

## Noise nuisance legislative enhancements in Scotland

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### 1. ABSTRACT

This paper presents an update of the legislative enhancements made by the Scottish Government over the past five years to control noise nuisance. This includes the introduction of antisocial behaviour (ASBA) noise legislation based on objectively measured noise levels for control of domestic noise complaints, and the enhancement of all the Statutory Nuisance provisions, including noise.

The paper demonstrates that better regulation when complimentary, flexible and enabling and backed by full funding and training can be effective. Scotland has the advantage that small is beautiful in that all 32 local authority regulators can be involved from inception to implementation and subsequent review. This is illustrated by the results of the background research and the subsequent development and implementation of the ASBA Noise provisions as well as feedback from the subsequent VFM study into the provisions efficacy. The precedents established were then utilised in the revision of all the Statutory Nuisance provisions in 2009 to provide enforcement agencies with a toolkit of complimentary powers to provide adaptability in controlling nuisance within our evolving communities.

### 2. INTRODUCTION

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 (1990 Act). (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 is consequently any number of situations that a court may consider to be a nuisance under common law. Under the 1990 Act however, only certain matters may constitute a statutory nuisance. The various matters that may constitute a statutory nuisance are set down in section 79 of the 1990 Act. 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 Scottish Government and previous administrations recognised for some time that the statutory nuisance provisions in Part III of the Environmental Protection Act 1990 required updating, not least in response to evolving societal and climatic changes. The Scottish Executive's Coalition Partnership Agreement in 2003 decided to give local authorities additional powers to deal with noise nuisance and tackle the problems of antisocial noise in dwellings up to 24 hours a day. This was due to complaints from the public over the lack of enforcement resources and thus response from the police and local authorities.

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The UK 1996 Noise Act was not implemented in Scotland as it was felt that existing legislation would suffice, although there was no consideration of the police resources required to adequately respond to domestic noise complaints nor reference to a need for multi-agency working to ensure consistency nationwide. It was noted in 2004 that only 14 of the 400 local authorities in the rest of the UK had formally adopted the 1996 Noise Act's night time provisions as no funding or flexibility was granted to resource the adoption. The only UK local authority to fully subscribe to the provisions were Belfast City Council, whose relative success in establishing good liaison with police and awareness with public in a city with historical social problems, proved an important precedent and catalyst in our policy development.

### **3. METHOD**

#### **a. Underlying Research**

In Scotland, Ministers wanted flexible enabling legislation with full funding of a new objectively based offence operating 24 hours a day enforced by an immediate fixed penalty notice. The Government's Air Noise & Nuisance Team commissioned Dr Bernadette McKell of Hamilton & McGregor, Acoustics consultants (now part of Aecom) to undertake background research into the feasibility of objective noise levels.

Her report<sup>1</sup> demonstrated there was no effective means in Scotland of dealing with one off noisy parties or other ASB type activities. The present legislative controls were simply inadequate in terms of time taken to bring any action to fruition or in the case of the Civic Government (Scotland) Act 1982, the available police resources.

The report established that it is feasible to introduce objectively measured levels which, if breached during anytime of the day, would cause an offence liable to conviction. The day, evening and night objectively measured intervention levels have been identified as 41dB(A), 37dB(A) and 31dB(A) respectively. Whilst apparently inconsistent in the application of the character correction (not included in Day Intervention Levels(DIL) and Evening Intervention Levels(EIL)) the reason for this is that the *WHO 1999*<sup>2</sup> document makes specific references (p61) to the effect that the character of noise may have on sleep. The effects on sleep are not part of the day and evening level requirements; therefore the DIL and EIL's are based on the typical external climate as reported in the UK Building Research Establishment's National Noise Incidence Survey in 2001.

The experience of dealing with neighbour noise in other countries, especially in Australia and New Zealand, shows that although fixed penalties are issued in respect of noise offences there is generally no objective measurement of noise. The review also identified that most other countries that do refer to objectively measured levels do so in respect to neighbourhood rather than neighbour noise. Also the levels are measured at the property boundary. It was noted that Belfast City Council's Night Noise Team had issued very few Fixed Penalty Notices in relationship to volume of Warning Notices issued. The team advised that Warning Notices had been found to be very effective in stopping the offending noise. They found that even with ordinary noise complaints most people respond positively when they are made aware that they are causing a disturbance to their neighbour. However, the threat of an immediate £100 fine being issued on the night seems to make the warning notices particularly effective. A Belfast Council officer commented "*The people who don't respond to the warning notices are the people who are unlikely to listen to nobody.*"

The report concluded that an objectively measured noise offence was feasible, however the need for a clear and concise national and local strategy for dealing with domestic complaints are apparent. It is essential that Scottish local authorities, Police constabularies and Housing authorities and mediation groups establish liaison groups should be developed, and effectively executed, to ensure effective in controlling and evaluating the measures put in place.

### **b. Implementation**

The Scottish Government fully endorsed the Hamilton & McGregor feasibility study and introduced the noise provisions within Part 5 of the Antisocial Behaviour etc. (Scotland) Act 2004. The main tenets were:

- Enabling and flexible discretion for local authorities to adopt the ASB Noise service for what periods of day and week they wish, depending on resource and needs.
- Complement existing noise nuisance enforcement legislation, and free up police resources to tackle more serious crime
- Alternative quick resolution- institute Fixed Penalty Notice system for breach of permitted noise levels within domestic dwellings, if Warning Notice deterrent ignored
- Requirement for a local strategy between main enforcement agencies to co-ordinate tackling all antisocial behaviour.
- Full funding for staff recruitment, training and equipment needs by annual grant scheme administered by the Scottish Government.
- Powers to local authority “authorised” officers who have received the appropriate training to increase flexibility and adaptability of staff used
- Establishment of a national noise advisory group of main stakeholders to develop the training and procedural guidance and implementation training.

This resulted in the production of procedural guidance “*Guidance on Noise Nuisance*”<sup>3</sup> This provides a management guide on research, legislation, noise investigation, as well as information on sound insulation, barking dogs, civil rights, mediation and powers of entry and seizure.

The guidance explained that the antisocial noise offence is a further tool to complement not replace existing legislation, in dealing with unreasonable noise within domestic dwellings. The offence is based on noise exceeding set permitted levels after a warning notice deterrent is not complied with. The investigation will require experienced officers to determine whether noise is caused by reasonable behaviour, including consideration of mental health, poor sound insulation, and where use of mediation could be advocated.

The guidance provides option matrices for antisocial behaviour noise investigation.

Stage 1 – Call screening to identify ASB and non-ASB complaints

Stage 2- ASB Noise Investigation- determine nature of noise and time of occurrence to determine action

Stage 3 –ASB Assessment and Measurement, Warning and FPN action

### **c. Funding**

The Scottish Government decided to fund Local Authority Antisocial Behaviour Noise Service teams-for their recruitment, resourcing, equipment and training needs by annual grant payment scheme. Funding of £2.88m was provided for 2005, £5.3m for 2006 and £5.3m for 2007. Two years funding allocated in 2006 to maximise

recruitment opportunities .Bids from 22 of the 32 local authorities received in 2005 and 25 from 2006. Direct Grant funding ceased from 1 April 2008, as current Scottish National Party Government administration decided to devolve all funding to individual local authority level.

#### **d. Training needs**

The Scottish Government recognised that introducing a new objectively measured noise offence, including noise levels and measuring equipment set in Regulations, would require additional training. This resulted in the IOA and Royal Environmental Health Institute of Scotland (REHIS) accredited new internal noise measurement training courses to meet the Government's "authorised" officer requirements.

These were either the focussed (update) 1 day short course for those with IOA's Certificate of Competence in Environmental Noise Measurement. To date, 184 prequalifiers have been trained and successfully passed the required written exam and practical Or the more complete 4 day course utilising IOA's existing syllabi, for those with no official noise training. To date, 154 officers have completed the training and passed the prerequisite exam and practical. Training courses have been established every 6 months at both Strathclyde University and Bell College to provide an ongoing flexible training resource.

#### **e. Evaluation of new provisions**

Volumes of noise complaints received annually were in the region of 10,000. Table 1 below illustrates that these volumes have increased fourfold. The enabling flexibility allowed different levels of service between local authorities, which makes direct comparison difficult. 6 of the 32 local authorities have a combined service. There are basically 3 levels of service:

- City- which tend to be 24/7 service
- Urban- more Thursday to Sunday service
- Rural – weekend night service

**Table 1 : Statistical returns of antisocial behaviour noise investigation and subsequent action from participating local authorities**

•	Year	LAs	Complaints	Visits	WN	FPN
•	2006	22	18,900	7920	1908	124
•	2007	25	38,587	19942	2645	187
•	2008	25	42,665	24016	2835	191

Analysis of these statistics illustrates that the volume of noise complaints have effectively quadrupled since 2005. It should be noted that only 50-60% of complaints visited as either nuisance ceased on pre check or referred to police if violent history. It has also been established that the use of a Verbal Warning Notices is much used- ie; threat of FPN issued at 200% level of written Warning Notice. Finally the FPN level of less than 1% of investigations made which would appear to validate the policy intention that a fast effective deterrent system works

The Scottish Government commissioned DTZ Consulting & Research in 2006 to undertake a formal evaluation of the effectiveness of the ASBA Noise Service. Their report<sup>4</sup> was published in October 2007 and their findings were as follows :

- Progress in set-up and services development has been varied across Scotland. From the 8 case study LAs, some have mobilised their service quickly and effectively, while others have experienced obstacles during the set-up period, such as sourcing equipment and recruitment problems.
- Majority of LAs stated that the key reasons for developing the service was in response to demand from the public, and the availability of specific funding was seen as a good opportunity to respond to the perceived need.
- In comparison, police response was not considered to provide value for money as the police may have more important priorities than domestic nuisance incidents. The noise teams are, therefore saving valuable police time and resource, which is greatly appreciated by the 6 police forces.

#### **Positive findings**

- Noise Investigation Officers (NIOs) are used rather than EHOs for the noise nuisance work. EHOs tend to be used in supervisory or managerial roles, or to provide “expert” capacity.
- EHOs take over complaints when deemed a Statutory Nuisance under the EPA, or else perhaps dealt with by the licensing board or planning committee of the LA.
- Given the large difference in salaries between these roles, this would suggest effective use of resources to tackle noise problems. Use of NIOs also serves to free up EHOs and police for broader skilled work
- NIOs believe the benefits of the service to be responsiveness to the public; its enforcement powers, and the strong technical basis of the service.
- The relevance, duration and quality of the delivery of the IOA and REHIS training to obtain the Certificate in Proficiency in Antisocial Behaviour (Scotland) Act Noise Measurement is considered appropriate
- Co-operation with other LA departments and police forces tends to be strong, although always room for improvement in working relationships

#### **Room for Improvement**

- Feedback from all surveys undertaken suggests further work in relation to public information, education and awareness raising of noise nuisance problems generally, and local noise nuisance services
- The regulated sound levels are considered by many LAs to be too high, particularly during the evening/night-time hours
- Sound insulation is not addressed- other than the test of “reasonableness”- thus requires staff to have experience and an understanding that this type of noise is not antisocial but a product of poor quality housing type.
- The civil FPN is not believed to be strong enough. Allegations that fines go unpaid and are not “chased up” effectively by the Procurator Fiscal
- Sound equipment requires a 0.6second break in the noise nuisance to detect background noise levels. Increasingly, music is mixed on CDs and there is no break.
- It is unclear what is supposed to happen with noise from dogs. Dog barking is difficult to measure, but the Act states that dogs can be considered “noise making equipment” and therefore seized.

#### **f. Scottish Government's response**

The response by the Scottish Government has been as follows:

- Despite loss of ringfencing, will continue to monitor performance, through review of all ASBA provisions in 2009-10
- Will update Guidance on Noise Nuisance and Noise Management Guide in 2009, to include barking dogs
- Will encourage LA teams to have awareness campaigns as part of Noise Action Week each May.
- Implement the EC Environmental Noise Directive by producing and publishing Action Plans of transport noise mitigation in 2009, to increase awareness of noise
- Will review and update the Awareness leaflet on laminate and hardwood flooring in 2009
- Will publish a research report by Napier University on the impact of the smoking ban on ASBA noise outside pubs and clubs in 2009, which is being presented separately at Euronoise 2009.
- Will enhance the Statutory Nuisance provisions within the EPA in the Public Health etc (Scotland) Act, which commenced in January 2009
- Will continue to liaise and work closely with Defra, IOA, REHIS, and EPUK on all Noise Nuisance issues

The Scottish Government recognised in response to feedback from practitioners that the Statutory Nuisance provisions contained within Part III of the Environmental Protection Act 1990 needed updating, not least to embrace the positive findings of the ASBA Noise provisions and FPN enforcement tool. In view of other legislation introduced in the interim, including EC Directives, and for example the Antisocial Behaviour etc (Scotland) Act 2004, and the UK Clean Neighbourhoods Act 2005, careful consideration has been given to avoid double regulation, burden on regulators and best practice.

The new provisions contained in Part 9 of the Public Health etc (Scotland) Act 2008 which commenced on 26th January 2009 are:

- Include insect nuisance, artificial light pollution and nuisance associated with water as statutory nuisances in line with legislation in England and Wales;
- Introduce a regulation-making power to amend the statutory nuisance regime in the future;
- Introduce a new fixed penalty regime for non-compliance with an abatement notice served under s80 of the Environmental Protection Act 1990;
- Amend the Water Services etc. (Scotland) Act 2005 in relation to sewerage nuisance

Following the success of the implementation model for the Antisocial Behaviour Noise provisions, procedural advice<sup>5</sup> on the new and existing Statutory Nuisance provisions has been produced, and launched with implementation training for all 32 local authorities in January 2009.

These new provisions introduce new statutory nuisances with no exemptions but with a universal best practicable means defence. They also include a FPN procedure for small level domestic and commercial statutory nuisance offences to mirror the effective deterrent system within the ASBA Noise provisions

## 4. CONCLUSIONS

The Scottish Government recognised that existing legislative controls were inadequate and finite police resources meant domestic noise offences were low priority. The undertaking of comprehensive research on the feasibility of introducing objectively measured noise offences, introducing new flexible and enabling legislation with full funding, procedural guidance and prerequisite training has proved key in providing a flexible enforcement toolkit. This methodology has been continued in enhancing the Statutory Nuisance provisions, including the use of the Fixed Penalty Notice system, which has proved an effective deterrent. As stated in the VFM evaluation, noise investigation officers believe the benefits of the (ASBA Noise)service to be responsiveness to the public; its enforcement powers, and the strong technical basis of the service.

The subsequent loss of direct grant funding of the ASBA Noise teams has not proved detrimental, despite these times of economic recession. The 25 participating local authorities have adapted their teams to do other environmental warden work, and all contribute to the ongoing review of policy, procedures and training. Small is beautiful in that directly involving all practitioners in producing constructive enabling enforcement tools, together with funding and training has proved successful in tackling this serious issue of domestic noise control.

## 5. ACKNOWLEDGMENTS

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## 6. REFERENCES

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