

## LEGAL REGULATION OF NOISE IN THE UNITED KINGDOM AND THE EUROPEAN UNION

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### NOISE REGULATION IN THE UK

The most important, initial, point to make about the legal regulation of noise in the UK is that it has been based, until recently, not in statute but in the Common Law. In particular as a sub-set of the old and consequently complex law of nuisance. Due to constraints on length, I have chosen to concentrate on statutory regulation. It would be dangerous for readers, however, to ignore the important and complementary role common law nuisance continues to play in this area. The first General Act devoted to the regulation of noise in the UK was the Noise Abatement Act 1960. In fact, it did little regulating since it merely declared that noise was a statutory nuisance. Its main contribution lay in the fact that it codified the pre-existing byelaws on noise that had been passed by some 400 different Local Authorities. The first Act of regulatory significance, interestingly, is the European Communities Act 1972. Regulations made under it control noise from motor vehicles and tractors (in tandem with several Road Traffic Acts). The second is the Control of Pollution Act 1974 ("COPA"), Part III of which is entirely devoted to noise (ss57-74). The Environmental Protection Act 1990 ("EPA") has repealed the substantive sections s.57(a), s.58 and s.59 and paragraphs 11 and 12 of Schedule 2 (although not in respect of Scotland). COPA's regulatory ambit today covers 4 main areas: (1) Control of noise on construction sites (ss60,61); (2) Noise in streets (s.62); (3) "Noise Abatement Zones" (s.63) and (4) Noise from plant and machinery (s.68).

**Control of Noise on Construction Sites.** Works where dredging or demolition occurs fall within the definition of construction sites. Regulation, arguably, takes two forms: firstly, regulation by Local Authorities (s.60) and secondly, self-imposed regulation under s.61.

Under s.60(2) where it appears to a Local Authority that construction site works are being, or are going to be, carried out, it *may* serve a notice imposing requirements as to the way in which they should be carried out. If a person

*intends* to carry out construction site works he may apply to the Local Authority for consent to do so under s.60(1). If the Local Authority consider that the application is sufficiently comprehensive in its proposed approach to the control of noise then it simply gives its consent to the application [s.61(4)] and no notice under s.60 is required. It can attach any further conditions to their consent [s.60(5)(a)] but must approve or refuse the consent within 28 days of receipt. A Code of Practice, British Standards Institution BS 5528, has also been approved for the carrying out of works on construction sites.

**Noise in Streets.** Section 62 of COPA attempts to regulate noise in the streets simply by regulating the times and purposes when a loudspeaker can be operated. Under s.62(1) a loudspeaker cannot be operated in a street between the hours of 9 p.m. and 8 a.m. of the following morning. COPA is now supplemented by the Noise and Statutory Nuisance Act 1993. This Act allows, *inter alia*, a Local Authority to grant consent to the use of loudspeakers in a street where it would otherwise be in breach of s.62 and to prosecute for noise nuisance caused by burglar alarms on, or in, premises. In addition, the Secretary of State has also approved Codes of Practice in relation to burglar alarms, model aircraft and even the chimes of ice-cream vans!

**Noise Abatement Zones.** Section 63(1) allows Local Authorities to designate all or any part of its area a "noise abatement zone", subject to the agreement of the Secretary of State. An order so made is called a "noise abatement order" and once made, compels the Local Authority to measure the level of noise emanating from premises within the zone which are of any class to which the Order relates and to record all measurements in a "noise level register" [s.64(1) & (2)].

**Noise from Plant and Machinery.** Although s.68 makes provision for regulations to be made in respect of noise from plant and machinery no regulations have been made under it. Construction plant noise is instead controlled by the Construction Plant and Equipment (Harmonisation of Noise Emission Standards) Regulations 1985 and 1988.

**Motor cycles.** Regulation takes three main forms. The Motorcycles (Sound Level Measurement Certificates) Regulations 1980 require the manufacturer to obtain a certificate from the Department of Transport indicating that the type of motorcycle that he intends to manufacture complies with EU sound level requirements. At the point of sale, the Motor Cycle Noise Act 1987 regulates the sale of exhaust systems and silencers. Finally, motorcyclists can be prosecuted for exceeding permitted noise levels under the 1986 Road Vehicles (Construction and Use) Regulations.

**Aeroplanes.** The principal legal mechanism for controlling aeroplane noise is by means of the noise certificate requirements for aeroplanes under the Air Navigation (Noise Certification) Order 1990 and the Aeroplane Noise (Limitation on Operation of Aeroplane) Regulations 1993 and, of course, by the powers invested in Local Authorities to refuse planning permission for airports or their further development.

**The Environmental Protection Act 1990.** This Act is of great significance. Section 79 (1)(g) states that "noise emitted from premises so as to be prejudicial to health or a nuisance" constitutes a statutory nuisance. Section 79 imposes a mandatory duty on every Local Authority to cause its area to be inspected from time to time to detect any statutory nuisances and, if a complaint of a statutory nuisance is made to it by a person living within its area, to take "such steps as are reasonably practicable" to investigate the complaint. There are two limbs to regulation of noise in the EPA. Under s.80 a local authority must serve an "abatement notice" where it is "satisfied" that a statutory nuisance exists or is likely to occur or recur. Under s.82 "any person" can ask a magistrates court to abate a nuisance on the ground that he is "aggrieved" by its existence. If the Court is satisfied that either (a) the alleged nuisance exists or (b) that although it has been abated it is likely to recur on the same premises it shall make an order requiring the abatement of the nuisance or its recurrence.

**The Noise and Statutory Nuisance Act 1993.** The NSNA also makes several important new contributions. Section 2 creates a new statutory nuisance in the EPA 1990: s.79(gg); "noise that is prejudicial to health or a nuisance and is emitted from or caused by a vehicle, machinery, or equipment in a street". ["Equipment" includes a musical instrument s.79(7) EPA 1990]. Section 3 of the NSNA amends s.80 of the EPA 1990 by inserting a new s.80A to allow an abatement notice to be fixed to the offending vehicle, machinery or equipment.

## REGULATION OF NOISE IN THE EUROPEAN UNION

There was no mention of the regulation of the Environment in the Treaty of Rome of 1957 never mind the regulation of noise. The closest reference to it is an oblique one in Article 36 which allowed for the continuation, or introduction of, the banning or restriction of trade for reasons of, inter alia, public health. Even when the European Economic Community finally adopted a common environmental policy 15 years later, at the Paris Summit of 1972, there was no specific reference to it in the first Programme of Action on the Environment which came out of it. Community action against noise nuisance was first conceived within the framework of the general programme for the "general elimination of technical barriers to trade" of 29<sup>th</sup> May 1969 and this approach has clearly influenced its later development. The Community announced an "anti-noise" policy in the Second Action Programme (para.67). In para.68 the Commission proposed an extensive programme of measures to be taken at local, regional, national and Community level. The Commission envisaged making proposals concerning guidelines for noise level in different zones; noise measurement methods; specifications for noisy products; noise insulation standards and permissible noise levels at work. It also said it would carry out research on the effects of noise on man and establish a Committee of National Experts.

The Third Action Programme declared that "in view of the Community's economic situation ... future noise-abatement measures would give much greater consideration to their socio-economic consequences" (para.23). The result was a complete absence of proposals and instead a focus on, for example, "determining" physical indicators with a view to evaluating the quality of a particular acoustic environment and "exploring links" between those indicators and the reactions of different population groups. In the Fourth Action Programme the Community recognised it had overreached itself in the Second Action Programme. More importantly, for the first time it characterised clearly the focus of the Community's approach to the regulation of noise when it stated that "the Commission has not yet been able to progress beyond the product-oriented approach" (para.4.5.2). In the Fifth Action Programme the Community acknowledged that noise pollution was "one of the most pressing problems in urban areas". Crucially, it also determined that the primary objective of the Community in relation to noise regulation should be to remedy the problem of noise at night time.

In terms of specific measures passed, as with the regulation of the Environment in general, the slow start preceded a period of significant and speedy growth. From 1970 to 1993 the EC passed 17 "mother" Directives (see below - please note this list does not include the "daughter" directives which amend the earlier Directives in the light of later technical knowledge or further changes agreed by the Council of Ministers). These are: (1) 70/157/EEC on the permissible sound level and the exhaust system of motor vehicles; (2) 70/338/EEC on audible warning devices for motor vehicles; (3) 78/1015/EEC on the permissible sound level and exhaust system of motorcycles; (4) 79/113/EEC on the determination of noise emissions of construction plant and equipment; (5) 80/51/EEC on noise emissions from subsonic aircraft; (6) 84/532/EEC on common provisions for construction plant and equipment; (7) 84/533/EEC on the permissible sound power level of compressors; (8) 84/534/EEC on the permissible sound power level of tower cranes; (9) 84/535/EEC on the permissible sound power level of welding generators; (10) 84/536/EEC on the permissible sound power level of power generators; (11) 84/537/EEC on the permissible sound power level of powered hand-held concrete-breakers and picks; (12) 84/538/EEC on the permissible sound power level of lawnmowers; (13) 86/188/EEC on the protection of workers from the risks related to exposure to noise at work; (14) 86/594/EEC on airborne noise emitted from household appliances; (15) 86/662/EEC on the limitation of noise emitted by hydraulic excavators, dozers, loaders and excavator loaders; (16) 89/629/EEC on the limitation of noise emission from civil subsonic jet aeroplanes; (17) 93/30/EEC on audible warning devices for two or three-wheel motor vehicles of motor vehicles.