
Guidance to Local Authorities in England

March 2008
Version 1
Overview

This document provides guidance to local authorities in England on the powers available to them to deal with night noise emanating from dwellings and licensed premises which exceeds the “permitted level” of noise prescribed under the Noise Act 1996 as amended by the Clean Neighbourhoods and Environment Act 2005. Whereas prior to the amendments made by the Clean Neighbourhoods and Environment Act 2005 the Noise Act only applied to night noise from dwellings, a complaint may now be made by someone within a dwelling concerning noise emitted from ‘any premises in respect of which a premises licence or a temporary event notice has effect’.

This guidance replaces previous guidance on the Noise Act 1996 contained in Environment Circular 8/97 and Defra Circular NN/31/03/2004.

The powers under the Noise Act 1996 are in addition to those possessed by local authorities under the Environmental Protection Act 1990 and the Noise and Statutory Nuisance Act 1993 on statutory nuisance.

Section 79 of the Environmental Protection Act 1990 places a duty on local authorities to inspect their areas periodically for statutory nuisances, and to take such steps as are reasonably practicable to investigate complaints of statutory nuisance. Where a statutory nuisance from noise exists or is likely to occur or recur, local authorities shall serve an abatement notice requiring the abatement of the nuisance or prohibiting or restricting its occurrence or recurrence, or requiring the execution of works, and the taking of such other steps necessary for these purposes. Local authorities can defer serving an abatement notice under section 80 (2A) – 2(E) of the Environmental Protection Act 1990 for statutory nuisance from noise for up to seven days in order to take other appropriate steps to abate the statutory nuisance, one of which may be use of the Noise Act 1996 for night noise. This optional seven day deferral was introduced by the Clean Neighbourhoods and Environment Act 2005. Local authorities do not have to make use of this seven day deferral period. The abatement notice can be served at any point within the seven day period, if used, and must be served at the end of the seven day period if the statutory nuisance does or may occur or recur.

Separate guidance on the closure of licensed premises on the grounds of noise which amounts to a public nuisance has been produced by the Department for Culture, Media and Sport.

Night Noise Offence

General Principles

1. This guidance does not constitute legal advice and each local authority should take legal advice where it is unsure.

2. The provisions of the Noise Act 1996 are intended to provide an alternative means of addressing disturbances caused by excessive noise. Previously, excessive noise could only be dealt with if it was thought to create a statutory nuisance. It is not always easy to establish such a case. Under the Noise Act 1996 an offence is committed if a person fails to ensure that any noise emitted from their premises does not exceed the permitted level.

3. In practice, upon receiving a complaint, a local authority may investigate the complaint and may as a result of the complaint issue a warning notice. A warning notice may be served on the person responsible for the noise if the local authority is satisfied that the noise, if measured from the complainant’s dwelling, would or might exceed the permitted level. Failure to comply with the notice may result in an offence being committed.

4. The offence is based on exceeding an objectively measured acoustic criteria (‘the permitted level’).

5. Instead of bringing a prosecution against someone who has failed to comply with a warning notice, a local authority may issue a fixed penalty notice. A fixed penalty notice provides a person with the opportunity to discharge liability to conviction by payment of the prescribed amount within 14 days. Payment within this time period will avoid court proceedings. The fixed penalty for night noise from domestic premises can be set locally or defaults to £100. The fixed penalty for night noise from licensed premises is set at £500.

6. The Noise Act 1996 does not require the local authority to measure the level of noise being emitted before a warning notice is issued. At the initial investigation stage it suffices for the local authority to be satisfied that the noise, if it were measured from within the complainant’s dwelling, would or might exceed the permitted level. A warning notice is often sufficient to persuade the noise maker to keep the noise to a reasonable level. The noise only needs to be measured if it is suspected that a warning notice is contravened and a local authority wishes to either consider (a) issuing a fixed penalty notice in respect of a night noise offence committed from a dwelling or other premises, or (b) prosecution for the same offences.
7. **The permitted level for the night noise offence should not be taken as an indicator of whether or not the noise may also constitute a statutory nuisance.** It is possible that a noise which is not an offence under the Noise Act 1996 may nevertheless be a statutory nuisance. It is also possible that noise which is an offence under the Noise Act 1996 may not be a statutory nuisance.

**Definitions and Interpretations**

**Definition of ‘dwelling’**
8. ‘ Dwelling’ is defined in section 11(2) of the Noise Act 1996 as meaning any building, or part of a building, used or intended to be used as a dwelling, and reference to noise emitted from a dwelling will include noise emitted from any garden, yard, outhouse or other appurtenance belonging to or enjoyed with the dwelling.

**Definition of ‘premises licence’ and ‘temporary event notice’**
9. Schedule 1 of the Clean Neighbourhoods and Environment Act 2005 inserts a new subsection 2(2)(b) into the Noise Act 1996 so that a complaint by someone within a dwelling about noise from ‘any premises in respect of which a premises licence or a temporary event notice has effect’ can now also be investigated under the Noise Act 1996. ‘Premises licence’ and ‘temporary event notice’ have the same meaning as in the Licensing Act 2003.

10. ‘Premises licence’ means a licence granted by a licensing authority under Part III of the Licensing Act 2003, authorising one or more licensable activities in respect of any premises. ‘Premises’ includes any land or place which is specified in the premises licence (or in the temporary event notice). This could include land within the curtilage of premises that is outdoors, although this must be specified in the premises licence.

11. ‘Temporary event notice’, for the purposes of the Noise Act 1996, is to be treated as having effect in accordance with section 171(6) of the Licensing Act 2003. That is, the temporary event notice has effect from the time it is given in accordance with Part 5 of the Licensing Act 2003 (Permitted Temporary Activities) until:

   (a) the time it is withdrawn
   (b) the time a counter notice is given under Part 5 of the Act
   (c) the expiry of the event period specified in the temporary event notice

whichever first occurs.
12. ‘Licensable activities’ are listed under section 1(1) of the Licensing Act 2003. They are:

(a) the sale by retail of alcohol
(b) the supply of alcohol by or on behalf of a club to, or to the order of, a member of the club
(c) the provision of regulated entertainment, and
(d) the provision of late night refreshment.

Definition of ‘the offending dwelling’
13. ‘The offending dwelling’ is a dwelling in respect of which an individual present in another dwelling during night hours complains that excessive noise is being emitted. – See section 2(2)(a) of the Noise Act 1996.

Definition of ‘the offending premises’
14. ‘The offending premises’ is any premises in respect of which a premises licence or a temporary event notice has effect and concerning which an individual present in a dwelling during night hours complains that excessive noise is being emitted. The Noise Act 1996 in places refers to “other premises”. These other premises are offending premises. See section 2(2)(b) and 2(4)(a) of the Noise Act 1996.

Night hours
15. Under section 2(6) of the Noise Act 1996, this means the period beginning with 11pm and ending with the following 7am.

16. For the purposes of the 1996 Act and in relation to England, a ‘local authority’ is defined in section 11 of that Act as:

- in Greater London, a London borough council, the Common Council of the City of London and, as respects the Temples, the Sub-Treasurer of the Inner Temple and the Under-Treasurer of the Middle Temple respectively;

- outside Greater London -

- any district council;

- the council of any county so far as they are the council for any area for which there are no district councils;

- the Council of the Isles of Scilly.
Detailed Guidance

This part of the guidance explains how each section of the Noise Act 1996 works following amendments made under the Anti-social Behaviour Act 2003 and the Clean Neighbourhoods and Environment Act 2005.

17. As a result of the amendments to the Noise Act 1996 made by section 42 of the Anti-social Behaviour Act 2003, the powers in relation to night noise offences may be used by any local authority in England. Local authorities do not need to adopt the Noise Act 1996, or provide a 24 hours a day, 7 day a week noise service in order to use the powers in the Act, as was previously the case.

18. Night noise may be investigated by a local authority under the Noise Act 1996 further to a complaint made by any individual present in a dwelling during night hours that excessive noise is being emitted from an offending dwelling or from offending premises.

19. It should be noted that this power differs from the mandatory duty in section 79(1)(g) of the Environmental Protection Act 1990 for local authorities to take reasonably practicable steps to respond to complaints of statutory noise nuisance from ‘a person living within its area’. It should also be noted that unlike statutory nuisance, there is no additional duty on a local authority to inspect its area from time to time to detect the presence of excessive night noise under the Noise Act 1996.

20. The Noise Act 1996 can be used where a local authority thinks, following a complaint, that the Noise Act 1996 will provide an effective means to deal with excessive night noise. If a statutory nuisance is occurring, or is likely to occur or recur, the local authority can still use the Noise Act 1996 should investigating officers think that this will be an effective means to deal with the noise, by deferring service of an abatement notice for statutory noise nuisance for up to seven days under section 80 (2A) – (2E) of the Environmental Protection Act 1990.

21. If a local authority receives a complaint about night noise emitted from an offending dwelling or offending premises, it may arrange for an officer of the authority to take reasonable steps to investigate it.

22. Where a local authority receives a complaint from an individual within a dwelling in their area that relates to noise emitted from an offending
dwelling or offending premises which is situated in another local authority area, then the local authority receiving the complaint may treat such a dwelling or premises as within its area. See section 2(7) of the Noise Act 1996.

Level of service
23. Detailed arrangements for the provision of services to respond to complaints of noise during night hours under the Noise Act 1996 are a matter for individual local authorities to determine in light of their assessment of local needs and circumstances. In particular, local authorities should give consideration to factors likely to be pertinent to such an assessment. These could include the number of complaints received, the timing of complaints and any weekly or seasonal variation in the rate of complaints, all of which might vary considerably during the night hours period, throughout a week and through the year.

24. A number of different arrangements may be appropriate, as determined by local needs and circumstances. The type of noise service considered appropriate may include officers on standby at a central location or on a call-out system from home, possibly covering targeted and varying hours between 11pm and 7am on selected nights each week and during specific times of the year e.g. 11pm to 3am at weekends and during busier summer periods.

How to respond to a complaint
25. Under the Environmental Protection Act 1990 a local authority must take reasonably practicable steps to investigate a complaint about noise. Where appropriate, it may also arrange to investigate the complaint under the Noise Act 1996.

26. If a local authority wishes to use the Noise Act 1996, it is suggested that the local authority officer should explain to the complainant the procedure involved in investigating a night noise complaint, including the possible need to measure from within the complainant’s dwelling and the conditions under which the measurement would be made. The local authority officer may also wish to explain the enforcement procedure for the night noise offence and use this initial contact as means to gain information to assist in dealing with the complaint.

27. The purpose of the investigation if using the Noise Act 1996 is to confirm the source of the noise and whether the noise level exceeds, or might exceed, the permitted level, and therefore to determine whether a warning notice may be issued. It is for the officer concerned to decide whether to assess the noise from inside or outside the complainant’s dwelling and whether or not to use any device for measuring the noise. There is no requirement to
measure the noise at this stage.

28. There is no requirement to serve a warning notice. However, if a warning notice is not served, no night noise offence is committed if subsequent measurement shows that the permitted level is being exceeded.

29. In circumstances where an officer determines that the noise complained of does not exceed the permitted level, the complainant should be advised as soon as practicable to help the complainant better understand the reasons why their complaint has not resulted in action being taken against the alleged noise maker.

30. Where an officer decides, by judgment or by taking a measurement, that the noise complained of does not exceed the permitted level, or where the officer decides that the noise cannot be measured or feels that the provisions of the Noise Act 1996 are inappropriate, the officer may nevertheless be satisfied that the noise is or could in the future be a statutory nuisance under section 79 of the Environmental Protection Act 1990. In that event, the local authority is under a statutory duty to serve an abatement notice under section 80 of the Environmental Protection Act 1990, with the option under section 80 (2A) – (2E) to defer serving the abatement notice for up to seven days to take such other steps that are appropriate for abating the noise nuisance or prohibiting its occurrence or recurrence within that period.

31. In some cases, the investigating officer may be unsure as to whether the noise amounts to a statutory nuisance. If this is the case, further visits may be required to enable the officer to make a judgment on whether a statutory nuisance exists or may occur or recur. The complainant should be informed of the approach that the local authority intends to take.

Statutory nuisance and the Noise Act offence

32. If the investigating officer is satisfied that a statutory nuisance is occurring and that the permitted level of noise is being exceeded, then the mandatory duty to serve an abatement notice will apply. However, it should be noted that the duty to serve an abatement notice may be deferred for up to seven days under section 80(2A) – (2E) of the Environmental Protection Act 1990 while other appropriate steps are taken to abate the noise nuisance.

Section 3 - the warning notice

33. A local authority has the power to serve a warning notice under section 3 of the Noise Act 1996 in respect of both offending dwellings and offending premises. Such a notice has a joint purpose. First, service of that notice alone may result in the noise being reduced. Secondly, an offence cannot
be committed under sections 4 or 4A of the Noise Act 1996 unless the local authority has first served a warning notice.

Content of warning notice
34. The warning notice must:

- state that the officer considers that noise is being emitted from the offending dwelling or the offending premises during night hours;
- state that the officer considers that the noise exceeds, or may exceed, the permitted level as measured from within the complainant’s dwelling;
- give warning:
  - in a case where the complaint is in respect of a dwelling, that any person who is responsible for noise which is emitted from the offending dwelling may be guilty of an offence if noise which exceeds the permitted level, as measured from within the complainant’s dwelling, is emitted from the premises in the period specified in the notice;
  - in a case where the complaint is in respect of other premises, that the responsible person in relation to the offending premises may be guilty of an offence if noise which exceeds the permitted level, as measured from within the complainant’s dwelling, is emitted from the premises in the period specified in the notice;
- state the time at which it was served.

35. It is not a requirement to state the name and address of the complainant on the warning notice. Such a step may result in the intimidation of complainants.

36. The Noise Act 1996 does not provide for a standard form, but a suggested form has been published by the Chartered Institute of Environmental Health (available from info@cieh.org).

Specified period
37. The period specified in the warning notice cannot begin earlier than ten minutes after the notice has been served and must continue until the following 7am. The notice may provide that the period commences later. For example, where the officer responds to a complaint of a noisy party and is assured that the party will cease in twenty minutes. If the officer believes that this is a reasonable response in the circumstances, then the period specified in the notice could begin in twenty minutes.

38. The notice ends automatically at 7am following service of the warning notice. There is no discretion in this matter. No more than one fixed penalty
notice can be given to a person in respect of noise emitted from a dwelling or offending premises during this period.

Service of warning notices

Offending dwellings
39. The warning notice must be served by delivering it to any person present at, or near, the offending dwelling and appearing to the officer to be responsible for the noise (s.3(3)(a)), or, if it is not reasonably practicable to identify such a person, by leaving the notice at the offending dwelling (s.3(3)(b)).

40. Section 3(5)) defines a person responsible for noise emitted from a dwelling as 'a person to whose act, default or sufferance the emission of the noise is wholly or partly attributable'.

Offending premises
41. Where the complaint is in respect of offending premises (i.e. those with a premises licence or in respect of which a temporary event notice has effect), section 3(3A) of the 1996 Act states that 'a warning notice must be served by delivering it to the person who appears to the officer of the authority to be the responsible person in relation to the premises at the time the notice is delivered'. In relation to offending premises, the warning notice cannot be served by leaving it at the premises.

42. A ‘responsible person’, under section 3(6) of the 1996 Act, means

(a) the person who holds the premises licence if he is present at the premises at that time, or

(b) where that person is not present at the premises at that time, the designated supervisor under the licence if he is present at the premises at that time, or

(c) where neither of the above is present at the premises at that time, any other person present at the premises at that time who is in charge of the premises.

43. Where a temporary event notice has effect in respect of the premises the responsible person is:

(a) the premises user (as defined in section 100(2) of the Licensing Act 2003) in relation to that notice if he is present at the premises at that time, or

(b) where the premises user is not present at the premises at that time,
any other person present at the premises at that time who is in charge of the premises.

Section 4 – Offence where noise from a dwelling exceeds the permitted level after service of warning notice

44. Section 4(1) provides that, if a warning notice has been served in respect of noise emitted from a dwelling, any person who is responsible for noise which:

   (a) is emitted from the dwelling in the period specified in the notice, and
   
   (b) exceeds the permitted level, as measured from within the complainant’s dwelling,

is guilty of an offence.

45. Section 4(2) provides that it is a defence for a person charged with an offence under this section to show that there was a reasonable excuse for the act, default or sufferance in question.

46. Section 4(3) provides that a person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale (currently £1,000).

Section 4A – Offence where noise from other premises exceeds the permitted level after service of warning notice

47. Section 4A(1) provides that, if

   (a) a warning notice has been served under Section 3 in respect of noise emitted from premises,
   
   (b) noise is emitted from the premises in the period specified in the notice, and
   
   (c) the noise exceeds the permitted level, as measured from within the complainant’s dwelling,

the responsible person in relation to the offending premises at the time at which the noise referred to in paragraph (c) is emitted is guilty of an offence. See paragraphs 41 and 42 for the meaning of ‘responsible person’. 
48. Section 4A(2) provides that a person guilty of an offence under section 4A is liable on summary conviction to a fine not exceeding level 5 on the standard scale (currently £5,000).

49. Unlike the offence under section 4, it is not a defence under section 4A to show that there was a reasonable excuse for the act, default or sufferance in question.

Offences under both section 4 and 4A
50. In relation to offences under both section 4 and 4A, the local authority cannot take proceedings for a conviction under the Noise Act 1996 unless it has first correctly served a warning notice. Further, no such proceedings can occur unless the local authority has taken measurements of the noise; such measurement must be made from within the complainant’s dwelling.

51. The local authority can decide, instead of prosecuting a person it believes to have committed an offence under section 4 or 4A, to offer that person the opportunity of accepting a fixed penalty notice to discharge liability to conviction.

Sections 4, 5 and 6 - assessment, measurement and determination of the noise

52. It should be noted that, in contrast to statutory nuisance, the night noise offences are based on noise exceeding the maximum level of noise which may be emitted during night hours from any dwelling or other premises. This maximum level (“the permitted level”) is determined by Directions made, in the case of England, by the Secretary of State in writing.

53. The measurement of the noise must be made from within the complainant’s dwelling using an approved measuring device. Such Approval is made, in the case of England, by the Secretary of State in writing.

54. The permitted level has been slightly reduced from the previous level. Previously the permitted level for dwellings was 35 dBA if the underlying level of noise was no more than 25 dBA, or 10 dBA above the underlying level of noise where this exceeded 25 dBA. The permitted level is now set at 34 dBA if the underlying level of noise is no more than 24 dBA, or 10 dBA above the underlying level of noise where this exceeds 24 dBA.

55. Use of an approved device may be made subject to conditions. The Directions and Approval for both offending dwellings and offending premises are available on the ‘Noise’ pages of the Defra website. If an approved device is not used or not used correctly, any measurement made may not be admissible as evidence in any court proceedings for the night noise offences.
Procedural points

56. While the 1996 Act does not define the type of noise to which the new offence might apply, it is understood that the technical aspects of measuring the noise complained of means that there may be difficulties in assessing some impulsive or sporadic noises e.g. slamming doors and isolated incidents of shouting. The night noise offence is likely to be most appropriate for cases of disturbance from persistent noises e.g. amplified music or prolonged noisy DIY activity.

57. The person who the local authority officer believes is responsible for a night noise offence does not have to accept the offer (if made) of discharging liability with payment of the fixed penalty notice, and can choose instead to have the case heard in court. A court may find the responsible person guilty of a criminal offence with a fine upon summary conviction being much higher than that of a fixed penalty notice.

58. It should be noted that measurement of noise is a skilled operation which should be undertaken only by people who are competent in the appropriate procedures. Consequently, local authorities who do not ensure that staff are adequately trained and can demonstrate competence in measurement of noise run the risk of successful legal challenge to any evidence relied upon in prosecutions against those alleged to have committed an offence.

59. The investigation of complaints, the issuing of a warning notice and the issuing of fixed penalty notices are unlikely to be suitable for contracting out, as the Noise Act 1996 specifies that these functions are to be performed by an ‘officer of the authority’.

Permitted level

60. The permitted level is determined by reference to the underlying level of noise. The underlying level of noise is indicative of the level of noise that would otherwise be present in the absence of the noise causing complaint. There will be cases where the level of noise complained of is clearly substantially above the level of noise that would otherwise be present and where there will be obvious gaps or lulls in the noise. In such cases it should be possible to assess, by judgment or measurement, that the underlying level of noise is at least 10dB below the $L_{Aeq, 5min}$ of the noise from the offending dwelling.

61. However, the measurement technique makes it possible to determine the underlying level of noise even if the dominant noise, such as amplified music, appears to be continuous. This can be done, using currently available instrumentation, by the use of a statistical parameter (such as $L_{A99.8, 5min}$, $L_{A99.5, 2min}$ or $L_{A99, 1min}$) as a proxy for the underlying level of noise.
62. If $L_{AN,T}$ measurements are to be used to determine the underlying level of noise, the equipment must meet certain criteria with regard to its sampling rate and its method of operation of statistical calculations. It is understood that at the present time, only the instrument manufacturer or their agent can usually supply such information for such instruments.

63. The Approval states that the measurement of the $L_{Aeq,5min}$ of the noise emitted from the offending dwelling or offending premises shall be continuous except for pauses to exclude from the measurement any significant noise other than that causing complaint. The measurement must therefore be for at least 5 minutes, but it could be longer should the officer consider it necessary and/or reasonable to do so. The noise emitted from the offending dwelling or offending premises and the underlying level of noise are both to be determined within an overall period of no more than 15 minutes. In other words, there is a moving 15 minute assessment ‘window’ within which both the noise from the offending dwelling or offending premises and the underlying level should be obtained.

64. Local authority officers should be aware that the measurement procedure may require measurements of relatively low levels of noise. They should also recognise that the noise generated by the approved device itself, including the microphone (i.e., self-noise), will always have the effect of elevating the underlying level of noise to a greater extent than the offending noise. At low levels of noise, the self-noise of the approved device can significantly affect the underlying level, making confirmation of an offence less likely. Approved devices with high levels of self-noise may not be appropriate for use where relatively low levels of noise are being measured.

65. To obtain suitable measurements for the purposes of the Noise Act 1996 in situations where underlying levels of noise are around 24 dB(A), it is recommended that the self-noise of the measuring device (including the microphone) should be below 19 dB(A). However, self-noise can exceed this level without significantly affecting the accuracy of measurement at higher sound pressure levels.


66. The Regulation of Investigatory Powers Act 2000 (RIPA) introduced new provisions relating to the carrying out of surveillance and the use of covert human intelligence sources. Part II applies to directed surveillance (section 26(2) of RIPA), intrusive surveillance (section 26(3) of RIPA), and the conduct and use of human intelligence resources.

67. There should be no implications under RIPA with regard to the use by a local authority of approved measuring devices in accordance with the provisions of the Noise Act 1996. Use of measuring equipment is unlikely to
count as surveillance.

68. See the Home Office Covert Surveillance Code of Practice for more information.

**Section 7 - Court proceedings for the night noise offence: evidence**

69. **Section 7(1)** provides that in proceedings for an offence under section 4 or 4A, evidence —

(a) of a measurement of noise made by a device, or of the circumstances in which it was made, or

(b) that a device was of a type approved for the purposes of section 6, or that any conditions subject to which the Approval was given were satisfied

may be given by the production of a document mentioned in section 7(2).

70. **Section 7(2)** states that the document referred to in section 7(1) is one which is signed by an officer of the local authority and which (as the case may be) —

(a) gives particulars of the measurement or of the circumstances in which it was made, or

(b) states that the device was of such a type or that, to the best of the knowledge and belief of the person making the statement, all such conditions were satisfied;

and if the document contains evidence of a measurement of noise it may consist partly of a record of the measurement produced automatically by a device.

71. **Section 7(3) and (3A)** states that in proceedings for an offence under section 4 and 4A (in respect of an offending dwelling and an offending premises), evidence that noise, or noise of any kind, measured by a device at any time was noise emitted from a dwelling or premises may be given by the production of a document —

(a) signed by an officer of the local authority, and

(b) stating that he had identified that dwelling as the source at that time of the noise or, as the case may be, the noise of that kind.
72. Section 7 does not make a document admissible in evidence in proceedings for a night noise offence unless a copy of it has, not less than seven days before the hearing or trial, been served on the person charged with the offence.

73. Furthermore, section 7 does not make a document admissible as evidence of anything other than the matters shown on the record produced automatically by a device if, not less than three days before the hearing or trial or within such further time as the court may in special circumstances allow, the person charged with the offence serves a notice on the prosecutor, requiring attendance at the hearing or trial, of the person who signed the document.

Section 8 and 9 - The fixed penalty

74. Note: This section covers the basic principles of fixed penalty notices for offences under the Noise Act 1996. However, detailed information on their use is provided in the separate Clean Neighbourhoods guidance available on fixed penalty notices: (www.defra.gov.uk/environment/localenv/legislation/cnea/fixedpenaltynotice.s.pdf). Authorised officers are strongly advised to consult this guidance when using the fixed penalty notice provisions.

Overview

75. An authorised officer of the local authority can offer a person who they believe is committing, or has just committed, a night noise offence the option of discharging liability to conviction by payment of a fixed penalty notice.

76. Local authorities should be aware of the need to ensure officers are duly authorised to serve fixed penalty notices under section 8(1) of the Noise Act 1996. The keeping of an up to date written record of officer authorisations is a successful method of countering challenges by noise makers on this point in Court actions.

Dwellings (section 4 – offence where noise from a dwelling exceeds the permitted level after service of a warning notice)

77. The level of the fixed penalty under section 8A(2)(a) and (b) of the Noise Act 1996:

(a) is the amount specified by the local authority in relation to the authority’s area, or

(b) if no amount is specified, £100
78. Under regulation 2(2)(c) of The Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) Regulations 2006 (SI 2006 No. 783), the amount of the fixed penalty which can be specified by the local authority must be within the range of £75 to £110.

79. A person cannot be convicted of an offence if a fixed penalty notice for that offence is paid within 14 days of the date of the notice. Proceedings for an offence must not be instituted within that 14 day period.

80. With regard to an offence under section 4, section 8A(3) of the 1996 Act enables local authorities to make provision for treating the fixed penalty as having been paid if a lesser amount is paid before the end of a period specified by the local authority. Section 8A(5)(b) enables the Secretary of State and the National Assembly for Wales to restrict the extent to which, and the circumstances in which, a local authority can make provision for this power. See the Clean Neighbourhoods guidance: (www.defra.gov.uk/environment/localenv/legislation/cnea/fixedpenaltynotice.pdf) on Fixed Penalty Notices for more detail.

81. The person responsible for the noise can refuse the offer of discharging liability to conviction through payment of a fixed penalty, and instead choose to have the case heard before a court.

Other premises (section 4A – offence where noise from other premises (i.e. premises with a premises licence or a temporary event notice) exceeds the permitted level after service of a warning notice)

82. Section 8A(2A) of the 1996 Act sets the level of the fixed penalty notice in respect of offences involving such premises at £500.

83. The local authority cannot alter the level of the fixed penalty. A local authority does not have to offer the person responsible the option of paying a fixed penalty, and the person responsible does not have to accept the offer of a fixed penalty to discharge liability to conviction.

84. A person cannot be convicted of an offence if a fixed penalty notice for that offence is paid within 14 days of the date of the notice. Proceedings for an offence must not be instituted within that period of 14 days.

Other premises (section 4A – offence where noise from other premises (i.e. premises with a premises licence or a temporary event notice) exceeds the permitted level after service of a warning notice)

85. Section 8(5) of the Noise Act 1996 provides that a fixed penalty notice must state:

- that proceedings will not be taken for fourteen days following the date of
service of the notice;

- the amount of the fixed penalty; and

- details of to whom and where the fixed penalty sum should be paid.

86. The fixed penalty notice must also give such details of the circumstances alleged to constitute the offence as are necessary to give reasonable information of the offence. This might include the address of the offending dwelling/premises, the date and time at which the warning notice was served and the time at which it came into force, the permitted level and the actual levels recorded. **There is no requirement to include the name or address of the complainant.**

87. The Secretary of State has power under section 9 to specify, by order, the form of the fixed penalty notice in relation to England. However, the Secretary of State does not propose to use this power at present. A form of fixed penalty notice has been suggested by the Chartered Institute of Environmental Health (available from [info@cieh.org](mailto:info@cieh.org)).

**Serving of notice**

88. A fixed penalty notice, where given, should be served on the person who the officer believes is committing or has just committed an offence under section 4 or 4A. This should be done either by delivering the notice to that person, or where this is not reasonably practicable, by leaving the notice addressed to that person at the offending dwelling. In relation to offending premises, the warning notice cannot be served by leaving it at the premises (see paragraph 41).

89. By section 8B of the 1996 Act, inserted by section 82(2) of the Clean Neighbourhoods and Environment Act 2005, a local authority may require a person to whom an authorised officer proposes to give a fixed penalty notice to give the officer his or her name and address. Failure to provide that information when asked to do so, or the giving of false or inaccurate replies to such a request, is an offence. A person guilty of such an offence is liable upon summary conviction to a fine not exceeding level 3 on the standard scale (currently £1,000).

**Payment of the fixed penalty**

90. Payment may be made by post, although payment by other means is permitted.

91. Where a fixed penalty notice has been issued, but has not been paid within the fourteen day period, the local authority may decide to take proceedings against the person responsible. By section 9(5), evidence that the fixed penalty was, or was not, paid before the end of the fourteen days may be
given to the court in the form of a certificate. This should state that such payment was, or was not, received within the required period and should be signed by, or on behalf of, the person having responsibility for the financial affairs of the local authority.

**Use of fixed penalty notice receipts**

92. As a result of the amendments made to the Noise Act 1996 by the Anti-social Behaviour Act 2003 (s.42(1) and (3)), introducing new s.9(4)-(4F) 1996 Act), a local authority may retain the sums it receives in respect of fixed penalty notices for night noise offences, for use on its ‘qualifying functions’. All local authority functions under the Noise Act 1996 are ‘qualifying functions’. In addition, section 83(2) of the Clean Neighbourhoods and Environment Act 2005 adds to the list of qualifying functions the functions under Chapter 1 of Part 7 of that Act (powers to deal with intruder alarms) and the functions under sections 79 – 82 of the Environmental Protection Act 1990 relating to statutory nuisance from noise (sections 79(1)(g) and (ga).

93. Section 83(3) of the Clean Neighbourhoods and Environment Act 2005 inserts new subsections (4G) and (4H) into section 9 of the Noise Act 1996 Act. Section 9(4G) of the 1996 Act states that the powers to make regulations under section 9 of the 1996 Act regarding qualifying functions and the use of fixed penalty receipts are to be regarded for the purposes of section 100(1) of the Local Government Act 2003 as included under section 100(2) of that Act. This will have the effect of permitting the Secretary of State to take into consideration the performance of a particular local authority, or local authorities in general, when making regulations for the use of fixed penalty notice receipts. (Section 100 of the Local Government Act 2003 applies to local authorities in England only.)

**Supply of information relating to the use of fixed penalty notices**

94. Under section 9(4C) of the 1996 Act a local authority shall supply the Secretary of State with such information relating to its use of fixed penalty receipts as the Secretary of State may require.

95. Defra sends out relevant forms to be completed on an annual basis. These forms seek information for fixed penalty notices issued for litter, dog fouling, graffiti and fly posting offences. Completed forms should be sent to: Local Environment Protection, Department for Environment, Food and Rural Affairs, Nobel House, 17 Smith Square, London, SW1P 3JR.

96. Alternatively, returns may be set out in an electronic table or spreadsheet clearly labelled as ‘night noise data’, and sent by email to: local.environment@defra.gsi.gov.uk, stating in the subject line ‘Offence Name Penalty Returns & the name of the local authority’, where the
Offence Name is ‘night noise’.

97. In addition, the Chartered Institute of Environmental Health collects some data on the use of fixed penalty notices in the course of its annual collection of noise statistics from local authorities.

**Further offences (section 9(2) and 9(2A))**

98. There may be circumstances where a fixed penalty notice has been served on an individual in respect of a night noise offence, but that person continues to be responsible for noise above the permitted level during the same night hours period.

99. If a fixed penalty notice is given to a person in respect of noise emitted from a dwelling or other premises in any period specified in a warning notice, a further fixed penalty notice **cannot** be served within that period (the specified period always ends at 7am). However, that person may be **convicted** of a further offence under section 4 or 4A in respect of noise emitted from the dwelling or premises after the fixed penalty notice is given and before the end of the period specified in the warning notice.

**Section 10 - Seizure, Retention and Forfeiture**

**Overview**

100. Section 10 of the 1996 Act together with the Schedule provides the powers which are available to a local authority to deal with offences committed under the Noise Act 1996. The powers include a power to seize and remove any equipment which it appears to the authority is being or has been used to commit a Noise Act offence or create a statutory nuisance by virtue of section 79(1)(g) of the 1990 Act.

**Seizure**

101. Where an officer of a local authority has reason to believe that following service of a warning notice under section 3 of the Noise Act 1996 the noise emitted from the premises has exceeded the permitted level during the period specified in the notice, that officer or another person so authorised may enter such premises and may seize and remove the noise-making equipment responsible.

102. Noisemaking equipment will typically comprise electronic items such as a HiFi, mixer desk, loudspeakers, TV, DIY equipment, and musical instruments such as drum-kits, keyboards or guitars and their amplification.

103. The Noise Act 1996 seizure powers are not intended to cover noisy animals such as barking dogs.
104. The person carrying out the seizure must produce their authority to do so, if required.

105. In some cases, alerting the person responsible to the intention to gain access to the premises could defeat the reason for entry – that is to seize the noise-making equipment. Alternatively, entry to the premises may be refused when an approach is made following the exceeding of the permitted level, or such a refusal may be anticipated.

106. In such cases, where a Justice of the Peace is satisfied that the correct procedures have been followed (see section 10(4) for conditions of warrant being issued) they may issue a warrant permitting the local authority to gain access to the premises, if necessary by force. A warrant remains in force until such time as the equipment has been seized, or until the purpose for which entry is required has been satisfied.

107. Where it is necessary for entry to be made, a person exercising a power of entry in section 10(2) may take with them such equipment and persons as necessary to gain entry to the premises. On leaving unoccupied premises, the officer must leave them in as secure a state as prior to their gaining entry.

Where a local authority is taking action under Part III (see section 81(3) and schedule 3) of the Environmental Protection Act 1990 as extended by the Noise Act 1996, they may seize and remove noise-making equipment to abate the noise nuisance and do whatever may be necessary in the execution of the notice. A warrant for entry may be sought by the local authority on application to a Justice of the Peace where –

- entry is refused or refusal is apprehended, or
- the premises are unoccupied, or
- the occupier is temporarily absent, or
- if the case is one of emergency, or
- an application for admission would defeat the object of entry,

and there are reasonable grounds of entry into the premises for the purpose of taking any action, or executing any work, authorised or required by Part III of the Environmental Protection Act 1990 (statutory nuisances). Thus a warrant for entry may be sought in order to seize any noisemaking equipment where a statutory nuisance is on-going or likely to recur.

108. It should be noted that (except in emergency) there is a requirement to provide 24 hours notice of intention to enter premises used wholly or mainly for residential purposes to carry out seizure without a warrant, although entry as of right is permitted for authorised officers at any reasonable time for all other premises when taking action under Part III of the Environmental
Protection Act 1990. (This requirement does not apply where seizure is being carried out with regard to equipment used in the commission of an offence under the Noise Act 1996.)

109. Any person who wilfully obstructs a person (whether or not they have a warrant) who is attempting to enter premises or seize noise-making equipment under section 10(2) of the Noise Act 1996 or section 81(3) of the Environmental Protection Act 1990, can be liable for a fine up to level 3 on the standard scale (currently £1,000).

Protection from personal liability (section 12)

110. Section 12 provides protection from personal liability for any member of, or an officer or other person authorised by, the local authority when carrying out in good faith their duties under the Noise Act 1996.

Schedule 1 - Retention, forfeiture and disposal

Paragraph 1
111. The Schedule outlines the powers for the retention, forfeiture and disposal of seized noise equipment. Paragraph 1 defines a number of terms which are used in the Schedule.

112. **Noise offence** – means –

   (a) In relation to equipment seized under section 10(2) of the Noise Act 1996, an offence under section 4 or 4A of the Act

   (b) In relation to equipment seized under section 81(3) of the Environmental Protection Act 1990 (as extended by section 10(7) of the Noise Act 1996), an offence under section 80(4) of the 1990 Act in respect of a statutory nuisance falling within section 79(1)(g) of that Act.

113. **Seized equipment** – Equipment seized in accordance with section 10(2) of the Noise Act 1996 or section 81(3) (as extended) of the Environmental Protection Act 1990.

114. **Related equipment** – In relation to any conviction or proceedings for a noise offence, equipment which has been seized having been used or alleged to have been used in the commission of an offence.

115. **Responsible local authority** – The local authority by or on whose behalf the equipment was seized.
116. It should be noted that section 10(2) of the Noise Act 1996 is widely phrased to cover any equipment which it appears to the officer is being or has been used in the emission of the noise.

Retention (Schedule, Paragraph 2)

117. Any seized equipment may be retained by the local authority for a period of twenty eight days from the date on which it was seized. Where information has been laid to initiate proceedings for an offence within that period of twenty eight days, related equipment may be held until the person is sentenced or otherwise dealt with for the offence, or acquitted of the offence, or held until a case is discontinued.

118. However, where a person whose equipment has been seized was served with a fixed penalty notice for the same offence and has paid the fixed penalty within the time allowed, the seized equipment must be returned.

Forfeiture and Disposal of Forfeited Equipment (Schedule, Paragraphs 3 and 4)

119. Where a person has been convicted of a noise offence the court may make a forfeiture order for any related equipment. Such an order can be made whether or not the offender is dealt with in any other way by the court.

120. When considering whether to make a forfeiture order the court must take account of the value of equipment to be forfeited and the likely financial and other effects on the offender if such an order is made. In cases where the court does take the decision to make a forfeiture order the offender is deprived of any rights in that equipment.

121. In some cases, it may be that equipment which has been the subject of a forfeiture order is the property of someone other than the person in whose case the forfeiture order was made. In these cases the legislation provides that the local authority should take reasonable steps to bring the matter to the attention of anyone who might be the owner.

122. Where a claimant applies for the equipment, the court must be satisfied that he is the owner and that either he did not consent to the offender having possession of the equipment, or did not know or have any reason to suspect that the equipment would be used in the commission of a noise offence. Where the court is satisfied on these points it may order the return of the equipment to the owner. Any claim with regard to ownership of the equipment must be made within six months of the date of a forfeiture order being made.

123. Paragraph 4(5) also provides certain additional rights for third parties.
124. The purpose of this provision is to provide protection for owners who were not aware and who had no reason to suspect that their equipment would be used in the commission of an offence. An example of such a situation could be where the owner of the equipment is a leasing company.

125. A local authority must retain the equipment for the period of six months from the date on which a forfeiture order is made. However, if no order for return of the equipment has been made at the end of the six month period from that date, the local authority may dispose of the equipment.

Return and Disposal of seized equipment (Schedule, Paragraphs 5 and 6)
126. If, in proceedings for a noise offence, no forfeiture order is made, a court may give directions as to the return, retention or disposal of seized equipment. This provision applies whether or not the person is convicted of a noise offence.

127. There may be cases where equipment is seized, but proceedings for an offence to which it is related have not begun within the specified 28 day period. In these circumstances, the local authority has a duty to return the equipment, to any person who appears to them to be the owner of the equipment and who makes a claim for its return within a six month period from the end of the period of 28 days after seizure of the equipment. If no claim is made within that same period, the local authority may dispose of the equipment. Whilst holding seized equipment, the local authority must make reasonable attempts to bring to the attention of persons their right to make a claim for the equipment.

128. In such cases, before returning seized equipment to the person making a claim for its ownership, the local authority can require that person to pay reasonable charges for the seizure, removal and retention of the equipment. Charges cannot be levied where the authority are satisfied that the person claiming the equipment did not know, and had no reason to suspect that the equipment would be used to emit a noise in excess of the permitted level.

129. The legislation enables an owner to make a claim within a year of a local authority having sold seized equipment in one of the circumstances described above. The local authority must pay any proceeds of sale in excess of reasonable charges for the seizure, removal and retention of the equipment, to the owner of the equipment. Again, if the local authority is satisfied that the owner did not know, and had no reason to suspect that the equipment would be used to create a noise offence, administrative charges cannot be made.
Resource Implications for local authorities

130. The financial implications for those authorities which choose to use the Noise Act 1996 will vary according to the level of noise service they currently provide. For those authorities which have already chosen to provide a partial or comprehensive night time noise service within existing resources, there will be little by way of additional cost. The measures covered by this guidance do not place any new duties on authorities but give them the flexibility to take action to deal with local issues.

131. Resource implications could include the following:

- the costs of staffing the service,
- the costs of staff training in noise measurement,
- transportation costs,
- costs of personal safety equipment and training for staff engaged in providing the service,
- communication costs e.g. mobile phones, radios and pagers,
- management and administrative costs of providing and supporting the service,
- costs of enforcement, seizure and storage of noise making equipment.

132. However, to maintain their existing cost structure in these areas, local authorities only offering Mon-Fri office hours coverage would need to justify maintaining the status quo. Any current decision not to offer an out-of-hours service, or at least an out-of-hours service at key times of the week or year, should be based on an assessment of local needs. Most noise problems almost by definition occur at night, outside office hours.

133. Additional funding may be available should a local authority include a 'stretched' target for noise services as part of its Local Area Agreement (LAA) Reward Element.

134. The LAA Reward Element carries on from the Local Public Service Agreements (LPSAs) that have been in operation since 2000, whereby top-tier authorities negotiated a package of around a dozen or so 'stretched'
targets with Government. These 'stretch' targets required authorities to consider their performance in service areas over a three year period, then commit to deliver an enhancement in performance beyond that, for which the authority would receive a Performance Reward Grant were it successful. To assist in this delivery, the authority received a Pump Priming Grant to spend as it wished in pursuance of the reward targets.

135. These same principles of 'stretch', Performance Reward Grant and Pump Priming Grant continue within the LAA Reward Element, the difference being that such targets are now negotiated as part of the LAA process by the relevant Government Office.

136. In some cases, local authorities undertaking seizure of noise-making equipment will be able to recover costs of seizure and storage from the equipment owner upon return, or by sale of equipment not claimed. In addition, use of the 1996 Act may be a more cost-effective alternative to evoking powers under the statutory nuisance regime of the Environmental Protection Act 1990.

Closure powers under the Licensing Act 2003 and the Anti-social Behaviour Act 2003

137. Section 161 of the Licensing Act 2003 enables senior police officers to close licensed premises for up to 24 hours on the grounds of public nuisance (a common law term that has not been defined in statute law) caused by, for example, noise coming from the premises where this is necessary to prevent that nuisance, or where there is, or is ‘likely imminently to be’, disorder on, or in the vicinity of and related to the premises, and their closure is necessary in the interests of public safety.

138. The police also have the power to seek a review of a licence, along with other licensing authorities (such as local authorities) with the possibility of a revocation of a licence.

139. Under the Anti-social Behaviour Act 2003, sections 40 and 41 enable the Chief Executive of a local authority to order the closure of licensed premises for up to 24 hours on the grounds of public nuisance caused by, for example, noise coming from the premises where closure is necessary to prevent that nuisance.

140. If licensed premises stay open during the 24 hour closure period ordered under the Licensing Act 2003 or the Anti-social Behaviour Act 2003, there is
a maximum penalty upon summary conviction of a three month prison sentence, a fine of £20,000, or both.

141. Guidance to police officers on the operation of closure powers under the Licensing Act 2003 has been issued by the Department for Culture, Media and Sport, and this includes guidance on the closure of licensed premises under the Anti-social Behaviour Act 2003.

142. Local authorities may wish to seek the cooperation of the police when closing licensed premises under the Anti-social Behaviour Act 2003. The Chartered Institute of Environmental Health’s Noise Liaison Guide provides good practice guidance for cooperation between local authorities and the police (info@cieh.org).

143. Although ‘public nuisance’ is not defined in statute for the purposes of the Licensing Act 2003 or the Anti-social Behaviour Act 2003, it is generally taken by the courts to be a nuisance which affects the public at large where it would not be reasonable to expect an individual to take proceedings to resolve the matter, although a local authority should seek its own legal advice when considering using these powers.

British Standards

144. British Standards are referred to in the Directions and Approval. Copies of British Standards are available from the British Standards Institute, 389 Chiswick High Road, London W4 4AL.

Other Relevant Documents

145. The following leaflet is available free of charge:


Copies are also available from:

Defra Publications
Admail 6000
London
SW1A 2XX

Tel: 08459 556000