



Public Health Act 1936

1936 CHAPTER 49

PART III

NUISANCES AND OFFENSIVE TRADES.

Nuisances which may be dealt with summarily.

92 Statutory nuisances.

- (1) Without prejudice to the exercise by a local authority of any other powers vested in them by or under this Act, the following matters may, subject to the provisions of this Part of this Act, be dealt with summarily, and are in this Part of this Act referred to as "statutory nuisances," that is to say:—
- (a) any premises in such a state as to be prejudicial to health or a nuisance;
 - (b) any animal kept in such a place or manner as to be prejudicial to health or a nuisance;
 - (c) any accumulation or deposit which is prejudicial to health or a nuisance;
 - (d) any dust or effluvia caused by any trade, business, manufacture or process and being prejudicial to the health of, or a nuisance to, the inhabitants of the neighbourhood;
 - (e) any factory (not being a factory to which section one of the Factory and Workshop Act, 1901, applies) workshop, or workplace, which is not provided with sufficient means of ventilation, or in which sufficient ventilation is not maintained, or which is not kept clean or not kept free from noxious effluvia, or which is so overcrowded while work is carried on as to be prejudicial to the health of those employed therein;
 - (f) any other matter declared by any provision of this Act to be a statutory nuisance.
- (2) A local authority shall not without the consent of the Minister institute summary proceedings under this Part of this Act in respect of any such nuisance as is mentioned in paragraph (c) or paragraph (d) of the preceding subsection if proceedings in respect thereof might be instituted under the Alkali, &c. Works Regulation Act, 1906.

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- (3) So much of paragraph (e) of subsection (1) of this section as relates to the provision of means of ventilation and the maintenance of ventilation shall not apply to a shop to which the Shops Act, 1934, applies.
- (4) In determining for the purposes of the said paragraph (e) whether any factory or workshop is provided with sufficient means of ventilation or whether sufficient ventilation is maintained therein, or whether any factory or workshop is so overcrowded as to be prejudicial to health, regard shall be had to the requirements of the Factory and Workshop Act, 1901, and of any order made by the Secretary of State thereunder, with respect to ventilation or overcrowding in factories and workshops.

93 Service of abatement notice.

Where a local authority are satisfied of the existence of a statutory nuisance, they shall serve a notice (hereafter in this Act referred to as "an abatement notice") on the person by whose act, default or sufferance the nuisance arises or continues, or, if that person cannot be found, on the owner or occupier of the premises on which the nuisance arises, requiring him to abate the nuisance and to execute such works and take such steps as may be necessary for that purpose :

Provided that—

- (a) where the nuisance arises from any defect of a structural character, the notice shall be served on the owner of the premises;
- (b) where the person causing the nuisance cannot be found and it is clear that the nuisance does not arise or continue by the act, default or sufferance of the owner or the occupier of the premises, the local authority may themselves do forthwith what they consider necessary to abate the nuisance and to prevent a recurrence thereof.

94 Power of court to make nuisance order if abatement notice disregarded.

- (1) If the person on whom an abatement notice has been served makes default in complying with any of the requirements of the notice, or if the nuisance, although abated since the service of the notice, is, in the opinion of the local authority, likely to recur on the same premises, the authority shall cause a complaint to be made to a justice of the peace, and the justice shall thereupon issue a summons requiring the person on whom the notice was served to appear before a court of summary jurisdiction.
- (2) If on the hearing of the complaint it is proved that the alleged nuisance exists, or that although abated it is likely to recur on the same premises, then, subject to the provisions of subsections (4) and (5) of this section the court shall make an order (hereafter in this Act referred to as "a nuisance order") for either, or both, of the following purposes—
- (a) requiring the defendant to comply with all or any of the requirements of the abatement notice, or otherwise 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 a recurrence;

and may also impose on the defendant a fine not exceeding five pounds.

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Where a nuisance proved to exist is such as to render a building, in the opinion of the court, unfit for human habitation, the nuisance order may prohibit the use of the building for that purpose until a court of summary jurisdiction, being satisfied that it has been rendered fit for human habitation, withdraws the prohibition.

- (3) Where on the hearing of a complaint under this section it is proved that the alleged nuisance existed at the date of the service of the abatement notice and that at the date of the making of the complaint it either still existed or was likely to recur, then, whether or not at the date of the hearing it still exists or is likely to recur, the court shall order the defendant to pay to the local authority such reasonable sum as the court may determine in respect of the expenses incurred by the authority in, or in connection with, the making of the complaint and the proceedings before the court.
- (4) Where proceedings are brought under this section in respect of a nuisance under paragraph (c) of subsection (1) of section ninety-two of this Act (which relates to certain accumulations or deposits) it shall be a defence for the defendant to prove that the accumulation or deposit complained of was necessary for the effectual carrying on of a business or manufacture and has not been kept longer than is necessary for the purposes of the business or manufacture, and that the best practicable means have been taken for preventing it from being prejudicial to the health of, or a nuisance to, the inhabitants of the neighbourhood.
- (5) Where proceedings are brought under this section in respect of a nuisance under paragraph (d) of subsection (1) of section ninety-two of this Act (which relates to dust or effluvia caused by any trade, business, manufacture or process), it shall be a defence for the defendant to prove that the best practicable means have been taken for preventing, or counteracting the effect of, the dust or effluvia.
- (6) If it appears to the court that the person by whose act or default the nuisance arises, or the owner or occupier of the premises, cannot be found, the nuisance order may be addressed to, and executed by, the local authority.

95 Penalty for contravention of nuisance order, and abatement of nuisance by local authority.

- (1) Any person who fails without reasonable excuse to comply with, or knowingly contravenes, a nuisance order shall be liable to a fine not exceeding five pounds and to a further fine not exceeding forty shillings for each day on which the offence continues after conviction therefor.
- (2) Without prejudice to the foregoing provisions of this section, where a nuisance order has not been complied with, the local authority may abate the nuisance, and do whatever may be necessary in execution of the order.

96 Costs of local authority in abating, or preventing recurrence of, nuisance.

- (1) Any expenses reasonably incurred by a local authority under this Part of this Act in abating, or preventing the recurrence of, a statutory nuisance in respect of which a nuisance order has been made may be recovered by them—
 - (a) where the order was made on some person other than the local authority, from that person ;
 - (b) where the order was made on the local authority, from the person by whose act or default the nuisance was caused,

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and, in either case, if the person in question is the owner of the premises, from any person who is for the time being the owner thereof.

- (2) In proceedings to recover any such expenses as aforesaid, the court shall have power to apportion the expenses between persons by whose acts or defaults the nuisance is caused in such manner as the court may deem fair and reasonable.

97 Proceedings where nuisance caused by acts or default of more than one person.

- (1) Where a statutory nuisance appears to be wholly or partly caused by the acts or defaults of two or more persons, proceedings may be instituted under the foregoing provisions of this Part of this Act against any one of them, or all or any two or more of them may be included in the same proceedings; and, subject to those provisions, any one or more of the persons proceeded against may be ordered to abate the nuisance, so far as it appears to the court to be caused by his or their acts or defaults, or may be prohibited from continuing any acts or defaults which, in the opinion of the court, contribute to the nuisance, or may be fined or otherwise punished, notwithstanding that the acts or defaults of any one of those persons would not separately have caused a nuisance, and the costs may be apportioned as the court may deem fair and reasonable.
- (2) Proceedings against several persons included in one complaint shall not abate by reason of the death of any of the persons so included, but may be carried on as if the deceased person had not been so included.
- (3) Where some only of the persons by whose acts or defaults a nuisance has been caused have been proceeded against under this Act, they may, without prejudice to any other remedy, recover in a summary manner from the other persons who were not proceeded against a proportionate part of the costs of, and incidental to, the proceedings and the abatement of the nuisance, and of any fine or costs ordered to be paid in the proceedings.

98 Power to proceed where cause of nuisance arises outside district.

- (1) Where a nuisance within, or affecting any part of, the district of a local authority appears to be wholly or partly caused by some act or default committed or taking place outside their district, the authority may take, or cause to be taken, against any person in respect of that act or default any proceedings in relation to nuisances by this Act authorised in the like cases, and with the like incidents and consequences, as if the act or default were committed or took place wholly within their district, so however that summary proceedings shall only be taken before a court having jurisdiction in the place where the act or default is alleged to be committed or to take place.
- (2) This section shall extend to London so far as to authorise proceedings to be taken under it in respect of any nuisance within, or affecting any part of, the district of a local authority, where that nuisance is wholly or partly caused by some act or default committed or taking place in London.

99 Power of individual to make complaint as to statutory nuisance.

Complaint of the existence of a statutory nuisance under this Act may be made to a justice of the peace by any person aggrieved by the nuisance, and thereupon the like proceedings shall be had, with the like incidents and consequences as to the making of orders, penalties for disobedience of orders and otherwise, as in the case of a complaint

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by the local authority, but any order made in such proceedings may, if the court after giving the local authority an opportunity of being heard thinks fit, direct the authority to abate the nuisance.

100 Local authority may take proceedings in High Court for abatement of statutory nuisance.

If in the case of any statutory nuisance the local authority are of opinion that summary proceedings would afford an inadequate remedy, they may in their own name take proceedings in the High Court for the purpose of securing the abatement or prohibition of that nuisance, and such proceedings shall be maintainable notwithstanding that the authority have suffered no damage from the nuisance.