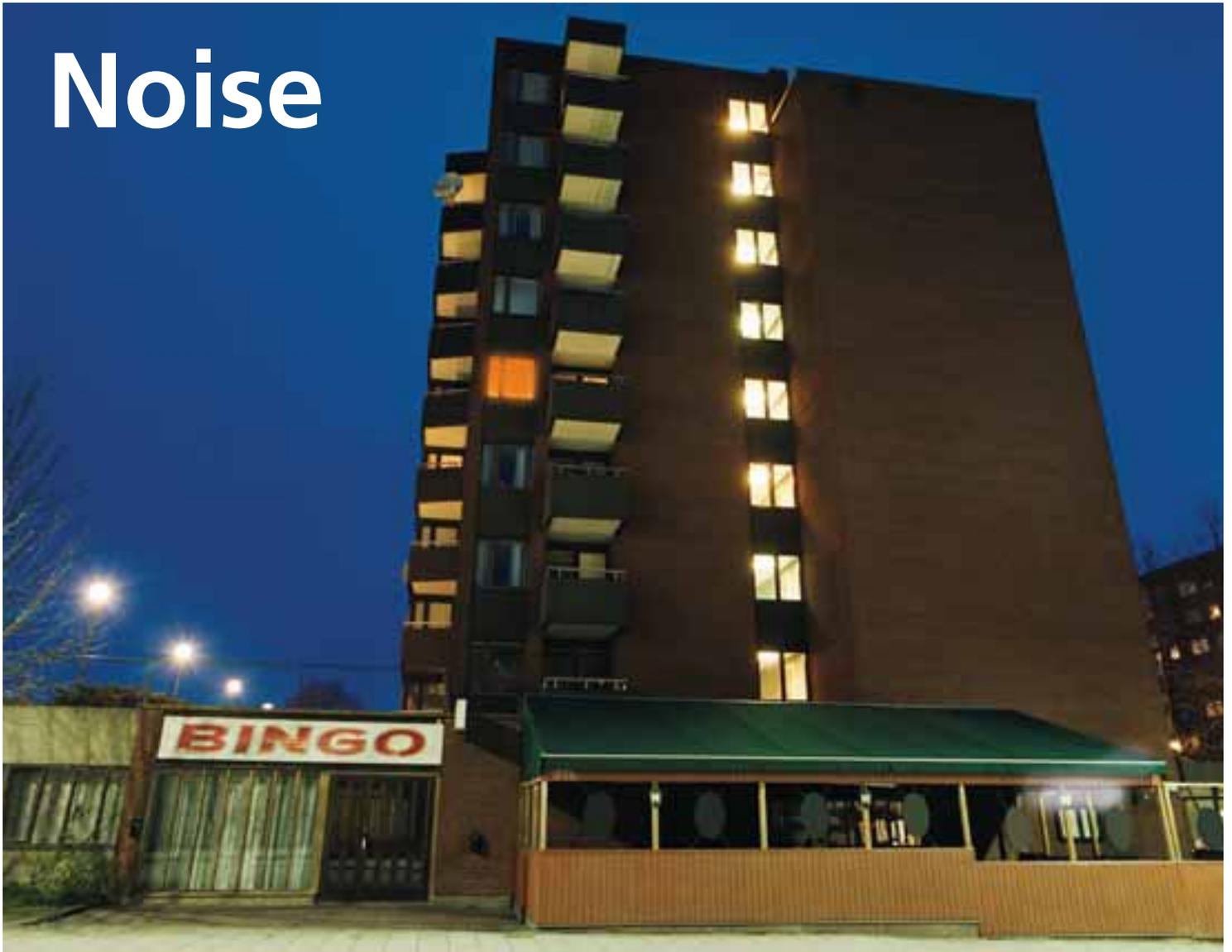


# Noise



Guidance on Sections 69 to 81 and Section 86 of the  
Clean Neighbourhoods and Environment Act 2005

This guidance is part of a series on legislation and powers affected by the Clean Neighbourhoods and Environment Act 2005.

Guidance on the following topics is also available;

- Nuisance and Abandoned Vehicles
- Litter and Refuse
- Defacement removal Notices
- Waste
- Fixed Penalty Notices
- Abandoned Shopping and Luggage trolleys
- Statutory Nuisance from Insects and Artificial Light

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[www.defra.gov.uk/environment/localenv/index.htm](http://www.defra.gov.uk/environment/localenv/index.htm)

[www.cleanersaferegreener.gov.uk](http://www.cleanersaferegreener.gov.uk)

[www.together.gov.uk](http://www.together.gov.uk)

# Overview

This document provides guidance on the provisions in the Clean Neighbourhoods and Environment Act 2005 that apply to audible intruder alarms and abatement notices issued under Section 79 (1) (g) (Noise) of the Environmental Protection Act 1990.

## Audible Intruder Alarms General Principles

1 Sections 69 to 81 introduce new powers for local authorities to deal with audible intruder alarms (which do not include fire alarms) in their areas and the annoyance they may cause. A local authority may designate its area (or part(s) of it) as an 'alarm notification area'. The occupier or (if none) the owner (the 'responsible person') in respect of any premises (residential or non-residential, actually occupied or vacant) that are fitted with an audible intruder alarm in the designated area must nominate a key-holder for those premises and notify the local authority of the contact details of that key-holder.

The authority can then turn in the first instance to that key-holder for assistance in silencing an alarm where necessary<sup>1</sup>. It is a summary offence to fail to nominate, or to fail to notify the local authority of the details of, a key-holder or a replacement key-holder within the specified time.

2 The provisions set out the steps that must be followed by a local authority wishing to designate an area as an alarm notification area. In particular, an authority must advertise its intention to designate, consider representations on the proposal, and send notice of any decision to designate to all premises in the affected area. A local authority has the power to withdraw a designation if it wishes, again subject to a requirement to publicise any decision to do so and to send a notice of such a decision to all premises in the affected area.

3 This part of the Act also provides local authorities with powers to enter premises in order to silence alarms where key-holders cannot be reached, or where the alarm is not in an alarm notification area. Local authorities do not need to designate an alarm notification area before using these powers of entry.

A local authority can, for example, continue to use a voluntary database of key-holder details if it wishes, without the sanctions that those who fail to register key-holders face under the 2005 Act. These new provisions do not affect the use of powers under the Environmental Protection Act 1990 and the Noise Act 1996 where relevant, although the former applies to alarms causing a nuisance, and the latter to alarms exceeding a permitted level further to receipt of complaints. These powers of entry apply to audible intruder alarms sounding for 20 minutes continuously or 1 hour intermittently, and likely to cause annoyance to those in the vicinity.

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<sup>1</sup>Section 23 of the London Local Authority Act 1991 and the unimplemented section 9 of, and Schedule 3 to, the Noise and Statutory Nuisance Act 1993 (both repealed by Schedule 5 of the Clean Neighbourhoods and Environment Act 2005) required key-holder details to be registered with the police, who do not have the authority to enter premises to deactivate an alarm.

# Detailed Guidance

## Section 69 – Designation of alarm notification areas

4 Section 69 empowers a local authority to designate all or any part(s) of its area as an 'alarm notification area'. If a local authority proposes to designate such an area, it must arrange for notice of the proposal to be published in a newspaper circulating in the area stating that representations may be made to the authority by a specified date at least 28 days hence. The local authority must consider any representations about the proposal which it receives before the specified date.

5 If a local authority then decides to go ahead and designate an area as an alarm notification area, it must arrange for notice of the decision to be published in a newspaper circulating in the same area, and send a copy of the notice to the address of all premises in the area. The notice must state the date on which the designation takes effect, and this date must be at least 28 days hence. If a local authority decides not to designate an area as an alarm notification area after all, it must arrange for notice

of that decision to be published in a newspaper circulating in the area.

6 The requirement to notify all premises in an area of a designation is intended to ensure that people whose premises in that area are fitted with an audible intruder alarm are aware of their obligations to nominate a key-holder and notify the council of his details, and that it is a criminal offence not to comply. It is *not*, however, necessary for a local authority to arrange to notify newcomers (people or businesses) who move into the designated area after the initial notification. Local authorities might choose to consider taking steps to ensure that newcomers to a designated area are aware of the requirement to notify the local authority of nominated key holders, which could include notifying landlords and estate agents, but it is not a requirement of the Act and it might well be overly burdensome.

7 For the initial notification it is not essential to use a dedicated mail-shot. Many councils have mechanisms for undertaking area-based communications, such as the distribution of newsletters,

council tax bills, and magazines, and it is sufficient to include the notification in an existing mailing exercise. A notification sent out with these mail-shots should take the form of a separate insert. Forward planning should allow designation of alarm notification areas to be undertaken at minimal additional cost.

8 The requirement in section 69 is for the local authority to send details of the proposed designation to all addresses in the relevant area. The Department's legal advice is that (unless a local authority had failed on a large scale to observe the notification requirements) it would probably not be accepted as a defence for a person accused of failing to notify the local authority of an intruder alarm to argue in court that he had not received notification of the designation at his premises.

### **Section 70 – Withdrawal of designation**

9 Section 70 allows a local authority which has designated an area as an alarm notification area to withdraw the designation, but it must do so in its

entirety – it cannot modify a designation this way.

In terms of publicising its decision, the local authority need only arrange for notice of the decision to be published in a newspaper circulating in the area, and to send a copy of the notice to the address of all premises in the area, stating the date on which withdrawal of designation takes effect.

### **Sections 71 and 72 – Notification and nomination of key-holders**

10 Sections 71 and 72 require the 'responsible person' (defined in section 81(1) as the occupier, or if there is no occupier, the owner of the premises) to nominate a key-holder and to notify the local authority in writing, within the required period, of the name, address and telephone number of the key-holder. If the alarm was installed before designation took effect, the required period for notification is 28 days from the date on which designation came into force. If the alarm was installed on or after the commencement of designation, the required time period is within 28 days

of the date on which its installation was completed. It is an offence to fail to nominate a key-holder or to fail to notify the local authority of the relevant details within the time limit. The maximum penalty on conviction is a fine not exceeding level 3 on the standard scale (currently £1,000).

### **Section 72 sets out the requirements that must be met by key-holders**

11 A person may only be nominated as a key-holder if he holds keys to gain access to the part of the premises in which the controls for the alarm are situated; is normally resident or situated in the vicinity of the premises; knows how to silence the alarm; and agrees to be a nominated key-holder. Premises with a twenty-minute cut-out included on their alarm are not excluded from the requirement to register key-holders in an alarm notification area.

12 For residential premises, a key-holder must be either an individual who is not the occupier of the premises, or a key-holding company (i.e. which holds keys and can be contacted at any time

of day). For non-residential premises, a key-holder can be the responsible person (i.e. can include the occupier or (if none) the owner of the premises), someone acting on behalf of the responsible person if the responsible person is not an individual, or a key-holding company.

13 The arrangements within key-holding companies are likely to vary considerably, and there may be occasions when, for example, a company responsible for a central telephone number is not the same as the company actually holding the keys. Local authorities are not expected to make enquiries about the precise status of key-holding companies (or individuals), provided that they are satisfied that the contact number they have will enable someone holding the keys to be contacted rapidly if the need arises.

14 If the responsible person becomes aware that a key-holder no longer satisfies one or more of the requirements, the responsible person must nominate another person as a key-holder within 28 days of becoming aware of the fact,

and it is again an offence if he fails to do so. Local authorities should be able to demonstrate culpability in such cases if they wish to take proceedings to prosecute or issue a fixed penalty notice. Where it is in dispute that the responsible person has known for 28 days that the registered key-holder no longer satisfies the requirements under the 2005 Act, a written warning to the responsible person at least 28 days before taking such action should be sufficient to demonstrate culpability if the key-holder then fails to nominate a new key-holder in the meantime.

### **Transferring police data to local authorities**

15 Some local authorities in London took the opportunity to adopt the section 23 provisions on audible intruder alarms (now to be repealed by the 2005 Act) contained in the London Local Authorities Act 1991, which required key-holder details to be registered with the police.

16 The Clean Neighbourhoods and Environment Act 2005 does not require the police to transfer any such data held. Local authorities and the police should

seek their own legal advice on data protection issues, but as a general rule data should be transferred only with the consent of the key-holder. This would also provide an ideal opportunity to ensure that data that are held are up to date and accurate, a requirement under Schedule 1 of the Data Protection Act 1998. It should be noted that the information Commissioner does not regard non-response as consent.

17 The Association of Chief Police Officers' Police Response to Security Systems ([www.acpo.police.uk/asp/policies/Data/police\\_response\\_to\\_security\\_systems\\_policy\\_april05.doc](http://www.acpo.police.uk/asp/policies/Data/police_response_to_security_systems_policy_april05.doc)) requires those with Type A intruder alarms (that upon activation alert the police) to register at least two key holders with the Alarm Receiving Centre/Remote Video Response Centre. Those with Type A intruder alarms will still have to nominate and register a key holder with the local authority within the required period should they live in an alarm notification area. Should the police be unsuccessful in contacting a key holder to deactivate a misfiring intruder alarm, they can contact

the local authority (should they not already have been contacted) to inform them of the situation. The local authority will be able to use the powers under the Clean Neighbourhoods and Environment Act 2005 to enter the premises without force, or with force if necessary and once a warrant has been obtained, to deactivate the alarm.

### Data protection issues

18 Local authorities will need to make arrangements to maintain databases of nominated key-holders. These databases will need to be maintained in accordance with the Data Protection Act 1998. This Act allows local authorities to keep information for as long as is relevant for the purposes of the database or register. When the information changes, such as when a key-holder steps down, that information will no longer be relevant and should not be kept. The key issue is that the data must not be disseminated to third parties without the consent of the key-holder and the responsible person, apart from in exceptional circumstances – legal advice should be sought before this is considered.

19 The liability for notifying the local authority of key-holder details, including amendments, falls to the ‘responsible person’, i.e. the occupier, or, where there is no occupier, the owner of premises on which an audible intruder alarm is installed. Local authorities may wish to make it as easy as possible for the responsible person to keep key-holder details up to date by, for example, providing an internet-based system on which to register key-holder details.

### Sections 73 to 76 – fixed penalty notices

*Note: This section covers the basic principles of fixed penalty notices for offences relating to intruder alarms under section 71. However, detailed information on their use is provided in the separate guidance available on fixed penalty notices; authorised officers and persons accredited under Community Safety Accreditation Schemes are strongly advised to consult this guidance when using the fixed penalty notice provisions.*



## **Sections 77 to 79 – powers of entry**

20 These sections provide local authorities with additional powers to deal with sounding intruder alarms causing likely annoyance to those in the vicinity.

**These powers are not linked to designated areas, and can be used by a local authority to silence a problem alarm anywhere in its area.**

21 **Section 77** gives to an authorised officer of a local authority a power to enter premises without force in order to silence an audible intruder alarm where the following conditions are met: that the alarm has been sounding continuously for more than twenty minutes or intermittently for more than one hour (it is sufficient to rely on witnesses for this purpose); that it is likely to give persons living or working in the vicinity reasonable cause for annoyance; and where, in a designated area, the authority has first taken reasonable steps to get the nominated key-holder to silence the alarm. The officer must show evidence of his authority to effect entry if required.

22 Once on the premises, an authorised officer can take whatever steps are necessary to silence the alarm. This might include, for example, disabling the externally mounted alarm, but would not include picking a lock to enter.

23 **Section 78** empowers a justice of the peace to issue a warrant authorising the use of force to enter premises to which an authorised officer has a right of entry under section 77. Before issuing a warrant a justice of the peace must be satisfied that the conditions in section 77 above have been met, and that the local authority cannot gain entry without the use of force. Before applying for a warrant, the authorised officer must leave a notice (of the local authority's own design) at the premises stating that he is satisfied that the alarm is likely to give reasonable cause of annoyance to those living or working in the vicinity, and that an application will be made for a warrant to authorise entry to the premises using reasonable force if necessary in order to silence the alarm. The officer must show evidence of the warrant if required.

There is no minimum time period between leaving a notice and applying for a warrant.

24 Under **section 79** an officer may take any steps he thinks necessary for the purpose of silencing the alarm, and take with him such other persons and equipment as he thinks necessary for the purpose of silencing the alarm. The officer and any accompanying persons must not cause more damage or disturbance than is necessary in order to silence the alarm.

25 If the premises are unoccupied or (where the premises are occupied) the occupier of the premises is temporarily absent, the officer must leave a notice (of the local authority's own design) at the premises stating what action has been taken on the premises under this section and section 77 or 78, and leave the premises (so far as is reasonably practicable) as effectively secured against entry as he found them. The officer is expressly not required to re-set the alarm.

26 Any expenses reasonably incurred by the local authority in connection with entering the premises, silencing the

alarm, leaving a notice and securing the premises may be recovered by the authority from the responsible person. Such expenses include the cost of steps taken to silence the alarm before the premises are entered, such as the cost of calling out an engineer. An example of this would be where the alarm is deactivated by the responsible person after steps have been taken to prepare entry to the premises, but before the local authority has entered the premises. Administrative and court costs may also be reclaimed.

27 A warrant under section 78 stays in force until the alarm has been silenced, and for as long as is necessary thereafter to leave a notice at the premises and, where practicable, to secure the premises.

28 The local authority, its authorised officers, and accompanying persons are not to be subject to any action, liability, claim or demand in respect of anything done under section 77, 78 or 79 provided it was done in good faith.

## Section 81 – Interpretation

29 Section 81 defines the terms used in this part of the Act as follows:

- ‘alarm notification area’ means an area in respect of which a designation under section 69 has effect;
- ‘local authority’ means, in England, a district council; a county council for an area for which there is no district council; a London borough council; the Common Council of the City of London, and the Council of the Isles of Scilly; and in Wales, a county or county borough council;
- ‘the occupier’ in respect of premises means a person occupying the premises, or, if the premises are unoccupied, a person entitled to occupy the premises (other than the owner). The fact that a person is occupying premises is to be disregarded for the purposes of this definition if the premises comprise a building that is being erected, constructed, altered, improved, maintained, cleaned or repaired; the person is occupying the premises in connection with that erection, construction, etc., and the person is

doing so by virtue of a written licence to occupy granted for less than four weeks. In such situations another occupier (if any) or (if none) the owner is the responsible person.

- ‘premises’ does not include a vehicle;
- ‘the responsible person’ in respect of premises means the occupier, or if there is no occupier, the owner.

## Repeals

30 Section 23 of the London Local Authorities Act 1991 on audible intruder alarms – which could be adopted by London local authorities – is repealed.

## Other Relevant Legislation/documents

- 31 Other relevant legislation/documents
- *S 79(1)(g) of the Environmental Protection Act 1990* – places a duty on local authorities to take reasonably practicable steps to investigate ‘noise emitted from premises so as to be prejudicial to health or a nuisance’. Section 80(1) requires a local authority to issue an abatement notice if satisfied that e.g. an audible intruder alarm is causing, or may cause, a statutory

nuisance. Where an abatement notice is not complied with, local authorities may enter the premises to abate the nuisance (e.g. by silencing an alarm). Section 80(2A) enables a local authority to take such other steps (e.g. under the Clean Neighbourhoods and Environment Act 2005) as it thinks appropriate to persuade the appropriate person to abate the nuisance within a seven day period without serving an abatement notice. An abatement notice should be served after the seven day period if the local authority thinks that a statutory nuisance still exists, or is likely to occur or recur.

- *Guidance on section 86 of the Clean Neighbourhoods and Environment Act 2005: Deferral of duty to serve an abatement notice.*
- *Code of Practice on Audible Intruder Alarms* (1982) (statutory code of practice)
- *Noise Act 1996* – the night noise offence of emitting excessive noise from a dwelling (extended to licensed premises by section 84 of, and

Schedule 1 to, the Clean Neighbourhoods and Environment Act 2005) between the hours of 11pm and 7am may arise as much by virtue of an intruder alarm as by virtue of other sources of noise, such as that from hi-fis. Following the service of a Warning Notice, the person responsible may be liable to a fixed penalty or summary prosecution. Elements of the alarm, in particular its sounder, may be removed (i.e. seized) by a local authority officer acting under a warrant if necessary.



# Deferral of duty to serve abatement notice

32 Section 86 of the Clean Neighbourhoods and Environment Act amends section 80 of the Environmental Protection Act 1990 by addition of a new subsection (2A) so as to enable a local authority to defer the issue of an abatement notice in the case of a statutory nuisance under section 79(1)(g) of the 1990 Act (i.e. that caused by noise emitted from premises). The deferral can be for up to seven days while the local authority takes appropriate steps to persuade the person on whom it would otherwise be serving the notice to abate the nuisance or prohibit or restrict its occurrence or recurrence.

33 This new provision only applies *after* a local authority has completed its investigation of a complaint and has concluded that it is satisfied that a statutory nuisance exists. It does not affect practices and procedures for investigating complaints at an earlier stage, including cases where there are a number of factors to consider before being satisfied that a statutory nuisance exists or is likely to occur or recur.

34 There is no obligation on the authority to pursue this alternative route – it may still proceed by issuing an abatement notice straightaway if it so chooses. Whenever a local authority decides to use the power to defer service of an abatement notice it should record the reasons for doing so.

35 If the authority does defer and the nuisance is not abated by the end of the seven-day period (or if the authority concludes before then that it will not be abated within that period), the authority must in most circumstances proceed to serve an abatement notice under section 80(1) in any event.

## Why are these changes being introduced?

36 Currently, local authorities are required to issue an abatement notice once they are satisfied (see 10.33 above) that a statutory nuisance exists or may occur or recur. There is no provision for the exercise of discretion as to whether or not to take this action, even if the local authority suspects that ‘best practicable means’ may be in place (only the courts can rule on whether ‘best practicable means’ are in place).

In some circumstances an informal approach will engender greater co-operation and a faster resolution of a noise nuisance. Sometimes it can be counterproductive and/or unnecessary to issue an abatement notice – for example, the notice may provoke one party to withdraw from negotiations, actually aggravate a situation, or enable the person responsible to avoid having to abate the problem by, for example, holding a one-off noisy party). The option to defer serving an abatement notice for up to seven days in order to pursue specific steps may support resolution without recourse to a formal abatement notice. It may also be more effective to use other means of enforcement, such as the Noise Act 1996 in cases of night noise from dwellings.

Issuing a Warning Notice under the Noise Act 1996 can often be a more effective means for dealing with one-off occurrences of night noise.

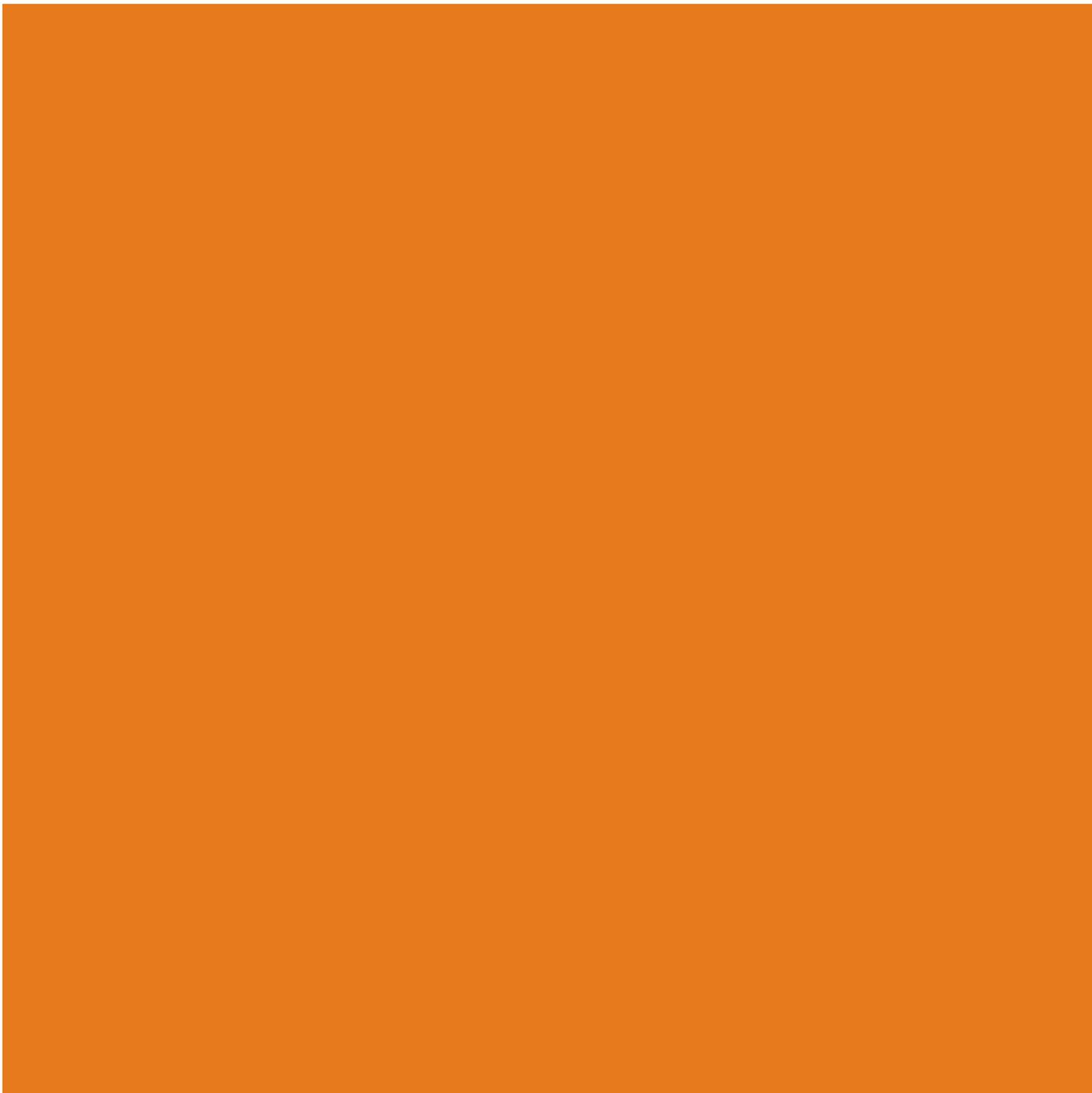
#### **How will the changes work?**

37 In cases where the local authority wishes to use the seven day deferral power, it will usually be appropriate to advise the person responsible for the nuisance in writing that a noise nuisance exists or is likely to occur or recur, and of the decision to defer service of an abatement notice provided the nuisance is dealt with within seven days. The local authority may also inform the noisemaker that if the nuisance continues after seven days of the notification of deferral, an abatement notice will be served. Outlining the consequences of an abatement notice in this initial letter advising of the decision to defer is recommended.

38 If during the course of the seven days the nuisance is abated or adequately restricted, the local authority should write to the person responsible and advise that the nuisance has been satisfactorily dealt with and that no further action will be taken under the Environmental Protection Act 1990 in regard to the specific nuisance referred to in the first letter, provided no recurrence occurs.

39 If the local authority is satisfied that a statutory nuisance continues to exist, or is likely to occur or recur, after the seven day deferral period, an abatement notice must be served requiring the abatement of the nuisance or prohibiting or restricting its occurrence or recurrence.





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