £500), to provide for the amount of the fixed penalty to be different in different cases or descriptions of case, to alter the period in which the penalty may be paid, and to provide for the keeping of accounts etc. by local authorities in relation to fixed penalties. Subsection (12) of new section 80ZA provides that Scottish Ministers must consult before making regulations under section 80ZA(11), in so far as it is reasonably practicable to do so. They must consult such associations of local authorities and other persons as they consider appropriate.
218. Subsection (4) amends subsection (3) of section 81 of the 1990 Act to provide that the powers available to a local authority to abate nuisance are available whether or not a FPN has been given.

Section 114 Procedure for regulations

219. This section amends section 161 (regulations, orders and directions) of the 1990 Act by inserting a new subsection (2B). The new subsection provides for regulations made under section 79(1ZA) or 80ZA(11) to be subject to affirmative procedure.

Section 115 Sewerage nuisance: local authority powers

220. This section amends section 26 of the Water Services etc. (Scotland) Act 2005 (“the 2005 Act”) to further specify the extent of a local authority’s powers in relation to the monitoring and enforcement of sewerage nuisances under section 26 of the 2005 Act. Subsection (2) provides that a local authority’s functions under Part III of the 1990 Act do not apply to nuisances which constitute a sewerage nuisance and in respect of which a sewerage code (contained in an order made under section 25 of the 2005 Act) applies.
221. Subsection (3) inserts a new subsection (10A) into section 26 of the 2005 Act, to apply the provisions of paragraphs 2, 3 and 5 of schedule 3 to the 1990 Act where a local authority is enforcing a sewerage code under section 26 of the 2005 Act, subject to the modifications specified in paragraphs (a) to (e). A local authority enforcing a sewerage code will acquire the powers of entry to premises set out in paragraph 2 of schedule 3 for the purpose of establishing whether a statutory nuisance exists or carrying out remedial action under Part III of the 1990 Act. Wilful obstruction of the exercise of these powers of entry will constitute a criminal offence, as will disclosure of any trade secret obtained by any person in the exercise of the powers. The local authority and those acting on its behalf will be protected from personal liability in respect of anything done in good faith in furtherance of Part III.