



2011 CHAPTER 23

PART 7

STATUTORY NUISANCES

Summary proceedings by persons aggrieved by statutory nuisances

70.—(1) A court of summary jurisdiction may act under this section on a complaint made by any person on the ground that that person is aggrieved by the existence of a statutory nuisance.

(2) If the court is satisfied that the alleged nuisance exists, or that although abated it is likely to recur on the same premises or, in the case of a nuisance within section 63(1)(j), in the same street, 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 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) 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) shall be brought—

- (a) except in a case falling within paragraph (b), (c) or (d), 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;
- (d) in the case of a statutory nuisance within section 63(1)(j) caused by noise emitted from or caused by an unattended vehicle or unattended machinery or equipment, against the person responsible for the vehicle, machinery or equipment.

(5) Subject to subsection (6), where more than one person is responsible for a statutory nuisance, subsections (1) to (4) 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) In relation to a statutory nuisance within section 63(1)(j) for which more than one person is responsible (whether or not what any one of those persons is responsible for would by itself amount to such a nuisance), subsection (4)(a) shall apply with the substitution of “each person responsible for the nuisance who can be found” for “the person responsible for the nuisance”.

(7) In relation to a statutory nuisance within section 63(1)(j) caused by noise emitted from or caused by an unattended vehicle or unattended machinery or equipment for which more than one person is responsible, subsection (4)(d) shall apply with the substitution of “any person” for “the person”.

(8) Before instituting proceedings for an order under subsection (2) against any person, the person aggrieved by the nuisance shall give to that person such notice in writing of the aggrieved person’s 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.

(9) The notice of the bringing of proceedings in respect of a statutory nuisance required by subsection (8) which is applicable is—

- (a) in the case of a nuisance falling within paragraph (i) or (j) of section 63(1), not less than 3 days’ notice; and
- (b) in the case of a nuisance of any other description, not less than 21 days’ notice;

but the Department 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.

(10) A person who, without reasonable excuse, contravenes any requirement or prohibition imposed by an order under subsection (2) 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.

(11) Subject to subsection (12), in any proceedings for an offence under subsection (10) 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.

(12) The defence under subsection (11) is not available—

- (a) in the case of a nuisance falling within paragraph (a), (d), (e), (f), (g) or (i) of section 63(1) except where the nuisance arises on industrial, trade or business premises;
- (b) in the case of a nuisance falling within paragraph (h) of section 63(1) except where—
 - (i) the artificial light is emitted from industrial, trade or business premises, or
 - (ii) the artificial light (not being light to which sub-paragraph (i) applies) is emitted by lights used for the purpose only of illuminating an outdoor relevant sports facility;
- (c) in the case of a nuisance falling within paragraph (j) of section 63(1) except where the noise is emitted from or caused by a vehicle, machinery or equipment being used for industrial, trade or business purposes;
- (d) in the case of a nuisance falling within paragraph (b) of section 63(1) except where the smoke is emitted from a chimney;
- (e) in the case of a nuisance falling within paragraph (c) or (n) of section 63(1); and
- (f) in the case of a nuisance which is such as to render the premises unfit for human habitation.

(13) For the purposes of subsection (12)(b) a relevant sports facility has the same meaning as in section 65(14).

(14) If a person is convicted of an offence under subsection (10), a court of summary jurisdiction may, after giving the district council in whose district the nuisance has occurred an opportunity of being heard, direct the council to do anything which the person convicted was required to do by the order to which the conviction relates.

(15) Where on the hearing of proceedings for an order under subsection (2) 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 that person for any expenses properly incurred by that person in the proceedings.

(16) If it appears to the court that neither the person responsible for the nuisance nor the owner or occupier of the premises or (as the case may be) the person responsible for the vehicle, machinery or equipment can be found the court may, after giving the district council in whose district the nuisance has occurred an opportunity of being heard, direct the council to do anything which the court would have ordered that person to do.