

Briefing for the Public Petitions Committee

Petition Number: [PE1742](#)

Main Petitioner: Michael W Pringle

Subject: Amend anti-social behaviour legislation to tackle neighbouring household odours

Calls on the Parliament to urge the Scottish Government to create a new anti-social behaviour order (ASBO), designed to tackle situations where a neighbour reputedly refuses to deal with odours or pollution leaking into neighbouring properties.

Background

[The Antisocial Behaviour etc. \(Scotland\) Act 2004](#) (**the 2004 Act**) is the most important piece of legislation in this field. It requires each local authority to publish a general strategy for dealing with antisocial behaviour (much of which will be relevant to the private rented sector). The **2004 Act** indicates that a person engages in antisocial conduct if they:

Act in a manner that causes or is likely to cause alarm or distress; or pursue a course of conduct that causes or is likely to cause alarm or distress, to at least one person who is not of the same household.
(Course of conduct must involve conduct on at least two occasions).

There are various ways in which councils can deal with antisocial behaviour (see below). These include:

- meeting with the people who are causing the problems/mediation
- agreeing an acceptable behaviour contract (ABC) with tenants – a voluntary agreement between the person behaving antisocially and the police, council, social workers etc. outlining how the person in question will behave in future
- obtaining an antisocial behaviour order (ASBO) requiring individuals to act in a certain way (part 2 of the **2004 Act**)
- referring the matter to the police if criminal behaviour is involved

Local authorities will normally also have a published antisocial behaviour policy outlining how they deal with reports of antisocial behaviour.

Note that an ASBO is a civil court order (usually issued by the civil courts) but *breach* of an ASBO is a criminal offence.

Section 6 of the **2004 Act** deals with the Environment. Penalties of up to £40,000 have been agreed for serious cases of:

- fly-tipping;
- using a large industrial plant (or landfill) in a way which would harm the environment;
- polluting the water environment or supply; and
- releasing harmful material into sewers.

There is no reference in this legislation to domestic odours constituting antisocial behaviour.

Section 5 of the **2004 Act** deals with noise nuisance (supplementing powers contained in the Environmental Protection Act 1990 – see p 2 of this briefing). The actions local authorities are able to take, relating to this, are outlined below.

- Local authorities can apply noise controls to specific areas and at specific times. If necessary, the authority can apply the conditions 24 hours a day, seven days a week.
- Officers of the local authority, or the police, have the power to investigate any noise complaints. Scottish Ministers will set the maximum levels of noise allowed and the approved measuring devices in regulations.
- If an officer of the local authority considers that the noise coming from someone's home is more than, or may have been more than, the noise level allowed, they may issue a warning notice.
- If noise continues after this warning notice has been served, a fixed penalty notice can be issued. If this penalty is paid, no further action will be taken. However, if the fine is not paid within 28 days, local authorities will proceed with prosecution through the procurator fiscal's office. Local authorities keep the proceeds of any notices issued.
- Powers have also been extended to allow local authority officers to apply for a warrant to seize any equipment which is causing the noise.

These actions could be applied to other types of antisocial behaviour.

Environmental Health Protection Act 1990 – Statutory Nuisance

Local authorities also have powers to deal with environmental health issues linked to antisocial behaviour. Part III of the [Environmental Health Protection Act 1990 \(the 1990 Act\)](#), as amended by the [Public Health etc. \(Scotland\) Act 2008 \(the 2008 Act\)](#), contains the main provisions on “statutory nuisance.”

The various matters that may constitute a statutory notice are set down in section 79(1) of the 1990 Act.

Local authorities have a duty to inspect their areas to detect whether a nuisance exists or is likely to occur or recur. An authority must also take such steps as are “reasonably practicable” to investigate any complaint of statutory nuisance from a person living in its area. Where the local authority is satisfied that a statutory nuisance exists, or is likely to occur or recur, it must serve an abatement notice on the person responsible. The notice should impose all or any of the following requirements:

- a) the abatement of the nuisance or prohibition or restriction of its occurrence or reoccurrence;
- b) the carrying out of such works and other steps necessary for the any of those purposes.

The Scottish Government has produced [guidance](#) on the Act’s provisions. The guidance states that, in determining what a statutory nuisance is:

“The local authority must be of the opinion that either substantial personal discomfort or a health effect must exist.” (para 3.11)

It lists eight key issues to consider when evaluating whether a nuisance exists: impact, locality, time, frequency, duration, convention, importance, and avoidability.

Ultimately it is for the local authority to decide whether a statutory nuisance exists based on the guidance and these key issues.

Separately from the provisions described above, section 82 of the **1990 Act** allows a private individual to take another individual to court to prevent or remedy a statutory nuisance. Court action can be expensive and stressful and, for that reason, should be used as a last resort.

The Public Health (Scotland) Act 2008 – Statutory Nuisance Provisions

Section 9 of the **2008 Act** deals with Statutory Nuisance Provisions and penalties. The Scottish Government has produced [guidance](#) on this. This was developed through a consultation process and domestic odours were mentioned, as described in paragraph 4.14.

... there was some comment that the nuisance regime should be extended to include odour from domestic premises. It is considered that

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there are already sufficient powers under the existing statutory nuisance regime to deal with the cause of most domestic odours (waste materials, animal excrement etc). The odour provisions of the regime only apply to commercial and industrial sites for this reason. The only likely odour source from domestic premises that is less clear is cooking odour - it may be possible to take action for premises in such as state under the existing regime where the odour is due to a building defect or under the fumes and gases provisions (see 3.15).

Parliamentary and Scottish Government involvement

There have been no questions raised in Parliament in respect of this issue. As previously discussed, the Scottish Government consultation process did raise this issue, but no action has been taken with regards to it.

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