

Noise Bill

[Bill 19 1995/96]

Research Paper 96/23

13 February 1996



Mr Harry Greenway, who came fifth in the Ballot, has introduced a Noise Bill which seeks to implement two of the recommendations made recently by the Department of the Environment's noise working party. If enacted, the Bill would allow local authorities to adopt measures creating a new night time noise offence for dwellings, and to levy fixed penalties. The Bill also seeks to strengthen the power of local authorities to confiscate noise making equipment.

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I. Neighbour noise

A. Introduction

This paper updates Library Research Paper 95/117, *Noise Nuisance and Anti-Social Neighbours*. It does not address the probationary/introductory tenancy provisions included in the present *Housing Bill* [Bill 44 1995/96], which are dealt with by Library Research Paper 96/12, *The social rented sector, conduct of tenants and Housing Benefit in the Housing Bill*.

For three decades complaints about noise have been steadily rising¹, and in 1993/94 complaints about noise from domestic premises rose for the seventh consecutive year, to a total of 131,153 complaints². 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 it³.

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-thirds⁴) 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 suicide⁵; one newspaper report has listed 17 deaths which have allegedly resulted from noise disputes⁶.

¹'Bleak picture of local environmental quality' *ENDS Report* 248, September 1995

²Chartered 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

⁴37,209 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

The number of complaints resolved through court action remains low (441 prosecutions and 372 convictions in 1993/4⁷), 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 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 I.C)⁸.

Two recent Acts deal with noise nuisance (see section II), 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 enforcement⁹.

At the end of 1994 the Government announced a working party to look at the problem of noise¹⁰, 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 Note¹¹ on Planning and Noise.

The working party produced its recommendations in March 1995¹² and these are discussed in the appropriate parts of this paper and also summarised in section IV.A. The Government invited comments by 30 June 1995¹³ and received 354 responses.

In December 1995 Mr Clappison announced that the Government proposed to accept the recommendations of the working party in full. The decision took account of the results of initial trials of a proposed night-time noise offence, and the Government believed the

⁷Chartered Institute of Environmental Health *Environmental Health Report* 1993/4 pp.1-2

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

¹⁰DoE Press Notice 556, 3.10.94

¹¹Department 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

¹³Department of the Environment press release 147 27 March 1995 Noise working party's recommendations published

recommendations represented 'a package of proposals which have a great deal of support' and which would 'bring substantial improvements in the four areas identified in the review'¹⁴:

Mr Greenway's Bill seeks to implement those measures in the package which require legislation (see section IV).

Between the hours of 11pm and 7am it will be an offence to make excessive noise in domestic premises, as measured in a complainant's house, after a warning notice has been served. A £40 fixed penalty, payable within 14 days, is envisaged.

Local authorities already have the power to confiscate noise making equipment, but these powers have been challenged in the court so some authorities are wary of using them. The Bill proposes a specific power of confiscation for equipment which has given rise to an offence under the existing legislation or new provisions¹⁵. Confiscation of equipment embodies a 'natural justice'; it is an effective way of persuading offenders of the error of their ways, it avoids the problem of some and not other offenders being able (or willing) to pay a fixed penalty as the price for a noisy party, and it certainly stops a noise problem, at least temporarily.

B. Noise and its effects

Noise can be defined as unwanted sound¹⁶. 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)¹⁷.

¹⁴Department of the Environment News Release 626 12 December 1995 *James Clappison announces move to tackle domestic noise nuisance*

¹⁵*House Magazine* 15 January 1996 'Noise Bill' p.12

¹⁶*NSCA 1995 Pollution Handbook* National Society for Clean Air and Environmental Protection p.197

¹⁷*This Common Inheritance*, Environment White Paper Cm 1200 September 1990 p.209

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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 DoE¹⁸. 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 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 each of 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 way¹⁹.

¹⁸*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

¹⁹ibid

C. 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%²⁰, while another source quotes considerable improvement or resolution in 40% of cases. When face 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 later²¹.

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.

²⁰*Environmental Health News*, 25.2.94, and NSCA Noise Seminar, Birmingham 1994

²¹*Mediation: Benefits and Practice. Information for those considering mediation as a way of resolving neighbour disputes.* DoE, November 1994

Although at one time the position of many mediation services was precarious²², 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 9241234²³.

II. Existing Statutory Controls

A. 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.

²²National Society for Clean Air Training Seminar, *Neighbour Noise Control - what next?* 16 February 1994
NEC Birmingham

²³Mediation UK Annual Report 1993/94

Individuals who wish to make a complaint about noise are advised by the Department of the Environment (DoE)²⁴ 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.

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 nuisance²⁵.

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 be done successfully although certain procedures must be observed; for example, three days' notice must be given of any intended action²⁶.

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 run²⁷.

²⁴*Bothered By Noise? What you can do about it* DoE 1994 Edition

²⁵*Clean Air* Vol. 25, No.2 p.52

²⁶*Bothered By Noise? What you can do about it* DoE 1994 Edition

²⁷*Neighbour Noise Working Party Review of the effectiveness of neighbour noise controls. Conclusions and recommendations.* DoE, WO and SO March 1995 para 6.10

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 tolerance²⁸;

"...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. 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

²⁸*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

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.

B. 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 Act²⁹. 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.

The *Noise and Statutory Nuisance Act 1993* 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 perhaps 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 alarms³⁰. 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 taken³¹.

²⁹*The Environmental Protection Act 1990 Text and Commentary*, Second Edition, Stephen Tromans 1993

³⁰HC Deb 30 October 1995 c29-30w

³¹*NSCA 1995 Pollution Handbook*, p.173

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 be consulting on regulations to limit the maximum period of audible alarm to 30 seconds for new alarms, and prohibiting the use of audible signals on arming and disarming the system³².

III. Operation of noise controls in practice

A. Local authority good practice and 24 hour noise teams

The Noise Working Party³³ 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, seven 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 resources³⁴.

³²HC Deb 30 October 1995 c29-30w

³³*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

³⁴*Clean Air*, Vol 25 No. 2 p.51

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 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 after serving a notice³⁵. When the Westminster team receives a complaint about household noise, two 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 premises³⁶.) 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 hour³⁷.

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 follows³⁸;

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 week³⁹;

³⁵*Standard* 21.11.94 p.15

³⁶DOE Press Release 588, 4 September 1992

³⁷*The Independent* 12.7.94 p.19

³⁸Chartered Institute of Environmental Health *Environmental Health Report* 1993/4 pg.12

³⁹HC Deb 1 November 1995 c288w

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)

B. Noisy parties and seizure of equipment

Private parties, for no private gain, can be controlled only through 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 noise⁴⁰.

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 assistance⁴¹. 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 resources⁴².

⁴⁰*Control of noisy parties. A joint guidance note produced by the Department of the Environment and the Home Office. September 1992*

⁴¹*Clean Air* Vol 25, No. 2 pp.50-55

⁴²*ibid*

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".

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 Merseyside⁴³ 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 out⁴⁴. According to one District Council noise officer⁴⁵:

"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

⁴³ *The Times*, 30 January 1992

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

⁴⁵ *ibid*

they have been challenged in the courts⁴⁶. 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 party⁴⁷;

"...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 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 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 would remove any ambiguity and give a greater legal basis for EHO action⁴⁸, and such provisions are made in the present Bill (see section IV.C).

There is a clear distinction between seizing equipment to secure compliance with a notice, and permanently confiscating or even destroying equipment. Permanent seizure is made 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 recommended that LAs should be encourage to seek permanent deprivation where necessary, since this was 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 felt that on balance it was unnecessary to duplicate the earlier controls. However, the Bill contains forfeiture provisions (see section IV. C).

⁴⁶*Neighbour Noise Working Party Review of the effectiveness of neighbour noise controls. Conclusions and recommendations.* DoE, WO and SO March 1995 Annex B

⁴⁷op cit, paras 4.1-4.2

⁴⁸HC Deb 1 November 1995 c288w

C. 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 resistance⁴⁹. Where parties include drunkenness or the taking of drugs, the advice of the Police is considered essential⁵⁰. The Home Office and DoE issued a joint guidance note on noisy parties in September 1992⁵¹.

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 responsibility⁵².

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 arrangements⁵³. However, the police admit that noise control is very low on their list of priorities⁵⁴.

⁴⁹National Society for Clean Air Training Seminar, *Neighbour Noise Control - what next?* 16 February 1994 NEC Birmingham

⁵⁰ DoE News Release 588, 4 September 1992

⁵¹*Control of noisy parties* A joint guidance note produced by the Department of the Environment and the Home Office September 1992

⁵²National Society for Clean Air Training Seminar, *Neighbour Noise Control - what next?* 16 February 1994 NEC Birmingham

⁵³*Neighbour Noise Working Party Review of the effectiveness of neighbour noise controls. Conclusions and recommendations.* DoE, WO and SO March 1995 para.3

⁵⁴*Clean Air* Vol 25, No. 2 pp.50-55

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 arose from the different statutory provisions in Scotland. Firstly, Scottish local authorities (LAs) did not have a duty under the 1974 Act to investigate noise complaints, and the maximum fines were much smaller. However, section 107 and schedule 17 of the *1995 Environment Act* have extended England and Wales' statutory nuisance system, including the noise controls, to Scotland.

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 was 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 disturbance⁵⁵.

⁵⁵*Neighbour Noise Working Party Review of the effectiveness of neighbour noise controls. Conclusions and recommendations.* DoE, WO and SO March 1995 para.5.1

3. Creation of a new noise offence

The recommendation of the noise working party which received most attention was 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 was already the Government's view that doing this might help provide a swifter remedy than the statutory nuisance regime as suggested by the effectiveness of the legislation in Scotland.

The working party suggested that the power would work alongside and not replace the statutory nuisance system, and that it should be adoptable by local authorities, to reflect different levels of noise problems around the country. A fixed penalty system was suggested⁵⁶.

The NSCA⁵⁷ however 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 found some technical and practical faults with the proposal, 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 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 admitted that making night-time neighbour noise a criminal offence would streamline LA responses and act as a deterrent, and noted that the confiscation of equipment embodies a natural justice⁵⁸.

⁵⁶ibid paras 5.1-5.12

⁵⁷*Clean Air* Vol 25, No. 2 pp.53,54

⁵⁸ibid

IV. Present proposals

A. Noise working party recommendations

The noise working party was set up in October 1994⁵⁹ 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 1995 and the Government invited responses and comments by 30 June 1995⁶⁰.

The recommendations were that⁶¹;

- 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.
- 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.

⁵⁹DoE Press Notice 556, 3.10.94

⁶⁰Department of the Environment press release 147 27 March 1995 Noise working party's recommendations published

⁶¹*Neighbour Noise Working Party Review of the effectiveness of neighbour noise controls. Conclusions and recommendations.* DoE, WO and SO March 1995

- 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.

B. The Government's response

In December 1995 Mr Clappison announced that the Government proposed to accept the recommendations of the working party in full. The decision took account of the results of initial trials of the proposed night-time noise offence, and the Government believed the recommendations represented 'a package of proposals which have a great deal of support' and which would 'bring substantial improvements in the four areas identified in the review'. Specifically, the Government considered that⁶²;

"First, as the working party recognised, there is a wide variation in the type of noise complaint service provided by individual authorities. Some authorities provide excellent and very effective services and of course the level of service is a matter to be decided locally in terms of what is appropriate for the area taking account of local circumstances and resources.

"However, many people are concerned by the disparity between levels of service provided by neighbouring authorities with similar levels of problem and uncertainty as to the responsiveness and effectiveness of the service being offered. We therefore propose to encourage local authorities, largely through the dissemination of best practice and professional

⁶²Department of the Environment News Release 626 12 December 1995 *James Clappison announces move to tackle domestic noise nuisance*

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guidance, to adopt a graduated service standard which will clearly identify the type of noise service which is being offered.

"The second area studied by the working party was the role of the police in dealing with noise complaints. There are many examples of excellent liaison locally between environmental health officers and the police. We want to encourage these informal arrangements by supporting the representative bodies in drawing up a code of practice on effective liaison between the agencies.

"The police will of course continue to have responsibility to support local authority staff where there is a threat to public order, though the judgement about the support required remains an operational matter for the police.

"There is overwhelming support for clarification of the current powers under which some authorities temporarily confiscate noise making equipment. Many respondents to the consultation paper take the view that confiscation has a significant deterrent effect.

"The fourth area is the creation of a new offence to deal with excessive noise from domestic premises during the night-time period. Noise makers would be given a warning by a local authority officer to reduce the noise below a measured standard, based on the World Health Organisation Guidelines of 35dB(A) as necessary for the restorative process of sleep.

"Failure to comply with this warning would be a criminal offence. There would be a fixed penalty set initially at £40; alternatively the offender could be prosecuted by the local authority. This new offence would supplement the existing statutory nuisance regime and local authorities would have a choice as to whether or not to adopt it for their area.

"The third and fourth elements of the package will require new legislative powers and we will look for an early opportunity to introduce these. We will also wish to consult further with local authorities on the detailed definition and operation of the new powers and what supporting guidance on their use may be appropriate.

"We believe that this package of measures represents a major step forward in tackling the problems of noise nuisance from domestic premises."

Mr Greenway's Bill seeks to implement the third and fourth measures in the package.

C. Noise Bill [Bill 19 1995/96]

Although the Bill is not divided into Parts, clauses 1 to 9 deal with the new night time noise offence and fixed penalty notices, while clause 10 and the Schedule deal with the seizure of equipment.

Clause 1 of the Bill allows local authorities (LAs) to adopt the provisions of sections 2 to 9 of the Act (night time noise offence) only if they so choose. If they do this, they must advertise the fact and provide details in a local newspaper.

Clause 2 states that if a local authority receives a complaint from an individual present in a dwelling during night hours (11 pm to 7am) of excessive noise being emitted from another dwelling it must ensure that one of its officers takes reasonable steps to investigate the complaint.

If an officer is satisfied that noise is being emitted during night hours and that if measured from within the complainant's dwelling this would or might exceed the permitted level (see clause 5 below), then he may serve a warning notice under clause 3. The officer may decide whether or not it is necessary to measure the noise from within the complainant's dwelling and whether or not to use a device to measure the noise level.

Clause 3 deals with warning notices. These must state that a local authority officer considers that noise is being emitted during night hours, that it exceeds or may exceed the permitted level when measured from within the complainant's dwelling, and that the person responsible may be guilty of an offence. The warning notice may apply to a period from not earlier than ten minutes after it has been served until the following 7am and it must state the time at which it was served.

The notice may be served to any person at or near the offending dwelling or to anyone who appears to be responsible for the noise, or failing this it may be served by leaving it at the offending dwelling.

Clause 4 states that if a warning notice has been served, any person responsible for noise which is emitted from the dwelling during the period specified in the notice, and which exceeds the permitted level as measured from within the complainant's dwelling, will be guilty of an offence. There will be a defence of reasonable excuse, but conviction may lead to a fine of up to level 3 on the standard scale (£1000).

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Clause 5 permits the Secretary of State to make directions as to the maximum level of noise which may be emitted from dwellings during the night (the permitted level). [Likely to be 35dB(A) as recommended by the WHO; see section B above.] This will be as measured from another dwelling in the vicinity using any device approved under **clause 6**, and using approved methods. Different permitted levels may be set for different circumstances and may be determined partly with reference to other levels of noise.

Clause 7 states that evidence may be in the form of a document signed by the LA officer giving details of the way in which the measurement was made and identifying the offending dwelling; it may include a record of a measurement made by the device. A copy of any such statement must be served on the person charged with the offence at least seven days before any hearing or trial. The person who signed the document will be required to attend the trial in place of the documentary evidence, if the defendant serves a notice to such effect at least three days before the trial.

Clause 8 allows an authorised LA officer who believes that an offence has been committed under clause 4 to serve a fixed penalty notice to the person responsible.

The fixed penalty notice may be delivered to the person responsible or to the dwelling. Proceedings for the offence must then not be instituted before 14 days are up, and if the person pays the fixed penalty notice within that time he cannot be convicted of the offence in question. The penalty notice must give details of the offence to which it pertains and of the amount of the fine, the name of the person and address to which it applies, and the time limit within which it must be paid. Payment may be made using a pre-paid envelope and by cash or otherwise.

The fixed penalty is set at £40.

Clause 9 allows the Secretary of State to alter the fixed penalty and to specify by order the form for the fixed penalty notice. Amounts received from fixed penalty notices must be paid by local authorities to the Secretary of State.

Clause 10 deals with the seizure of equipment used to make noise unlawfully.

Where a warning notice has been served in respect of noise emitted from a dwelling and noise has exceeded the permitted level at any time within the period specified in the notice (as measured from within the complainant's dwelling), a local authority officer may enter the offending dwelling and may seize or remove any equipment which it appears to him is being

or has been used in the emission of the noise. The officer must produce his authority if asked to do so.

If a justice of the peace is given a sworn written statement that a warning notice has been served and breached and that entry has been refused, the justice may issue a warrant for entry by force if necessary.

A person entering such premises may take with him such other persons and equipment as necessary, but if the premises are unoccupied when he leaves he must leave the premises as effectively secured against trespassers as he found them.

Subsection (7) clarifies the powers of confiscation already existing under section 81(3) of the *Environmental Protection Act 1990*. It states that the power of a local authority to abate a noise nuisance under that Act includes the power to seize and remove any equipment which appears to have been used in emission of the noise in question. (This power was already thought to exist but has been challenged in the courts; see section III.B above.)

A person who wilfully obstructs anyone exercising the above entry and confiscation powers will be liable on conviction to a fine of up to level 3 on the standard scale (£1000).

Clause 10 also gives effect to the **Schedule** to the Act. This states that any seized equipment may be retained for 28 days or, if proceedings are instituted, until a person is sentenced, otherwise dealt with or acquitted, or until proceedings are dropped. Seized equipment may not be retained if a fixed penalty has been served and paid and the equipment in question was used in the emission of that noise.

Regulations may provide for the retention and keeping of seized equipment and prescribe charges for its seizure, removal and retention. Local authorities may recover such prescribed charges from the person from whom equipment has been seized, and retain the equipment pending payment of such charges.

Where a person from whom equipment has been seized is convicted of a noise offence and the court is satisfied that the equipment was used in commission of the offence, the court may make a forfeiture order for that equipment. This may be done independently of any other penalty decided upon by the court and without regard to restrictions on forfeiture in any other enactment, but the court must have regard to the value of the equipment and to the likely financial and other effects on the offender.

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Where equipment has been forfeited but an applicant can show that he had not consented to the offender having possession of the equipment and that he did not know or suspect that it would be used in the commission of a noise offence, the applicant may take proceedings for the recovery of the equipment. This must be done within six months of the equipment being forfeited. Where no such application has been made, regulations may provide for the disposal of equipment and for the application of any such proceeds.

Clause 11 states that 'dwelling' refers to any building, or part of a building, used or intended to be used as a dwelling. References to noise emitted from a dwelling include noise emitted from any garden, yard, outhouse or other appurtenance belonging to or enjoyed by the dwelling.

Clause 12 exempts members and officers of local authorities from liability for acts done in good faith for the purpose of putting the above powers into practice, with the exception of liability under sections 19 or 20 of the *Local Government Finance Act 1982* (powers of district auditor and court).

Clause 14 states that the Act will come into force as appointed by order, and that it applies to England and Wales only.

Abbreviations

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
1990 Act	Environmental Protection Act 1990 (Chapter 43)

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

Library Research Paper 96/12, *The social rented sector, conduct of tenants and Housing Benefit in the Housing Bill.*

Library Research Paper 95/117, *Noise Nuisance and Anti-Social Neighbours.*