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## **REVIEW OF THE IMPLEMENTATION OF THE NOISE ACT 1996 - CONSULTATION**

### **1 SUMMARY**

- 1.1 This report seeks Members' views on a consultation published by the Department of Environment, Transport and Regions (DETR) who commissioned the University of Birmingham to undertake a review of the take up and workings of the Noise Act 1996 (the 1996 Act) in October 1999. The Government is now seeking views by the 30<sup>th</sup> March 2001. One of the options outlined would, if adopted, make it a statutory requirement for all authorities to provide an out of hours service between 11pm and 7am, 365 days a year.

### **2 INTRODUCTION**

- 2.1 The main objectives of the review were:
- to establish the effectiveness of the 1996 Act
  - to establish how far a common approach was developing by local authorities across England, Wales and Northern Ireland in handling noise complaints, specifically those occurring in the hours covered by the Noise Act; and
  - to identify good practice in dealing with night noise whether or not an authority has chosen to adopt the 1996 Act.
- 2.2 The Environmental Protection Act 1990 (the 1990 Act) provided streamlined powers to deal with complaints of excessive noise. However, concerns about the effectiveness of the existing legislation to deal with problems of neighbour noise in particular led to the making of the Noise Act 1996.
- 2.3 The 1996 Act, brought forward a new Night Noise offence for neighbour noise occurring between the hours of 2300 and 0700, clarified procedures for the seizure and forfeiture of noise-making equipment and introduced a fixed penalty scheme. The new offence was additional, and complementary, to existing statutory nuisance procedures within the 1990 Act.
- 2.4 The 1996 Act was implemented in two stages in England, Wales and Northern Ireland. The clarified powers for the seizure of noise-making equipment came into force on the 19<sup>th</sup> September 1996. The remainder of the Act's provisions (the Night Noise offence) came into force on 23<sup>rd</sup> July 1997.

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**3 DETAILS OF THE NOISE ACT 1996**

- 3.1 Any local authority in England, Wales and Northern Ireland may choose to adopt the Night Noise offence. If adopted certain criteria must be fulfilled:
- it must do so for the whole of its geographical area;
  - the local authority must appoint an officer/officers who will take reasonable steps to investigate complaints between 2300 and 0700 hours.
- 3.2 The type of complaint covered by the Act is one made by any individual present in a dwelling during night hours (beginning at 2300 and ending at 0700 hours) that excessive noise is being emitted from another dwelling. If the officer is satisfied that such noise is being emitted and if measured from within the complainant's dwelling, would or might exceed the permitted level, a warning notice under Section 3 may be served.
- 3.3 Where a warning notice has been served, any person who is responsible for noise emitted from a dwelling within the period specified by the notice and where this noise exceeds the permitted level as measured within the complainant's dwelling, is guilty of an offence and liable to summary conviction.

**4 THE REVIEW**

- 4.1 To achieve the objectives of the review, as detailed in paragraph 2.1 above, a postal questionnaire survey of all local authorities in England, Wales and Northern Ireland was conducted from November 1999 to January 2000, and 12 in depth interviews were conducted with selected local authorities in February/March 2000.
- 4.2 The majority of noise complaints were received during normal working hours. Of those complaints received "out of hours" less than a quarter were between 2300 hours and 0700 hours. Looking in more detail, of those complaints received between 2300 hours and 0700 hours over 50% were received before 0100 hours and there was a steady decline in complaints received through the remaining night period.
- 4.3 Only thirteen local authorities in England, Wales and Northern Ireland have so far adopted the provisions of the Noise Act 1996 and three indicated that they were likely to adopt within two years. These authorities gave the following reasons for doing so:
- Increased powers (50%);
  - Desire of management or council (30%);
  - Securing funding for existing service (20%).

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- 4.4 Authorities that have chosen not to adopt the 1996 Act gave the following key reasons:
- No local demand (38%);
  - Insufficient resources to fund the full requirements of the 1996 Act (55%);
  - Current service is adequate (41%).
- 4.5 Opinion was split as to whether the 1996 Act provisions should be extended to include commercial premises such as pubs and clubs.
- 4.6 In 1994, just 52% of respondents had a form of service to deal with "out of hours" noise complaints in place. By 1997 when the Noise Act was implemented this had increased to 79% and by 1999, 90% had a form of noise service in place. Of those authorities offering such a service, 45% do so 7 days a week.
- 4.7 Where local authorities have adopted the 1996 Act, most noise complaints are still dealt with using other legislation such as the statutory nuisance provisions contained in the Environmental Protection Act 1990. However the clarified seizure powers contained in the 1996 Act were found to be helpful and beneficial to their procedures.
- 4.8 Of the authorities that offered some form of "out of hours" service, 26% sought public opinion and representations specifically about this service.
- 4.9 The cost of the out of hours noise services varied greatly amongst local authorities, indicative of the variety of services being offered, the nature of the authority and the number of complaints received. Most of the authorities interviewed had carried out some form of cost/benefit analysis of the effectiveness of their out of hours noise services. In some cases this was following the principles of Best Value.
- 4.10 Good relations and support from the police was found to be essential to operate an effective out of hours noise service and formal arrangements with the police were shown to be more effective than informal or ad hoc arrangements.

## **5 PROPOSALS**

- 5.1 The Government states that it wishes to ensure that authorities have access to adequate powers to take effective action to tackle noise nuisance and that these meet local authorities needs. They have identified three options to meet this end:
- (1) no legislative change on the grounds that most local authorities now operate a night noise service, but use Best Value and other

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existing channels to present the case to all local authorities for offering these services;

- (2) make the existing provisions mandatory for all authorities. This would require all authorities to provide an out of hours service between 11pm and 7am, 7 days a week, 365 days a year;
- (3) make the provisions less prescriptive and non-adoptive. This would make the Night Noise Offence another tool available to all local authorities to use when dealing with night time noise.

5.2 Options 2 and 3, would require legislation.

## **6 ROCHFORD'S POSITION**

6.1 Members have in the past expressed a wish to introduce a more responsive noise service but due to financial constraints this has not been possible even on a limited basis e.g. cover for weekend periods. Because of this the 1996 Act has not been adopted.

6.2 The number of noise related complaints received are as follows: -

Year	Number of Noise Complaints
1998/1999	318
1999/2000	380
2000/2001	370*

\*Predicted number based on  $\frac{3}{4}$  year figure of 278 complaints.

6.3 Data provided by the Chartered Institute of Environmental Health (CIEH) show a steady increase in the total number of noise complaints received by local authorities from 1990/91 to 1997/98. Complaints from domestic/neighbour noise sources make up the greatest proportion of noise complaints received. It is also apparent that nationally domestic/neighbour noise complaints are increasing year on year at a greater rate than other noise sources.

6.4 The majority of complaints are received during normal working hours. Statistics have not been specifically kept for the number of noise complaints received either on the answer-phone service (out of normal hours) or by the Council's emergency call out service. However, based on the review's analysis of other authorities and assuming this is reflected in this District, annually, approximately 90 could be received between 2300 hours and 0700 hours with 45 complaints before 0100 hours based on 1999/2000 figures.

6.5 Should any out of hours responsive service be provided it is very likely that the demands upon it would grow, as it becomes known.

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- 6.6 Although an out of hours responsive service is not provided by the Council, inspections are made where appropriate on a planned basis. In addition noise-recording equipment can be used. However, evidence gained by this process cannot be used in proceedings unless an officer witnesses the incident. Recording is, therefore, sometimes used as a screening tool before officers make site visits.

## **7 OFFICER COMMENT**

- 7.1 The key reasons for non-adoption is the lack of resources and the prescriptiveness of the legislation i.e. needs to cover the whole District and have someone available to respond to complaints between 2300 hours and 0700 hours, 365 days a year. Nevertheless, some out of hours service is provided on a planned visit basis.
- 7.2 As stated in the review, there appears to be a common approach being adopted by authorities in that they are tailoring the service they provide to the need they perceive. Consequently, although there is a wide range of differing services on offer, these reflect the wide range of need that exists and demonstrate that local authorities are aiming to optimise the out of hours service they provide. It is hoped that the good practice information contained in the report will further assist all local authorities in determining how best to address the issue of night noise.
- 7.3 Rochford District Council is not an inner city area and as such it would be difficult to justify, on complaint levels alone, the provision of an out of hours service between 11pm and 7am, 7 days a week, 365 days a year. However, it would be appropriate to provide increased service at the weekends e.g. Friday and Saturday nights.
- 7.4 Option (1) of paragraph 5.1 is recommended, subject to Government funding being made available to cover the costs involved in implementing services that are provided in response to standards set by Government through the best value process.
- 7.5 The provision of an out of office hours responsive service will be considered as part of the Best Value Review process. Public regulation, inspection and protection services are programmed for review in 2002/2003.

## **8 CRIME AND DISORDER IMPLICATIONS**

- 8.1 Providing an out of office responsive noise service would assist in reducing disturbance within the District. Taking prompt action when noise issues arise may reduce disorder.

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**9 ENVIRONMENTAL IMPLICATIONS**

- 9.1 The provision of an out of hours responsive service may help to produce a quieter environment.

**10 RESOURCE IMPLICATIONS**

- 10.1 Out of hours noise officers should be:

- authorised to undertake the full range of available actions;
- qualified in assessing noise nuisance and;
- competent at making noise measurements.

- 10.2 Any out of hours noise service should be designed to overcome problems of tiredness with staff who may also have normal daytime duties. Any scheme would also need to take into consideration The Working Time Regulations 1998.

- 10.3 Currently, for out of hours duties officers either receive overtime payments or receive time off in lieu depending on their seniority. A more responsive service would need to address both the human and financial resource implications. The provision of a service that meets the requirements of the Noise Act 1996 would incur much greater costs than those that have previously been rejected by Members during their consideration of the Revenue Budget.

**11 LEGAL IMPLICATIONS**

- 11.1 The Council has a statutory duty to inspect its area for noise nuisances and where reasonably practicable investigate complaints received. The Authority must take action to abate any statutory nuisances found.

**12 RECOMMENDATION**

- 12.1 It is proposed the Committee **RECOMMENDS**

That, subject to Members comments, the officer response outlined above is approved. (HHHCC)

Graham Woolhouse

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**Background Papers:**

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None

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