

# Guide to Statutory Nuisance

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## 1. Introduction

The Environmental Rights Centre for Scotland (ERCS) aims to increase people’s awareness of their environmental rights and to ensure that people can effectively exercise them.

This is a brief guide to the law on statutory nuisance in Scotland. It is intended to inform members of the public, community groups and organisations to help them to understand how to challenge statutory nuisances.

This is not a comprehensive legal guide. ERCS provides free advice to individuals, community groups and organisations on environmental and related planning law – please [contact us through our website if you have a specific statutory nuisance-related query](#).

## 2. What is a statutory nuisance?

The law of nuisance broadly protects people from any unreasonable interference from external sources. Sources of nuisance come in many different forms, such as noise, odours, light and dust.

There are two similar but distinct nuisance regimes in Scotland. The first is ‘common law’ nuisance, which has been developed by the courts.

The second is ‘**statutory nuisance**’, which refers to nuisance defined in the [Environmental Protection Act 1990](#). This guide covers statutory nuisance only.

Nuisance is defined in the 1990 Act. For a statutory nuisance to exist, there has to be some form of **triggering activity** (smoke, dust, artificial light, noise, etc.) which is either ‘**prejudicial to health**’ or a ‘**nuisance**’. The terms ‘prejudicial to health’ and ‘nuisance’ are used in the alternative, which means that only one needs to apply for there to be a statutory nuisance.

There are several types of triggering activities which can constitute a statutory nuisance, they include the following:

- (a) the state of premises;
- (b) smoke emitted from premises;
- (c) fumes or gases emitted from premises;
- (d) dust, steam, smell or other effluvia arising on industrial, trade or business premises;
- (e) an accumulation or deposit;
- (ea) any water covering land or land covered with water;
- (f) animals;
- (faa) any insects emanating from premises;

- (fba) artificial light emitted from premises or a stationary object;
- (g) noise emitted from premises;
- (ga) noise from a vehicle, machinery or equipment in a road;
- (h) any other matter declared by any enactment to be a statutory nuisance.<sup>1</sup>

The term '**prejudicial to health**' is defined as 'injurious, or likely to cause injury, to health'.<sup>2</sup> To show that any of the types of triggering activity would be prejudicial to health, either it will need to be well-understood that the activity would be prejudicial to health (such as the inhalation of black smoke) or some form of supportive medical evidence may be needed.

The term '**nuisance**' is not defined in the 1990 Act. It has been described in caselaw as something which is 'plus quam tolerabile' for the person who complains of an alleged nuisance – roughly translated as something that interferes unreasonably with the enjoyment of property.

Exactly what constitutes a 'nuisance' has been described as 'fiendishly difficult to define'.<sup>3</sup> At what point an activity becomes a nuisance is one of fact and degree, and legal advice may be helpful to establish whether something is a nuisance.

The Scottish Government [has produced guidance](#) which refers to eight different factors which should be considered when evaluating whether a nuisance exists.<sup>4</sup>

### 3. Local authority powers and duties to tackle statutory nuisances

Local authorities (councils) are required by law to deal with statutory nuisances in their areas.

They must inspect their areas for statutory nuisances and ‘take such steps as are reasonably practicable’ to investigate any complaints of statutory nuisances which they receive from members of the public.<sup>5</sup> A local authority which fails to comply with these duties may be acting unlawfully and could be subject to judicial review proceedings.

Where a local authority is satisfied that a statutory nuisance exists, or is likely to occur or recur in its area, it is required to serve an ‘abatement notice’.<sup>6</sup> An abatement notice can require the abatement of the nuisance, prohibit or restricting its occurrence or recurrence.<sup>7</sup> An abatement notice can also require the execution of such works, and the taking of such other steps, as may be necessary for any of those purposes.

Where someone has been served with an abatement notice, it is an offence to fail to comply with that notice without a ‘reasonable excuse’, and the maximum penalty for such an offence is £40,000.<sup>8</sup> There is a defence available where it can be proven that, ‘the best practicable means were used to prevent, or to counteract the effects of, the nuisance’.<sup>9</sup>

Local authorities cannot usually serve abatement notices where the nuisance relates to a site which is regulated by a permit issued under the Pollution Prevention and Control (Scotland) Regulations 2012 (this applies most large industrial facilities), and where SEPA could instead take action.<sup>10</sup> The reason for this exception is to avoid regulatory duplication.

## 4. How to report a statutory nuisance

A statutory nuisance should be reported to the relevant local authority in the first instance. We recommend that you report statutory nuisances in writing, so that you have a written record of your report to refer to in case something later goes wrong.

Most local authorities have environmental health departments which employ **environmental health officers** who investigate statutory nuisances in their area.

**Tip:** If you are affected by a statutory nuisance, it may be helpful to keep a record of how you have been affected and share this with the local authority. You could keep a diary with a note of what happened, the date and time of day any nuisance takes place and the names of any people involved. Photos and videos of any nuisance may also be helpful.

Sometimes local authorities will either fail to inspect a statutory nuisance, or will inspect a problem and declare that it is not serious enough to amount to a statutory nuisance. If you have a problem like this, try to discuss it with the local authority staff member first. If that fails to resolve the problem, local authorities have complaints processes which can be used.

Taking legal action against a local authority which fails to fulfil their duties to deal with statutory nuisances is a possibility, but should be considered a last resort.

## 5. Going to court over statutory nuisances

Members of the public can also take legal action to directly challenge statutory nuisances.

Any person who is “aggrieved by the existence of a statutory nuisance” can take legal action in the relevant sheriff court to have that nuisance abated.<sup>11</sup> This is done using the ‘summary application’ procedure.

Any person who uses this procedure must first give notice in writing to their opponent, the minimum notice periods are three or 21 days' notice, depending on the type of nuisance.<sup>12</sup>

If the court is persuaded that there is a statutory nuisance or that it may recur, it should order the abatement of the nuisance. The person responsible for the nuisance may be prosecuted and fined if the terms of that order are not complied with.

The 1990 Act provides a defence for anyone subject to these types of proceedings who is able to: “prove that the best practicable means were used to prevent, or to counteract the effects of, the nuisance”.<sup>13</sup>

Going to court is not something to be done lightly. Court action can be complicated and time-consuming. It is also expensive - the general rule is that the loser of a court case must pay their opponent’s legal expenses, which in a statutory nuisance case is likely to amount to thousands or tens of thousands of pounds.

**We strongly recommend that anyone considering going to court should seek legal advice beforehand.**

**If you have questions about statutory nuisance, contact us. ERCS provides free advice to individuals, community groups and organisations on environmental and related planning law – [you can contact us by completing our online form](#).**

## 6. Other useful resources

[The Environmental Protection Act 1990.](#)

[Scottish Government, Nuisance provisions of the Public Health etc \(Scotland\) Act 2008: guidance \(2009\).](#)

## References

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<sup>1</sup> Environmental Protection Act 1990, S79(1).

<sup>2</sup> Ibid, S79(7).

<sup>3</sup> Francis McManus, *Environmental Law in Scotland: An Introduction and Guide* (Edinburgh University Press, 2016), p11.

<sup>4</sup> Scottish Government, Nuisance provisions of the Public Health etc (Scotland) Act 2008: guidance (2009), pp7-9. The eight factors are: impact, locality, time, frequency, duration, convention, importance and avoidability.

<sup>5</sup> Environmental Protection Act 1990, Section 79(1).

<sup>6</sup> Ibid, Section 80(1).

<sup>7</sup> Ibid, Section 80(1).

<sup>8</sup> Ibid, Sections 80(4) and 80(6).

<sup>9</sup> Ibid, Section 80(7).

<sup>10</sup> Ibid, Section 79(10).

<sup>11</sup> Ibid, Section 82(1).

<sup>12</sup> Ibid, Section 82(6-7).

<sup>13</sup> Ibid, Section 82(9).