

Statutory nuisance

Research Briefing

January 2022



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1. Introduction

Noise, light, smells, and smoke. All these things can be annoying or an inconvenience, but if it adversely affects enjoyment of a property or there is a risk to health, it could constitute a 'statutory nuisance'. They, and other sources of nuisance, can be caused by the actions, or inaction, of neighbours, businesses, landlords and others.

Statutory nuisances are specific matters set out in the **Environmental Protection Act 1990** (EPA) and will be the focus of this briefing.

The EPA provides a means for local authorities to investigate complaints and determine if a statutory nuisance is taking place. The EPA places duties on a local authority to inspect its area, investigate complaints of statutory nuisance made by a person living within its area and take action that will seek to resolve statutory nuisances.

In some circumstances the functions conferred or imposed by the EPA in relation to statutory nuisances rest with port health authorities. In this briefing, reference to local authorities may include port health authorities where they are responsible for the relevant functions.

Finding resolutions

It might be quicker and more amicable to find resolutions without involving local authorities or taking legal action. The UK Government guidance on resolving **neighbour disputes** provides a range of suggestions to help people discuss problems with their neighbours. It suggests:

- approaching them, or writing them a letter, explaining the problem clearly and sticking to the facts;
- discussing the problem with neighbours who are also affected and making a complaint to those responsible as a group; or
- discussing the **problem with the landlord** if tenants are causing a problem.

2. Statutory nuisance

There is no legal definition of a statutory nuisance. A statutory nuisance exists in respect of an issue that:

- **'unreasonably and substantially'** interferes with the use or enjoyment of a home or other premises; or
- is 'prejudicial to health', or is likely to be, which has been held by the courts to mean a threat to health from disease, vermin and the like and **not physical injury**.

To be a statutory nuisance, the activity must be ongoing or repeated; one-off events are not usually considered to be a nuisance.

The **EPA** identifies the following as statutory nuisances:

- 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 arising on industrial, trade or business premises and being prejudicial to health or a nuisance;
- e.** any accumulation or deposit which is prejudicial to health or a nuisance;
- f.** any animal kept in such a place or manner as to be prejudicial to health or a nuisance;
- fa.** any insects emanating from relevant industrial, trade or business premises and being prejudicial to health or a nuisance;
- fb.** artificial light emitted from premises so as to be prejudicial to health or a nuisance;
- g.** noise emitted from premises so as to be prejudicial to health or a nuisance;
- ga.** noise that is prejudicial to health or a nuisance and is emitted from or caused by a vehicle, machinery, or equipment in a street; or
- h.** any other matter declared by any enactment to be a statutory nuisance.

The statutory nuisance itself is not an offence. However, failure to take action to resolve the nuisance when directed to do so, is an offence.

When is a nuisance not a statutory nuisance?

Some activities or circumstances may be annoying or an inconvenience, but are not statutory nuisances under the **EPA**. Some of these include:

- land being in a 'contaminated state';
- smoke, artificial light or noise emitted from premises occupied on behalf of the Crown for naval, military or air force purposes;
- smoke emitted from the chimney of private dwellings within a smoke control area;
- dark smoke emitted from industrial or trade premises;
- fumes or gases emitted from premises other than private dwellings;
- artificial light emitted from airports, harbours, railways, prisons, goods transport centres and lighthouses;
- smoke or steam emitted from a railway locomotive steam engine; or
- noise from aircraft (except model aircrafts), traffic or political demonstrations.

Where can a statutory nuisance take place?

Some statutory nuisances can only occur in or come from certain types of premises. Depending on the particular nuisance, they can occur in or come from **'any premises' or 'industrial, trade or business premises'**.

This could include all land, including private and public sector housing, most vessels, and premises used for industrial, trade or business purposes.

'Industrial, trade or business premises' means premises which are:

- a.** used for any industrial, trade or business purposes;
- b.** premises on which matter is burnt in connection with any industrial, trade or business process; or
- c.** premises used for the purposes of any treatment or process as well as where they are used for the purposes of manufacturing.

In some circumstances, 'relevant industrial, trade or business premises' are excluded from the scope of the statutory nuisance regime. In this context, 'relevant industrial, trade or business premises' excludes:

- a.** land used as arable, grazing, meadow or pasture land;

- b.** land used as osier land, reed beds or woodland;
- c.** land used for market gardens, nursery grounds or orchards;
- d.** land forming part of an agricultural unit, not being land falling within any of paragraphs (a) to (c), where the land is of a description prescribed by regulations made by the appropriate person; and
- e.** land included in a site of special scientific interest (as defined in section 52(1) of the *Wildlife and Countryside Act 1981*).

3. The role of local authorities

A local authority must inspect its area for statutory nuisances from '**time to time**'. If a nuisance complaint is raised by a person in its area, the local authority must take such steps 'as reasonably practical' to investigate the complaint. This can involve a **local authority officer** attending the property affected.

Where a local authority deems a statutory nuisance exists, or is likely to occur or recur, it is **legally bound to act** by serving an abatement notice.

A statutory nuisance can originate outside the local authority's area. Under these circumstances the local authority may proceed as if the 'act or default' causing the nuisance were taking **place inside its area**.

Serving an abatement notice

Where the local authority is satisfied that a statutory nuisance exists, or is likely to occur or recur, it will serve an **abatement notice** on the person responsible.

In the case of a statutory nuisance arising from noise emitted from premises so as to be prejudicial to health or a nuisance, this can be served immediately, or the local authority may informally 'persuade' them to abate the nuisance. Where informal persuasion is ineffective, an abatement notice must be served. The informal persuasion will be ineffective where the local authority is satisfied:

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

For these purposes, 'relevant period' means the seven day period starting with the

day on which the local authority was first satisfied that the nuisance existed, or was likely to occur or recur.

Once served with an abatement notice, the person on whom that notice has been served will be required to reduce/remove the nuisance or prohibit or restrict its occurrence or recurrence.

The notice will:

- specify the time or times within which the requirements of the notice are to be complied with; and
- give clear information such that the person responsible can identify the nuisance and the works **required to resolve the nuisance**.

However, the notice is not required to specify the exact **works needed to abate** the nuisance. It must be served on:

- the owner of the premises if the nuisance arises from a structural defect;
- the owner or occupier of the premises if the person responsible for the nuisance cannot be found or the nuisance has not yet occurred; or
- otherwise, the person responsible for the nuisance.

More than one person can be responsible for a statutory nuisance. Each of those persons, whether or not their individual actions amount to a nuisance, can be served an abatement notice.

An abatement notice can be fixed to unattended **vehicles, machinery, or equipment** if the noise they emit causes a statutory nuisance and the person responsible for the vehicle, machinery or equipment cannot be found.

Failing to comply with an abatement notice is an offence

Unless the person served has a '**reasonable excuse**', the person will be guilty of an offence if they contravene or fail to comply with any requirement or prohibition imposed by a notice. If convicted they are liable to a maximum fine, with a further fine for each day the offence continues after the conviction.

If the person has committed the offence on an industrial, trade or business premises, they are liable on **summary conviction** to 'a fine' only.

A person served with an abatement notice can **appeal to a Magistrates' Court** within twenty-one days of the notice being served. Where the abatement notice

is served by a local authority in respect of a nuisance arising outside their area, an appeal is heard by a Magistrates' Court with jurisdiction where the act or default allegedly took place.

The 'best practicable means' defence

In some circumstances, a person will have a defence if they can prove that they have used the '**best practicable means**' to prevent, or counteract the effects of, the nuisance.

The defence is not available in the following cases:

- a.** certain nuisances (those being (a) premises in such a state; (d) dust, steam, smell, or other effluvia; (e), accumulation of deposit; (f), animal kept in such a place or manner; (fa), insects emanating from premises and (g) noise emitted from premises), except where the nuisance arises on industrial, trade or business premises;
- aza.** artificial light emitted from premises, except where emitted from industrial, trade or business premises, or emitted by lights used for the purpose only of illuminating an outdoor relevant sports facility;
- aa.** noise emitted from or caused by a vehicle, machinery or equipment in a street, except where the noise is emitted from or caused by a vehicle, machinery or equipment being used for industrial, trade or business purposes;
- b.** smoke emitted from premises, except where the smoke is emitted from a chimney; and
- c.** fumes or gasses from premises or any other matter declared by another enactment to be a statutory nuisance.

Practicable means "reasonably practicable" in terms of local conditions and circumstances, the current state of technical knowledge and financial implications.

The "means" refers to "the design, installation, maintenance and manner and periods of operation of plant and machinery, and the design, construction and maintenance of buildings and structures".

In the case of noise emanating from a pub, this defence could involve showing noise mitigating measures are in place. For example, **double glazed windows and restrictions** on the number of customers permitted in certain areas of the establishment.

This defence is only applicable if it is compatible with safety requirements and any duty imposed by law.

A separate defence is also available in relation to statutory nuisances arising from noise emitted from premises or noise emitted from or caused by a vehicle, machinery, or equipment in a street. This is outlined in **80(9) of the EPA**.

Resolving the nuisance and recovering expenses

If the abatement notice is **not complied with** the local authority may resolve the nuisance itself, by doing “whatever may be necessary”.

It can do this regardless of whether it prosecutes the offence. It can recover ‘expenses reasonably incurred’ in abating or preventing the recurrence of a nuisance, from the person, or people, responsible.

Complaints against local authorities

In some cases, the complainant may feel their concerns were not adequately addressed by the local authority. Under these circumstances a formal complaint should be submitted to the local authority’s complaints process.

After a complaint is lodged with the local authority, a complaint can be submitted to the **Public Services Ombudsman for Wales**. The Ombudsman has powers to investigate complaints about public services, is independent and free of charge. A complaint could be submitted if:

- the local authority does not provide a satisfactory response to the formal complaint **within 12 weeks**; or
- the complainant remains unsatisfied after completing the local authority’s complaints procedure.

The Ombudsman’s guidance to **complaining about a public body** highlights that exceptions can be made when a complaint is urgent and presents an immediate risk to safety.

4. Environmental Permitting Regulations

Activities with the potential to harm the environment and human health carried out at regulated facilities are regulated through the **Environmental Permitting Regulations 2016** (EPR). **They require:**

operators of “regulated facilities” to obtain a permit or to register some activities, which would otherwise require permits, as “exempt facilities”.

Environmental permits and exemptions for regulated facilities can include specific **conditions that address potential statutory nuisances**, for example, smoke or noise emitted from a premises.

This allows the **regulator to take enforcement action** if these conditions are breached.

Prosecute under the Environmental Protection Act or Environmental Permitting Regulations?

Under the Act, a local authority can serve an abatement notice on a regulated facility causing a statutory nuisance. However, because of the crossover between the Act and the Regulations, local authorities **must seek the consent of the Welsh Ministers** before bringing proceedings for the following statutory nuisances:

- b.** smoke emitted from premises so as to be prejudicial to health or a nuisance.
- d.** any dust, steam, smell, or other effluvia arising on industrial, trade or business premises and being prejudicial to health or a nuisance;
- e.** any accumulation or deposit which is prejudicial to health or a nuisance;
- fb.** artificial light emitted from premises so as to be prejudicial to health or a nuisance;
- g.** noise emitted from premises so as to be prejudicial to health or a nuisance;

This prevents operators facing two separate prosecutions over the same event.

5. Private action

A person aggrieved by a statutory nuisance **can take private action in the Magistrates' Court**. A person may wish to do this if:

- the local authority has not investigated or found that there is no nuisance; or
- the local authority is the subject of the complaint.

If the Magistrates' Court is satisfied that a nuisance exists, or is likely to recur, it will make an order:

- a. requiring the defendant to abate the nuisance, within a time specified in the order, and to execute any works necessary for that purpose; and/or
- 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;

The Court may also impose a fine on the defendant.

The Magistrates' Court may be satisfied that the alleged nuisance exists and renders the premises unfit for human habitation. Under these circumstances, the Court may prohibit the use of the premises for human habitation until the premises are, to the satisfaction of the Court, made fit.

As with an abatement notice issued by a local authority, a person who contravenes any requirement or prohibition imposed by an order is guilty of an offence. That person may rely on a defence that the best practicable means were used to prevent, or to counteract the effects of, the nuisance.

6. Statutory nuisance and other relevant legislation

The EPA is not the only law available to address nuisances. This section takes a look at some statutory nuisances and highlights alternative legislation and regulations.

The condition of premises

The 'state' of a premises alone is not a nuisance, it is the effect of the state of the premises which **gives rise to the nuisance**.

A premises prejudicial to health poses a risk of disease or illness. As previously stated, the EPA does not protect against the danger of **physical injury**.

Citizen's Advice states that for tenants in private rented accommodation and housing association tenants, the failure of a landlord to do repair work, such that the 'premises is in a state prejudicial to health', can amount to a statutory nuisance.

Nuisances arising from the state of a neighbour's garden, for example from high hedges or overhanging trees are covered by other legislation, such as the **Anti-social Behaviour Act 2003**. Senedd Research has published a separate briefing on **nuisance trees and hedges**.

Smoke

The EPA includes soot, ash, grit, and gritty particles emitted with smoke in its definition of smoke.

A common source of smoke nuisance is domestic bonfires. There are no laws against bonfires, but there are laws against any nuisance they cause. The bonfire must occur frequently to be addressed as a statutory nuisance.

Some smoke nuisances are covered by other legislation:

- the **Highways Act 1980** places restrictions on smoke emitting fires near roads; and
- the **Clean Air Act 1993** regulates smoke emitted from a chimney of a private dwelling within a smoke control area; dark smoke emitted from a chimney of a building or furnace of a fixed boiler/industrial plant; and dark smoke emitted

from an industrial or trade premises, or burning matter connected with industrial or trade process on domestic premises.

Smells and odours

Commercial **kitchens and industrial processes** are common sources of nuisance smells and effluvia. Smell is subjective, and councils usually use at least two **human 'sniffers'** to characterise the strength, frequency and offensiveness of smells.

The **Shared Regulatory Services** (SRS), a collaboration of Bridgend, Cardiff, and Vale of Glamorgan councils, highlights in its **statutory nuisance guidance** that:

There are no set levels or measuring devices to detect odour.

SRS relies on the information provided by the claimant to assist the investigation. It advises complainants to keep notes on when the nuisance is at its worst.

The smell must be of an unusual nature in the area. Agricultural smells in a country location are **not considered a nuisance** unless excessive.

Smell and effluvia from residential properties do not constitute a statutory nuisance.

EPR regulated facilities must ensure they **minimise or prevent odour** pollution. While smells coming from filthy or vermin-infested premises can be dealt with by local authorities under the **Public Health Act 1936**.

Rubbish and waste accumulations

A pile of rubbish or waste can be **considered a statutory nuisance if it is:**

... considerable and pose[s] some health threat such as attraction of vermin.

Inert waste, for example bricks, glass or construction material, is **not considered a statutory nuisance**.

Nuisance accumulations and deposits of rubbish are also covered by other sections of the EPA and other legislation:

- the unauthorised deposition of controlled waste, **commonly known as fly-tipping**, is an offence under **Section 33 EPA**;
- small-scale fly-tipping can be addressed under Section 33ZB EPA (inserted by the **Unauthorised Deposit of Waste (Fixed Penalties) (Wales) Regulations 2017**);

- domestic households which do not transfer their waste to an ‘authorised person’ can be issued with a fixed penalty notice under Section 34ZB EPA (inserted by the **Household Waste Duty Of Care (Fixed Penalties) (Wales) Regulations 2019**);
- if land is in such a ‘state as to adversely affect the amenity of the neighbourhood’ the local planning authority can serve a notice on the owners or occupiers under the **Town and Country Planning Act 1990**; and
- where litter nuisance negatively affects a ‘community’s **quality of life**’, a community protection notice can be issued under the **Anti-social Behaviour and Policing Act 2014**.

Noise

The Welsh Government has published **Sound Advice on Noise**, which provides guidance on addressing noise problems. It highlights there:

isn’t a specific measurement to define when noise becomes a statutory nuisance.

A local authority officer must decide if the law is being breached in each individual circumstance.

Sound Advice on Noise covers legislation and noise controls, including:

- the power of local authorities to create byelaws to control particular types of noise in streets or local authority property;
- the power of local authorities, under the **Control of Pollution Act 1974**, to specify how construction work is conducted to reduce the noise disturbance;
- restrictions of loudspeaker use in the street under the **Control of Pollution Act 1974**;
- the noise controls made available by the **Anti-social behaviour, Crime and Policing Act 2014**; and
- night-time noise offences under the **Noise Act 1996**.

Fireworks are a common source of noise complaints. The short-lived nature of the noise can make it challenging for authorities to determine if a statutory nuisance is occurring. Senedd Research has published an article detailing the **legislation surrounding fireworks**.

Welsh planning policy includes the 'agent of change' principle, which states that:

a business or person responsible for introducing a change is responsible for managing that change.

In **practice this means:**

the developer of a new residential building near an existing live music venue is required to include noise mitigation measures as part of the new development.