

# Noise Act 1996

## (as amended by the Anti-social Behaviour Act 2003)

### Introduction

1. This circular is to draw attention to the Noise Act 1996 (the 1996 Act), as amended by s.42 of the Anti-social Behaviour Act 2003. It also encloses the Secretary of State's directions under section 5 and approval of measuring devices under section 6 which apply in England and Wales – these were originally issued prior to devolution and continue to apply in England and Wales. The 1996 Act introduced for the first time a night noise offence relating to domestic premises and a procedure for the seizure and forfeiture of noise making equipment. The 1996 Act extends to England, Wales and with modifications, to Northern Ireland. However, this circular only addresses the position in England and Wales. This circular represents the Department and the National Assembly for Wales's views and interpretation of the legislation. Local authorities should continue to seek their own legal advice as required.
2. The Environmental Protection Act 1990 (the 1990 Act) provided streamlined powers to deal with complaints of excessive noise, and for the first time placed a duty on local authorities to investigate complaints of noise nuisance. However, concerns about the effectiveness of the existing legislation to deal with problems of neighbour noise in particular led to the establishment of the Neighbour Noise Working Party in October 1994. The Working Party considered the options for dealing with problems of excessive noise taking account of the concerns raised as to the time it can take for complaints to be dealt with under the statutory nuisance regime. The conclusions and recommendations of the working party were issued in March 1995<sup>1</sup> and included proposals that consideration should be given to a specific night noise offence and clarification of the powers to confiscate noise making equipment.
3. The Government's response to the consultation on the Working Party's report was to support the recommendations it made, recognising them as a package of proposals which, taken together, could bring substantial improvements to the way in which noise problems are tackled. The 1996 Act took forward the legislative elements of the recommendations. However, sections 2 to 9 of the 1996 Act applied only to the areas of local authorities which had resolved that they should so apply, or in respect of which the Secretary of State or the National Assembly for Wales had so provided.

<sup>1</sup> Copies are available from Noise and Nuisance Policy Unit, Department for the Environment, Food and Rural Affairs. (See page 19 for address)

4. Following a Parliamentary commitment to review the 1996 Act the Department commissioned the University of Birmingham to undertake a review of the take-up and workings of the 1996 Act in October 1999. The outcome of this and a subsequent public consultation, concluded in March 2001, was the amendment of the 1996 Act so that it provides local authorities with a further tool to use without the need for formal adoption as had been required originally. The low take-up of the 1996 Act by local authorities was attributed by many to the obligation, having once adopted the 1996 Act, that they maintain an out-of-hours noise response service that might not be justified by local circumstances and their own Best Value reviews.

## Timetable

5. The amendments to the 1996 Act made by the Anti-social Behaviour Act 2003 came into force in England and Wales on 31 March 2004.

## Night Noise Offence

### Overview

6. The night noise offence complements the statutory nuisance controls on noise. It is intended to provide a swift remedy to problems of disturbance caused by noise from dwellings at night. The offence is based on exceeding an objective measured sound level value ('the permitted level'). It has the advantage of not being subject to the same subjective uncertainties about judgements of nuisance which can prolong court proceedings for noise offences. The availability of a fixed penalty system, as well as providing a swifter sanction, may also prevent some cases being brought to court.
7. It is important to recognise that the night noise offence in the 1996 Act is additional and complementary to the existing statutory nuisance regime. During the passage of the Noise Bill, the then Parliamentary Under Secretary of State, James Clappison, stated that '...the existing powers of local authorities to deal with noise under the statutory nuisance regime will remain available to all residents,....The Bill does not alter those legal powers...' (Official Report, 12 July 1996; Vol 281, Col 718).
8. The permitted level for the new night noise offence should not be taken as an indicator of whether or not noise is a statutory nuisance. It is possible that a noise which is not an offence under the 1996 Act may nevertheless be prejudicial to health or a common law nuisance and so be a statutory nuisance.

## Use (Section 1)

9. As a result of the amendments to the 1996 Act made by the Anti-social Behaviour Act 2003 the night noise offence may be used by any local authority in England and Wales. The Anti-social Behaviour Act 2003 is explained more fully in Defra guidance available at: <http://www.defra.gov.uk/environment/localenv/asb-act/> .

For the purposes of the 1996 Act, a 'local authority' is defined in section 11 of the 1996 Act as:

- in Greater London, a London borough council, the Common Council of the City of London and, as respects the Temples, the Sub-Treasurer of the Inner Temple and the Under-Treasurer of the Middle Temple respectively;
- outside Greater London -
  - (i) any district council;
  - (ii) the council of any county so far as they are the council for any area for which there are no district councils;
- in Wales, the council of a county borough;
- the Council of the Isles of Scilly.

## Investigation (Section 2)

10. Night noise may be investigated under the 1996 Act further to a complaint made by any individual **present in a dwelling** that excessive noise is being emitted from another dwelling ('the offending dwelling') between the hours of 23:00 and 07:00 ('the night hours'). It should be noted that this differs from the mandatory requirement in Part III of the 1990 Act for local authorities to respond to complaints from 'a person living within its area'. It should also be noted that, unlike statutory nuisance, there is no additional duty on a local authority to inspect its area from time to time to detect the presence of excessive night neighbour noise under the 1996 Act.
11. "Dwelling" is defined in section 11(2) of the 1996 Act as meaning any building, or part of a building, used or intended to be used as a dwelling, and reference to noise emitted from a dwelling will include noise emitted from any garden, yard, outhouse or other appurtenance belonging to or enjoyed with the dwelling.
12. If a local authority is considering using its powers under the 1996 Act, then that authority may, if it receives a complaint of the kind described in section 2(2), arrange for an officer of the authority to take reasonable steps to investigate the complaint.
13. Detailed arrangements for the provision of services to enable the issuing of Night Noise fixed penalty notices under the 1996 Act are a matter for individual local authorities to determine in light of their assessment of local needs and circumstances. In particular, local

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authorities should give consideration to factors likely to be pertinent to such an assessment. These could include the number of complaints received, the timing of complaints and any weekly or seasonal variation in complaint rate, all of which might vary considerably during the night-time period, throughout a week and through the year.

14. Following the amendments made by s.42(1), (2) and (3) of the Anti-social Behaviour Act 2003, there is no longer a duty on a local authority to provide throughout the year a full 23:00 – 07:00, 7 nights a week, noise response service in order to issue Night Noise fixed penalty notices. Instead, a number of different arrangements may be appropriate, as determined by local needs and circumstances. The type of noise service appropriate may include officers on standby at a central location or on a call-out system from home, possibly covering targeted and varying hours between 23:00 and 07:00 on selected nights each week and during specific times of the year e.g. 23:00 to 03:00 at weekends and during busier summer periods only.
15. Additionally there may be times when due to peaks in the demand for the night noise service or pressure from other competing priorities, a local authority may find that the level of service that can be provided within available resources will not meet the increased demand. In such circumstances, in order to ensure the most effective use of available resources complaints may need to be subject to prioritisation, whereby the level of response to a complaint is based on a screening and assessment process in order to determine priority for action, based on factors which could include:
  - How often the noise complained of occurs;
  - How likely investigating officers are to be able to witness and measure the noise complained of; and
  - How the noise is affecting the complainant.
16. It should be noted that measurement of noise is a skilled operation which should be undertaken only by people who are competent in the appropriate procedures. Consequently, local authorities who do not ensure that staff charged with use of the night noise offence are adequately trained and can demonstrate competence in measurement of noise and the 1996 Act procedure, run the risk of successful legal challenge by noise makers. The issuing of warning and fixed penalty notices is unlikely to be suitable for contracting out, as the Act specifies that this function should be performed by an 'officer of the authority'.
17. Where a noise complaint is received but the source of the noise is a dwelling which is situated in another local authority area, the local authority receiving the complaint may treat the offending dwelling as if it were within its area.
18. The Chartered Institute of Environmental Health, with assistance from Defra and National Assembly for Wales, has prepared good practice guidance on the management of local authority noise services. Copies of the guidance are available from the Chartered Institute at Chadwick Court, 15 Hatfields, London, SE1 8DJ or on their web site at [www.cieh.org](http://www.cieh.org).

## Investigation of complaint (section 2)

19. The local authority may arrange for one of its officers to take reasonable steps to investigate the complaint. It is suggested that the local authority officer should make contact with the complainant in order to explain the procedure involved in investigating a night noise complaint, including the possible need to measure from within the complainant's dwelling and the conditions under which the measurement would be made. The local authority officer may also wish to explain the enforcement procedure for the night noise offence and use this initial contact as means to gain information to assist in dealing with the complaint and prioritisation of response.
20. The local authority officer may consider a visit is necessary to investigate the complaint. The purpose of the initial investigation is to decide whether or not the noise complained of exceeds, or might exceed, the permitted level (see paragraphs 35 and 36 and the Annex). In coming to this decision, it is for the officer concerned to decide whether to assess the noise from within or outside the complainant's dwelling and whether or not to use any device for measuring the noise. There is **no requirement** to measure the noise at this stage.
21. Where an officer decides, by judgement or by taking a measurement, that the noise complained of does not exceed the permitted level, or where she or he decides that the noise cannot be measured or where she or he feels that the provisions of the 1996 Act are inappropriate, she or he may nevertheless be satisfied that the noise is a statutory nuisance under the provisions of the 1990 Act. In such cases, the local authority is under a duty to serve an abatement notice under section 80 of the 1990 Act.
22. If the officer is satisfied, either by judgement or measurement, that the noise complained of exceeds or may exceed the permitted level during night hours, then a warning notice may be served, although there is **no requirement** on him to do so. However, if a warning notice is not served, no Night Noise offence is committed if subsequent measurement shows that the permitted level is being exceeded.
23. If the investigating officer is satisfied that a statutory nuisance is being caused as well as the permitted noise level being exceeded, then the mandatory duty to serve an abatement also applies. However, should the permitted noise level continue to be exceeded or a statutory nuisance continue after service of both a warning notice and an abatement notice, the local authority has discretion, limited by the double jeopardy principle and guided by the Code of Crown Prosecutors code of practice, whether to follow the remainder of the 1996 Act or the 1990 Act enforcement processes. In such cases it would be inappropriate to use both enforcement regimes; instead the local authority must decide which is the most appropriate and either cease that under the 1996 Act or stay with that under the 1990 Act.
24. In circumstances where an officer determines that the noise complained of does not exceed the permitted level and is not a statutory nuisance, the complainant should be advised as soon as practicable. It is good practice for investigating officers to explain their decision, as this can help complainants more fully understand the reasons why their complaint has not resulted in action being taken against the alleged noise maker.

### The warning notice (Section 3)

25. The warning notice must be served by delivering it to any person present at, *or near*, the offending dwelling *and* appearing to the officer to be responsible for the noise (s.3(3)(a)), or if it is not reasonably practicable to identify such a person, by leaving the notice at the offending dwelling (s.3(3)(b)).
26. The provisions of the 1996 Act define 'the person responsible' in this context as 'a person to whose act, default or sufferance the emission of the noise is wholly or partly attributable'. If the identity of that person is known, the person's name should be included in the notice.
27. The warning notice must state:
  - that the officer considers that noise is being emitted from the offending dwelling during night hours;
  - that the officer considers that the noise exceeds, or may exceed, the permitted level as measured from within the complainant's dwelling;
  - that any person who is responsible for noise emitted from the offending dwelling, in the period specified in the notice, which exceeds the permitted level when measured from within the complainant's dwelling, may be guilty of an offence;
  - the specified period; and
  - the time at which the notice was served.
28. There is no provision in the Act for the Department or the National Assembly for Wales to provide a standard form for a warning notice, but a suggested form has been published by the Chartered Institute of Environmental Health.
29. The period of the notice cannot begin earlier than ten minutes after the notice has been served, although the notice may provide that the period commences later. An example of this could be where the officer responds to a complaint of a noisy party and, on attempting to serve the warning notice, is assured that the party will cease in twenty minutes. If the officer believes that it is a reasonable response in the circumstances, the initial period before the warning notice comes into effect could then be extended to twenty minutes.
30. The warning notice is valid until 07:00 (7am) following the time of service. There is no discretion as to when the warning notice ceases to have effect.

### The new offence (section 4)

31. Where a warning notice has been served, then any person who is responsible for noise emitted from the offending dwelling, which:

- is emitted in the period specified in the notice; and
- exceeds the permitted level, as determined using measurements taken within the complainant's dwelling, is guilty of an offence.

See paragraph 26 above for the definition of 'the person responsible'. It should be noted that this need not necessarily be the person on whom the warning notice was served.

32. If, upon measuring the noise during the period specified in the warning notice, the officer is satisfied that an offence has been committed, then the local authority can decide to prosecute or to serve a fixed penalty notice in lieu of prosecution (see paragraphs 48 to 58).
33. A person guilty of a night noise offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale (currently £1000). The 1996 Act provides that it is a defence for a person charged with a night noise offence to show that there was a reasonable excuse for the act, default or sufferance in question.

### **Assessment, measurement and determination of the noise – procedure (sections 4, 5 and 6)**

34. It should be noted that, in contrast to statutory nuisance, the night noise offence is based on the exceeding of an objective measured sound level ('the permitted level'). The offence requires that the noise emitted from the offending dwelling be measured from within the complainant's dwelling using an approved measuring device in a specified manner. The permitted level is set out in directions made by the Secretary of State who also has the power to approve measuring devices in England; the power to make such directions and give such approval in relation to Wales is exercisable by the National Assembly for Wales. The noise complained of must be measured using an approved device in accordance with any conditions subject to which such approval is given. The Secretary of State's directions under section 5 and approval under section 6 are set out in the Annex. These were issued prior to devolution and continue to apply in England and Wales. If the approved procedure is not followed, the measurement made will not be admissible as evidence in any court proceedings for the night noise offence.
35. For the purposes of the night noise offence, the permitted level (see paragraphs 3-5 of the Directions) shall be determined in accordance with the following:
  - In any case where the underlying level of noise does not exceed 25dB, the permitted level shall be 35dB.
  - In any case where the underlying level of noise exceeds 25dB, the permitted level shall be 10dB in excess of that underlying level.
36. While the 1996 Act does not define the type of noise to which the new offence might apply, it is understood that the technical aspects of measuring the noise complained of means that there may be difficulties in assessing some impulsive or sporadic noises e.g.

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slamming doors and isolated incidents of shouting. The night noise offence is likely to be most appropriate for cases of disturbance from persistent noises e.g. amplified music or prolonged noisy DIY activity.

37. It will be noted from the above that the permitted level is determined by reference to the underlying level of noise. There will be cases where the level of noise complained of is clearly substantially above the level of noise that would otherwise be present and where there will be obvious gaps or lulls in the noise. In such cases it should be possible to assess, by judgement or measurement, that the underlying level of noise (as an A-weighted sound pressure level using time weighting 'F') is at least 10dB below the LAeq, 5min of the noise from the offending dwelling.
38. However, the measurement technique makes it possible to determine the underlying level of noise even if the dominant noise, such as amplified music, appears to be continuous. This can be done, using currently available instrumentation, by the use of a statistical parameter (such as  $L_{A99,8,5min}$ ,  $L_{A99,5,2min}$  or  $L_{A99,1min}$ ) as a proxy for the underlying level of noise.
39. If  $L_{AN,T}$  measurements are to be used to determine the underlying level of noise, the equipment must meet certain criteria with regard to its sampling rate and its method of operation of statistical calculations (see paragraph 3(b) of the Approval). It is understood that at the present time, only the instrument manufacturer or their agent can usually supply such information for such instruments.
40. Local authority officers should be aware that the measurement procedure may require measurements of relatively low levels of noise. They should also recognise that the noise generated by the approved device itself (including the microphone), ie. self-noise, will always have the effect of elevating the underlying level of noise to a greater extent than the offending noise. At low levels of noise, the self-noise of the approved device can significantly affect the underlying level, making confirmation of an offence less likely. Approved devices with high levels of self-noise may not be appropriate for use where relatively low levels of noise are being measured.
41. To obtain suitable measurements for the purposes of the 1996 Act in situations where underlying levels of noise are around 25 dB(A), it is recommended that the self-noise of the measuring device (including the microphone) should be below 20 dB(A). However self-noise can exceed this level without significantly affecting the accuracy of measurement at higher sound pressure levels.
42. In the future, the Department and the National Assembly for Wales envisages that equipment may be developed capable of determining the underlying level of noise, and the wider offence requirements, directly. We intend to keep the measurement protocol under review and to be responsive to any significant advances in the ability to objectively quantify excessive night-time noise. This may include the use of dB(C) and short (125ms)  $L_{eq}$ .

## **Court proceedings for the night noise offence – evidence (section 7)**

43. Section 7 provides that in proceedings for a night noise offence under section 4 of the 1996 Act, evidence of a measurement of noise made by a device or of the circumstances in which such a measurement was made, or that a device was of an approved type, or that any conditions subject to which such approval was given were satisfied, may be given by production of a document described in s.7(2). The document must be signed by an officer of the local authority.
44. If the document contains evidence of a measurement of noise it may consist partly of a record of the measurement produced automatically by a device.
45. Section 7 further provides that in proceedings for a night noise offence under section 4, evidence that noise, or noise of any kind, measured by a device at any time, was emitted from a dwelling, may be given by production of a document:
  - signed by an officer of the local authority, and
  - stating that he had identified that dwelling as the source at that time of the noise or, as the case may be, the noise of that kind.
46. A document is not admissible in evidence in proceedings for a night noise offence unless a copy of it has, not less than seven days before the hearing or trial, been served on the person charged with the offence.
47. Furthermore, a document is not admissible as evidence of anything other than the matters shown on the record produced automatically by a device if, not less than three days before the hearing or trial or within such further time as the court may in special circumstances allow, the person charged with the offence serves a notice on the prosecutor, requiring attendance at the hearing or trial, of the person who signed the document.

## **The fixed penalty (sections 8 and 9)**

### **Overview**

48. The officer can offer a person who is committing, or has just committed, a night noise offence the option of discharging liability to conviction by payment of a fixed penalty notice. Local authorities should be aware of the need to ensure officers are duly authorised to serve fixed penalty notices under section 8(1) of the 1996 Act. The keeping of an up to date written record of officer authorisations is a successful method of countering challenges by noise makers on this point in Court actions. The fixed penalty sum is set at £100 with a power for the Secretary of State, in relation to England, and the National Assembly for Wales, in relation to Wales, to change this by order. In cases of persistent or gross noise-making, or where a large-scale party was occurring, prosecution which can attract a penalty of up to £1,000 might be a more appropriate response.

## The fixed penalty (sections 8 and 9)

49. Where a fixed penalty notice has been served, the local authority cannot institute proceedings for that offence for fourteen days from the date of service of the notice. If the person responsible pays the fixed penalty before the end of that period, s/he cannot be convicted of that offence. However, it should be noted that payment of the fixed penalty does not prevent action for further offences within the same night-time period (see paragraph 63).

### Form of notice

50. The 1996 Act provides that the fixed penalty notice must state:
- that proceedings will not be taken for fourteen days following the date of service of the notice;
  - that the fixed penalty sum is £100; and
  - details of to whom and where the fixed penalty sum should be paid.
51. The fixed penalty notice must also give such details of the circumstances alleged to constitute the offence as are necessary to give reasonable information of the offence. This might include the address of the offending dwelling, the date and time at which the warning notice was served and the time at which it came into force, the permitted level and the actual levels recorded.
52. The Secretary of State and the National Assembly for Wales have power under section 9 to specify, by order, the form of the fixed penalty notice in relation to England and Wales respectively. However, they do not propose to use their powers at present. A suggested form of fixed penalty notice has been prepared by the Chartered Institute of Environmental Health.

### Service of notice

53. The fixed penalty notice should be given to the person who the officer believes is committing or has just committed the offence (see paragraph 26 above for the definition of 'the person responsible'). This should be done either by delivering the notice to that person, or where this is not reasonably practicable, by leaving the notice addressed to that person at the offending dwelling.

### Payment of the fixed penalty (sections 8 and 9)

54. Payment may be made by post, although payment by other means is not ruled out.
55. Where a fixed penalty notice has been issued, but has not been paid within the fourteen-day period, the local authority may decide to take proceedings against the person responsible. Evidence that the fixed penalty was not paid before the end of the fourteen

days may be given to the court in the form of a certificate. This should state that such payment was not received within the required period and should be signed by, or on behalf of, the person having responsibility for the financial affairs of the local authority.

56. As a result of the amendments made to the 1996 Act by the Anti-social Behaviour Act 2003 (s.42(1) and (3), introducing new s.9(4)-(4F) 1996 Act), a local authority may retain the sums it receives in respect of fixed penalty notices for the night noise offence, for use on its 'qualifying functions'. All local authority functions under the 1996 Act are 'qualifying functions'. In addition, the 1996 Act provides for regulations to be made by the Secretary of State in relation to England, and by the National Assembly for Wales in relation to Wales, to specify additional local authority functions as 'qualifying functions' on which receipts may be spent. Before making regulations under this section, the Secretary of State or, as the case may be, the National Assembly for Wales must consult those local authorities affected and any other person that s/he or it considers appropriate.
57. The Secretary of State and the National Assembly of Wales has the power to make regulations as to the action which local authorities must take in relation to unspent receipts and the accounting arrangements for local authority fixed penalty receipts. These regulation-making powers are subject to the same duty of consultation as that described above. Defra and the National Assembly for Wales will consult on the Regulations to be made under this power for introduction at the earliest opportunity, but until that time the receipts from fixed penalty notices may only be used for qualifying functions under s.9(4A)(a) Noise Act 1996.

## Supply of information relating to the use of fixed penalty notices

58. Under section 42(5)(4C) of the Anti-social Behaviour Act 2003 a local authority shall supply the Secretary of State or the Welsh Assembly Government with such information relating to its use of fixed penalty receipts as the Secretary of State or Welsh Assembly Government may require. For England it is proposed that the information to be required under this provision will include (a) the number of fines issued (b) the number of fines paid and unpaid (c) the total amount received from paid fines, and (d) the number of cases taken to court.
59. Defra will send out the relevant forms to be completed on an annual basis. These forms will be in a format similar to the those sent out by the Department for fixed penalty notices issued for litter, dog fouling, graffiti and fly posting offences. Return forms should be sent to:  
Local Environmental Quality Team, Department for Environment, Food and Rural Affairs,  
4/D9 Ashdown House, 123 Victoria Street, London, SW1E 6DE
60. Alternatively, returns may be set out in an electronic table or spreadsheet clearly labeled as 'night noise data', and sent by email to:  
local.environment@defra.gsi.gov.uk, stating in the subject line '[Offence Name] Penalty Returns & the name of the local authority', where the [Offence Name] is '**night noise**'.

## Further offences (section 9(2))

61. There may be circumstances where a fixed penalty notice has been served on an individual in respect of a night noise offence, but that person continues to be responsible for noise above the permitted level during the same night-time period. In such cases, although a further fixed penalty notice cannot be served, a person may be convicted of a further offence. Such proceedings may be taken without service of a further warning notice.

# Seizure, Retention and Forfeiture

## Overview

62. Since the original 1996 Act, the Human Rights Act 1998 has been implemented. The Human Rights Act 1998 is significant because section 6 makes it unlawful for local authorities to act in a manner which is incompatible with the rights contained in the European Convention on Human Rights (ECHR). These rights extend to both the noise victim and noise maker. The key principle of the Human Rights Act 1998 is that wherever possible local authority actions should be compatible with the Convention rights. This principle covers the actions, and failure to act, by a local authority.
63. It is understood that a number of local authorities have used section 81(3) of the 1990 Act together with paragraph 2 of Schedule 3 of that Act to seize items considered to have been used in the commission of a statutory nuisance offence. However, there has been some debate as to whether this is a satisfactory means by which to achieve seizure, forfeiture and disposal of noise-making equipment.
64. Section 10 of the 1996 Act, together with the Schedule, extends the powers for the existing statutory nuisance regime and makes similar provisions for the night noise offence.

## Seizure (section 10)

65. Where a warning notice has been served under section 3 of the 1996 Act, and the noise emitted from the premises has exceeded the permitted level during the period specified in the notice, action to seize the noise-making equipment may be undertaken. Such noise-making equipment will typically comprise electronic items such as a HiFi, mixer desk, loud speakers, TV, DIY equipment, and musical instruments such as drum-kits, keyboards or guitars and their amplification. It may potentially also include a collection of CDs, records, minidisks or tapes. The 1996 Act powers are not intended to cover noisy animals such as barking dogs. An officer of the local authority or person authorised by them may enter the dwelling to seize and remove the equipment that he or she believes is being, or has been used, in the emission of noise during the period when the noise exceeded the permitted level. The person carrying out the seizure must produce their authority to do so, if requested.

66. In some cases, alerting the person responsible to the intention to gain access to the premises could defeat the reason for entry – that is to seize the noise-making equipment. Alternatively, entry to the premises may be refused when an approach is made following the exceeding of the permitted level, or such a refusal may be apprehended. In such cases, where a Justice of the Peace is satisfied that the correct procedures have been followed with regard to service of the notice and measurement of the noise complained of, s/he may issue a warrant permitting the local authority to gain access to the premises, if necessary by force. A warrant remains in force until such time as the equipment has been seized, or until the purpose for which entry is required has been satisfied.
67. Where it is necessary for entry to be made, the local authority may use such equipment and persons as necessary to gain entry to the premises. On leaving unoccupied premises, the local authority has a duty to leave them in as secure a state as prior to their gaining entry.
68. Where a local authority is taking action under Part III of the 1990 Act as extended by the 1996 Act, they may seize and remove noise-making equipment necessary to abate the nuisance or to comply with an abatement notice. Where entry is refused or refusal is apprehended, or the premises are unoccupied or the occupier is temporarily absent, or if the case is one of emergency, or an application for admission would defeat the object of entry; and there are reasonable grounds of entry into the premises to seize the noise-making equipment e.g. statutory nuisance is on-going or likely to recur, a warrant for entry may be sought by application to a Justice of the Peace. It should be noted that (except in emergency) there is a requirement to provide 24 hours notice of intention to enter premises used wholly or mainly for residential purposes to carry out seizure without a warrant to enter, although entry as of right is permitted for authorised officers at any reasonable time for all other premises when taking action under Part III of the 1990 Act. This requirement does not apply where seizure is being carried out with regard to equipment used in the commission of an offence under the 1996 Act.
69. Any person who wilfully obstructs a person who is attempting to enter premises or seize noise-making equipment can be liable for a fine up to level 3 on the standard scale (£1,000).

## **Retention, forfeiture and disposal (Schedule, Paragraph 1)**

70. The Schedule outlines the powers for the retention, forfeiture and disposal of seized noise equipment.
71. Paragraph 1 defines a number of terms which are used in the Schedule.

**Noise offence** – In relation to noise-making equipment seized under section 10(2) of the 1996 Act, an offence under section 4 of the 1996 Act: that is, the night noise offence; and in relation to equipment seized under section 81(3) of the 1990 Act (as extended by section 10(7) of the 1996 Act) a statutory nuisance offence under section 80(4) of the 1990 Act falling within section 79(1)(g): that is, noise nuisance.

## Seizure, Retention and Forfeiture

**Seized equipment** – Equipment seized in accordance with section 10(2) of the 1996 Act or section 81(3) (as extended) of the 1990 Act.

**Related equipment** – In relation to any conviction or proceedings for a noise offence, equipment which has been seized having been used or alleged to have been used in the commission of an offence.

**Responsible local authority** – The local authority by or on whose behalf the equipment was seized.

72. It should be noted that section 10(2) of the 1996 Act is widely phrased to cover any equipment which it appears to the officer is being or has been used in the emission of the noise. During the Second Reading of the Noise Bill, James Clappison stated 'the equipment that causes the noise...could certainly include tapes, records, compact discs and do-it-yourself equipment'. (Official Report, 16 February 1996; Vol 271, Col 1299)

### Retention (Schedule, Paragraph 2)

73. Any seized equipment may be retained by the local authority for a period of twenty eight days from the date on which it was seized. Where information has been laid to initiate proceedings for an offence within that period of twenty eight days, related equipment may be held until the person is sentenced or otherwise dealt with for the offence, or acquitted of the offence, or held until a case is discontinued.

74. However, where a person whose equipment has been seized was served with a fixed penalty notice for the same offence and has paid the fixed penalty within the time allowed, the seized equipment must be returned.

### Forfeiture and Disposal of Forfeited Equipment (Schedule, Paragraphs 3 and 4)

75. Where a person has been convicted of a noise offence the court may make a forfeiture order for any related equipment. Such an order can be made whether or not the offender is dealt with in any other way by the court.

76. When considering whether to make a forfeiture order the court must take account of the value of equipment to be forfeited and the likely financial and other effects on the offender if such an order is made. In cases where the court does take the decision to make a forfeiture order the offender is deprived of any rights in that equipment.

77. In some cases, it may be that equipment which has been the subject of a forfeiture order is the property of someone other than the person in whose case the forfeiture order was made. In these cases the legislation provides that the local authority should take reasonable steps to bring the matter to the attention of anyone who might be the owner. Where a claimant applies for the equipment, the court must be satisfied that he is the owner and that either he did not consent to the offender having possession of the equipment, or did

not know or have any reason to suspect that the equipment would be used in the commission of a noise offence. Where the court is satisfied on these points they may order the return of the equipment to the owner. Any claim with regard to ownership of the equipment must be made within six months of the date of the forfeiture order being made. Paragraph 4(5) also provides certain additional rights for third parties.

78. The purpose of this provision is to provide protection for owners who were not aware and who had no reason to suspect that their equipment would be used in the commission of an offence. An example of such a situation could be where the owner of the equipment is a leasing company.
79. A local authority must retain the equipment for the period of six months from the date on which a forfeiture order is made. However, if no order for return of the equipment has been made at the end of the six month period from that date, the local authority may dispose of the equipment.

## **Return and Disposal of seized equipment (Schedule, Paragraphs 5 and 6)**

80. If, in proceedings for a noise offence, no forfeiture order is made, a court may give directions as to the return, retention or disposal of seized equipment. This provision applies whether or not the person is convicted of a noise offence.
81. There may be cases where equipment is seized, but proceedings for an offence to which it is related have not begun within the specified 28 day period. In these circumstances, the local authority has a duty to return the equipment, to any person who appears to them to be the owner of the equipment and makes a claim for its return within a six month period from the end of the period of 28 days after seizure of the equipment. If no claim is made within that same period, the local authority may dispose of the equipment. Whilst holding seized equipment, the local authority must make reasonable attempts to bring to the attention of persons their right to make a claim for the equipment.
82. In such cases, before returning seized equipment to the person making a claim for its ownership, the local authority can require that person to pay reasonable charges for the seizure, removal and retention of the equipment. Charges cannot be levied where the authority are satisfied that the person claiming the equipment did not know, and had no reason to suspect that the equipment would be used to emit a noise in excess of the permitted level.
83. The legislation enables an owner to make a claim within a year of a local authority having sold seized equipment in one of the circumstances described in paragraphs 69 and 70 above. The local authority must pay any proceeds of sale in excess of reasonable charges for the seizure, removal and retention of the equipment, to the owner of the equipment. Again, if the local authority is satisfied that the owner did not know, and had no reason to suspect that the equipment would be used to create a noise offence, administrative charges cannot be made.

### **Protection from personal liability (section 12)**

84. Section 12 provides protection from personal liability for any member, officer or person authorised by the local authority when carrying out in good faith their duties under the 1996 Act.

## Resource Implications for local authorities

85. In deciding whether to make use of the 1996 Act, local authorities will need to take into account local needs and circumstances. The financial implications for those authorities which choose to do so will vary according to the level of noise service they currently provide. For those authorities which have already chosen to provide a partial or comprehensive night time noise service within existing resources, there will be little by way of additional cost. The measures covered by this guidance do not place any new duties on authorities but give them the flexibility to take action to deal with local issues.
86. Those local authorities in England and Wales which do not currently provide a partial or comprehensive night time noise service, will be unable to use the new power without changing how their team operates which could result in additional costs. These could include the following:
- the costs of staffing the service,
  - the costs of staff training in noise measurement,
  - transportation costs,
  - costs of personal safety equipment and training for staff engaged in providing the service,
  - communication costs e.g. mobile phones, radios and pagers,
  - management and administrative costs of providing and supporting the service,
  - costs of enforcement, seizure and storage of noise making equipment.

However, simply to maintain their existing cost structure in these areas, local authorities only offering Mon-Fri office hours coverage would simply need to justify maintaining the status quo. Their current decision not to offer an out of hours service should be based on 'best value' after assessing local needs and available resources. Neither of these factors will change following the removal of the Night Noise Offence.

87. In some cases, local authorities undertaking seizure of noise-making equipment will be able to recover costs of seizure and storage from the equipment owner upon return, or by sale of equipment not claimed. In addition, use of the 1996 Act may be a more cost-effective alternative to evoking powers under the statutory nuisance regime of the 1990 Act.

## General

### **Guidance on the Management of Local Authority Noise Services**

88. The issuing of warning notices, service of fixed penalty notices and seizure of noise making equipment all carry varying degrees of risk to the personal safety of the staff involved, which should be identified and mitigated as far as practicable in a comprehensive risk assessment of a breakdown of the tasks involved. Local authorities should establish written work procedures which put in place safe systems of work for those carrying out these duties and monitor compliance with the systems and regularly review their effectiveness.
89. There will be circumstances where the risks to personal safety cannot be effectively managed to acceptable levels, and it will be unacceptable for staff to be placed at such risk; the local authority will have to hold enforcement action in abeyance or even cancel it. In other circumstances, personal safety training, equipment and the support of the Police will reduce personal safety risks to acceptable levels and permit enforcement action. Additionally, the involvement of the Police can reassure complainants anxious about retribution or harassment by a noise maker, and deter noise makers from harassing or otherwise bothering their victims.
90. Consequently, local authorities may wish to consult with their local police regarding how they may support the Council in using the 1996 Act powers, and be guided by the expertise and advice of the Police when executing these powers. Where resources are not available and the safety of staff involved is of concern, fixed penalty notices can be served by post. Many local authorities and police forces that did not already have effective liaison have found the Crime & Disorder Act 1998 requirement to produce a crime & disorder strategy a useful forum to discuss these issues.
91. The Neighbour Noise Working Party Report (see paragraph 2) also made a number of recommendations in respect of guidance to local authorities on the management of noise services and liaison between local authorities and the police when dealing with noise complaints.
92. The Chartered Institute of Environmental Health issued both of these pieces of guidance, the latter together with the Association of Chief Police Officers, on 12 February 1997. At the time of this circular going to press, planned guidance on the management of noise services is being revised and reissued for 2004. Copies are available from the Chartered Institute of Environmental Health, Chadwick Court, 15 Hatfields, London, SE1 8DJ.

### **Links With Housing Act 1996**

93. Part V of the Housing Act 1996 contains provisions for social and private landlords to deal with anti-social behaviour from tenants. These powers for landlords help them to tackle problems not only in individual properties but also in the locality and apply to tenants and visitors. Landlords also have the grounds to seek possession from tenants for behaviour 'likely' to cause a nuisance which enables landlords to use professional witnesses during

possession proceedings, for example where tenants may be too frightened to give evidence against their neighbours for fear of reprisals or intimidation. These provisions complement the new night noise offence. Most of these provisions came into force on 12 February 1997; DOE Circular 2/97 (Welsh Office 4/97) gives guidance on their use.

### **Getting the Best out of the Court System**

94. The Department of Transport Local Government and the Regions issued guidance Getting the Best out of the Court System – Claims for Possession, which assists landlords in making the best use of the courts when seeking eviction. It provides a quick reference list of steps to take to ensure that possession cases are dealt with urgently in the courts. More detailed information is given about the possession process including liaison with the courts, hearing dates, witnesses and evidence. Copies are available from Publication Centre, PO Box 236, Wetherby, West Yorkshire LS23 7NB, Telephone: 0870 1226236, Fax: 0870 1226237, or on the web at: ([http://www.courtservice.gov.uk/cms/media/best\\_court\\_system.pdf](http://www.courtservice.gov.uk/cms/media/best_court_system.pdf)).

### **British Standards**

95. British Standards are referred to in the Directions and Approval. Copies of British Standards are available from the British Standards Institute, 389 Chiswick High Road, London W4 4AL.

### **Government Publications on Noise**

96. The following leaflets are available free of charge:

*'Bothered by noise? There's no need to suffer'.*  
A guide to the noise complaints procedure.

*Sound Advice on Noise – Don't Suffer in Silence* (Bilingual)

*'Constant barking can be avoided.'*  
Advice on how to stop dogs disturbing others. (At the time of this circular going to press, a revised version of this leaflet is being prepared for a late 2004 publication).

## Annex

### **Directions under Section 5 and Approval under Section 6 of the Noise Act 1996**

#### **Section 5 Directions: the Permitted Level**

The Secretary of State, in exercise of the powers conferred upon him by section 5 of the Noise Act 1996 ("the Act") and of all other powers enabling him in that behalf, hereby makes the following Directions:

#### **Commencement**

1. These Directions shall come into force on 23 July 1997.

#### **Interpretation**

2. In these Directions:

"the Approval" means the approval dated 10 July 1997 given under section 6 of the Act and titled "Section 6: Approval of Measuring Devices and Conditions as to their Use";

"A-weighted sound pressure level" has the same meaning as that given in British Standard BS 7445: Part 1 1991/International Standard ISO 1996-1: 1982 'Description and measurement of environmental noise. Part 1. Guide to quantities and procedures.' ("BS 7445");

"dB" is a unit of both A-weighted sound pressure level and equivalent continuous A-weighted sound pressure level as given in BS 7445;

"the underlying level of noise" has the same meaning as in the Approval.

#### **The permitted level**

3. For the purposes of sections 2 to 9 of the Act, the maximum level of noise (referred to in that group of sections and in these Directions as "the permitted level") which may be emitted during night hours from any dwelling shall be determined in accordance with paragraphs 3 and 4 below.
4. In any case where the underlying level of noise does not exceed 25dB, the permitted level shall be 35dB.
5. In any case where the underlying level of noise exceeds 25dB, the permitted level shall be 10dB in excess of that underlying level of noise.

Signed by authority of the Secretary of State

*Angela Eagle MP*  
Parliamentary Under Secretary of State,  
Department of the Environment, Transport and the Regions

10 July 1997

**NOTE: 1.** *In accordance with section 5(2) of the Noise Act 1996, the permitted level is to be a level applicable to noise (emitted from the offending dwelling) as measured from within any other dwelling in the vicinity (the complainant's dwelling) by an approved device used in accordance with any conditions subject to which the approval was given. This approval and these conditions are set out in the Approval under section 6 of the Act dated 10 July 1997.*

**2.** *BS 7445 is available from the British Standards Institute at 389 Chiswick High Road, London W4 4AL.*

## **Section 6: Approval of Measuring Devices and Conditions as to Their Use**

The Secretary of State in exercise of the powers conferred upon him by section 6 of the Noise Act 1996 ("the Act") and of all other powers enabling him in that behalf, hereby gives the following Approval:

### **Commencement**

1. This Approval shall come into force on 23 July 1997.

### **Interpretation**

2. In this Approval:

"an acoustic calibrator or pistonphone" means an acoustic calibrator or pistonphone conforming to class 1 of BS 7189 :1989 'Specification for sound calibrators.';

"an approved device" means any device used for the measurement of noise approved under paragraph 3 below;

"the Directions" means the directions dated 10 July 1997 issued under section 5 of the Act and titled "Section 5 Directions: The Permitted Level";

" $L_{AN,T}$ " has the same meaning as that given to it in British Standard BS 7445: Part 1 1991/International Standard ISO 1996 -1 : 1982 'Description and measurement of environmental noise. Part 1. Guide to Quantities and Procedures.' ("BS 7445");

$L_{Aeq,5min}$  has the meaning given to  $L_{Aeq,T}$  in BS 7445, where T is equal to 5 minutes;

“time weighting ‘F’” has the same meaning as that given in British Standard BS EN 60651: 1994 “Specification for sound level meters.” (“BS EN 60651”);

“the underlying level of noise” means the level applicable to noise expressed in dB and determined with an approved device used in accordance with the conditions set out in paragraph 4(3) below; provided that where the determination under paragraph 4(3)(d) below results in a non-integer value, that value shall be rounded up to the next integer. [See footnote]<sup>2</sup>;

“A-weighted sound pressure level” and “dB” have the same meanings as they are given in the Directions.

## Approval of measuring devices

3. For the purposes of sections 2 to 9 of the Act the following types of device for the measurement of noise are hereby approved, subject to the conditions set out in paragraphs (a) to (c) and paragraph 4 below as to the purposes for which, and the manner and other circumstances in which, they are to be used:

**(a) For measuring the noise emitted from the offending dwelling:**

Integrating sound level meters, or measuring equipment or measuring systems, complying with the requirements of Type 1 of British Standard BS EN 60804: 1994 ‘Specification for integrating-averaging sound level meters.’

**(b) For measuring the underlying level of noise:**

- (i) Subject to paragraph (ii) below, sound level meters, measuring equipment or measuring systems, complying with the requirements of Type 1 of BS EN 60651 and capable of determining the A-weighted sound pressure level, time weighting ‘F’, which is not exceeded for 0.6 seconds in a time period of no shorter than 1 minute and no longer than 5 minutes.
- (ii) Where  $L_{AN,T}$  measurements are used for the purposes of paragraph 4(3)(d) below, the sound level meters, measuring equipment or measuring systems mentioned in paragraph (i) above shall:
- sample the sound pressure level at a rate of not less than 10 times per second; and
  - use in the statistical calculation a class interval of no greater than 0.5dB.

<sup>2</sup> For example, 25.1 becomes 26.

*(c) For measuring both the noise emitted from the offending dwelling and the underlying level of noise:*

Single meters or measuring equipment or measuring systems which satisfy the requirements of paragraphs 3(a) and 3(b) above.

## **Conditions**

### ***4.–(1) Testing and verification of approved devices etc:***

- (a) An approved device shall, within a period of not more than 24 months before being used for any purpose set out in this Approval, be verified together with an acoustic calibrator or pistonphone in accordance with BS 7580: Part 1:1997 'Specification for the verification of sound level meters.'
- (b) While an approved device is within the complainant's dwelling for the purposes set out in paragraph 4 (2) below, the sensitivity of that device shall be checked before, and rechecked after, the period within which the noise emitted from the offending dwelling is measured under paragraph 4(2)(d) below, using the acoustic calibrator or pistonphone with which that approved device was verified in accordance with paragraph (a) above.
- (c) Where, in accordance with paragraph (b) above, the sensitivity of the approved device is rechecked and the level indicated by the approved device has changed by at least 0.5dB from the level indicated when the sensitivity of that device was checked (in accordance with paragraph (b) above), then any measurements made by that device, between the time when the sensitivity of that device was checked and rechecked as required by paragraph (b) above, shall not be used for any purpose of this Approval.

### ***(2) Manner in which a measuring device approved under paragraphs 3(a) or 3(c) above is to be used to measure noise emitted from the offending dwelling for the purposes of section 4 of the Act:***

- (a) Measurements shall be made in a room in the complainant's dwelling used for living purposes (including any bedroom, kitchen or study, but not including any bathroom, hallway, stairway or lavatory).
- (b) The windows and doors in the room in which the noise measurements are made shall be closed.
- (c) The measuring microphone of the approved device shall be positioned at least 0.5m from any room surface (including the floor) and from any items of furniture.
- (d) Within a period of no more than 15 minutes (commencing with the start of the measurement under this paragraph) the equivalent continuous A-weighted sound pressure level of the noise emitted from the offending dwelling shall be measured for a continuous integration time of 5 minutes ( $L_{Aeq,5min}$ ), except for pauses to exclude from the measurement any significant noise other than that causing complaint.

- (e) For the purpose of section 4 of the Act, the noise emitted from the offending dwelling shall be the equivalent continuous A-weighted sound pressure level measured under paragraph (d) above; provided that where the measurement results in a non-integer value, that value shall be rounded down to the next integer. [See *footnote*]<sup>3</sup>.

**(3) *Manner in which a measuring device approved under paragraphs 3(b) or 3(c) above is to be used to determine the underlying level of noise:***

- (a) Measurements shall be made in the same room in the complainant's dwelling as used for the purposes of paragraph 4(2)(a) above (the room used for measuring the noise emitted from the offending dwelling).
- (b) Windows and doors in the room in which the noise measurements are made shall be closed.
- (c) The measuring microphone of the approved device shall be positioned at least 0.5m from any room surface (including the floor) and from any items of furniture.
- (d) Using time weighting 'F', the A-weighted sound pressure level which is not exceeded for 0.6 seconds shall be determined in a period which shall be no shorter than 1 minute and no longer than 5 minutes. This determination shall be made within the same period within which the noise emitted from the offending dwelling may be measured under paragraph 4(2)(d) above.

Signed by authority of the Secretary of State

*Angela Eagle MP*  
Parliamentary Under Secretary of State,  
Department of the Environment, Transport and the Regions

10 July 1997

**NOTE: 1.** *Section 6(3) of the Noise Act 1996 provides that in any proceedings for an offence under section 4 of that Act, a measurement of noise made by a device is not admissible as evidence of the level of noise unless it is an approved device and any conditions subject to which the approval was given are satisfied.*

**2.** *BS (British Standard) documents are available from the British Standards Institute at 389 Chiswick High Road, London W4 4AL.*

<sup>3</sup> For example, 40.9 becomes 40.

These leaflets are available from:

In England:

Defra Publications, Admail 6000, London, SW1A 2XX  
Tel: 08459 556000  
Email: [defra@iforcegroup.com](mailto:defra@iforcegroup.com)

In Wales:

Welsh Assembly Government, Environment Division, Cathays Park, Cardiff, CF10 3NQ  
Tel: 029 2082 3499  
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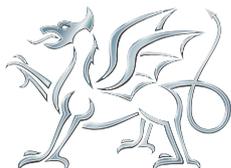
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