Noise nuisance and anti-social neighbours

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Noisy neighbours can make home life a misery, and noise making is often accompanied or replaced by other anti-social types of behaviour. The Department of the Environment has recently reviewed the working of the noise nuisance laws, and the Government is now considering the necessary action. The Government has also committed itself to strengthening the powers of local authorities to deal with their own tenants who exhibit anti-social behaviour; measures are expected in the forthcoming Housing Bill. This paper considers the problems and some possible remedies, including mediation.

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I. Neighbour noise

A. Introduction

For three decades complaints about noise have been steadily rising[1], and in 1993/94 complaints about noise from domestic premises rose for the seventh consecutive year, to a total of 131,153 complaints[2]. This is partly due to technological improvements which make it possible to produce ever louder and more readily available sound systems, and more noisy machinery and equipment for the home and elsewhere. However, people are also becoming more aware of the insidious nature of noise, and wish to be isolated from it[3].

It is often thought that the Police have the responsibility for dealing with noise complaints, but this is not the case unless a crime is being committed (if drugs are being taken at a noisy party or violence is involved, for example). Instead, the statutory nuisance provisions of the *Environmental Protection Act 1990* (EPA) make local authority environmental health officers (EHOs) responsible for dealing with the problem, and 180 local authorities now run out-of-hours noise teams.

While many noise complaints (around two-thirds[4]) are not confirmed as nuisances when investigated by the local authority, public perception is clearly of a growing problem. Some widely publicised cases have highlighted the misery that can be caused by a noisy neighbour. Often noisy actions are accompanied by other forms of inconsiderate or intimidatory behaviour, which in some cases have driven individuals to violent retaliatory action, even murder and suicide[5]; one newspaper report has listed 17 deaths which have allegedly resulted from noise disputes[6].

The number of complaints resolved through court action remains low (441 prosecutions and 372 convictions in 1993/4[7]), indicating that alternative and sometimes novel approaches are increasingly being adopted, including mediation and informal resolution (over 32,000 nuisances remedied informally), and the service of abatement notices (over 5,000). There has

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[1]'Bleak picture of local environmental quality' *ENDS Report* 248, September 1995
[2]Chartered Institute of Environmental Health *Environmental Health Report* 1993/4 pp.1-2
[3]'Neighbourhood noise in the UK. The legal approach to conflict resolution'. *Environmental Law and Management,* August 1994 pp.130-136
[4]37,209 nuisances confirmed from 131,153 complaints received in 1993/4
[5]*Mediation: Benefits and Practice. Information for those considering mediation as a way of resolving neighbour disputes.* Department of the Environment November 1994
[6]'Neighbourhood noise: 17 people have died from it: Disputes drive people to murder and suicide' *Independent on Sunday* 18 December 1994
[7]Chartered Institute of Environmental Health *Environmental Health Report* 1993/4 pp.1-2

been a dramatic increase in demand for mediation and it is often pointed out by professionals working in the field that many neighbour disputes and noise problems could be dealt with relatively easily if the parties would talk at an early stage. Regrettably this advice is rarely followed, although trained mediation has helped resolve over 10,000 neighbour disputes in the last ten years (see section II.A.6)[8].

Two recent Acts deal with noise nuisance (see next section), yet the problem of neighbourhood noise is clearly not being solved. According to a survey by the National Society for Clean Air (NSCA), local authorities (LAs) have seen an increase in workload due to noise complaints, and around a third of them think the law is inadequate, while slightly more think the law *would* be adequate if they were given more resources for enforcement[9].

At the end of 1994 the Government announced a working party to look at the problem of noise[10], particularly to provide guidance to local authorities concerning good practice and on making use of scarce resources. At the same time the Department of the Environment (DoE) issued a Planning Policy Guidance Note[11] on Planning and Noise.

The working party produced its recommendations in March 1995[12] and these are discussed in the appropriate parts of this paper and also summarised in section I.G. The Government invited responses and comments by 30 June 1995[13] and is now considering the responses to the consultation with a view to announcing shortly how it plans to proceed[14]. One recommendation is that a night time noise limit of 35dB (A) might be set, the breaking of which would be an offence. It is also possible that temporary and permanent confiscation powers may be strengthened.

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[8]*Mediation: Benefits and Practice. Information for those considering mediation as a way of resolving neighbour disputes.* Department of the Environment November 1994
[9]*Clean Air* Vol. 25, No.2 p.50
[10]DoE Press Notice 556, 3.10.94
[11]Department of the Environment Planning Policy Guidance (PPG) 24, *Planning and Noise* September 1994
[12]*Neighbour Noise Working Party Review of the effectiveness of neighbour noise controls. Conclusions and recommendations.* DoE, WO and SO March 1995
[13]Department of the Environment press release 147 27 March 1995 Noise working party's recommendations published
[14]HC Deb 1 November 1995 c288w

B. Assessing noise and its effects

Noise can be defined as unwanted sound[15]. One of the problems with dealing with noise is that it is often necessary to make subjective judgements. Noise is measured in decibels (dB) which are a logarithmic measure of sound pressure level, and an increase of about 10 dB results in a doubling of how loud a noise seems. The usual form of measurement is dB (A) where (A) denotes a filter used in sound measurement to mimic human hearing. The noise level in the average living room is about 40 dB (A), a kettle boiling half a metre away produces 55, conversation runs at about 60, a vacuum cleaner 3 m away produces levels of about 70, a hair dryer at 0.5 m around 75, a pneumatic drill around 100 and a jet taking off 125 dB (A)[16].

Of course most people do not have sound level meters, and even if they did, the effect of noise on a person, or the nuisance it causes, is affected by many other factors. The Building Research Establishment carried out a survey on attitudes to noise in 1991 as part of the noise research programme of the DoE[17]. The acceptability of noises heard varied. Some noises such as birdsong, or laughter or children which give some sense of human contact, were enjoyed or appreciated. Others were seen as an inescapable part of modern living (some traffic noise, the occasional party next door, DIY at reasonable hours and delivery of the post, milk and newspapers). People would not object to a dog barking occasionally but they would object if they thought it was in pain.

Other noises were considered objectionable and were likely to result in adverse reactions. These included noises without apparent end (traffic throughout the day and night), unpredictable noises (alarms), emotive noises (such as neighbours shouting or children screaming) and seemingly unnecessary noises (such as cars revving up or doors slamming at night).

Group discussions carried out as part of the BRE survey indicated that when a noise first begins it may be easy to ignore, but as it continues it may become an irritation. If noise continues still longer or becomes louder or more frequent, people seem to respond in one of two ways. People who tend to express their feelings speak of becoming 'aggravated, annoyed, bitter or angry'. People who tend to suppress their feelings become 'tense, pressured, frustrated, resigned, fraught, or anxious'. With still further noise, people tending to express reactions move on to using terms like 'hatred, revenge, violence, strangle, kill, bloodshed and

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[15]*NSCA 1995 Pollution Handbook* National Society for Clean Air and Environmental Protection p.197
[16]*This Common Inheritance,* Environment White Paper Cm 1200 September 1990 p.209
[17]*Current attitudes to neighbour noise - results of a national survey.* Colin Grimwood, Building Research Establishment; paper given at National Society for Clean Air Training Seminar, *Neighbour Noise Control - what next?* 16 February 1994 NEC Birmingham

hostility', whereas those who suppress their reactions speak of feeling 'depressed, tired, upset and afraid'.

The BRE national survey carried out in 1991 interviewed one adult from 2,373 randomly selected households. 30% of the total sample said their home life was to some extent spoiled by noise, and 1% said their home life was totally spoiled by noise. While more people objected to traffic noise than to neighbour noise, of all the different types of environmental noise, people who heard noise from neighbours were the most likely to complain in some way[18].

C. Statutory Controls

1. Noise from premises

Under section 79 of the *Environmental Protection Act (1990)* (EPA):

> Noise emitted from premises [which includes land, and therefore someone's garden] so as to be prejudicial to health or a nuisance,

is designated a "statutory nuisance". As well as having a duty to cause their areas to be inspected from time to time to detect any statutory nuisances which ought to be dealt with, local authorities have a duty to "take such steps as are reasonably practicable" to investigate a complaint of a statutory nuisance made by a person living within their area.

Individuals who wish to make a complaint about noise are advised by the Department of the Environment (DoE)[19] to contact their local authority's environmental health department. Schedule 3 to the 1990 Act gives powers of entry to officers of the local authority for the purposes of ascertaining whether or not a statutory nuisance exists, or for the purposes of taking any action needed to put their duties concerning statutory nuisance into effect. Following a complaint of a noise nuisance, local authority environmental health officers have to judge for themselves whether a noise nuisance really exists, rather than simply taking the word of the complainant. Whether they take any action, and if so the action they will take, will depend on how severe they judge the problem to be.

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[18]ibid

[19]*Bothered By Noise? What you can do about it* DoE 1994 Edition

It sometimes helps in the case of noisy neighbours for complainants to keep diaries detailing the extent of the problem and the way in which it is affecting their daily lives, and to persuade other neighbours to keep similar diaries. With the difficulties and subjective judgements involved in assessing the effects of noise (see section I.B above) it might be desirable to have general guidance on the sorts of noise that may constitute a statutory nuisance (and this is indeed one of the noise working party's recommendations). However, while acknowledging that magistrates if no-one else certainly do seem to need some guidance on such matters, the NSCA has pointed out the danger of stipulating specifically that 'x level of noise at y time of night is likely to cause a nuisance'; the reverse implication is that slightly less than x or slightly earlier than y would be *unlikely* to cause a nuisance[20].

Where a local authority is satisfied that a statutory nuisance exists, or is likely to occur or reoccur and an informal approach has failed, section 80 of the 1990 Act requires the local authority to serve an "abatement notice" which may require the abatement of the nuisance and/or prohibit or restrict its occurrence. Failure by the recipient to comply with such a notice is an offence under section 80 of the 1990 Act, which would lead on conviction in the Magistrates' court to a fine of up to £5000. If the local authority declines to take action for whatever reason, individuals can themselves take action in the Magistrates' court. This can been done successfully although certain procedures must be observed; for example, three days' notice must be given of any intended action[21].

Some local authorities have expressed concern about the time that it takes some noise nuisance cases to come to court, which can be further delayed if the defence or prosecution seek adjournments. The noise working party considered the possibility of establishing noise tribunals with professionals with noise expertise, but concluded that such a system would not necessarily speed up the process but be disproportionately costly to run[22].

One person's experiences of taking private action are detailed below; the case also illustrates how easily a situation can develop, and how noise can invade the life even of someone with a high tolerance[23];

> "...Those events seemed trivial, however, compared with my year - long struggle - at that time moving towards an uncertain denouement - to get my neighbours above my first-floor flat to keep their noise down to reasonable levels and social hours ... Things started to go seriously wrong when Ilana lost her job and started making sandwiches from home to sell in offices.

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[20]*Clean Air* Vol. 25, No.2 p.52
[21]*Bothered By Noise? What you can do about it* DoE 1994 Edition
[22]*Neighbour Noise Working Party Review of the effectiveness of neighbour noise controls. Conclusions and recommendations.* DoE, WO and SO March 1995 para 6.10
[23]*The Independent* 30 December 1992 "Noise and violence, then blessed silence: When Liz Heron complained to her neighbours about the racket, they got nasty. Her battle for a quiet life ended up in court " p.12

All through that summer she got up at four or five in the morning, went out briefly to buy provisions and then busied noisily about the flat.

Meanwhile, their social life was becoming more and more uproarious. They played music into the early hours and would run erratically around the flat at two or three in the morning - one night they seemed to be cavorting over the furniture. Dark rumours circulated the house that they had been heard making love in the stairway. We politely requested - not too often - that they be quieter, but this had no effect. Until one morning in mid-October last year. Ilana had got a job outside, but was still leaving noisily at six or seven. Getting up and asking her to be quieter precipitated a breathtaking outburst of personal abuse and a week-long campaign of stamping on the stairs, slamming the flat door and playing the stereo at top volume. Despite the provocation, I made a gesture of goodwill and suggested we had a friendly chat. They refused to have anything to do with me.

Although previously I'd had a Londoner's normal tolerance of noise, I now became acutely sensitive to it. My neighbours' total denial of my point of view and my rights turned each noise into an act of aggression. I decided that each time they disturbed my sleep, I would make a note of exactly what I heard and how I responded. I used this record in a letter to their landlady asking her to take steps to protect my rights. She wrote to the tenants, but to no avail. I informed her and complained to the managing agents. Neither replied. The noise got worse and I evacuated to a friend's house for a few weeks.

When I told people my saga most knew of some similar case, which always ended with the victim reduced to a nervous wreck and forced to sell up or move out. Usually a long, fruitless dialogue with an environmental health department was involved. But a solicitor friend said there was another way. She advised me how to prepare civil proceedings in nuisance against the tenants myself. It cost me £43 and two evenings drawing up the particulars of my claim and an affidavit laying out what had happened. I gave the tenants a week to stop the noise or face prosecution. The noise continued and the papers went off to court, where they spent the summer of this year being processed. When, in September, I received a date for my case and the summons to serve on the tenants, I balked. They were now being quieter: what if they responded with more violence and provocation? What if the case was adjourned and dragged on for months? Wouldn't it just intensify an already unbearable conflict?

Serving the summons was a breakthrough. The tenants crumpled. Far from being violent, they became blissfully quiet. Letters flowed in from the agents saying they would be leaving and asking me to drop the case. Ilana, the only defendant to turn up in court, was unrepresented and readily signed an undertaking saying that she would not cause unreasonable noise in future. With hindsight, I believe the legal action had added force because I brought it myself. An injunction imposed at my request that listed my demands gave them a direct legal obligation to me. If they broke it, I would be the one to have them speedily jailed. Within three weeks they had moved out. The quiet continued until the weekend they left. In a final orgy of noise, they turned up the stereo, slammed the doors and crashed about with boxes and furniture as loudly as they could. Like a retreating army, they slashed and burned as they left.

2. Noise in the streets

The definition of 'premises' under the EPA includes land, vessels and agricultural land, so noise coming from a someone's garden or from a farmer's field, or even from a houseboat

would probably be covered by the Act[24]. However, in an early case taken under the *Control of Pollution Act 1974*, the term was held not to cover noise made in public places or streets.

Mr Andrew Hunter's *Noise and Statutory Nuisance Act 1993* received Royal Assent on 5 November 1993 and extended the provisions of the EPA to provide new powers and duties for local authorities to investigate and deal with noise arising in the street. Section 2 of the Act amended section 79 of the EPA as follows

> 2) (b) after paragraph (g) there shall be inserted-
> (ga) noise that is prejudicial to health or a nuisance and is emitted from or caused by a vehicle, machinery or equipment in a street.

This was primarily designed to deal with the advent of noisy and temperamental car alarms, and also with Hi-fis. Since the noise has to be produced by a vehicle, machinery or equipment (VME), it clearly does not cover, for instance, people who may have gathered in the street, outside a pub or around a food stall, and who are making noise (unless for instance customers are frequently playing car stereos).

The powers under the 1993 Act allow EHOs to forcibly enter cars (in certain circumstances) to disable car alarms[25]. The procedure is as follows. If possible, a notice should be served on the person responsible, but if they are not around the notice can be affixed to the VME. The EHO should then spend an hour trying to find the person responsible, but if they cannot be found the EHO may take the necessary steps to abate the nuisance (e.g. to turn off an alarm); they may gain entry to do this but before doing so the police should be notified, and the vehicle should be left as secure before entry. If this is not possible it should be immobilised and removed to a secure place, and the police should be told where it has been taken[26].

The recent *Statutory Nuisance (Appeals) Regulations* (SI 2644/1995) extended the appeal system against abatement notices to noise in the street, so the appeal system now embraces the 1993 Act as well as the EPA. This will mean that it will be a possible defence to say that 'the best practicable means' has been used to stop a noise nuisance in the street.

Although the Government sees car alarms as a positive deterrent to car crime, mindful of the nuisance they can cause, it will shortly be consulting on regulations to limit the maximum

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[24]*The Environmental Protection Act 1990 Text and Commentary*, Second Edition, Stephen Tromans 1993
[25]HC Deb 30 October 1995 c29-30w
[26]*NSCA 1995 Pollution Handbook*, p.173

period of audible alarm to 30 seconds for new alarms, and prohibiting the use of audible signals on arming and disarming the system[27].

D. Local authority good practice and 24 hour noise teams

The Noise Working Party[28] recognised the expertise which EHOs have built up in dealing with noise problems but equally recognised a very wide variation in noise services provided in practice by individual authorities. Examples ranged from simply providing diary sheets to a constituent on which to record their problems, to a 24 hour 7 day a week investigation and action service.

The working party listed some examples of useful good practice; some local authorities have begun advertising noise services in accordance with the Citizens Charter initiative to give greater publicity to noise services and promote good 'noise awareness' (of reasonableness and the sort of noise that is likely to constitute a nuisance). Some have arranged procedures with local Magistrates to obtain warrants quickly when these are needed to enter domestic premises to silence burglar alarms or to confiscate equipment. The working party has made streamlining such procedures one of its nine recommendations. The NSCA has produced its own *Local Authority Neighbour Noise Guidelines,* which have been 'enthusiastically adopted' by many LAs and it sees the need for good practice guidance (possibly based on an update of its own document, following consultation). If this were to include an assessment of the cost-effectiveness of different management options this would help address the problem of scarce resources[29].

Local authorities in England and Wales do indeed vary in the way in which they implement the statutory nuisance legislation that exists; the powers are there for all of them, but of course, local authority policies depend on resources and the importance they attach to noise complaints. Some authorities give noise a high priority and have 24 hour noise lines and officers on hand at all times to deal with noise nuisances.

Westminster Council, for instance, has a noise team consisting of 16 officers sharing 12 hour night shifts throughout the year and this is the busiest team in the country. Since the 1993 Act Westminster noise team has also been targeting street noise; in the first 9 months of 1994 they dealt with 424 car alarms and 53 buskers; they switched off 60 car alarms themselves

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[27]HC Deb 30 October 1995 c29-30w

[28]*Neighbour Noise Working Party Review of the effectiveness of neighbour noise controls. Conclusions and recommendations.* DoE, WO and SO March 1995 paras 2.1- 2.5

[29]*Clean Air,* Vol 25 No. 2 p.51

after serving a notice[30]. When the Westminster team receives a complaint about household noise, two environmental health officers (EHOs) will visit the premises and deploy persuasion at first, but if this fails they serve an abatement notice that makes their request a legal requirement. (Abatement notices can be served on anyone involved with organising a party, addressed to the occupier of the premises or even simply affixed to the premises[31].) Then they apply to a Magistrate for a warrant to seize equipment if necessary, and the whole process can be performed in less than an hour[32].

In 1993/4 180 out of the 300 local authorities who submitted returns to the Chartered Institute of Environmental Health (CIEH) ran out-of-hours noise teams. Of these, the extent of the service was as follows[33];

Of 180 authorities operating an out-of-hours noise service (1993/4)	
24 hours a day, 7 days a week	86
Weekend service (eg Thursday-Sunday)	19
Other	74
No response	1

Regarding speed of response, according to a more recent survey of 328 authorities by the CIEH (carried out in December 1994), very few authorities aim to provide an immediate response to noise complaints, and the majority instead aim to act within a week[34];

Of 328 authorities surveyed (percentage)	
Immediate response	9 (2.7)
Within 24 hours	51 (15.5)
Within 2-7 days	206 (62.8)
Longer than 7 days	9 (2.7)
Prioritised service	49 (14.9)

[30]*Standard* 21.11.94 p.15
[31]DOE Press Release 588, 4 September 1992
[32]*The Independent* 12.7.94 p.19
[33]Chartered Institute of Environmental Health *Environmental Health Report* 1993/4 pg.12
[34]HC Deb 1 November 1995 c288w

E. Noisy parties and seizure of equipment

Private parties, for no private gain, can be controlled only though statutory nuisance legislation. (Conversely, general licensing law applies to 'pay parties' such as acid and warehouse parties and raves.) As such, private parties are matters of civil rather than criminal law and thus subject to local authority rather than police control. However, the police have often worked with local authorities in setting up 'noisy party patrols' where associated problems such as illegal drinking, drug taking and the blocking of highways are occurring in conjunction with noise[35].

It can be difficult to serve an abatement notice on the person responsible for the nuisance at a noisy party, who may be the organiser, host, DJ or sound engineer. However, if that person cannot be found the owner or occupier of the premises can be served with a notice, and if that person cannot be addressed by name the notice may simply specify 'the occupier'. Failing this, a notice can even be served by simply attaching it to the premises.

When the NSCA surveyed LA noise control policy in 1994 it found that, in particular, LAs wish to see new legal powers to tackle one-off noisy events, which often need an immediate response, perhaps with police assistance[36]. The NSCA feels that the present statutory nuisance regime is adequate for dealing with persistent nuisance problems which do not need immediate attention but may need to be investigated out-of-hours (although the main problem is lack of resources). However, it believes that there is a problem in dealing with one-off noisy events, for which the current legislative framework is 'adequate in theory but proving inadequate in practice', although there is no consensus about whether this reflects a lack of powers or resources[37].

Section 81 of the EPA allows a local authority to "do whatever may be necessary" in execution of a notice;

> "Where an abatement notice has not been complied with, the local authority may, whether or not they take proceedings for an offence under Section 80(4) above, abate the nuisance and do whatever may be necessary in execution of the notice".

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[35]*Control of noisy parties. A joint guidance note produced by the Department of the Environment and the Home Office.* September 1992
[36]*Clean Air* Vol 25, No. 2 pp.50-55
[37]ibid

Schedule 3 to the 1990 Act gives powers of entry to EHOs for the purposes of ascertaining whether or not a statutory nuisance exists, or for the purposes of taking any action needed to put their duties concerning statutory nuisance into effect. So once a notice has been served and has not been acted upon, EHOs are within their rights to remedy a nuisance themselves, i.e. to enter premises and for example take away sound equipment, to secure compliance with their notice. This is known as undertaking 'works in default'.

These powers were first used in January 1992 to seize stereo equipment from a teenager on Merseyside[38] and since then have been used on many occasions, after a notice has been served and breached, to temporarily seize the source of a noise nuisance in order to abate that nuisance, be it audio equipment, domestic burglar alarms, and in at least one case, barking dogs. The powers are used 'frequently' to confiscate music equipment if a premise's occupiers refuse to turn down music after being required to do so by an abatement notice. Most councils appear to consider it good practice to have obtained a warrant from the local Magistrates' court before entering premises, although at the same time it is thought that this is not strictly necessary under the Act, so long as the abatement notice served includes a statement to the effect that default works may be carried out[39]. According to one District Council noise officer[40]:

> "In our experiences the even temporary seizure of equipment has improved the powers of understanding of the recipient of the notice and has resulted in a significant improvement in the noise climate."

The problem is that these default powers, used to temporarily seize equipment when a notice has been breached, have not proved 'particularly successful' in dealing with noisy parties since they have been challenged in the courts[41]. Some local authorities are, perhaps understandably, nervous of using them, particularly if an EHO noise team is called to a raucous party. According to the noise working party[42];

> "...The Department of the Environment and the Home Office have previously expressed the view that section 81(3), coupled with paragraph 2 of schedule 3 of the 1990 Act, could be used to temporarily remove noise making equipment where abatement notices have not been complied with. A number

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[38] *The Times,* 30 January 1992

[39]National Society for Clean Air Training Seminar, *Neighbour Noise Control - what next?* 16 February 1994 NEC Birmingham

[40]ibid

[41]*Neighbour Noise Working Party Review of the effectiveness of neighbour noise controls. Conclusions and recommendations.* DoE, WO and SO March 1995 Annex B

[42]op cit, paras 4.1-4.2

> of local authorities share this view and have successfully temporarily confiscated equipment such as hi-fis and stereos. ... However, others are uncertain about the legality of using this wide general power for this purpose. There is considerable agreement amongst local authorities, which was shared by the working party, that a specific power to take this kind of action ... would be useful both as a quick remedy and a deterrent to noise makers..."

The working party has recommended a specific power of temporary confiscation, with the power for LAs to levy an administrative charge for the return of equipment. If acted on, this should remove any ambiguity and give a greater legal basis for EHO action[43] .

There is a clear distinction between seizing equipment to secure compliance with a notice, and permanently confiscating or even destroying equipment. Permanent seizure is done less frequently after someone has been convicted of breaching a noise abatement notice, and only after a deprivation order has been made under section 43 of the *Powers of Criminal Courts Act 1973*.

The working party has recommended that LAs should be encourage to seek permanent deprivation where necessary, since this is felt to be a more appropriate punishment than a fine which an individual might not be able to pay. Although the working party wondered whether a specific power should be introduced for this, as for temporary confiscation, it feels that on balance it is unnecessary to duplicate the earlier controls.

F. Should making noise be a criminal offence?

1. Police powers

Constituents often complain to the Police about noisy neighbours, but the Police can usually only appeal to the neighbours for reasonableness; they have no powers to act in England and Wales (see next section for police powers in Scotland) unless a crime is being committed. Despite the fact that the control of noise pollution hardly ever falls within the remit of the police, EHOs do seek their advice and assistance where appropriate. They will for instance often ask the police to accompany them to premises in case of violence or resistance[44]. Where parties include drunkenness or the taking of drugs, the advice of the Police is

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[43]HC Deb 1 November 1995 c288w

[44]National Society for Clean Air Training Seminar, *Neighbour Noise Control - what next?* 16 February 1994 NEC Birmingham

considered essential[45]. The Home Office and DoE issued a joint guidance note on noisy parties in September 1992[46].

Some people think that local authorities are too pressed to deal with noise complaints and that the Police should be given further powers, but equally the Police themselves feel that they do not have the resources to take on such a large extra responsibility[47].

The noise working party recognised that the Police are often the first port of call for noise complaints. In some areas local authorities and the police have come to informal arrangements whereby the police will help by seeking to remedy the situation informally, if asked and if other pressures allow. If the authority wants to confiscate equipment, for example, they may have arranged formal call out arrangements, and the police will always seek to attend when violence is anticipated or exists, subject to other commitments. The working party recommended that codes of good practice should be drawn up to encourage effective local arrangements[48]. However, the police admit that noise control is very low on their list of priorities[49].

2. Scottish powers

The statutory nuisance provisions of the EPA were initially not extended to Scotland, where the very similar provisions of the *Control of Pollution Act 1974*, which the 1990 Act replaced, were retained for noise control, and the *Public Health (Scotland) Act 1897* was retained for other statutory nuisances.

Two main differences presently arise from the different statutory provisions in Scotland. Firstly, Scottish local authorities (LAs) do not have a duty under the 1974 Act to investigate noise complaints, and the maximum fines are much smaller. This is due to change; section 107 and schedule 17 of the *1995 Environment Act* extend England and Wales' statutory nuisance system, including the noise controls, to Scotland. A commencement order has not yet been laid.

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[45] DoE News Release 588, 4 September 1992

[46] *Control of noisy parties* A joint guidance note produced by the Department of the Environment and the Home Office September 1992

[47] National Society for Clean Air Training Seminar, *Neighbour Noise Control - what next?* 16 February 1994 NEC Birmingham

[48] *Neighbour Noise Working Party Review of the effectiveness of neighbour noise controls. Conclusions and recommendations.* DoE, WO and SO March 1995 para.3

[49] *Clean Air* Vol 25, No. 2 pp.50-55

Secondly, in Scotland the police are empowered to tackle some noise problems, whereas in England and Wales they are not. This important additional control available in Scotland operates under section 54 of the *Civic Government (Scotland) Act (1982)* whereby it is an offence not to stop making certain noises (such as singing or playing a hi-fi) which are giving reasonable cause for annoyance, when asked to do so by the police. If the noise maker fails to stop he can then be arrested and charged, although evidence shows that many people making noise normally stop when asked to do so by a uniformed constable. Moreover, the police have powers under common law to remove articles suspected of being used in the commission of an offence, so they can seize equipment following a failure to desist from making noise under the 1982 Act.

This Scottish power has been influential in the decision of the Noise Working Party to recommend the consideration of a new noise offence for England and Wales in an effort to provide swifter remedies for night time noise disturbance[50].

3. Possible creation of a new noise offence

The recommendation of the noise working party which has received most attention has been the possibility of creating a new criminal offence based on the World Health Organisation guidelines of 35 dB(A) for acceptable indoor night noise levels. It is the Government's view that doing this might help provide a swifter remedy than the statutory nuisance regime. This is suggested by the effectiveness of the legislation in Scotland.

It is suggested that the power would work alongside and not replace the statutory nuisance system, and be adoptable by local authorities, to reflect different levels of noise problems around the country. A fixed penalty system is suggested[51].

The NSCA[52] however has stated 'with confidence' that if the other recommendations of the working party were to be implemented swiftly, the need for a new offence would be much reduced; rather than rush into new legislation the less contentious options should be tried first. The NSCA finds several technical and practical faults with the proposal in any case, particularly with setting any particular figure for noise levels and with using a fixed penalty system (some people would find it an acceptable price for a noisy party; others would be unable to pay, and the system would be confrontational and potentially dangerous if drink or

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[50]*Neighbour Noise Working Party Review of the effectiveness of neighbour noise controls. Conclusions and recommendations.* DoE, WO and SO March 1995 para.5.1
[51]ibid paras 5.1-5.12
[52]*Clean Air* Vol 25, No. 2 pp.53,54

drugs were being taken at a party). If the powers were to be adoptive this would result in an activity being a criminal offence only in some parts of the country, with little precedent.

However, the NSCA also admits that making nighttime neighbour noise a criminal offence would streamline LA responses and act as a deterrent, and it notes that the confiscation of equipment has a natural justice[53].

The overwhelming impression is that many LAs are currently experimenting and feeling their way with the existing legislation. If their present powers, particularly relating to confiscation and deprivation were clarified and strengthened, this might obviate the need for a new offence.

G. Noise working party recommendations

The noise working party was set up in October 1994[54] with the particular remit of providing guidance to local authorities concerning good practice and on making use of scarce resources. Its recommendations were produced in March and the Government invited responses and comments by 30 June 1995[55]. The Government is now considering the responses to the consultation and hopes to announce shortly how it plans to proceed[56].

The recommendations are that[57];

- Good practice guidance should be made available to local authorities on the management of noise services.

- Local authorities should be encouraged to provide information to residents about their authority's noise complaints service and to increase public awareness of neighbour noise issues. Government should consider supporting publicity initiatives to increase awareness of what constitutes unacceptable noise.

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[53]ibid
[54]DoE Press Notice 556, 3.10.94
[55]Department of the Environment press release 147 27 March 1995 Noise working party's recommendations published
[56]HC Deb 1 November 1995 c288w
[57]*Neighbour Noise Working Party Review of the effectiveness of neighbour noise controls. Conclusions and recommendations.* DoE, WO and SO March 1995

- Consideration should be given to issuing general guidance on the sorts of noise problems which might constitute a statutory nuisance.

- Local authorities should be encouraged to provide services which respond to complaints outside working hours wherever such services are required.

- Local authorities should be encouraged to establish streamlined local arrangements for obtaining warrants to enter domestic premises to temporarily confiscate noise-making equipment or silence intruder alarms.

- Code of good practice should be issued jointly by the professional representative bodies to police forces and local authorities to encourage effective local arrangements for dealing with noise complaints.

- A specific power of temporary confiscation of noise-making equipment (to provide a stronger legal base for existing practice) should be introduced, with the power for local authorities to levy an administration charge for its return.

- Local authorities should be encouraged to seek, where appropriate, deprivation orders for the permanent confiscation of noise-making equipment following prosecution.

- Consideration should be given to the creation of a criminal offence, separate to the statutory nuisance regime, to apply to night time neighbour noise disturbance.

II. Public sector tenants and anti-social behaviour

There is a wide range of views on what constitutes anti-social behaviour. Different people are annoyed by different things; however, it could be described as behaviour that destroys the quality of life for those living in the proximity of the perpetrators. A Department of the Environment consultation paper notes that:[58]

> "Such behaviour manifests itself in many different ways and at varying levels of intensity. This can include vandalism, noise, verbal and physical abuse, threats of violence, racial harassment, damage to property, trespass, nuisance from dogs, car repairs on the street, joyriding, domestic violence, drugs and other criminal activities, such as burglary."

Anti-social behaviour and neighbour disputes are not confined to the residents of public housing but this is the area where the problem has attracted most attention, perhaps because occupiers can turn to their landlord for assistance instead of dealing with it themselves. Although the vast majority of neighbour disputes are satisfactorily resolved by housing officers, in recent years concern has been raised over the amount of time that is being devoted to a small but growing number of more serious cases. Research in this area has found that up to 20 per cent of housing managers' time is now spent on dealing with neighbour nuisance issues, and that between two and ten per cent of tenants on any given estate has been the subject of a complaint.[59]

In April 1995 the Government issued a consultation paper entitled *Anti-Social Behaviour on Council Estates*.[60] More recently, it announced a package of measures aimed at strengthening local authorities' hands in dealing with neighbour nuisance problems.[61] Legislation to introduce these measures is expected in the new session. These initiatives have met with a varied response from the housing world. This section of the paper outlines the existing remedies available to local authorities and goes on to discuss the Government's proposals.

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[58] *Anti-Social Behaviour on Council Estates*, April 1995, para 1.2
[59] Ibid para 1.3
[60] Ibid
[61] DoE Press Notice 18.10.95 *Government gets tough with nuisance neighbours*

A. Current remedies and approaches

1. Evicting the perpetrator

Schedule 2 to the *Housing Act 1985* sets out the Grounds upon which a court may grant an order for possession against a secure council or housing association tenant. Ground 2 provides for the eviction of a tenant, or any person residing in the dwelling-house, who has been guilty of conduct that is a nuisance or annoyance to neighbours, or who has been convicted of using the dwelling-house or allowing it to be used for immoral or illegal purposes. The nuisance or annoyance must be to a neighbour but this does not mean that the occupier's property is necessarily physically contiguous [*Cobstone Investments Ltd v Maxim* (1985) Q.B 140].

Ground 1 of schedule 2 to the 1985 Act provides for the granting of a court order where rent due from the tenant is unpaid or where an obligation of the tenancy has been broken or not performed. Councils may insert additional terms into tenancy agreements that, if breached, can give rise to eviction proceedings. Many authorities have included an obligation to refrain from racial harassment in their tenancy agreements so that eviction action under Ground 1 can be pursued against perpetrators should the need arise. Before granting a possession order under Grounds 1 or 2 the court must be satisfied not only that the alleged breach has occurred, but also that it is reasonable to grant the order.

The grounds on which an order for possession may be granted against an assured tenant of a housing association are set out in Schedule 2 to the *Housing Act 1988*. The "nuisance" Ground is Ground 14; as with secure tenants it is a discretionary Ground and a court will only grant possession to the landlord if it thinks it reasonable to do so.

2. Injunctions

An injunction is a court order that prohibits a particular activity or requires someone to take action, eg to avoid causing a nuisance. Several social landlords, including the London Borough of Hackney and Manchester City Council, have successfully sought injunctions against some of their tenants in an attempt to tackle vandalism, violence, noise, harassment, threatening and unneighbourly behaviour on their estates.

Normally the ability to seek an injunction would be limited to the person(s) who had actually suffered from the nuisance; however, landlords may bring an injunction where it can be shown that the tenant in question is in breach of a tenancy condition not to indulge in

particular sorts of behaviour, provided tenancy agreements are clearly and unambiguously drafted.

An injunction may be perpetual, ie a final order, or interlocutory, which is an interim order pending the final outcome of the matter. An interlocutory order can, in an emergency, be obtained without the defendant being given notice of the proceedings (*ex parte)*. This has the effect of "freezing" the situation for a few days until an application for a further interlocutory injunction is made. With an interlocutory order if the nuisance ceases no further action is taken, if it continues a perpetual injunction must be sought. Failure to comply with an injunction is contempt of court which is punishable by fine and/or imprisonment.

The following extract describes Manchester City Council's experience of using injunctions to combat anti-social behaviour:[62]

> "The experience of Manchester City Council, which started seeking injunctions in 1992, has been that they can be effective in controlling unneighbourly behaviour. When appropriate, an injunction is sought against people breaking the clause in the tenancy agreement which prohibits causing a nuisance. The initiative originally came from housing management staff but received the support of tenants' groups and councillors. Housing staff are aware that some judges in the County Court are reluctant to grant injunctions and have therefore been careful only to seek them when they can put forward a strong case, supported by conclusive evidence.
>
> After nine months, sixteen injunctions had been obtained and all except two were regarded as immediately successful in stopping the offending behaviour. In other cases warning the offender that an injunction would be sought had been effective. In two cases where offending behaviour continued despite the injunction, possession action was taken and the tenants have now been evicted. The fact that there had been a prior history of injunctions was helpful in making the case to the court for possession.
>
> Injunctions have covered a variety of subjects, the most frequently occurring being noise with associated fighting and drunkenness in some cases. Other subjects include trespass by a squatter, the threat to knock down a wall in the course of a boundary dispute and driving over a green."

Local authorities may also rely on their general power to institute proceedings leading to an injunction under section 222 of the *Local Government Act 1972*. This enables an authority where it considers it expedient to promote or protect the interests of inhabitants of its area, to prosecute, defend or appear in legal proceedings. Coventry City Council reportedly used section 222 to obtain an order excluding two brothers from their mother's home following a string of burglaries on her estate.[63]

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[62] Chartered Institute of Housing *Neighbour Disputes: Responses by Social Landlords*, 1993, p.114
[63] *Roof* July/August 1995 "Antisocial antidotes"

3. Moving the perpetrator or the victim

Some local authorities have traditionally adopted a "management transfer" approach to neighbour disputes under which either the victim or the alleged perpetrator is moved to another property. In England and Wales these moves can only take place with the consent of the tenant involved, in Scotland it is possible to enforce a transfer. This has been criticised as a "nuisance pays" approach to harassment, particularly if the household which has been moved has been a victim of racial harassment. However, councils may prefer this method to eviction proceedings as it is quicker, cheaper and produces a more predictable result.

4. Use of byelaws

District councils and London borough councils have a general power to make byelaws under section 235 of the *Local Government Act 1972*. Byelaws may lay down provisions for controlling the use of public open spaces and thus attempt to remove causes of friction between citizens, eg by requiring that all dogs be restrained. In addition, local housing authorities may, under section 23(1) of the *Housing Act 1985*, "make byelaws for the management, use and regulation of their houses."

Breach of a byelaw will amount to a criminal offence; thus, an authority must be able to prove its case beyond reasonable doubt. It seems that few authorities make use of their byelaws other than in relation to non-residential parts of estates.[64]

5. Use of covenants on right to buy properties

If a serious dispute arises between a council tenant and an occupier who has exercised their right to buy the council has no powers to evict the owner occupier. Several local authorities use covenants on right to buy sales as a means of demonstrating both to buyers and their tenant neighbours that expectations about behaviour are the same for owners as for tenants.

Typical clauses which authorities include in covenants will prohibit:

- the use of properties for illegal or immoral purposes;

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[64] Chartered Institute of Housing *Neighbour Disputes:Responses by Social Landlords*, 1993, p.132

- creating a nuisance, annoyance or inconvenience to neighbours;
- failing to keep the garden tidy;
- keeping animals without permission.

6. Mediation

Over 10,000 neighbour disputes have been resolved with the help of mediation during the last ten years in the UK, and about 60% of mediated neighbour disputes involve noise. Informal approaches are by far the best way to sort out neighbour disagreements, although often things progress well beyond such a stage. Several reasons are advanced in favour of using mediation:

- it can reduce the amount of officers' time that is spent on neighbour disputes;
- legal remedies are not appropriate for all cases, they are expensive and can often make disputes worse before they get better;
- officers of an independent organisation are seen as impartial and without conflicting interests;
- it can prevent a dispute from escalating into a more serious disturbance that may require court action;
- residents feel that their complaints are being taken more seriously as the dispute handler can devote more time to the problem.

A number of local authorities have developed their own in-house mediation services and others have used the services of independent organisations. Many neutral mediation schemes have been established throughout the country. When mediation is attempted the success rate is high; one estimate of success (abatement or substantial improvement) is 77%[65], while another source quotes considerable improvement or resolution in 40% of cases. When face

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[65] *Environmental Health News*, 25.2.94, and NSCA Noise Seminar, Birmingham 1994

to face mediation takes place, which happens in about 20% of cases referred, about 90% are successful, in that they result in agreements which are still holding some months later[66].

The cost of handling each case works out at between only £200-£300 and it should be noted that mediators often work on a volunteer basis. It has been estimated that if mediation is involved at an early stage, it has the potential to save up to perhaps £1000 per case, largely in housing officer and other local agency time.

Although at one time the position of many mediation services was precarious[67], the Department of the Environment is now keen to encourage the use of mediation by local authorities for noise and other neighbour disputes, although it points out that mediation is not appropriate in all cases. Where the relationship between disputants is important, both parties are willing to work towards a solution and statutory action is not appropriate, mediation is particularly suitable. If there is violence or a fear of violence, the parties are unwilling to negotiate, or statutory action is needed, mediation is not appropriate.

The most common type of mediation service is an independent community service, almost always a registered charity. The Bristol Mediation Service, founded in 1987, and the Southwark Mediation Centre, established in 1985, are two of the oldest pioneering centres; the former was funded by the Environmental Action Fund until March 1994 and the latter until March 1995. The umbrella organisation Mediation UK is based at the Bristol office; among other things it has published a *Guide to Starting a Community Mediation Service*. It keeps a directory of mediation services and can be contacted on 0117 9241234[68].

One particular problem with using mediation to solve neighbour noise disputes is the EPA's specific legal requirement for local authorities to investigate complaints of statutory nuisances and serve an abatement notice if necessary. This makes the role of informal remedies such as mediation in the system unclear. Would mediation satisfy the EPA's requirements? The NSCA has called for this point to be clarified[69].

B. Perceived problems with existing remedies and approaches

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[66]*Mediation: Benefits and Practice. Information for those considering mediation as a way of resolving neighbour disputes.* DoE, November 1994

[67]National Society for Clean Air Training Seminar, *Neighbour Noise Control - what next?* 16 February 1994 NEC Birmingham

[68]Mediation UK Annual Report 1993/94

[69]*Clean Air*, Vol. 25 No. 2 p.51

No single remedy or approach is appropriate to all neighbour disputes. There is general agreement that public sector landlords need to develop a coherent strategy to deal with this issue which incorporates all the options available. Some authorities, such as Manchester City Council and Refrew in Scotland, have taken this a step further and have set up specific teams to deal with neighbour nuisance complaints. Manchester has also set up multi-agency groups that bring together the police, tenants' associations and other departments such as social services, environmental health and education. The purpose of these groups is to assist in the provision of information and case building.

Despite these efforts certain authorities have been vocal in demanding a strengthening of their powers to deal with the perpetrators of anti-social behaviour. The following problems have been identified with their existing powers:

- possession actions can encounter problems that are inherent in any litigation, ie they can be time consuming and expensive to pursue and can involve long delays;

- there are often difficulties in proving a case, in marshalling evidence and in persuading witnesses to appear because of fear of retaliation;[70]

- the nature of neighbour disputes means that the rights and wrongs of a situation are often unclear. Even where the original source of the dispute shows an innocent party, subsequent escalation usually draws both sides into culpable behaviour and makes possession action against one party inappropriate;

- courts can sometimes be reluctant to grant a possession order for neighbour nuisance, it is a discretionary Ground;[71]

- although injunctions can provide a speedy and effective remedy they can also be expensive[72] and involve time-consuming court proceedings;

- when an injunction is breached the punishment inflicted may not be severe; if a term of imprisonment is imposed it may be suspended or for as little as one or two weeks;

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[70] some authorities have tried to overcome this problem by using detective agencies to acquire evidence and act as professional witnesses (see *The Independent* "Under private investigation" 20.3.95)

[71] Manchester CC is reportedly planning to hold a seminar for judges on the problems faced by local authorities in dealing with neighbour disputes (see *Roof* July/August 1995 "Antisocial antidotes")

[72] Manchester City Council's Director of Housing estimates that they are spending about £100,000 a year on injunctions (see *Roof* July/August 1995 "Antisocial antidotes")

- the parties may simply refuse to take part in efforts to mediate.

The Chartered Institute of Housing's (CIH) publication, *Neighbour Disputes: Responses by Social Landlords*, notes the following reasons why landlords are reluctant to bring actions for possession in nuisance cases:[73]

- The legal sections of local authorities, often acutely conscious of budgetary constraints, are frequently unwilling to take court action where they feel they do not have a good chance of winning.
- There is frequently weak co-ordination between local authority housing and legal departments with a lack of support and guidance given to housing officers by lawyers. Smaller housing associations may lack in-house legal expertise.
- There is also an understandable desire on the part of social landlords and their officers not to be seen to be 'worsted' in court by a tenant against whom they take unsuccessful action.
- Legal sections will want to feel sure that the evidence the landlord wishes to rely on is reliable. Nuisance actions are also not easily won and judges in the County Court may require a great deal of proof before granting the remedy sought - proof that may have to be put forward in a highly formal way, such as, in the case of a noise nuisance, a 'diary' detailing the matter complained of, the type of noise, its dates and time of occurrence, its duration and quality. The complainant may not be able or willing to supply such evidence or have it corroborated.
- District judges, who hear most possession actions in the County Court can often regard neighbour disputes as 'six of one and half a dozen of the other' and so are unsympathetic to the landlord's attempts to gain possession.
- Fear of reprisals may cause victims and witnesses to be unwilling to act as witnesses.
- Witnesses may need assistance, for example in the form of child-minding and transport, to get to the court. Explanations may also need to be given to employers about time being taken from work.
- The law tends to reinforce the reluctance of landlords to be involved. For an 'annoyance' to pass the threshold of becoming a legal nuisance, the matter complained of must clearly have gone beyond the bounds of 'give and take', 'live and let live'.
- A tendency for courts to award suspended possession orders makes the weapon of possession ineffective and further inhibits witnesses and victims.
- The feeling that the problem is merely pushed to another address.
- The feeling by local authorities that the 1985 Housing Act Part III (homeless persons) makes the sanction ineffective for many families, although they may, of course, be deemed intentionally homeless.

C. The Government's proposals

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[73] pp 107-8

1. Probationary/introductory tenancies

In April 1995 the Government issued a consultation paper on probationary tenancies entitled *Anti-social Behaviour on Council Estates*. This paper asked for views on the proposal to give councils and Housing Action Trusts (HATs) the power to introduce a probationary period of 12 months for all new tenants. Under current provisions new tenants of these bodies are secure tenants who can only be evicted by court order on one of the Grounds specified in Schedule 2 to the *1985 Housing Act*. It is envisaged that a tenant within his or her probationary period could have the tenancy terminated simply by the service of a notice to quit (in not less than 28 days) if their behaviour is deemed to be anti-social.

It is proposed that a probationary tenant issued with a notice to quit will have the right to have the decision reviewed by the local authority before the notice period expires. The notice must set out the reasons why the tenancy is being terminated and advise on the time limit for requesting a review (within 7 days). Local authorities will be able to determine their own arrangements for reviews but the paper states that those involved in the review should be independent from those who made the decision to evict.

The idea behind introductory tenancies is that councils will be able to act quickly to remove new tenants who exhibit anti-social behaviour. The consultation paper states:

> "A probationary tenancy, to be converted automatically on its satisfactory completion, would give a clear signal to new tenants that anti-social behaviour was unacceptable and that it would result in the loss of their home. It would also give reassurance to existing tenants that their authority would take prompt action to remove any new tenants acting in this way."

The paper draws a distinction between behaviour which is "different, but not necessarily anti-social" and refers to the need for local authorities to exercise the proposed new power "responsibly and sensitively." People who are evicted because they breach their probationary tenancies would, the consultation paper states "typically be regarded as intentionally homeless, and the duty owed [to rehouse] in such cases is very limited".

It is not envisaged that a person who is already a secure tenant should have to serve a probationary period if they move to another dwelling within their existing landlord's area or if they move to another authority's area. It is suggested that a tenant who moves after partially completing a probationary period should only be required to complete the remainder of the term with the new landlord (if that authority has decided to operate a system of probationary tenancies). Where existing tenants seek a joint tenancy, unless each has already completed a probationary tenancy with the same or another local authority landlord or were

secure tenants of another social landlord or the tenants of a registered housing association, it is proposed that all the joint tenants will have to serve a probationary period again.

Housing associations have been able to grant assured shorthold tenancies, which offer them an automatic right of repossession, since the enactment of the *1988 Housing Act* (1989), this power has only been used exceptionally with the specific consent of the Housing Corporation. The Corporation has set up a pilot scheme to monitor the use of shorthold tenancies as a means of dealing with anti-social behaviour on a new estate in Manchester.

2. Grounds for possession

The Government intends to strengthen the existing ground for possession which is based on nuisance and annoyance to neighbours by making it apply to behaviour within the vicinity of a tenant's property, and also extending it to cover behaviour by visitors to a property.[74]

This proposal is intended to deal with two problems associated with the existing ground. The first is that the behaviour must relate to the property; it is not enough if it arises elsewhere. The second is that judges can sometimes be reluctant to grant possession where the offender appears to be beyond the tenant's control.

Local authorities are to be given the power to evict a tenant for behaviour which is *likely* to cause nuisance and annoyance. This will remove the need for victims of nuisance to give evidence in court; evidence may be provided instead by professional witnesses or local authority officers.

A new ground for possession is proposed which will enable authorities to evict a tenant who has been left in occupation by a partner fleeing domestic violence towards themselves or their children, where the property concerned is "larger than reasonably necessary" for their needs. Currently councils may not evict tenants in these circumstances unless the joint tenant (partner) surrenders her interest in the tenancy by serving a valid notice to quit on the council.[75]

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[74] DoE Press Notice 18.10.95 *Government gets tough with nuisance neighbours*
[75] *Greenwich LBC* v *McGrady* 1983

The repossession process is to be speeded up by enabling authorities to start possession proceedings against a tenant as soon as a notice for possession (NISP) has been issued. Currently 28 days must elapse after the service of a NISP before an application to the court can be made.

3. Injunctions

The Government intends that powers of arrest should be attached to injunctions taken out by authorities to prevent anti-social behaviour in those cases where violence has occurred or is threatened.

When announcing these proposals, which may be extended to housing association tenants, the Housing Minister, David Curry, stated:[76]

> "These measures, working in parallel with other activities such as mediation, counselling, and physical security and design measures, will enable council tenants to live safely without despair."

D. Reactions to the proposals

Although some authorities have lobbied hard for the introduction of probationary tenancies, most notably Manchester MDC and Dundee District Council[77], the housing movement as a whole is not persuaded that they will be of any great assistance in tackling the issue of anti-social behaviour on estates. Some housing commentators have bemoaned the fact that there has been little research into the history and causes of nuisance behaviour and are of the view that more account should be taken of local authorities' management practices, the design of estates and the impact of allocation policies, before strengthening the legal remedies at the disposal of authorities.[78] Several respondents have emphasized that anti-social behaviour is not a problem which is confined to council estates and are worried that council tenants are at risk of being further stigmatised by having to "serve probation" in order to obtain a permanent tenancy.

More specifically, there is concern that these tenancies will result in the erosion of all new tenants' rights because of the criminal/anti-social behaviour of a minority. A number of

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[76] DoE Press Notice 18.10.95 *Government gets tough with nuisance neighbours*
[77] the Scottish Office has also consulted over the introduction of probationary tenancies and the Scottish Affairs Committee is investigating the issue of anti-social behaviour on estates
[78] *Housing* July/August 1995 "The myth of the bad neighbour"

respondents to the proposals have pointed out that, for probationary tenancies to be successful, the offending tenant will have to show signs of anti-social behaviour within 12 months of moving into a property. Local authorities' experiences have shown that problems may not manifest themselves so quickly; probationary tenancies will do nothing to assist with existing anti-social tenants.

The fact that the proposals contain no clear definition of anti-social behaviour has led Shelter to comment that there is "potential for inconsistent interpretation, and judgemental and arbitrary decision making".[79] The danger of vulnerable tenants being evicted owing to anti-social behaviour rather than being provided with adequate support is also highlighted.[80]

Given that the main argument in support of probationary tenancies is that they would provide councils with a speedy means of getting rid of nuisance tenants, it is significant that the Chartered Institute of Housing (CIH) and the various local authority associations do not believe that this will work in practice:[81]

> "Prior to the 1980 Housing Act local authorities could end unprotected tenancies by a simple four week Notice to Quit. This resulted in constant challenges by tenants in the Court of Appeal. If the proposal signals a return to periodic tenancies, this will inevitably trigger a series of judicial reviews being heard in the High Court in an attempt to overturn the serving of a Notice to Quit. Whilst any judicial review may be unsuccessful, it will still prevent authorities from taking swift action and will delay possession for months or even years. This means that, far from being a swifter route to possession, there will be no advantage over proceedings under section 83 of the 1985 Act.[82]

> ...The type of tenant persistently involved in severe anti-social behaviour is not likely to leave quietly when presented with a Notice to Quit. If the tenant refuses to leave, the landlord must still go to court under the terms of the Protection from Eviction Act 1977 and if the tenant still refuses to leave on the date specified, will need to go back to court. In these circumstances, probationary tenancies will not provide a fast-track route to possession and, therefore, offer no material improvement on possession proceedings under section 83."

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[79] Shelter's Response to the White paper "Our Future Homes" September 1995, p.36
[80] Association of London Government's Response to Probationary Tenancies, May 1995, p.6
[81] CIH's Response to Consultation on Probationary Tenancies, May 1995, p.7
[82] this view has been endorsed by counsel's opinion obtained by the Tenant Participation Advisory Service, see *Housing Association Weekly* "Evicting probationary tenants could be a lengthy problem, lawyers warn" 28.4.95

Respondents have argued that authorities make insufficient use of existing remedies at their disposal; Russell Campbell, a solicitor with Shelter, has written:[83]

> "Most worryingly, those who advocate probationary tenancies appear woefully ignorant of the extent and effectiveness of existing legal measures to deal with these problems. The right approach is to combine the use of injunctions with possession proceedings."

Alternatively, North British Housing Association, which has been involved in the probationary tenancies pilot scheme on Manchester's Monsall estate, has hailed probationary tenancies as effective.[84] Fifty one tenancies on this estate have been let on six-month assured shorthold basis with consent from the Housing Corporation. By mid October eight tenants had been switched to permanent tenancies and two have had their probationary tenancies extended by a further six months. Respondents to the consultation paper felt that powers to operate a probationary tenancy scheme should not be granted until full results from the pilot scheme become available. As yet there is no evidence that probationary tenancies have deterred anti-social behaviour or will provide a speedy mechanism for evictions.

The proposals concerning the grounds for possession and injunctions have been broadly welcomed by the local authority associations, most of which argued for a review of the overall framework within which possession proceedings and injunctions are sought in their responses to the consultation paper. Some of these proposals were suggested by the associations themselves. However, there is remaining concern that the Government has failed to come up with proposals aimed specifically at speeding up court procedures when dealing with possession cases.[85]

E. The Labour Party's policy

Earlier this year the Labour Party set out its proposals for dealing with anti-social behaviour by neighbours in a consultation document entitled *A Quiet Life: Tough Action on Criminal Neighbours.*

This paper identified a need for new remedies to deal with "chronic anti-social criminal behaviour" and proposed the introduction of a Community Safety Order which would amount to a special form of injunction. The Order would be available on application by a police officer of superintendent rank or above, or the chief executive of a local authority. An Order,

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[83] *Roof* May/June 1995 "Putting security on probation"
[84] *Housing Association Weekly* "Probationary tenancies effective - North British" 25.8.95
[85] *Inside Housing* "Crackdown not enough" 20.10.95

where granted, would restrain anti-social behaviour by those named on it by imposing curfews, excluding perpetrators from particular areas, placing restraints on approaching individuals, issuing threats, making noise of specified kinds and desisting from racist behaviour.

It is proposed that Orders would have a power of arrest attached to them. In the event of a breach the paper states that "the court should have available to it the full range of non-custodial and custodial punishments up to imprisonment for, say, seven years."

The burden of proof for obtaining an initial Community Safety Order would be on the balance of probabilities but it is proposed that subsequent breaches would be dealt with under the rules of criminal evidence given the severity of the maximum sentence proposed.

Examples given of evidence of chronic anti-social behaviour which may lead to an application for an Order include:

- multiple convictions by the respondents which are related to the area;
- evidence of the commission of such multiple offences, even where there had not been a conviction;
- other evidence of unlawful acts by an individual or members of his or her household likely to interfere with the peace and comfort of a residential occupier.

The paper contains three proposals to deal with the issue of witness intimidation:

- initial evidence for making an application for an order will be by affidavit and governed by the rules of civil evidence, although relevant police officers/local authority officers will be required to give oral evidence as well. The complainant will not need to be identified where there are reasonable grounds for believing that to do so would put the complainant at possible risk of further intimidation;
- where neighbours or others *have* to give evidence and are likely to suffer intimidation it is proposed that witness protection orders should be available to restrain the intimidation;

- it is proposed that the rules relating to the use of "professional witnesses" be clarified.

The paper also proposes, where one or more of the respondents is a public authority tenant, that the landlord will be able to seek an order for possession within the same proceedings as those to seek a Community Safety Order.

Magistrates and the Penal Affairs Consortium have reportedly criticised these proposals as "a draconian and dangerous course to take" on the basis that people who ignored an Order would end up in jail.[86]

F. Liberal Democrat policy

The Liberal Democrats, while accepting the need for additional powers to deal with anti-social tenants, is doubtful that probationary tenancies would achieve any significant improvements. The Party has requested that the Housing Corporation's pilot scheme be fully evaluated before legislation is brought forward in this area.[87]

The Liberal Democrats have lent support to:

- better resourced prevention and conciliation measures:
- tightening up of tenancy contracts;
- streamlining court possession procedures;
- extending the grounds for possession to include harassment and domestic violence;
- extending the immediate power of arrest for breach of injunctions to cases involving anti-social behaviour;
- toughening up the law to prevent witness intimidation.

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[86] *The Guardian* "Doubts over Labour plan to jail hell families" 20.6.95
[87] Liberal Democrats *An Uncertain Future for our Homes*

List of acronyms

BRE	Building Research Establishment
CIEH	Chartered Institute of Environmental Health (formerly the Institute of Environmental Health Officers)
DoE	Department of the Environment
EHO	Environmental health officer
EPA	Environmental Protection Act 1990 (Chapter 43)
LA	Local authority
NSCA	National Society for Clean Air and Environmental Protection
PPG	Planning Policy Guidance
SO	Scottish Office
VME	Vehicle, machinery or equipment
WO	Welsh Office

Further reading

Neighbour Noise Working Party. Review of the effectiveness of neighbour noise controls. Conclusions and recommendations. DoE, WO and SO March 1995

Control of noisy parties. A joint guidance note produced by the Department of the Environment and the Home Office. September 1992

Mediation: Benefits and Practice. Information for those considering mediation as a way of resolving neighbour disputes. Department of the Environment November 1994

Anti-Social Behaviour on Council Estates, Department of the Environment April 1995

Neighbour Disputes: Responses by Social Landlords, Chartered Institute of Housing 1993