

NEIGHBOUR NOISE SCOTLAND



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Noise from neighbours is a common source of disturbance. The most frequent complaints are about barking dogs, loud music or TV, shouting, banging doors and DIY activities. Remember that no house or flat is totally soundproof, and gardens and garages can be particularly noisy! Everyone can expect some noise from the people who live around them. You could be disturbed for the following reasons:

- The neighbours are behaving unreasonably
- The neighbours are behaving normally, but sound insulation in your home is not good enough to cut out the sounds of normal everyday living
- The sensitivity of people to different types of noise varies - sounds that some enjoy may annoy others

What Can You Do?

If you are being disturbed by noise from a neighbour you should first try approaching the neighbour and explain politely that you are being troubled by noise. You may find this difficult, but often people are unaware that they are causing a problem. Most will be glad to do what they can to reduce noise. However, approach the matter carefully if you think your neighbour might react angrily to a complaint.

If the problem continues, start a diary recording dates, times and cause of the noise, and the effects it has on you. Write to your neighbour explaining the problem. Ask them to stop the noise nuisance, referring to any conversations you may have had and what, if anything, they agreed to do about it. Keep a record of any conversations you have or letters you write. If your neighbours are tenants, discuss your problem with the landlord (if they are private tenants, you may need to find out who the landlord is). Most Conditions of Tenancy require that tenants do not cause nuisance to neighbours; a local authority or housing association should take action if a nuisance is being caused.

Are There Alternatives to Legal Action?

Noise disputes are often resolved informally. Legal action should be a last resort. It is unpleasant and will inevitably further sour the relationship between you and your neighbour. It is very important that you do your best to resolve any problem in a friendly way.

Mediation

Many areas have mediation services which can help you to resolve noise and other neighbour problems. Your local authority should be able to refer you to local mediation services.

Scottish Mediation Network

Tel: 0131 556 1221

Email: admin@scottishmediation.org.uk

www.scottishmediation.org.uk

Sound Insulation

If the problem seems to be inadequate sound insulation, there are DIY measures that can help:

"Improving Sound Insulation in Homes" from the Building Research Establishment www.bre.co.uk/pdf/soundins_homes.pdf

Your local authority may also be able to offer advice in relation to tackling the problem; for example, if it is a new build property and you can prove that sound insulation is not up to standards in the Scottish Building Regulations, you may have recourse under the builders defect liability period. The local authority will be able to provide details of companies who can undertake sound insulation testing. Advice on dealing with noise problems is given in "Sound Advice on Noise: don't suffer in silence" 2001, available from www.scotland.gov.uk/Topics/Environment/Pollution/Noise-Nuisance

Action by the Council

Anti-Social Behaviour

The Antisocial Behaviour etc (Scotland) Act 2004 (ASB) gives local authorities optional powers to deal with unreasonable noise within dwellings at the time of occurrence. Noise control provisions are optional and can be applied to specific areas and/or times. If your authority has adopted the power, an authorised officer may issue a Warning Notice if they consider noise excessive. Continued annoyance may result in the issue of a Fixed Penalty Notice if the noise exceeds a prescribed permitted level. An authorised officer can also enter a dwelling to confiscate noise making equipment. Your local authority can tell you what noise control provisions have been adopted.

Noise can be part of a more serious neighbour problem. Under the ASB Act councils can apply for an anti-social behaviour order for anyone causing "harassment, alarm or distress" – including noise. Disobeying an order is an offence and can carry a prison sentence.

Noise Nuisance

If ASB powers have not been adopted, your Environmental Health Department can take action under the Environmental Protection

Act 1990 (EPA). They must take “all reasonable steps” to investigate your complaint. They may write to the person causing the nuisance saying that a complaint has been made, requesting they take steps that may be necessary to reduce noise. If they believe a statutory nuisance is occurring or likely to occur or recur they must take action. A statutory nuisance is defined in the EPA as “noise emitted from premises so as to be prejudicial to health or a nuisance”.

If the noise continues, an Environmental Health Officer (EHO) or Technical Officer should call, ideally at a time when you expect the noise to occur, to see whether in their judgement the noise is a statutory nuisance. They will consider the type of noise, how loud it is, how often and at what times it occurs. If the local authority is satisfied that a statutory noise nuisance exists they must issue a notice requiring the neighbour to stop causing the nuisance. If the person, without reasonable excuse, fails to comply with the notice, he or she is guilty of an offence and can be prosecuted.

EHOs are the recognised experts and their professional judgement is very important – if they consider that a nuisance is being caused a Sheriff will normally accept their view. However in some cases the EHO may be sympathetic to the effect the noise is having on you, but unable to say it would represent a nuisance to the "average" person.

Local authorities take noise problems very seriously and will do their best to help. However, if you feel that the Council is not fulfilling its legal obligations you can, as a last resort, complain to the local authority ombudsman.

Dog barking is one of the most common complaints and the owner can be taken to court if no action is taken to stop the nuisance. There are different approaches that can be taken to resolve complaints about dog barking and you should contact your Local Authority for further details.

Taking Your Own Action

If it is not possible for a local authority officer to witness the noise they may not feel able to take action on behalf of someone who has made a complaint. If this happens you can take independent action by complaining direct to the Sheriff Court under section 82 of the Environmental Protection Act 1990. This is quite simple and need not cost much; you do not need to employ a solicitor, but it is advisable to obtain some legal advice.

Before approaching the court it is a good idea to write to the noise-maker saying that unless the noise is abated by a certain date (e.g. two weeks) you will complain to the Sheriff Court. Keep a copy of all correspondence. If the noise-maker ignores either a verbal or written request by you to abate the noise, contact the Justices' Clerk's Office at your local Sheriff Court explaining that you wish to make a complaint under section 82 of the Environmental Protection Act 1990.

The Clerk of the Court should be able to advise you further. You must give at least three days notice of your intention to complain to the Sheriff Court to the person considered responsible for the noise. The notice should provide details of the complaint and may be delivered by hand or by post. A solicitor can do this for you (a solicitor's letter will show you are serious). You need to prove to the Sheriff, beyond reasonable doubt, that the noise you are complaining about amounts to a nuisance. The diary you keep will be important evidence. Although the law says that only one person needs to be affected for there to be a nuisance, in practice the evidence of other witnesses will strengthen your complaint.

A date will be set for the hearing and the person about whom you are complaining will be summoned to Court. You will be required to explain your problem and produce evidence of the disturbance. You will have to give your own evidence and cross-examine your supporting witnesses to draw out their evidence. The neighbour will be able to cross-examine you and your witnesses and may produce their own evidence.

The law relating to business premises is slightly different: they can defend themselves by proving that they are using the "best practicable means" to prevent the noise.

If you prove your case the Court will make an order requiring the nuisance to be abated, and/or prohibit recurrence of the nuisance. It also has the power at the time the nuisance order is made to impose a fine on the defendant (currently up to £5,000). If this order is ignored further Court action will need to be taken; you must therefore continue to keep records of noise nuisance in case it is necessary to return to Court. If you fail to prove your case you may have to pay some of the defendant's expenses in coming to Court.

Further Contacts

Quieter Homes Website

Advice on reducing noise in the home
www.quieterhomes.org

Noise Abatement Society

Advice and support for noise sufferers
Noise Helpline: 01273 823851
Email: nas@noiseabatementociety.fsnet.co.uk
www.noiseabatementociety.com

Environmental Law Foundation

Legal support and advice to individuals and communities
Tel: 020 7404 1030
E-mail: info@elflaw.org
www.elflaw.org



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You may also be interested in our leaflets on:

- **Air Pollution - Scotland**
- **Fireworks**
- **Noise Pollution – Scotland**
- **Small Scale Wind Turbines - Scotland**

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Registered Charity 221026

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