

 <b>West Lothian Council</b>	<b>Environmental Health</b>		<b>SUBJECT:</b> Statutory Nuisance Law
		Food Safety/Food Hygiene	<b>NUMBER:</b> PH07a
<b>REVISED:</b> 17/11/2008		Health & Safety	
	✓	Public Health	
<b>STATUS:</b> PUBLIC ADVICE	✓	Pollution Control	
	✓	Pest Control/Dog Warden	

## **Information Sheet PH07a The law of Statutory Nuisance**

We are often asked about what constitutes a Statutory Nuisance. In general, there is no quick, simple answer to this, with a few exceptions. These notes have been put together to help explain how decisions are made on whether a problem is a statutory nuisance.

Often, this has been decided in previous court cases and where this is the case, reference is made to the court case concerned. This is known as 'case law', which generally sets a precedent with which subsequent court cases must be consistent.

We acknowledge the Scottish Government guidance on Statutory Nuisance, from which these notes are adapted.

### **Nuisance in Scotland**

There are two ways of addressing a problem of nuisance in Scotland: either through the common law (i.e. law made by the Courts in successive judgements) or, if applicable, through the statutory provisions in the Environmental Protection Act 1990 (EPA). (i.e. laws passed by Parliament).

Nuisance generally entails some form of damage to, or intolerable interference with a person's use or enjoyment of, property. There are consequently any number of situations that a court may consider to be a nuisance under common law. Under the EPA however, only certain matters may constitute a statutory nuisance. The various matters which may constitute a statutory nuisance are set down in section 79 of the EPA. In each case, the matter must either be a nuisance in its own right or be prejudicial to health, in order to be a statutory nuisance.

### **The Environmental Protection Act 1990**

Part III of the EPA contains the main provisions on statutory nuisance. (Caution should be used as this has been updated and altered by other laws several times since it was first written). It enables local authorities and individuals to take action to secure the abatement of a statutory nuisance. Local authorities have a duty to inspect their areas to detect whether a nuisance exists or is likely to recur. An authority must also take such steps as are reasonably practicable to investigate any complaint of statutory nuisance from a person living in its area. Where the local authority is satisfied that a statutory nuisance exists, or is likely to occur or recur, it must serve an abatement notice on the person responsible. The notice should impose all or any of the following requirements:

- the abatement of the nuisance or prohibition or restriction of its occurrence or recurrence;
- the carrying out of such works and other steps necessary for any of those purposes.

## **Appeals**

The person on whom the notice is served may appeal to the Sheriff within 21 days of the date on which he is served with the notice. The detail of the appeal procedure is included in Schedule 3 of the EPA and in the regulations made under the Schedule, the Statutory Nuisance (Appeals)(Scotland) Regulations 1996.

## **Failure to Comply with an Abatement Notice**

Failure to comply with the terms of an abatement notice without reasonable excuse may result in prosecution in the Sheriff Court. On summary conviction a person may be liable to a fine not exceeding level five on the standard scale (presently £5000) plus an additional daily fine of an amount equal to one tenth of that level (i.e. £500) for each day on which the offence continues after conviction. Where the conviction is for an offence on industrial, trade or business premises, the maximum fine on summary conviction is £40,000. From early 2009 it will be possible for Local Authorities to issue fixed penalty notices for failure to comply with an abatement notice.

It is a defence against liability for the failure to comply with (or contravention of) an abatement notice to prove that the best practicable means were used to prevent or counteract the effects of the nuisance. However this defence is not available in the case of certain nuisances and these are listed in section 80 of the EPA.

If an abatement notice is not complied with, the local authority may take the necessary steps to abate the nuisance itself (including in the case of noise nuisance, seizure of the equipment causing the noise) and may recover the costs which were reasonably incurred in doing this from the responsible person.

## **Private Actions**

The EPA also makes provision for any person (i.e. a member of the public or a business) aggrieved by the existence of a statutory nuisance to make an application to the Sheriff who, if satisfied that a nuisance exists, shall make an order requiring the abatement of the nuisance and/or the prevention of its recurrence.

## **Further Information**

Environmental Health is always willing to discuss any queries or problems in connection with Statutory Nuisance. To help with this, we have produced more detailed notes, which we will be happy to send out on request.

If you are in any doubt about what to do, then please contact us on 01506 282500 or [environmentalhealth@westlothian.gov.uk](mailto:environmentalhealth@westlothian.gov.uk). However, if you are the recipient of an Abatement Notice, you should consider seeking legal advice.