

THIRD SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 5154 GIBRALTAR Thursday 13th June 2024

B. 17/24

BILL

FOR

ENVIRONMENTAL HEALTH (NUISANCES) BILL 2024

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FOR

AN ACT to restate the law relating to statutory nuisances with amendments and to improve the summary procedures for dealing with them, to control the emission of smoke by vessels, to provide for the repeal of the existing controls over offensive trades or businesses, and for connected purposes.

ENACTED by the Legislature of Gibraltar.

PART 1

Title.

1. This Act may be cited as the Environmental Health (Nuisances) Act 2024.

Commencement.

2. This Act comes into operation on the day of publication.

Interpretation.

3.(1) In this Act—

“chimney” includes structures and openings of any kind from or through which smoke may be emitted;

“dust” does not include dust emitted from a chimney as an ingredient of smoke;

“Environmental Agency” means the Environmental Agency Limited;

“equipment” includes a musical instrument;

“fumes” means any airborne solid matter smaller than dust;

“gas” includes vapour and moisture precipitated from vapour;

“industrial, trade or business premises” means premises used for any industrial, trade or business purposes or premises not so used on which matter is burnt in connection with any industrial, trade or business process, and premises are used for industrial purposes where they are used for the purposes of any treatment or process as well as where they are used for the purposes of manufacturing;

“Minister” means the Minister with responsibility for the environment;

“noise” includes vibration;

“owner”, in relation to any land, means a person (other than a mortgagee not in possession) who, whether in his own right or as trustee for any other person, is entitled to receive rent at market rate for the land, or where the land is not let at market rate, would be so entitled if it were so let;

“person responsible” –

- (a) in relation to a statutory nuisance means the person to whose act, default or sufferance the nuisance is attributable;
- (b) in relation to machinery or equipment, includes any person who is for the time being the operator of the machinery or equipment;

“prejudicial to health” means injurious, or likely to cause injury, to health;

“private dwelling” means any building, or part of a building, used or intended to be used, as a dwelling;

“smoke” includes soot, ash, grit and gritty particles emitted in smoke.

(2) In this Act “best practicable means” is to be interpreted by reference to the following provisions –

- (a) “practicable” means reasonably practicable having regard among other things to local conditions and circumstances, to the current state of technical knowledge and to the financial implications;
- (b) the means to be employed include the design, installation, maintenance and manner and periods of operation of plant and machinery, and the design, construction and maintenance of buildings and structures;
- (c) the test is to apply only so far as compatible with any duty imposed by law;
- (d) the test is to apply only so far as compatible with safety and safe working conditions, and with the exigencies of any emergency or unforeseeable circumstances.

Statutory nuisances

Statutory nuisances.

4.(1) Subject to subsections (2) to (5), the following matters constitute “statutory nuisances” for the purposes of this Act –

- (a) any premises in such a state as to be prejudicial to health or a nuisance;
- (b) smoke emitted from premises so as to be prejudicial to health or a nuisance;
- (c) fumes or gases emitted from premises so as to be prejudicial to health or a nuisance;
- (d) any dust, steam, smell, or other 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 accumulation or deposit which is prejudicial to health or a nuisance;
- (f) any animal or bird kept in such a place or manner as to be prejudicial to health or a nuisance;
- (g) noise emitted from premises so as to be prejudicial to health or a nuisance;
- (h) noise that is prejudicial to health or a nuisance and is emitted from or caused by machinery or equipment in a street;
- (i) any insects or other vermin emanating from relevant industrial, trade or business premises and being prejudicial to health or a nuisance;
- (j) any 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 other substances or which is so overcrowded while work is carried on as to be prejudicial to the health of those employed therein;
- (k) any house or part of a house, or other structure including a shed or tent, used for human habitation which is so overcrowded or insufficiently ventilated as to be prejudicial to the health of occupiers, whether or not members of the same family, or in relation to the use of which, by reason of the absence of proper sanitary accommodation or otherwise gives rise to a nuisance or conditions prejudicial to health;
- (l) any pool, ditch, gutter or watercourse which is so foul or in such a state as to be prejudicial to health or a nuisance;

- (m) any premises not sufficiently supplied with fresh and salt water, regard being had in every case to the nature thereof, the number of persons usually occupying, inhabiting or using the same, and the means of supply thereto;
- (n) any house or erection, and any fixture, matter or thing affixed to or placed in or upon any house or erection, in such a state as to be dangerous to any person within or passing or being near to, such house or erection;
- (o) any well, tank, cistern or reservoir for water used for dietetic purposes, the water wherein shall be a nuisance, or the use whereof for dietetic purposes would be prejudicial to health;
- (p) any collecting area, filter, gutter or pipe for the collecting, purifying or conveying water for dietetic purposes, which shall be in such a state or condition that the water collected thereby, or passing over or through the same, would be a nuisance, or the use whereof for dietetic purposes would be prejudicial to health;
- (q) any cistern, well, pool, channel, barrel, bucket, tub, or other vessel or receptacle so placed, constructed or kept as to allow the breeding of insects therein, or render the water therein liable to contamination or prejudicial to health;
- (r) any gutter, drain, shoot, stack pipe or downspout of a building which by reason of its insufficiency or defective condition causes damp in any such building or in an adjoining building;
- (s) any deposit of material in or on any building or land which causes damp in such building or in an adjoining building so as to be prejudicial to health;
- (t) any dustbin, manure bin or other receptacle which is or is kept in such a condition as to be prejudicial to health or a nuisance;
- (u) any other matter declared by any enactment to be a statutory nuisance,

and it shall be the duty of the Environmental Agency to carry out inspections from time to time to detect any statutory nuisances which ought to be dealt with under section 5 and, where a complaint of statutory nuisance is made to it, to take such steps as are reasonably practicable to investigate the complaint.

- (2) Subsection (1)(b) does not apply to the chimney of a private house.
- (3) Subsection (1)(c) does not apply in relation to premises other than private dwellings.
- (4) Subsection (1)(g) does not apply to noise caused by aircraft other than model aircraft.
- (5) Subsection (1)(h) does not apply to noise made -
 - (i) by traffic;

- (ii) noise made by any naval, military or air force of the Crown;
- (iii) by a political demonstration or a demonstration supporting or opposing a cause or campaign;
- (iv) to noise made by the Government or the Environmental Agency in exercise of powers conferred on them by any enactment.

Summary proceedings for statutory nuisances.

5.(1) Subject to subsection (3), where the Environmental Agency is satisfied that a statutory nuisance exists, or is likely to occur or recur, the Environmental Agency shall serve a notice (“an abatement notice”) imposing all or any of the following requirements -

- (a) requiring the abatement of the nuisance or prohibiting or restricting its occurrence or recurrence;
- (b) requiring the execution of such works, and the taking of such other steps, as may be necessary for any of those purposes,

and the notice shall specify the time or times within which the requirements of the notice are to be complied with.

(2) Subject to section 6, the abatement notice shall be served –

- (a) except in a case falling within paragraph (b) or (c) below, on the person responsible for the nuisance;
- (b) where the nuisance arises from any defect of a structural character, on the owner of the premises;
- (c) where the person responsible for the nuisance cannot be found or the nuisance has not yet occurred, on the owner or occupier of the premises.

(3) Where the Environmental Agency is satisfied that a statutory nuisance falling within section 4(1)(g) exists, or is likely to occur or recur, the Environmental Agency shall –

- (a) serve an abatement notice in respect of the nuisance in accordance with subsections (1) and (2); or
- (b) take such other steps as it thinks appropriate for the purpose of persuading the appropriate person to abate the nuisance or prohibit or restrict its occurrence or recurrence.

(4) If the Environmental Agency has taken steps under subsection (3)(b) and either of the conditions in subsection (5) is satisfied, the Environmental Agency shall serve an abatement notice in respect of the nuisance.

(5) The conditions are –

- (a) that the Environmental Agency is satisfied at any time before the end of the relevant period that the steps taken will not be successful in persuading the appropriate person to abate the nuisance or prohibit or restrict its occurrence or recurrence;
- (b) that the Environmental Agency is satisfied at the end of the relevant period that the nuisance continues to exist, or continues to be likely to occur or recur.

(6) The relevant period is the period of seven days starting with the day on which the Environmental Agency was first satisfied that the nuisance existed, or was likely to occur or recur.

(7) The appropriate person is the person on whom the Environmental Agency would otherwise be required under subsection (3)(a) to serve an abatement notice in respect of the nuisance.

(8) A person served with an abatement notice may appeal against the notice to the magistrates' court within the period of 21 days beginning with the date on which the person was served with the notice.

(9) If a person on whom an abatement notice is served, without reasonable excuse, contravenes or fails to comply with any requirement or prohibition imposed by the notice, that person shall be guilty of an offence.

(10) A person who commits an offence under subsection (9) shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale together with a further fine of an amount one tenth of the amount at level 4 on the standard scale for each day on which the offence continues after the conviction.

(11) Subject to subsection (12), in any proceedings for an offence under subsection (9) 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 paragraphs (a), (d), (e), (f), (g), or (i) of section 4(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 4(1) except where the noise is emitted from or caused by machinery or equipment being used for industrial, trade or business purposes;
- (c) in the case of a nuisance falling within paragraph (b) of section 4(1) except where the smoke is emitted from a chimney;

- (d) in the case of a nuisance falling within paragraphs (c), (j), (k), (l), (m), (n), (o), (p), (q), (r), (s), (t) or (u) of section 4(1).

(13) In proceedings for an offence under section 4(1)(g) or (h), where the offence consists in contravening requirements imposed by virtue of subsection (1)(a) it shall be a defence to prove that the alleged offence was covered by a permit or licence issued under any enactment.

(14) The further supplementary provisions on appeals in Schedule 1 have effect.

Abatement notice in respect of noise in street.

6.(1) In the case of a statutory nuisance within section 4(1)(h) that –

- (a) has not yet occurred; or
- (b) arises from noise emitted from or caused by unattended machinery or equipment,

the abatement notice shall be served in accordance with subsection (2).

(2) The notice shall be served-

- (a) where the person responsible for the machinery or equipment can be found, on that person;
- (b) where that person cannot be found or where the Environmental Agency determines that this paragraph should apply, by fixing the notice to the machinery or equipment.

(3) Where-

- (a) an abatement notice is served in accordance with subsection (2)(b) by virtue of a determination of the Environmental Agency; and
- (b) the person responsible for the machinery or equipment can be found and served with a copy of the notice within an hour of the notice being fixed to the vehicle, machinery or equipment,

a copy of the notice shall be served on that person accordingly.

(4) Where an abatement notice is served in accordance with subsection (2)(b) by virtue of a determination of the Environmental Agency, the notice shall state that, if a copy of the notice is subsequently served under subsection (3), the time specified in the notice as the time within which its requirements are to be complied with is extended by such further period as is specified in the notice.

(5) Where an abatement notice is served in accordance with subsection (2)(b), the person responsible for the machinery or equipment may appeal against the notice under section 5(8)

as if he had been served with the notice on the date on which it was fixed to the machinery or equipment.

(6) Section 5(9) applies in relation to a person on whom a copy of an abatement notice is served under subsection (3) as if the copy were the notice itself.

(7) A person who removes or interferes with a notice fixed to machinery or equipment in accordance with subsection (2)(b) shall be guilty of an offence, unless he is the person responsible for the machinery or equipment or he does so with the authority of that person.

(8) A person who commits an offence under subsection (7) shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Supplementary provisions.

7.(1) Subject to subsection (2), where more than one person is responsible for a statutory nuisance, section 5 applies to each of those persons whether or not what any one of them is responsible for would by itself amount to a nuisance.

(2) In relation to a statutory nuisance within section 4(1)(h) 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 nuisance), section 5(2)(a) applies with the substitution of “any one of those persons” for “the person”.

(3) In relation to a statutory nuisance within section 4(1)(h) caused by noise emitted from or caused by unattended machinery or equipment for which more than one person is responsible, section 6 applies with the substitution-

- (a) in subsection (2)(a) of “any of the persons” for “the person” and of “one such person” for “that person”;
- (b) in subsection (2)(b), of “such a person” for “that person”;
- (c) in subsection (3), of “any of the persons” for “the person” and of “one such person” for “that person”;
- (d) in subsection (5), of “any person” for “the person”; and
- (e) in subsection (7), of “a person” for “the person” and of “such a person” for “that person”.

(4) Where an abatement notice has not been complied with, the Environmental Agency may, with the consent of the Minister, whether or not they take proceedings for an offence under section 5(9), abate the nuisance and do whatever may be necessary in execution of the notice.

(5) Any expenses reasonably incurred by the Environmental Agency in abating, or preventing the recurrence of, a statutory nuisance under subsection (4) may be recovered by

the Environmental Agency from the person by whose act or default the nuisance was caused, and if that person is the owner of the premises, from any person who is for the time being the owner thereof; and the court may apportion the expenses between persons by whose acts or defaults the nuisance is caused in such manner as the court considers fair and reasonable.

(6) If the Environmental Agency is of the opinion that summary proceedings would afford an inadequate remedy in the case of any statutory nuisance, they may, subject to subsection (8) take proceedings in the Supreme Court for the purpose of securing the abatement or prohibition of that nuisance, whether the Environmental Agency has suffered damage from the nuisance or not.

(7) 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 as a civil debt 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.

(8) In any proceedings under subsection (6) in respect of a nuisance falling within section 4(1)(g) or (h), it shall be a defence to prove that the noise was authorised by a permit or licence issued under any enactment.

Expenses recoverable from owner to be a charge on premises.

8.(1) Where any expenses are recoverable under section 7(5) from a person who is the owner of the premises there mentioned and the Environmental Agency serves a notice on that person under this section –

- (a) the expenses shall carry interest, at such reasonable rate as the Government may determine, from the date of service of the notice until the whole amount is paid; and
- (b) subject to the following provisions of this section, the expenses and accrued interest shall be a charge on the premises.

(2) A notice served under this section shall –

- (a) specify the amount of the expenses that the Environmental Agency claims is recoverable;
- (b) state the effect of subsection (1) and the rate of interest determined by the Government under that section; and
- (c) state the effect of subsections (4) to (6).

(3) On the date on which the Environmental Agency serves a notice on a person under this section, the Environmental Agency shall also serve a copy of the notice on every other person who, to the knowledge of the Environmental Agency, has an interest in the premises capable of being affected by the charge.

(4) Subject to any order under subsection (7)(b) or (c), the amount of any expenses specified in a notice under this section and the accrued interest shall be a charge on the premises-

- (a) as from the end of the period of twenty-one days beginning with the date of service of the notice; or
- (b) where an appeal is brought under subsection (6) below, as from the final determination of the appeal,

until the expenses and interest are recovered.

(5) For the purposes of subsection (4), the withdrawal of an appeal has the same effect as a final determination of the appeal.

(6) A person served with a notice or copy of a notice under this section may appeal against the notice to the magistrates' court within the period of twenty-one days beginning with the date of service, and the procedure shall be by way of complaint for an order.

(7) On such an appeal the magistrates' court may-

- (a) confirm the notice without modification;
- (b) order that the notice is to have effect with the substitution of a different amount for the amount originally specified in it; or
- (c) order that the notice is to be of no effect.

(8) The Environmental Agency shall, for the purposes of enforcing a charge under this section, have all the same powers and remedies under the Land Law and Conveyancing Act, and otherwise as if they were mortgagees by deed having powers of sale and lease, of accepting surrenders of leases and of appointing a receiver.

(9) In this section "premises" does not include a vessel.

Payment of expenses by instalments.

9.(1) Where any expenses are a charge on premises under section 8, the Environmental Agency may by order declare the expenses to be payable with interest by instalments within the specified period, until the whole amount is paid.

(2) In subsection (1) –

"interest" means interest at the rate determined by the Government under section 8; and

"the specified period" means such period of thirty years or less from the date of service of the notice under section 8 as it specified in the order.

(3) Subject to subsection (5), the instalments and interest, or any part of them, may be recovered from the owner or occupier for the time being of the premises.

(4) Any sums recovered from an occupier may be deducted by the occupier from the rent of the premises.

(5) An occupier shall not be required to pay at any one time any sum greater than the aggregate of-

- (a) the amount that was due from him on account of rent at the date on which he was served with a demand from the Environmental Agency together with a notice requiring him not to pay rent to his landlord without deducting the sum demanded; and
- (b) the amount that has become due from the occupier on account of rent since that date.

Summary proceedings by persons aggrieved by statutory nuisances.

10.(1) The magistrates' court 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 magistrates' 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 4(1)(h), 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 the court may also impose on the defendant a fine not exceeding level 4 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) 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) 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;
- (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 4(1)(h) caused by noise emitted from or caused by unattended machinery or equipment, against the person responsible for the machinery or equipment.

(5) Subject to subsection (7) below, where more than one person is responsible for a statutory nuisance, subsections (1) to (4) 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 sections 4(1)(g) or (h), subsection (1) shall have effect as if for the reference to any person aggrieved by the nuisance there were substituted a reference to any three or more persons each of whom is the occupier of land or premises, and is in that capacity aggrieved by the nuisance.

(7) In relation to a statutory nuisance within section 4(1)(h) 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) applies with the substitution of “each person responsible for the nuisance who can be found” for “the person responsible for the nuisance”.

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

(9) 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 their 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.

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

- (a) in the case of a nuisance falling within paragraph (g) or (h) of section 4(1), 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.

(11) 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 4 on the standard scale together with a further fine of one tenth of the amount at level 4 for each day on which the offence continues after the conviction.

(12) Subject to subsection (13), in any proceedings for an offence under subsection (11) 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.

(13) The defence under subsection (12) is not available –

- (a) in the case of a nuisance falling within paragraph (a), (d), (e), (f) (g) or (i) of section 4(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 4(1) except where the noise is emitted from or caused by machinery or equipment being used for industrial, trade or business purposes;
- (c) in the case of a nuisance falling within paragraph (b) of section 4(1) except where the smoke is emitted from a chimney;
- (d) in the case of a nuisance falling within paragraph (c), (j), (k), (l), (m), (n), (o), (p), (q), (r), (s), (t) or (u) of section 4(1);
- (e) in the case of a nuisance which is such as to render the premises unfit for human habitation.

(14) If a person is convicted of an offence under subsection (11), the magistrates' court may, after giving the Environmental Agency an opportunity of being heard, direct the Environmental Agency 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 magistrates' 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 in the proceedings.

(16) If it appears to the magistrates' 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 machinery or equipment, can be found the court may, after giving the Environmental Agency the opportunity of being heard, direct the Environmental Agency to do anything which the magistrates' court would have ordered that person to do.

Dark smoke from vessels

Emission of dark smoke from vessels

11.(1) Subject to subsection (3), no vessel within BGTW may emit dark smoke for longer than the period specified in the second column of the table in Schedule 2 in respect of the class of case specified in the first column of the said Schedule, provided that:

(a) in no case shall black smoke be emitted for two minutes or more in the aggregate within a period of thirty minutes: and

(b) continuous emissions of dark smoke shall not exceed three minutes.

(2) If subsection (1) is contravened, the owner and master of the vessel each commits an offence.

(3) In any proceedings for an offence under this section, it shall be a defence to prove that:

(a) the emission of dark smoke took place in circumstances affecting the safety of life or of the vessel; or

(b) the contravention complained of was solely due to some failure of the ship's furnace or of apparatus used in connection with a furnace, provided that –

(i) such failure could not reasonably have been foreseen or, if foreseen, could not reasonably have been provided against; and

(ii) the contravention could not reasonably have been prevented or minimised by action taken after the failure occurred.

(4) Each person who commits an offence under subsection (2) is liable on summary conviction to a fine not exceeding £5,000.

(5) This section does not apply to vessels of His Majesty's navy or to Government ships in the service of the Secretary of State for Defence while employed for the purposes of His Majesty's navy.

(6) For the purposes of Schedule 2, a vessel is not under way when it is at anchor or made fast to the shore or bottom, and a vessel which is aground shall be deemed to be under way.

(7) The Minister may, by Order in the Gazette, amend or vary the provisions of Schedule 2 in order to specify periods during which emission of smoke from vessels may be permitted in any class of case and subject to limitations.

(8) In this section, unless the context otherwise requires:

“BGTW” means British Gibraltar Territorial Waters which is the area of sea, the sea bed and subsoil within the seaward limits of the territorial sea adjacent to Gibraltar under British sovereignty and which, in accordance with the United Nations Convention on the Law of the Sea 1982, currently extends to three nautical miles and to the median line in the Bay of Gibraltar;

“black smoke” means smoke which would appear to be dark as, or darker than, shade 4 on the Ringelman Chart as provided for in British Standard 2742C: 1957;

“dark smoke” means smoke which would appear to be as dark as, or darker than, shade 2 on the Ringelman Chart as provided for in British Standard 2742:1957;

“smoke” includes soot, ash, gritty particles emitted in smoke or steam.

Rules as to smoke and health nuisances.

12.(1) The Government may make rules regulating the emission of smoke of such colour, density, or content as may be prescribed by the rules.

(2) Rules made under subsection (1) may also –

- (a) provide for the adoption of precautions against the emission of smoke from vessels;
- (b) make general provision for effectively controlling the emission of smoke from vessels; and
- (c) impose penalties for breaches of the rules and section 23(b) of the Interpretation and General Clauses Act does not apply to any such rules.

Additional Provisions about Specific Kinds of Noise

Restriction of operation on highways etc., of loudspeakers.

13.(1) Subject to the provisions of this section, a loudspeaker in a street shall not be operated-

- (a) between 9 pm and 8 am the following day, for any purpose;
- (b) at any other time, for the purpose of advertising any entertainment, trade or business,

and a person who operates or permits the operation of a loudspeaker in contravention of this subsection is guilty of an offence and is liable on summary conviction to a fine at level 3 on the standard scale.

(2) Subsection (1) shall not apply to the operation of a loudspeaker –

- (a) for police, fire brigade or ambulance purposes, or by the Government;
- (b) for communicating with persons on a vessel for the purpose of directing the movement of that or any other vessel;
- (c) if the loudspeaker forms part of a public telephone system;
- (d) if the loudspeaker –
 - (i) is in or fixed to a vehicle, and
 - (ii) is operated solely for the entertainment of or for communicating with the driver or a passenger of the vehicle or, where the loudspeaker is or forms part of the horn or similar warning instrument of the vehicle, solely for giving warning to other traffic, and
 - (iii) is so operated as not to give reasonable cause for annoyance to persons in the vicinity;
- (e) for the purpose of Parliamentary elections;
- (f) on land which is being used for the purposes of a fete or pleasure fair or any sport or entertainment open to the public;
- (g) in accordance with a licence or permit issued under any enactment;
- (h) in case of emergency.

(3) Paragraph (b) of subsection (1) shall not apply to the operation of a loudspeaker between the hours of 9 a.m. and 9 p.m. on the same day if the loudspeaker –

- (a) is fixed to a vehicle which is being used for the conveyance of a perishable commodity for human consumption; and
- (b) is operated solely for informing members of the public (otherwise than by means of words) that the commodity is on sale from the vehicle; and
- (c) is so operated as not to give reasonable cause for annoyance to persons in the vicinity.

(4) In this section –

“loudspeaker” includes a megaphone and any other device for amplifying sound;

“street” means a highway and any other road, footway, square or court which is for the time being open to the public.

General

Power of Environmental Agency to require information as to ownership of premises.

14.(1) The Environmental Agency may, for the purposes of enabling it to perform any of its functions under this Act, require the occupier of any premises, and any person who either directly or indirectly receives rent in respect of any premises, to state in writing the nature of their own interest in the premises, and the name and address of any other person known to have an interest in the premises, whether as freeholder, mortgagee, lessee or otherwise.

(2) Any person who, having been required to provide any information pursuant to subsection (1) fails to give that information or knowingly provides false information, is guilty of an offence and is liable to summary conviction to a fine at level 3 on the standard scale.

Notices to be in writing; forms of notices etc.

15.(1) All notices required by or under this Act to be given shall be in writing.

(2) The Minister may by regulations prescribe the form of any notice or other document to be used for the purposes of this Act, and if forms are so prescribed, those forms or forms to like effect may be used in all cases to which those forms are applicable.

Authentication of documents.

16. Any notice, order or other document which the Environmental Agency is authorised or required by or under this Act to give, make or issue may be signed on behalf of the Environmental Agency by an authorised person.

Service of notices.

17.(1) Any notice required or authorised by or under this Act to be served on or given to a person may be served or given by delivering it to that person, or by leaving it at that person's last known address, or by sending it by post at that address.

(2) In the case of a document to be given or served on the owner or the occupier of any premises, if it is not practicable after reasonable inquiry to ascertain the name and address of the person to or on whom it should be given or served, or if the premises are unoccupied, by addressing it to the person concerned by the description of "owner" or "occupier" of the premises (naming them) to which it relates, and delivering it to some person on the premises, or, if there is no person on the premises to whom it can be delivered, by affixing it, or a copy of it, to some conspicuous part of the premises.

(3) Any such notice may –

- (a) in the case of a body corporate, be served on or given to the secretary or clerk of that body;

- (b) in the case of a partnership, be served on or given to a partner or a person having the control or management of the partnership business.

(4) Where a notice is served by being sent by post it shall unless the contrary is proved be deemed to have been received by the person or incorporated company or body in respect of whom it is given or served on the day following the day on which it would have been delivered in the ordinary course of post.

(5) Where an appeal against a notice served by the Environmental Agency lies to a magistrates' court by virtue of section 5(8) or 8(6), the Environmental Agency must include in such notice a statement indicating the right to appeal and specifying the time within which it must be brought.

Powers of entry.

18.(1) Subject to subsection (2), any person authorised by the Environmental Agency ("an authorised person") may, on production (if so required) of that authority, enter any premises at any reasonable time –

- (a) for the purpose of ascertaining whether or not a statutory nuisance exists; or
- (b) for the purpose of taking any action, or executing any works, authorised or required by this Act.

(2) Admission by virtue of subsection (1) to any premises used wholly or mainly for residential purposes shall not except in an emergency be demanded as of right unless twenty-four hours' notice of the intended entry has been given to the occupier.

(3) If it is shown to the satisfaction of a justice of the peace on sworn information in writing-

- (a) that admission to any premises has been refused, or that refusal is apprehended, or that the premises are unoccupied or the occupier is temporarily absent, or that the case is one of emergency, or that an application for admission would defeat the object of the entry; and
- (b) that there is reasonable ground for entry into the premises for the purpose for which entry is required,

the justice may by warrant under his hand authorise any environmental health officer to enter the premises, if need be by force.

(4) An authorised person entering any premises by virtue of subsection (1) or a warrant under subsection (3) may –

- (a) take with him such other persons and such equipment as may be necessary;

- (b) carry out such inspections, measurements and tests as he considers necessary for the discharge of the Environmental Agency's functions under this Act; and
- (c) take away such samples or articles as he considers necessary for that purpose.

(5) On leaving any unoccupied premises which he has entered by virtue of subsection (1) or a warrant under subsection (3) the authorised person shall leave them as effectually secured against trespassers as he found them.

(6) A warrant issued under subsection (3) shall continue in force until the purpose for which the entry is required has been satisfied.

(7) Any reference in this section to an emergency is a reference to a case where the person requiring entry has reasonable cause to believe that circumstances exist which are likely to endanger life or health and that immediate entry is necessary to verify the existence of those circumstances or to ascertain their cause and to effect a remedy.

Machinery and equipment.

19.(1) An authorised person may on production (if so required) of the person's authority-

- (a) enter or open machinery or equipment, if necessary by force; or
- (b) remove machinery or equipment from a street to a secure place,

for the purpose of taking any action, or executing any work, authorised by or required under this Act in relation to a statutory nuisance within section 4(1)(h) caused by noise emitted from or caused by machinery or equipment.

(2) On leaving any unattended machinery or equipment that he has entered or opened under subsection (1), the environmental officer shall (subject to subsection (3) below) leave it secured against interference or theft in such manner and as effectually as he found it.

(3) If the authorised person is unable to comply with subsection (2), he shall for the purpose of securing the unattended machinery or equipment either –

- (a) immobilise it by such means as he considers expedient; or
- (b) remove it from the street to a secure place.

(4) In carrying out any function under subsections (1), (2) or (3), the authorised person shall not cause more damage than is necessary.

(5) Before machinery or equipment is entered, opened or removed under subsection (1), (2) or (3), the Environmental Agency shall notify the police of its removal and current location by reporting it at New Mole House.

(6) For the purpose of section 7(5), any expenses reasonably incurred by the Environmental Agency under subsection (2) or (3) shall be treated as incurred by the Environmental Agency under section 7(5) in abating or preventing the recurrence of the statutory nuisance in question.

Penalty for obstruction.

20. A person who wilfully obstructs any person acting in the exercise of any powers conferred by this Act, shall be liable, on summary conviction, to a fine not exceeding level 4 on the standard scale.

Power to require occupier to permit works to be executed by owner.

21.(1) If on a complaint made by the owner of any premises, it appears to the magistrates' court that the occupier of those premises prevents the owner from executing any work which the owner is by or under this Act required to execute, the court may order the occupier to permit the execution of the work and to pay the costs of such complaint.

(2) An occupier of any premises who wilfully obstructs or prevents the owners of those premises from executing any work which the owner is by or under this Act required to execute is guilty of an offence and is liable on summary conviction to a fine at level 1 on the standard scale for each day on which the offence continues after conviction.

Continuing offences and penalties.

22. Where provision is made by this Act for the continuing imposition of a daily penalty in respect of a continuing offence, the court may fix a reasonable period from the date of conviction for compliance by the defendant with any directions given by the court and, where a court has fixed such period, the daily penalty is not recoverable in respect of any day before that period expires.

Liability of bodies corporate.

23.(1) Where an offence under any provision of this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or a person who was purporting to act in any such capacity, that person as well as the body corporate shall be guilty of that offence.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts or defaults of a member in connection with the member's functions of management as if the member were a director of the body corporate.

Protection from personal liability.

24. Nothing done by the Environmental Agency, or by one of its officers or any other person authorised by the Environmental Agency shall, if done in good faith for the purpose of

executing this Act, subject them or any of them personally to any action, liability, claim or demand whatsoever.

Appeals to Supreme Court against decisions of magistrates' court.

25. An appeal against any decision of the magistrates' court on an appeal to which Schedule 1 applies shall lie to the Supreme Court at the instance of any party to the proceedings in which the decision was given.

Powers of Act to be cumulative.

26. All powers and duties conferred or imposed by this Act are deemed to be in addition to, and not in derogation of, any other powers and duties conferred or imposed by any other enactment or custom, and, subject to any repeal effected by, or other express provision of, this Act all such other powers and duties may be exercised, and shall be performed in the same manner as if this Act had not been passed.

Regulations.

27. The Minister may make regulations—

- (a) to carry out and give effect to the provisions of this Act;
- (b) for the prevention and suppression of nuisances, to include the creation of new offences;
- (c) as to appeals;
- (d) which contain supplementary, incidental, consequential, transitional or saving provision.

Consequential and minor amendments and repeals.

28.(1) The following provisions of the Public Health Act are repealed –

- (a) Part II;
- (b) sections 96 to 98;
- (c) Schedule 22.

(2) The Minister may by order repeal or amend any provision of any Act commenced before this Act or of any subsidiary legislation made under an Act so commenced if it appears to the Minister that the provision is inconsistent with, or has become unnecessary or requires alteration in consequence of, any provision of this Act or corresponds to any provision repealed by this Act.

Revocation of subsidiary legislation.

29.(1) The Public Health (Offensive Trades) Rules 1990 are revoked.

(2) The Public Health (Offensive Trades) Order 1990 is revoked.

Savings.

30.(1) Nothing in this Act shall have any effect in relation to an abatement notice served under the provisions of Part II of the Public Health Act before the commencement of this Act.

(2) Any summary proceedings commenced under Part II of the Public Health Act shall continue as if Part II of the Public Health Act had not been repealed.

SCHEDULE 1

STATUTORY NUISANCES: SUPPLEMENTARY PROVISIONS

Appeals against an abatement notice.

1.(1) This paragraph applies to appeals under section 5(8) against an abatement notice to the magistrates' court.

(2) An appeal to which this paragraph applies shall be by way of complaint for an order and the Magistrates' Court Act applies to the proceedings.

(3) The time within which any such appeal may be brought is twenty-one days from the date on which the abatement notice was served upon the person wishing to appeal, and for the purposes of this paragraph the making of the complaint shall be deemed to be the bringing of the appeal.

(4) In any case where such an appeal lies, the abatement notice must state the right of appeal to the magistrates' court and the time within which such an appeal may be brought.

(5) The grounds on which a person served with such a notice may appeal under section 5(8) are any one or more of the following grounds that are appropriate in the circumstances of the particular case –

- (a) that the abatement notice is not justified by section 5;
- (b) that there has been some informality, defect or error in, or in connection with, the abatement notice, or in connection with any copy of the abatement notice served under section 6;
- (c) that the Environmental Agency has refused unreasonably to accept compliance with alternative requirements, or that the requirements of the abatement notice are otherwise unreasonable in character or extent, or are unnecessary;
- (d) that the time, or where more than one time is specified, any of the times, within which the requirements of the abatement notice are to be complied with is not reasonably sufficient for the purpose;
- (e) where the nuisance to which the notice relates –
 - (i) is a nuisance falling within section 4(1)(a), (d), (e), (f) or (g) and arises on industrial, trade or business premises; or
 - (ii) is a nuisance falling within section 4(1)(b) and the smoke is emitted from a chimney; or

- (iii) is a nuisance falling within section 4(1)(h) and is noise emitted from or caused by a vehicle, machinery or equipment being used for industrial, trade or business purposes,

that the best practicable means were used to prevent, or to counteract the effects of, the nuisance;

- (f) that the abatement notice should have been served on some person instead of the appellant, being –

- (i) the person responsible for the nuisance; or

- (ii) the person responsible for the machinery or equipment; or

- (iii) in the case of a nuisance arising from any defect of a structural character, the owner of the premises; or

- (iv) in the case where the person responsible for the nuisance cannot be found or the nuisance has not yet occurred, the owner or occupier of the premises;

- (g) that the abatement notice might lawfully have been served on some person instead of the appellant being –

- (i) in the case where the appellant is the owner of the premises, the occupier of the premises, or

- (ii) in the case where the appellant is the occupier of the premises, the owner of the premises,

and that it would have been equitable for it to have been so served;

- (h) that the abatement notice might lawfully have been served on some person in addition to the appellant, being –

- (i) a person also responsible for the nuisance, or

- (ii) a person who is also owner of the premises, or

- (iii) a person who is also occupier of the premises, or

- (iv) a person who is also the person responsible for the machinery or equipment and that it would have been equitable for it to have been so served.

(6) If and in so far as an appeal under this Schedule is based on the ground of some informality, defect or error in or in conjunction with the notice the court shall dismiss the appeal if it is satisfied that the informality, defect or error was not a material one.

(7) Where the grounds upon which an appeal is brought include a ground specified in paragraph (5)(g) or (h), the appellant shall serve a copy of the notice of appeal on any other person referred to, and in the case of any appeal to which these regulations apply, the appellant may serve a copy of the notice of appeal on any other person having an estate or interest in the premises, vehicle, machinery or equipment in question.

(8) On the hearing of the appeal the court may-

- (a) quash the abatement notice to which the appeal relates; or
- (b) vary the abatement notice in favour of the appellant in such manner as it thinks fit; or
- (c) dismiss the appeal;

and an abatement notice that is varied under sub-paragraph (b) is final and otherwise has effect, as varied, as if it had been so made by the Environmental Agency.

(9) Subject to paragraph (10), on the hearing of an appeal the court may make such order as it thinks fit –

- (a) with respect to the person by whom any work is to be executed and the contribution to be made by any person towards the cost of the work; or
- (b) as to the proportions in which any expenses which may become recoverable by the Environmental Agency are to be borne by the appellant and by any other person.

(10) In exercising its powers under paragraph (9) the court –

- (a) shall have regard, as between an owner and an occupier, to the terms and conditions, whether contractual or statutory of any relevant tenancy and to the nature of the works required; and
- (b) shall be satisfied before it imposes any requirement thereunder on any person other than the appellant, that that person has received a copy of the notice of appeal pursuant to paragraph (7).

Suspension of notice.

2.(1) Where –

- (a) an appeal is brought against an abatement notice served under section 5 or section 6; and
- (b) either-

- (i) compliance with the abatement notice would involve any person in expenditure on the carrying out of works before the hearing of the appeal; or
 - (ii) in the case of a nuisance under section 4(1)(g) or (h), the noise to which the abatement notice relates is noise necessarily caused in the course of the performance of some duty imposed by law on the appellant; and
- (c) either paragraph (2) does not apply, or it does apply but the requirements of paragraph (3) have not been met,

the abatement notice shall be suspended until the appeal has been abandoned or decided by the court.

(2) This paragraph applies where-

- (a) the nuisance to which the abatement notice relates –
 - (i) is injurious to health; or
 - (ii) is likely to be of a limited duration such that the suspension of the notice would render it of no practical effect; or
- (b) the expenditure which would be incurred by any person in the carrying out of works in compliance with the abatement notice before any appeal has been decided would not be disproportionate to the public benefit to be expected in that period from such compliance.

(3) Where paragraph (2) applies the abatement notice –

- (a) shall include a statement that paragraph (2) applies, and that as a consequence it shall have effect notwithstanding any appeal to the magistrates' court which has not been decided by the court; and
- (b) shall include a statement as to which of the grounds set out in paragraph (2) apply.

SCHEDULE 2

First column Class of Case	Second Column Permitted Period
1. When new fires are being lit preparatory to raising steam	10 minutes in the aggregate in any period of 1 hour
2. When a breakdown has affected the combustion equipment	10 minutes in the aggregate in any period of 1 hour
3. When it is necessary, because of navigational difficulties, to force the combustion equipment to the detriment of its operation	10 minutes in the aggregate in any period of 1 hour
4. Emissions from a natural draught oil-fired furnace or a coal-fired boiler furnace in the following cases:	
(a) a tug not under way but preparatory to getting under way or supplying power to other vessels or to shore installations	10 minutes in the aggregate in any period of 1 hour
(b) a vessel not under way but using main power for the purpose of dredging, lifting, pumping or performing some other special operation for which the vessel is designed	10 minutes in the aggregate in any period of 1 hour
5. Emissions from any other source	5 minutes in the aggregate in any period of 1 hour

Explanatory Memorandum

This Bill repeals and replaces Part II of the Public Health Act, on statutory nuisances. It repeals the provisions relating to the establishment of offensive trades as these relate to outdated practices which are redundant in light of a regulatory framework on the establishment of business generally.

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