

INFRASTRUCTURE SERVICES

ENVIRONMENTAL HEALTH

NOISE ENFORCEMENT POLICY

November 2019

**ABERDEENSHIRE COUNCIL
ENVIRONMENTAL HEALTH SECTION**

NOISE ENFORCEMENT POLICY

1. GENERAL OBJECTIVES

The Environmental Health Section is committed to safeguarding public health and quality of life and to preventing and controlling statutory nuisance through an integrated approach to the management of noise.

The Environmental Health Section will endeavour, within the limits of its resources, to develop and improve the noise service it provides to ensure the needs of the public are met.

2. POLICY OBJECTIVES

- 2.1 To ensure that the public are not exposed to unreasonable levels of noise arising from sources subject to controls falling under the jurisdiction of the authority.
- 2.2 To investigate and assess complaints of noise nuisance to determine whether action by the authority is appropriate and within the jurisdiction of the authority.
- 2.3 Where appropriate to endeavour to resolve complaints of noise nuisance through advice, informal action and formal legal proceedings.
- 2.4 To fulfil statutory duties placed on the authority relating to noise nuisance.

3. ENFORCEMENT POLICY

- 3.1 The enforcement policy of the Environmental Health Section is set out in this document but officers will also operate in accordance with relevant legislation, codes of practice and other guidance.
- 3.2 The Environmental Health Section will ensure that its authorised officers are adequately qualified, trained and experienced consistent with their authorisation and duties.
- 3.3 All authorised officers will be expected to adhere to the enforcement policy outlined in this document.
- 3.4 Only officers of the Environmental Health Section who are authorised to do so will issue enforcement actions.
- 3.5 The enforcement policy is available to the public on the Aberdeenshire Council web site at www.aberdeenshire.gov.uk.

4. RESPONSIBILITY

It is the responsibility of enforcement officers to:-

- 4.1 Carry out all duties in a professional and courteous manner.
- 4.2 Acquaint themselves with the requirements of this policy and the appropriate legislation and associated guidance.

5. ACTION

- 5.1 Enforcement decisions should always be consistent, balanced, fair and relate to common standards that ensure that the public is adequately protected. In coming to any decision many criteria will be taken into account including the seriousness of the offence, the past history of the case, the consequences of non-compliance and the likely effectiveness of the various enforcement options.
- 5.2 The Council follows the principles of the Scottish Regulators' Strategic Code of Practice.
- 5.3 Having considered all relevant information and evidence the choices for action are:
 - ✧ Take no action
 - ✧ Take informal action
 - ✧ To use statutory notices
 - ✧ Report for prosecution
 - ✧ Abatement of the noise by direct action
 - ✧ Injunction
- 5.4 Throughout any investigation the Council will endeavour to keep the complainant updated with any relevant developments. When the investigation is deemed closed by the Officer, this will be communicated to the complainant, who, if dissatisfied may wish to make representation to the Council's Feedback Team.

6. INFORMAL ACTION

6.1 No action required

When there are no observed contraventions or for unsubstantiated allegations.

6.2 Informal Action

Informal action can be taken in instances where:-

- ✧ The act or omission is not serious enough to warrant formal action.

- ✧ From the individual's/enterprise's history it can be reasonably expected that informal action will achieve compliance.
- ✧ Confidence in the individual/enterprise's management involved is high.
- ✧ The consequences of non-compliance will not pose a significant risk to public health

If written observations, suggestion or requirements are appropriate these will clearly identify the nature of the complaint or problem and any remedial works that are required. The officer will, with due regard to technical accuracy express requirements or suggestions in a manner that is clear and readily understandable.

- ✧ Any requirements made verbally or in writing will clearly identify whether they are mandatory or advisory in nature. If the requirements are mandatory, a timescale for compliance will be specified, unless immediate cessation of the noise is required.
- ✧ Due regard will be had to any special circumstances brought to an officer's attention by the person responsible when a timescale for compliance is specified

7. STATUTORY NOTICE

7.1 In this section enforcement action means serving a notice under section 80(1) of the Environmental Protection Act 1990.

7.2 Where the Local Authority is satisfied that a statutory nuisance:

- ✧ Exists; or
- ✧ Is likely to occur; or
- ✧ Is likely to recur.

It is required to serve an abatement notice:

- ✧ Requiring the abatement of the nuisance or prohibiting or restricting its occurrence;
- ✧ Requiring the execution of such works as necessary for these purposes;
- ✧ Specifying the time or times within which the notice is to be complied with.

The notice must also indicate the rights of the individual and time limits for appeal.

7.3 Abatement notices can be effective and quick in that they require problems to be rectified without the potential delays and uncertainty of going to Court. The recipient has the right to appeal to the Sheriff Court.

7.4 In the event of an appeal, the notice may be suspended until the appeal is abandoned or until the outcome of the appeal hearing.

- 7.5 The notice may not be suspended in the event of an appeal if the notice is worded accordingly because, in the opinion of the Council,
- ✧ the noise is prejudicial to health or likely to be of limited duration such that suspension would render the notice of no practical effect
 - ✧ the expenditure which would be incurred by any person carrying out works in compliance with the notice before any appeal has been decided would not be disproportionate to the public benefit to be expected in that period from such compliance.
- 7.6 Notices will be served under legislation other than the Environmental Protection Act 1990 (eg Section 60 Control of Pollution Act 1974) where such action is considered necessary and appropriate.

8. REPORTS TO THE PROCURATOR FISCAL

- 8.1 Reporting contraventions to the Procurator Fiscal will be considered when:-
- ✧ the person served with an abatement notice fails to comply with the requirements of the notice
and
 - ✧ there has been no appeal against the terms of the notice or any appeal made has not been upheld
and
 - ✧ The Council regards prosecution as likely to be a more appropriate and effective remedy than work in default in the rare instances that this would be possible.
- 8.2 In deciding whether to report to the Procurator Fiscal, the Council will consider
- ✧ the gravity of the offence
 - ✧ the general record and approach of the person responsible
 - ✧ whether it is in the best interest of the public to ensure remedial action or to deter others who may fail to comply with notices.
 - ✧ whether the evidence available provides a realistic prospect of a conviction
 - ✧ whether it would be more efficient use of public funds to simply carry out works in default.
- 8.3 If an officer is satisfied that circumstances merit sending a report to the Procurator Fiscal, then the report will be prepared at the earliest opportunity.

N.B. Enforcement officers cannot decide to prosecute – only the Procurator Fiscal can do this.

9. WORKS IN DEFAULT

9.1 Where the requirements of a notice are not carried out, in many instances the Council is empowered to do whatever is necessary to abate the nuisance and this can also include works in default. The Council will generally carry out work in default when:

- ✧ the person served with an abatement notice failed to comply with the requirements of the notice,
and
- ✧ there has been no appeal against the terms of the notice or any appeal made has not been upheld
and
- ✧ the Council regard work in default as likely to be a more appropriate or effective remedy than prosecution or a successful prosecution has already been taken but the problem remains

9.2 In deciding whether to carry out work in default, the Council will consider:

- ✧ The urgency of the need to abate the nuisance.
- ✧ The wishes of the person responsible for the problem.
- ✧ Whether the evidence available provides a realistic prospect of defending the Council's action in the event that the person responsible contests recovery of costs.

9.3 The Council will seek to recover the costs of the work from the person responsible.

9.4 In carrying out duties, duly authorised officers have a range of far reaching powers, including the right to enter any premises at any reasonable time in order to;

- ✧ Ascertain whether or not a breach of legislation exists.
- ✧ Carry out any action or works authorised in accordance with this policy

9.5 Entry to residential property shall not, except in an emergency, be demanded as of right unless 24 hours notice has been given.

9.6 If entry is refused, an officer may apply to a Justice of the Peace for a Warrant to enter the premises, if necessary, by force.

9.7 An officer authorised to enter may:

- ✧ take with him such other persons and equipment as may be necessary
- ✧ carry out such inspections, measurements and tests as he considers necessary
- ✧ take away such samples or articles as he considers necessary for that purpose

9.8 Before using such powers, an officer will have decided that informal action, in that particular instance;

- ✧ would not be appropriate, *or*
- ✧ would be inadequate for the Council to fulfil its duty, *or*
- ✧ would not be successful, *or*
- ✧ has already failed

10. INJUNCTION

Where the risk to public health is greatest and/or the delay that would occur in taking the case for prosecution would allow an unacceptable continuation of the breach, the Council may decide to seek an injunction.

11. COMPLAINTS

Complaints in respect of noise enforcement will be dealt with in accordance with Aberdeenshire Council's Complaint Procedure handled by the Feedback Team. Once this process has been completed, complaints may then wish to complain to the Scottish Public Services Ombudsman (SPSO).

12. REVIEW

The policy will be reviewed on an annual basis by the Environmental Health Management Team.