

NUISANCE (PUBLIC AND STATUTORY)

Introduction

- 1 This Note deals with statutory and public nuisance. A separate Legal Topic Note, LTN 67 – Nuisance (Private), considers private nuisance.
- 2 The law of nuisance is closely related to (i) negligence and (ii) occupiers liability. Those subjects are set out in separate legal topic notes (LTN 68 - Negligence and LTN 42 - Occupiers Liability). It is sometimes difficult to distinguish between these areas of the law and, in cases of doubt; reference should also be made to all three Legal Topic Notes.

What is statutory nuisance?

- 3 A statutory nuisance is anything contained in s.79 (1) of the Environmental Protection Act 1990 (“the 1990 Act”) as a statutory nuisance. The relevant provisions of the 1990 Act are listed below and are subject to numerous qualifications They are:
 - any premises in such a state as to be prejudicial to health or a nuisance;
 - smoke emitted from premises so as to be prejudicial to health or a nuisance;
 - fumes or gases emitted from premises so as to be prejudicial to health or a nuisance;
 - any dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or a nuisance;
 - any accumulation or deposit which is prejudicial to health or a nuisance;
 - any animal kept in such a place or manner as to be prejudicial to health or a nuisance;
 - any insects emanating from relevant industrial, trade or business premises and being prejudicial to health or a nuisance;
 - artificial light emitted from premises so as to be prejudicial to health or a nuisance;
 - noise emitted from premises so as to be prejudicial to health or a nuisance;
 - noise that is prejudicial to health or a nuisance and is emitted from or caused by a

vehicle, machinery or equipment in a street;

- any other matter declared by any enactment to be a statutory nuisance;
- any pond, pool, ditch, gutter or watercourse which is so foul or in such a state as to be prejudicial to health or a nuisance or any part of a non-navigable watercourse so choked or silted as to obstruct the flow of water so that it is prejudicial to health or a nuisance (s. 259(1) of the Public Health Act 1936 (“the 1936 Act”)).

- 4 “Prejudicial to health” is defined by section 79 (7) of the 1990 Act and means injurious or likely to cause injury, to health.

Who can take action in respect of a statutory nuisance?

- 5 It is the duty of every district council or unitary authority or in Wales a county council or county borough to inspect its area to detect statutory nuisances (s.79 (1) of the 1990 Act).
- 6 It is also their duty to take such steps as are reasonably practicable to investigate any complaint by a resident of the existence of a statutory nuisance (s.79 (1)).
- 7 A private person or body directly affected by a statutory nuisance may also bring proceedings, independently of the authority responsible for taking action (s.82 of the 1990 Act). Before instituting proceedings against any person, the person aggrieved by the nuisance must give to that person written notice of his intention to bring the proceedings and the notice shall specify the matter complained of.

What steps can principal authorities take in respect of a statutory nuisance?

- 8 Where a relevant principal authority as described in paragraph 5 above is satisfied that a statutory nuisance exists, is likely to occur, or recur in its area, it must serve an abatement notice. Abatement notices are served on the person responsible for the nuisance or on the owner or occupier of premises on which the nuisance arises (s.80 (2) of the 1990 Act). An abatement notice may impose any or all of the following requirements:
- a. requiring the abatement of the nuisance or prohibiting or restricting its occurrence or reoccurrence;
 - b. requiring the execution of such works and taking other steps as may be necessary for that purpose; and
 - c. the timeframe within which the requirements of the notice are to be complied with.

What happens if an abatement notice is not complied with or it is contravened?

- 9 Anyone who without reasonable excuse, contravenes or fails to comply with any requirement or prohibition imposed by the notice, is guilty of an offence (s.80 (4) of the 1990 Act. A magistrates' court may impose a fine not exceeding level 5 on the standard scale (currently £5000) together with a further fine of an amount equal to one tenth of that level for each day on which the offence continues after conviction (s.80(5)). The penalty for an offence committed on industrial, trade or business premises is a fine not exceeding £20,000.
- 10 Where an abatement notice has not been complied with, the authority may abate the nuisance and do what is necessary in execution of the notice (s. 81(3) of the 1990 Act) and may do so whether or not they take proceedings for the offence under s.80 (4).
- 11 Any expenses reasonably incurred by the authority in abating or preventing the reoccurrence of a statutory nuisance may be recovered from the person whose act or omission caused the nuisance which may include the owner of the land (s. 81(4)).

What powers to local council have in respect of statutory nuisance?

- 12 A local council, may drain, clean, cover or otherwise deal with any pond, pool, ditch, gutter or place containing or used for the collection of any drainage, filth, stagnant water or matter likely to be prejudicial to health (s.260 of the 1936 Act). This is a statutory nuisance for the purposes of s.79 of the 1990 Act (see paragraph 3 above). A local council may carry out works of improvement or maintenance to prevent it being prejudicial to health or contribute to the expenses of anyone carrying out that work. Local councils may not interfere with any private rights or with public sewers or drains.
- 13 The authority responsible for bringing action under the 1990 Act has concurrent powers under s.260 of the 1936 Act in addition to its duty to abate statutory nuisances.
- 14 Complaints from members of the public about statutory nuisances should normally be referred to the district or unitary authority. If the alleged nuisance affects a substantial area or number of residents a local council can properly make direct representations to the responsible authority.

What is public nuisance?

- 15 A public nuisance is best defined as an act or omission which adversely affects the reasonable comfort and convenience of the general public or a substantial class of the public. Public nuisance can include a wide range of activities such as allowing feral pigeons to roost under a bridge to the inconvenience of the public using the road below (*Wandsworth LBC v Railtrack PLC [2001]*). Peaceful assemblies on the highway which are not obstructive nor unreasonably large nor unreasonably prolonged are not a public nuisance (*DPP v Jones (Margaret) [1999]*). A public nuisance can be both a crime and a tort (civil wrong). Public nuisance is generally dealt with by criminal law. Any person, including a council, may prosecute but normally prosecutions are undertaken by the police or the public body directly affected. The sanction against a public nuisance is a fine or imprisonment.
- 16 If a person wishes to bring an action in tort, he need not have any legal interest in the land (e.g. arising from ownership or occupation of the land affected). The usual remedy sought in an action for public nuisance is an injunction. A council may apply for an injunction to abate a public nuisance which interferes with the interests of their residents.
- 17 Many activities which fall within the definition of public nuisance are also criminalised by statute e.g. obstruction of a public highway. Prosecutions in such cases are brought under the specific legislation in question.

Other Legal Topic Notes (LTNs) relevant to this subject:

LTN	Title	Relevance
15	Legal Proceedings	Sets out the procedures for bringing proceedings.
42	Occupiers Liability	Sets out the responsibilities of local councils as occupiers of land.
67	Private Nuisance	Sets out the general law of private nuisance.
68	Negligence	Sets out the provisions of the common law of negligence.
70	Clean Neighbourhoods and Environment Act 2005	Sets out amendments to the Environmental Protection Act 1990.

© NALC 2014