



# Environmental Protection Act 1990

## 1990 CHAPTER 43

### PART III

#### STATUTORY NUISANCES AND CLEAN AIR

##### *Statutory nuisances: England and Wales*

#### **82 Summary proceedings by persons aggrieved by statutory nuisances**

- (1) A magistrates' court may act under this section on a complaint made by any person on the ground that he is aggrieved by the existence of a statutory nuisance.
- (2) If the magistrates' court is satisfied that the alleged nuisance exists, or that although abated it is likely to recur on the same premises, 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 magistrates' 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) above 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) above shall be brought—
  - (a) except in a case falling within paragraph (b) or (c) below, 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;

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- (c) where the person responsible for the nuisance cannot be found, against the owner or occupier of the premises.
- (5) Where more than one person is responsible for a statutory nuisance, subsections (1) to (4) above 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) Before instituting proceedings for an order under subsection (2) above against any person, the person aggrieved by the nuisance shall give to that person such notice in writing of his 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.
- (7) The notice of the bringing of proceedings in respect of a statutory nuisance required by subsection (6) above which is applicable is—
- (a) in the case of a nuisance falling within paragraph (g) of section 79(1) above, not less than three days' notice; and
  - (b) in the case of a nuisance of any other description, not less than twenty-one days' notice;
- but the Secretary of State 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.
- (8) A person who, without reasonable excuse, contravenes any requirement or prohibition imposed by an order under subsection (2) above 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.
- (9) Subject to subsection (10) below, in any proceedings for an offence under subsection (8) above 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.
- (10) The defence under subsection (9) above is not available—
- (a) in the case of a nuisance falling within paragraph (a), (d), (e), (f) or (g) of section 79(1) above except where the nuisance arises on industrial, trade or business premises;
  - (b) in the case of a nuisance falling within paragraph (b) of section 79(1) above except where the smoke is emitted from a chimney;
  - (c) in the case of a nuisance falling within paragraph (c) or (h) of section 79(1) above; and
  - (d) in the case of a nuisance which is such as to render the premises unfit for human habitation.
- (11) If a person is convicted of an offence under subsection (8) above, a magistrates' court may, after giving the local authority in whose area the nuisance has occurred an opportunity of being heard, direct the authority to do anything which the person convicted was required to do by the order to which the conviction relates.
- (12) Where on the hearing of proceedings for an order under subsection (2) above 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

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reasonable) to pay to the person bringing the proceedings such amount as the court considers reasonably sufficient to compensate him for any expenses properly incurred by him in the proceedings.

- (13) If it appears to the magistrates' court that neither the person responsible for the nuisance nor the owner or occupier of the premises can be found the court may, after giving the local authority in whose area the nuisance has occurred an opportunity of being heard, direct the authority to do anything which the court would have ordered that person to do.