

# **Statutory Nuisance Policy**



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## 1. What is a Statutory Nuisance?

Part three of the 1990 Environmental Protection Act has a list of nuisances to which abandonment (reduction) procedures apply. These include:

- Any premises in such a state as to be harmful to health or a nuisance.
- Smoke coming from the chimney of a house within a smoke control area.
- Dark smoke from the chimney of a building or of a furnace attached to a building or installed on any land.
- Smoke from a railway locomotive steam engine, dark smoke from any industrial or trade premises, fumes or gases coming from private dwellings that is harmful to health or a nuisance.
- Any dust, steam (other than from a railway locomotive engine), smell or other effluvia (odorous fumes given off by waste) arising on industrial, trade or business premises that is harmful to health or a nuisance.
- Any accumulation or deposit which is harmful to health or a nuisance.
- Any animal kept a place or manner which is harmful to health or a nuisance.
- Noise (except that from aircraft other than model aircraft) coming from premises that is harmful to health or a nuisance; but this does not apply to Crown premises used for military or Ministry of Defense purposes.
  - Noise that is harmful to health or a nuisance and comes from or caused by a vehicle, machinery or equipment in a street (other than noise made by traffic, by an military force or by political demonstration or a demonstration supporting or opposing a cause or campaign)
  - A number of issues need to be taken into account when judging whether a noise amounts to an actionable nuisance. They are listed below but nearly always need to be taken in combination:
    - The time of the day - night-time noise that is likely to disturb sleep is much more likely to be actionable than daytime noise.
    - The duration of the noise - unpredictable sporadic noise has a greater capacity to create nuisance (subject of course to other factors listed here)
    - The frequency of the noise – tonal content of noise e.g. a whine can significantly increase the capacity of a noise to create a nuisance.
    - Whereabouts the noise is heard – noise (from a premises) audible in the street but not in a house is very unlikely to be an actionable nuisance (even if the noise is heard within a dwelling, if it only affects a bathroom or kitchen (not otherwise used as a living room), then action is unlikely)
    - Defendant's motives – even an otherwise innocent act could be an actionable nuisance if it is done with malice although this can be very difficult to determine.
    - The character of the neighborhood – where the background noise level is low for example in an entirely residential area, the threshold at which sound can be heard will be lower and noise is more likely to be at an actionable level.
    - Continuous or repetitive incidents compared to isolated incidents and the time the nuisance occurs.
    - Unusual sensitivity – 'The Eggshell Skull Rule': if a plaintiff is particularly sensitive to a particular type of noise, it is not actionable unless one can show that the noise would have affected a 'reasonable' person's enjoyment of their property.

**Any other matter declared by any act to be statutory nuisance and these include:**

- Any well, tank, cistern or water butt used for the supply of water for domestic purposes which is so placed, constructed or kept in a way that makes the water liable to contamination and harmful to health.
- Any pond, pool, ditch, gutter or watercourse which is so foul or in such a state that it is harmful to health or a nuisance.
- Any part of a watercourse, which is not ordinarily navigated by vessels used to carry goods by water, which is so choked or silted up that it obstructs or prevents the proper flow of water and as a result causes a nuisance or creates conditions which are harmful to health.
- A tent, van, shed or similar structure used for human habitation which is in such a state, or so overcrowded, as to be harmful to the health of the people living in it, or the use of which, because of the absence of proper sanitary accommodation, or otherwise, can create whether on the site or on other land, a nuisance or to conditions which are harmful to health.
- A shaft or outlet of an abandoned or disused mine where:
  - It is not properly secured in order to prevent people accidentally entering the outlet; or because it is accessible from a road or public place it constitutes a danger to the public.
  - A quarry that does not have an efficient and properly maintained barrier designed and built to prevent people from accidentally falling into it and because it is accessible from a road or public place, amounts to a danger to the public.

## 2. What is the law concerning nuisances?

If you cause a nuisance you may be **sued by individuals** who have suffered personal or property damage as a result of the nuisance, you may have to attend a court hearing and **pay compensation** or damages.

If the nuisance you are responsible for is affecting a public space or a large number of people, you may be causing a **public nuisance**. You may have to **pay compensation** or damages. Your local council may also take action against you to restrict your activities.

If the nuisance occurs because of a **structural defect** on your premises, action may be taken against you as the **owner** of the premises, rather than the person responsible for the nuisance. This also applies where that person cannot be found or to a nuisance that has not, but is likely, to occur.

### Statutory nuisance

The conditions that create a nuisance are set out in legislation. This is called a **statutory nuisance**.

A statutory nuisance can be caused by:

- noise and vibration**
- smell**
- smoke**
- vermin**
- fumes**
- animals** you keep
- gases**
- waste** deposits
- dust**
- the poor state** of your premises
- steam**

If your environmental health officer finds that a **statutory nuisance** exists or is likely to occur or recur, your local council can serve you with an **Abatement Notice**.

These notices:

- Stop or impose restrictions on your operations
- Require you to carry out works or take other steps to restrict or remove the nuisance

An Abatement Notice is a legal document and if you do not comply with it your local council will prosecute you. Individuals can also bring a case to court.

In **England** and **Wales** the conditions of statutory nuisance also include:

- **Insects** coming from your business premises
- **Artificial lighting**

### 3. Avoiding nuisances – good practice

It is in your best interests to maintain **good relations** with your **neighbours**. Give neighbours **early warning** of any particular operation, such as building work or an installation for new plant. **Display details** of a contact person for your site, local residents can then contact you with any concerns and you can address them quickly.

To avoid legal action being taken against you, you must ensure that your business activities **are not**:

- Damaging to people's health
- Preventing, or interfering with, people's rightful use and enjoyment of land
- Interfering with public space and public land

This particularly applies to nuisances that you may cause which affect neighbours in their homes and gardens. Ensure that one-off nuisance events do not become persistent and regular as this is more likely to result in legal action.

To avoid causing a nuisance you should:

- Regularly **check your site** for any waste or evidence of vermin, noise or smell
- Check noise, odours and other emissions near the boundary of your site during different operating conditions and at different times of the day
- Have a good level of housekeeping on your site
- Make sure your staff are aware of the need to avoid creating a nuisance.

If you identify any nuisance you should take all reasonable steps to prevent or minimise it. Consider whether there are simple practical things that you can do to reduce potential nuisances.

#### Dealing with complaints about nuisances

Encourage your local council's **environmental health officer** to inform you of concerns or complaints. You may be able to deal with these complaints before formal action is taken.

#### Contact your local council

If you receive a complaint make sure you:

- Keep a **record** of the complaint, your investigations and any resulting actions
- **Deal** with it promptly and appropriately, and tell the complainant what you have done
- Use the information to **improve** your procedures and **prevent** further complaints

If a complaint is made to your council, an environmental health officer will assess if a statutory nuisance exists.

## 4. Noise and vibration nuisances – how to avoid

Avoid or minimise noisy activities, especially at **night**. Pay particular attention to traffic movements, reversing sirens, deliveries, tannoys and radios.

Where practical, schedule or **restrict noisy activities** to the normal **working day**, e.g. 8am to 6pm Monday to Friday and 8am to 1pm on Saturday.

Identify areas where noise may cause a nuisance and locate noisy activities away from these areas. Position noisy equipment away from your site boundary, existing buildings can be used to shield the noise source.

Use **solid panelled fencing** around your site instead of wire fences. This can help to screen the source and reduce the level of noise that is leaving the site.

If possible, landscape your site boundary with mounds or raised borders to further reduce noise nuisance to neighbours. You can reduce your businesses noise most effectively by combining these methods.

Make sure your buildings have adequate **soundproofing**; shutting your doors and windows will also reduce noise.

### Burglar alarms

Contact your local council to see if your business is in a designated **alarm notification area**. If is you must register your burglar alarm with your local council and provide the details of a person who holds the keys. You could be fined if you don't register.

Make sure that your burglar alarms have:

- A maintenance contract and a callout agreement
- An automatic shut-down after no longer than 20 minutes.

Your local council can get permission to enter your premises to silence persistent or recurring alarm systems.

### Contact your local council

### Loudspeakers

You **must not** use loudspeakers or public address (PA) systems in a public place for **advertising** of any kind.

The only exception is using a vehicle to sell fresh food, for example **ice cream vans**. In this case you can use a PA system between the hours of noon and 7pm.

If you want to use loudspeakers or a PA system outside of these hours, you must have consent from your local council. You must specify the time, date, location and duration of use in your application and submit it 21 days before it is needed.

### Noise abatement zones

Local councils can designate an area as a **noise abatement zone**, this is to help measure and control noise from fixed premises. If your local council believes noise reduction is necessary, they may serve you with a **noise reduction notice**. This will require you to use different equipment and change your practices.

In order to **defend your business** from a noise reduction notice you should be able to demonstrate good operational practices and show that you have used the most effective means to stop or minimise the noise.

Contact your local council to find out if your premises are in a noise abatement zone.

## Vehicles

When replacing equipment, consider buying quieter alternatives.

Reduce noise from your **vehicles** by:

- Turning off engines when they are not in use
- Checking the brakes are properly adjusted and don't squeal
- Not revving the engine unnecessarily
- Only using horns in emergencies
- Replacing exhaust systems as soon as they become noisy
- Replacing vehicles with electric or gas powered alternatives.

**Service** your vehicles and machinery regularly, well-maintained equipment will make less noise and will be less likely to break down.

## 5. Odour, dust and smoke nuisances – how to avoid

Do **not** use bonfires to burn your waste. You could be committing an offence. Instead find ways to **reuse** or **recover** your waste. If you must burn waste there are legal requirements that you must follow.

Keep **equipment** that reduces emissions such as filters and cyclones in good working order. Make sure **boilers**, especially oil or solid fuel units, are operating efficiently and do not emit excessive smoke.

Planting **shrubs** and **trees** in belts around the edge of your premises will help screen out dust and smoke pollution.

When determining if an odour is a statutory nuisance an environmental health officer will assess:

- Intensity
- Character (odours that are easily recognised tend to be more annoying)
- Time and duration of its release
- Intensity of effect i.e. how annoying or intrusive it is
- Whether the odour would be expected in that location

Assess whether **odours** are likely to be emitted from your site and put **appropriate controls** in place.

Consider the impact of odours from your premises on the surrounding environment as part of your **routine site inspections**.

Control or stop the odour at its **source**, you should be able to demonstrate good operational practices and show that you have used the most effective means to prevent an odour nuisance.

## 6. Artificial lighting nuisances – how to avoid

Artificial lighting is only a statutory nuisance in **England** and **Wales**, but may still be a nuisance in **Northern Ireland** and **Scotland**.

### Artificial lighting as a statutory nuisance

In **England** and **Wales** your local council will investigate all complaints of nuisances caused by artificial lighting. When determining if the lighting is a nuisance they will consider:

- The nature of the surrounding area
- How often and when the lighting is used
- How long the lighting is used each time.

Some premises are excluded from nuisance lighting in the interests of health and safety:

- Goods vehicle operating centres
- Public transport facilities

Even if your premises are excluded, you must still use lighting in a responsible and appropriate way.

### Good practice

**Plan** the lighting for your site to make sure that lights only come on when they are needed. Careful planning can **reduce** your **energy costs**.

You should:

- Position lights carefully to ensure that you use the minimum number of lights
- Dim and switch off lights when they are not required
- Use baffles, shields and louvres to reduce obtrusive light
- Use lights that switch off automatically when natural light is available.

**Angle your lights** downwards rather than upwards, use light fittings that reduce any light shining upwards. The ideal angle of lighting is less than 70 degrees from the vertical, lights that shine upwards are more likely to cause a nuisance, waste money and create an orange 'smog' in the sky (light pollution).

Make sure your security lights do not produce **excessive glare**, which could affect drivers or neighbours. Only use the necessary amount of lighting you need. Lights that are too strong can create **dark shadows**, which could encourage theft or vandalism on your site. Use security lights that are activated by movement, check they are only triggered by humans and not animals.

## 7. Building site nuisance - how to avoid

If you are using a building site and causing a nuisance your local council can restrict the:

- Type of plant or machinery you use
- Hours when you can work
- Levels of noise, artificial lighting or dust.

If you do not comply with these restrictions your local council can stop your operations and you can be fined.

If you are planning construction work on your premises and know that it is likely to cause a nuisance you can apply for **prior consent** from your local council.

Your council will outline restrictions on possible nuisances before the work starts. You can apply for this consent at the same time as seeking approval under Building Regulations, it may save you time later on.

## **8. Most likely statutory complaints to Wilts Wholesale Electrical Co. Limited**

- Noise – night delivery – sirens – radios
- Odour – fires – boilers
- Artificial Lighting – security lighting
- Building nuisance – plant / machinery – noise – dust – lighting

## **9. What should I do if approached by a member of public or enforcing authority reporting a statutory nuisance?**

1. Be polite and listen
2. Take the time and date of the incident and any contact details
3. Note the discussion and write it down
4. Confirm that the company will act and be in contact with them
5. Immediately inform the H&S manager at head office and send all details by **Email:** [healthandsafety@wilts.co.uk](mailto:healthandsafety@wilts.co.uk)

## **10. Monitoring**

The health and safety manager will keep all relevant paper work in relation to statutory nuisance.

The health and safety manager will communicate with all relevant parties.

The health and safety manager will report to the board on monthly bases on the H&S report under the heading of environment.