



# Public Health (Scotland) Act 1897

## 1897 CHAPTER 38

### PART II

#### SANITARY PROVISIONS.

##### *General Nuisances.*

#### 16 Definition of nuisances.

For the purposes of this Act,

- (1) Any premises or part thereof of such a construction or in such a state as to be a nuisance or injurious or dangerous to health :
- (2) Any street, pool, ditch, gutter, watercourse, sink, cistern, watercloset, earth-closet, privy, urinal, cesspool, drain, dung-pit, or ashpit so foul or in such a state or so situated as to be a nuisance or injurious or dangerous to health:
- (3) Any well or water supply injurious or dangerous to health:
- (4) Any stable, byre, or other building in which any animal or animals are kept in such a manner or in such numbers as to be a nuisance or injurious or dangerous to health :
- (5) Any accumulation or deposit, including any deposit of mineral refuse, which is a nuisance or injurious or dangerous to health, or any deposit of offensive matter, refuse, or offal, or manure (other than farmyard manure or manure from byres or stables, or spent hops from breweries), within fifty yards of any public road wherever situated, or any offensive matter, refuse, or offal, or manure other than aforesaid contained in uncovered trucks or waggons standing or being at any station or siding or elsewhere on a railway or in canal boats so as to be a nuisance or injurious or dangerous to health:
- (6) Any work, manufactory, trade, or business, injurious to the health of the neighbourhood or so conducted as to be injurious or dangerous to health, or any collection of rags or bones injurious or dangerous to health:

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*Status: This is the original version (as it was originally enacted).*

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- (7) Any house or part of a house so overcrowded as to be injurious or dangerous to the health of the inmates:
- (8) Any schoolhouse, or any factory which is not a factory subject to the provisions of the Factory and "Workshop Acts, 1878 to 1895, or any Act amending the same, with respect to cleanliness, ventilation, or overcrowding, and
- (i) is not kept in a cleanly state and free from effluvia arising from any drain, privy, watercloset, earth-closet, urinal, or other nuisance, or
  - (ii) is not ventilated in such a manner as to render harmless so far as practicable any gases, vapours, dust, or other impurities generated in the course of the work carried on therein that are a nuisance or injurious or dangerous to health, or
  - (iii) is so overcrowded while work is carried on as to be injurious or dangerous to the health of those therein employed:
- (9) Any fireplace or furnace situated within the limits of any burgh or special scavenging district which does not so far as practicable consume the smoke arising from the combustible matter used therein, for working engines by steam, or in any mill, factory, dyehouse, brewery, bakehouse, or gaswork, or in any manufacturing or trade process whatsoever:
- (10) Any chimney (not being the chimney of a private dwellinghouse) sending forth smoke in such quantity as to be, a nuisance or injurious or dangerous to health: and
- (11) Any churchyard, cemetery, or place of sepulture so situated or so crowded or otherwise so conducted as to be offensive or injurious or dangerous to health ;  
shall be deemed to be nuisances liable to be dealt with summarily in manner provided by this Act: Provided that—
- (a) a penalty shall not be imposed as herein-after provided on any person in respect of any accumulation or deposit necessary for the effectual carrying on of any business, trade, or manufacture, if it be proved to the satisfaction of the court that the accumulation or deposit has not been kept longer than is necessary for the purposes of the business, trade, or manufacture, and that the best available means have been taken for preventing injury or danger thereby to the public health; and
  - (b) in considering whether any dwelling-house or part thereof which is also used as a factory, or whether any factory, used also as a dwelling-house, is a nuisance by reason of overcrowding, the court shall have regard to the circumstances of such other use.

## **17 Duty of local authority to inspect district for detection of nuisances.**

It shall be the duty of every local authority to cause to be made from time to time inspection of their district, with a view to ascertain what nuisances exist calling for removal under the powers of this Act, and to enforce the provisions of this Act in order to remove the same, and otherwise to put in force the powers vested in them relating to public health, so as to secure the proper sanitary condition of all premises within their district.

## **18 Power of entry to local authority or their officers.**

If the local authority, or medical officer, or sanitary inspector have reasonable grounds for believing that nuisance exists in any premises, such local authority, or medical officer, or sanitary inspector may demand admission for themselves, the chief constable or superintendent of police, or any other person or persons whom the local authority may desire to enter and inspect such premises, and, if necessary, to open up the ground of such premises, or for any or all of them, to inspect the same at any hour between nine in the morning and six in the evening, or at any hour when the operations suspected to cause the nuisance are believed to be in progress or are usually carried on; and may cause the ground or surface to be opened, and the drains to be tested, or such other work to be done as may be necessary for an effectual examination of the said premises: Provided always, that if no nuisance be found to exist, the local authority shall restore the premises at their own expense, and if admission be refused, the local authority, or medical officer, or sanitary inspector may apply to the sheriff, or to any magistrate or justice of the peace having jurisdiction in the place, stating on oath such belief; and such sheriff, magistrate, or justice may, after intimation to the owner and occupier, or person in charge of the premises, by order in writing, require the occupier or person having the custody of such premises to admit the local authority and others aforesaid; and if such occupier or person refuse or fail to obey such order, he shall, on conviction of such offence, be liable to a penalty not exceeding five pounds; and on being satisfied of such failure or refusal, the sheriff, magistrate, or justice may grant warrant to such local authority, officers, or person or persons for immediate forcible entry into the premises ; and if no such occupier or person can be discovered, or if no person is found on the premises to give or refuse admission, the local authority or their officers may enter the premises without any order or warrant, and forcibly if need be.

Provided that if no nuisance be found to exist, the local authority shall restore the premises at their own expense.

Any order made by a sheriff, magistrate, or justice, for the admission of the local authority or their officers or other persons under this section shall continue in force until the nuisance has been removed, or the work for which the entry was necessary has been done.

## **19 Information of nuisances to local authority.**

Information of any nuisance under this Act in the district of any local authority may be given to such local authority by any person, and it shall be the duty of every officer of such authority, and of any constable or officer of police of the county or burgh, in accordance with the regulations of the authority having control over him, to give that information, and it shall be the duty of the said authority to make the said regulations. The local authority shall give such directions to their officers as will secure the existence of the nuisance being immediately brought to the knowledge of any person who may be required to remove it, and such officer shall do so by an intimation as herein-after provided.

## **20 Notice requiring removal of nuisance.**

- (1) On the receipt of any information respecting the existence of a nuisance liable to be dealt with summarily under this Act, the local authority shall, if satisfied of the existence of a nuisance, serve a notice on the author of the nuisance, or, if such author cannot be found, on the occupier or owner of the premises on which the nuisance

arises or continues, requiring him to remove the same within the time specified in the notice, and to execute such works and do such things as may be necessary for that purpose, and if the local authority think it desirable (but not otherwise) specifying any works to be executed.

- (2) The local authority may also by the same or another notice served on such occupier, owner, or person, require him to do what is necessary for preventing the recurrence of the nuisance, and, if they think it desirable, may specify any works to be executed for that purpose, and may serve that notice, notwithstanding that the nuisance may for the time have been removed, if the local authority consider that it is likely to recur on the same premises.
- (3) Provided that—
- (a) where the nuisance arises from any want or defect of a structural character, or where the premises are unoccupied, the notice shall be served on the owner;
  - (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 or default or sufferance of the occupier or owner of the premises, the local authority may themselves remove the same, and may do what is necessary to prevent the recurrence thereof.

## **21 On non-compliance with notice local authority to proceed summarily.**

If the person on whom a notice to remove a nuisance has been served as aforesaid makes default in complying with any of the requisitions thereof within the time specified, and if the nuisance, although removed since the service of the notice is, in the opinion of the local authority, likely to recur on the same premises, the local authority shall proceed by summary petition as hereinafter provided.

## **22 Proceedings by local authority when nuisances are ascertained to exist.**

In any case where the existence of a nuisance is ascertained to their satisfaction by the local authority, or where the nuisance in the opinion of the local authority did exist, and, although the same may have been since removed or discontinued, is in their opinion likely to recur or to be repeated, they may apply to the sheriff or to any magistrate or justice, by summary petition in manner herein-after directed, and if it appear to his satisfaction that the nuisance exists, or, if removed or discontinued, that it is likely to recur or to be repeated, he shall decern for the removal or remedy or discontinuance or interdict of the nuisance as herein-after mentioned; provided that if it appear to the sheriff or magistrate or justice that the nuisance arose from the wilful fault or culpable negligence either of the owner or occupier of the premises, and that a notice in respect thereof had previously been served on such author, the sheriff or magistrate or justice may, in addition to making a decree as aforesaid, impose a fine not exceeding five pounds on such owner or occupier; provided that in the cases under sub-sections (6) and (8) in section sixteen of this Act such application shall be made only on medical certificate, or on a representation by a parish council, or on a requisition in writing under the hands of any ten ratepayers of the district of the local authority, and that in these cases and the cases under sub-sections (9) and (10) in said section, it shall be made only to the sheriff; and farther, that in the cases under sub-section (11) in section sixteen it shall not be necessary to cite any person as the author of the nuisance, but such application shall be proceeded with by the sheriff (to whom alone it shall be made) after such intimation to the collector of the churchyard or other dues, or to such other person as to the sheriff shall seem meet; and such person or persons as shall appear after such intimation shall, if the sheriff think proper, be allowed to be

heard and to object to such application in the same manner as if he or they were the author of the alleged nuisance within the meaning of this Act.

### **23 Form of interlocutor.**

It shall not be necessary to restrict such decree to any special remedy prayed for in the petition, but, as the case shall require, the author of the nuisance or owner or occupier of the premises may be ordained to execute such works or to do or to abstain or cease from doing such acts or things as are necessary to remove the nuisance complained of, in such manner and within such time as shall be specified; and if the sheriff, magistrate, or justice, is of opinion that such or the like nuisance is likely to recur, he may further grant interdict against the recurrence of it, or do otherwise, as the case may in his judgment require; and if the nuisance proved to exist be such as to render a house or building unfit for human habitation or use, he may prohibit such habitation or use until in his judgment it is rendered fit therefor, and on the sheriff, magistrate, or justice being satisfied that it has been rendered fit for that purpose he may declare the house or building habitable, and from the date thereof such house or building may be let or occupied, or the sheriff, magistrate, or justice may do otherwise as the case may in his judgment require.

### **24 Penalty for contravention of decree and of interdict.**

If the said decree be not complied with in good and sufficient manner, and within the time appointed, the author of the nuisance, or the owner or occupier, as the case may be, shall be liable, in the case of nuisances under sub-sections (1), (2), (3), (4), (5), (7), (10), and (11) in section sixteen of this Act, to a penalty of not more than ten shillings per day during his failure so to comply ; and if the said interdict be knowingly infringed by the act or authority of the owner or occupier, such owner or occupier shall be liable for every such offence to a penalty not exceeding twenty shillings per day during such infringement; and in the case of nuisances under sub-sections (6), (8), and (9) in the said section, the party not complying with or infringing such decree shall be liable to a penalty not exceeding five pounds for the first offence, and not exceeding ten pounds for the second, and for each subsequent conviction a sum not exceeding double the amount of the penalty in the last preceding conviction, but no penalty shall exceed two hundred pounds : Provided always, in the case of a nuisance under the said sub-section (9), that if it appears to the sheriff that the best means then known to be available for mitigating the nuisance, or the injurious effects thereof, have not been adopted, he may suspend his final determination upon condition that the author of the nuisance shall undertake to adopt within a definite time such means as he shall judge to be practicable, and order to be carried into effect, for mitigating or preventing such injurious effects.

### **25 Order when structural works are required.**

When it shall appear to the sheriff, magistrate, or justice that the execution of structural works is required for the removal or remedy of a nuisance, he may appoint such works to be carried out under the direction and subject to the approval of any person he may appoint; and he may, before making his order, require the local authority, within a time to be specified by him, to furnish him with an estimate of the cost of the required works.

**26 Local authority to do works on owner's or occupier's default, or if person causing nuisance cannot be found.**

In case of non-compliance with or infringement of any decree aforesaid, the sheriff, magistrate, or justice may, on application by the local authority, grant' warrant to such person or persons as he may deem right to enter the premises to which such decree relates, and remove or remedy the nuisance thereby condemned or interdicted, and do whatever may be necessary in execution of such decree; or if in the original application it appears to his satisfaction that the author of the nuisance is not known or cannot be found, then such decree may at once ordain the local authority to execute the works thereby directed ; and all "expenses incurred by the local authority in executing the works may be recovered from the author of the nuisance and failing him from the owner of the premises.

**27 Articles removed to be sold.**

Any matter or thing removed by the local authority in pursuance of this Act may be sold by public roup, after not less than five days notice by printed handbills posted in the locality, except in cases where delay would be prejudicial to health, or in which the matter or thing is not of the value of two pounds or upwards, in which cases the sheriff, magistrate, or justice may, by writing under his hand, order the immediate removal, sale, or destruction of the matter or thing, and the proceeds of the sale shall be retained by the local authority, and applied pro tanto in payment of all expenses incurred under this Act with reference to such nuisance ; and the surplus, if any, shall be paid, on demand, by the local authority, to the owner of such matter or thing; and the balance of such expenses shall be defrayed, if such proceeds are insufficient for that purpose, by the author of the nuisance or the owner of the premises.

**28 Foul ditches, &c. may be replaced by sewers.**

Whenever any watercourse, ditch, gutter, or drain along the side of any street, or between or parallel to rows of dwellinghouses, shall be used or partly used for the conveyance of any water, sewage, or other liquid or matter from any premises, and cannot in the opinion of the local authority be rendered free from foulness or offensive smell without the laying down of a sewer or of some other structure, such local authority shall and they are hereby required to lay down such sewer or other structure within the limits of their district, or, subject to the approval of the Board, where necessary for the purpose of outfall or distribution of sewage, without their district, and to keep the same in good and serviceable repair; and they may enter any premises for such purposes, and use such part thereof as shall be necessary, and for such use shall pay such damages as may be assessed by the sheriff on a summary application, and to such party as the sheriff may direct: Provided always, that no damage shall be payable to any person who has caused or contributed to cause such watercourse, ditch, gutter, or drain to become foul or offensive, unless such person shall satisfy the sheriff that he had justifiable excuse for so doing; and such local authority are hereby authorised and empowered to assess the owners of all the premises (according to the yearly value thereof) from which then or at any time thereafter any material other than pure water flows, falls, or is carried into the said sewer or other structure, for payment of all expenses incurred in making and maintaining the same, and that either in one sum or in instalments, as they shall think just and reasonable, and after fourteen days notice at the least left with the said owners, if resident within the district, and if not so resident with the occupiers of the said premises, to levy and collect the sum so assessed, with the same remedies in case of default in payment thereof as are herein-

after provided with reference to the public health general assessment leviable under this Act.

**29 Local authority may erect public waterclosets, &c.**

The local authority may erect such public ashpits, waterclosets, privies, and urinals, and in such situations, as they may think fit, and may defray the expense thereof, and of keeping the same in repair and in good order, and shall cause such privies to be cleansed daily; and the local authority may also, by written notice to the owner or occupier of any schoolhouse, or of any factory or building in which persons are employed in any manufacture, trade, or business, require them or either of them, within a time specified, to construct a sufficient number of waterclosets or privies for the separate use of each sex; and any person failing to comply with such notice shall be liable for each offence in a penalty not exceeding twenty pounds.

**30 Penalty for injuring closet, &c. so as to cause nuisance.**

If a person causes any drain, watercloset, earth-closet, privy, urinal, or ashpit to be a nuisance or injurious or dangerous to health, by wilfully destroying or damaging the same or any water-supply, apparatus, pipe, or work connected therewith, or by otherwise wilfully stopping up, or wilfully interfering with, or improperly using the same, or any such water-supply, apparatus, pipe, or work, he shall be liable to a penalty not exceeding five pounds.

**31 Waterclosets, &c. used in common.**

The following provisions shall have effect with respect to any watercloset, earth-closet, privy, or similar convenience used in common by the occupiers of two or more separate dwelling-houses, or by other persons :—

- (1) If any person injures or improperly fouls any such convenience, or anything used in connection therewith, he shall for each offence be liable to a penalty not exceeding ten shillings;
- (2) If any such watercloset, earth-closet, privy, or similar convenience, or the approaches thereto, or the walls, floors, seats, or fittings thereof, is or are, in the opinion of the local authority or of their sanitary inspector or medical officer, in such a state as to be a nuisance or annoyance to any of the persons using, or entitled to use, the same for want of the proper cleansing thereof, such of the persons having the use thereof in common as may be in default, or in the absence of proof satisfactory to the court as to which of the persons having the use thereof in common is in default, each of those persons shall be liable to a penalty not exceeding ten shillings, and to a penalty not exceeding five shillings for every day during which the offence continues after a conviction for the offence.