



SPICe Briefing

Pàipear-ullachaidh SPICe

Nuisance complaints - some frequently asked questions

Angus Evans, Kate Berry, Alexa Morrison, Alan Rehfisch

This briefing outlines some of the main rules which can be used to deal with nuisance complaints in Scotland. These are often connected to problems in housing or with neighbours, or with wider public health or environmental protection concerns, such as complaints linked to excess noise, smoke, fumes, light, animals, insects, vermin etc.



Contents

Summary	4
What steps can be taken to resolve disputes? Informal and formal steps	5
Statutory nuisance	6
What is a statutory nuisance?	7
Exemptions from the statutory nuisance rules	8
What role do local authorities have?	9
Investigations	9
Abatement notices	10
Appeals	10
Failure to comply with an abatement notice	10
Complaints about local authorities - the Scottish Public Services Ombudsman	11
What role do individuals have? Private actions	11
Permits under the Pollution Prevention and Control (Scotland) Regulations 2012 and statutory nuisance	12
Further information on statutory nuisance	13
Housing	14
Tenants' rights	14
Antisocial behaviour in housing	15
Private rented housing	15
Social housing	16
Social housing - eviction for antisocial behaviour	17
Short term lets	18
Property law - flats and housing estates	19
Antisocial behaviour	20
Further information on antisocial behaviour	21
Civil law remedies	22
Common law nuisance	22
Title deeds	23
Negligence	25
Common nuisances	26
Noise	26
Statutory nuisance	26
Antisocial behaviour	26
Noise from musical instruments, loudspeakers etc.	27
Noise from premises licensed to sell alcohol	27

Transport noise	28
Planning permissions	29
Construction noise	29
Light	29
Water	30
Smoke	31
Fumes and smells or odour	32
Litter, waste, infestations and conditions of premises	32
Statutory nuisance	33
Other waste and litter regulation	33
Amenity and condition of premises	34
Infestations	35
Trees and hedges	35
Annexe - list of statutory nuisances	36
Bibliography	37

Summary

Complaints about nuisance are a common theme in parliamentary and council in-trays. These are often connected to problems in housing or with neighbours, or with wider public health or environmental protection concerns. For example, complaints linked to excess noise, smoke, fumes, light, animals, insects, vermin etc.

This briefing provides a short overview of some of the main ways of dealing with these sorts of issues focusing on:

1. informal ways to resolve disputes
2. statutory nuisance rules and other local authority powers
3. possible civil law remedies, potentially involving court actions, including "common law nuisance".

It also includes a brief mention of certain environmental and housing law issues (including antisocial behaviour in housing); information on legislation which can be relevant for some of the more common nuisances; and links to sources of further information and advice.

The information in this briefing is aimed at providing a general, non-exhaustive overview of some of the main rules in relation to nuisance. It is not intended as legal advice and should not be relied on for that purpose. It also doesn't deal with larger policy issues, such as the impact of local authority budgets on local authority powers and policies, the potential costs of individuals bringing actions in the courts (i.e. issues linked to "access to justice"), or the enforcement of environmental rules by regulatory bodies.

The briefing also does not deal directly with issues of criminal law or with [the civil rules on non-harassment](#).

Cover image: Canva free images

What steps can be taken to resolve disputes? Informal and formal steps

Although this will depend on the circumstances, as with many disputes the first step would normally involve trying to resolve any issues informally before considering more formal steps - for example, discussing the problem with the owner of the property where the problem comes from.

Mediation can also be worth trying in some circumstances (for example, neighbour disputes), although its success requires the willingness of all the parties to a dispute to participate. Mediation involves an independent third party, such as a member of the local community or a professional mediator, helping two sides to come to agreement. The search facility of [the Scottish Mediation Network](#) allows people to search for local mediators.

If informal methods are not successful, another avenue would be to speak to the relevant local authority's environmental health department. Local authorities have a range of statutory powers which may provide a solution. These include [powers under the Environmental Protection Act 1990 to deal with "statutory nuisances"](#) and powers under the Antisocial Behaviour etc. (Scotland) Act 2004 to deal with other antisocial behaviour (information on these powers is normally available on council websites).

Local authorities may also be able to resolve complaints informally by contacting the main parties concerned and alerting them to their legal obligations. [The website of East Ayrshire Council](#) notes for example that:

“ A large number of the complaints are resolved informally by contacting the main parties concerned. Use of legal procedures and notices are normally reserved for problems of a more serious nature or where attempts at informal resolution have proven unsuccessful.”

East Ayrshire Council , 2018¹

However, there can be situations where it is not possible to resolve a dispute in the above ways. In these cases, legal advice from a solicitor may be necessary as, depending on the facts, there are various civil law remedies which might assist.

In some cases, a letter from a solicitor may be sufficient to prompt action. However, individuals may sometimes have to bring actions in the courts. This can be an expensive and uncertain process which does not necessarily guarantee success. Court actions can also aggravate relations with neighbours or other parties to the court action.

Legal advice should be sought before proceeding with a court action. Depending on individuals' financial circumstances, legal aid may be available to cover the costs. For more information on legal aid, see [the SPICe briefing 'Legal aid - how it works'](#) ² and [the information 'New to legal aid' on the website of the Scottish Legal Aid Board.](#) ³ For information on legal advice see [the SPICe briefing 'Legal advice - where to go and how to pay'](#). ⁴

Statutory nuisance

The law on statutory nuisance covers the powers which local authorities have in the Environmental Protection Act 1990 ("EPA") to deal with a range of common nuisances.

The law was updated by the Public Health etc. (Scotland) Act 2008 which added new statutory nuisances to the regime and made changes to how the Act is enforced

The statutory nuisance rules can be useful when dealing with nuisance complaints as, unlike [common law nuisance](#) where individuals need to take action in court, local authorities have the main enforcement role. This role includes the power to serve what are known as "[abatement notices](#)" requiring the nuisance to stop. Local authorities may also be able to resolve complaints informally by first contacting the parties concerned and alerting them to their legal obligations. Local authorities normally have information on their websites which outlines what the options are.

Contacting a local authority's environmental health department to complain about a nuisance can therefore be one potential way of remedying a problem.

What is a statutory nuisance?

Statutory nuisances are defined in section 79 of the EPA. They cover a list of eleven specific categories such as noise, smoke, smells, fumes, dust, artificial light, water, insects, animals etc. which are only regarded as statutory nuisances if they are either:

1. **a nuisance; or**
2. **prejudicial to health** - defined in section 79(7) of the EPA as "injurious, or likely to cause injury, to health".

For a full list of the statutory nuisances, see [the Annexe to this briefing](#).

Many of the nuisances listed are limited to problems emanating from "premises" which is defined in section 79(7) to also include land and vessels. However, some have wider scope, whereas others have more limited application, for example only applying to "industrial, trade or business premises".

The list also includes a catch-all statutory nuisance covering "any premises in such a state as to be prejudicial to health or a nuisance".

Statutory nuisances in other legislation are also included, as the definition in section 79 also covers "any other matter declared by any enactment to be a statutory nuisance".

Section 79 of the EPA also exempts various matters from the statutory nuisance rules. For further details see [the Scottish Government's guidance to accompany the Statutory Nuisance Provisions of the Public Health etc. \(Scotland\) Act 2008](#) ("the Scottish Government's guidance on statutory nuisance").

"Nuisance" isn't defined in the EPA, but largely has a similar meaning as in [common law nuisance](#) where a key factor is whether a reasonable person would tolerate the matter.^{i 5} Mere annoyance or inconvenience is therefore not sufficient.

However, unlike common law nuisance, the statutory regime is not focused on property rights or damage to property. Instead, a statutory nuisance has to affect someone's personal comfort in a material way. [The Scottish Government's guidance on statutory nuisance](#) states that:

ⁱ William MacBean v Scottish Water [2021] CSIH 36

“ 3.9 There are three significant differences between common law nuisance and statutory nuisance:- a) for a statutory nuisance to occur there must be a common law nuisance; however not all common law nuisances would amount to a statutory nuisance (NCB v Thorne 1976). b) the statutory nuisance regime, unlike common law nuisance does not deal with harm to property; a statutory nuisance must interfere with personal comfort in a manner that affects their wellbeing for example dust affecting cars would not be nuisance but the same dust in a person's eyes or hair would interfere with personal comfort even if there were no adverse health impact (Wivenhoe Port Ltd v Colchester Borough Council 1985). c) there is no requirement for a person to have any property rights as for a common law private nuisance - a statutory nuisance protects people not property (Hunter v Canary Wharf Ltd 1997).”

Scottish Government, 2009⁶

Whether something is a statutory nuisance will ultimately depend on the facts and needs to be determined by looking at the rules in the EPA in conjunction with case law. Local authorities have an element of discretion in assessing whether a statutory nuisance exists.

Exemptions from the statutory nuisance rules

Section 79 of the EPA exempts various matters from the statutory nuisance rules.

Examples include:

- nuisance that consists of, or is caused by, any land being in a contaminated state - Part IIA of the EPA contains specific rules aimed at dealing with such land ⁷
- certain nuisances linked to the armed forces, e.g. in relation to noise
- smoke from private dwellings within a smoke control area, or smoke, fumes or gases from premises other than private dwellings ([these are covered by other legislation](#))
- artificial light from airports, harbours, railway and tram premises, bus stations, other passenger and goods transport facilities, lighthouses and prisons
- noise from aircraft, traffic or political demonstrations.

For further details see [the Scottish Government's guidance on statutory nuisance](#).

What role do local authorities have?

Local authorities have the main role of investigating and taking action against statutory nuisances.

They have a duty in sections 79 and 80 of the EPA:

- to inspect their areas from time to time to detect any statutory nuisances;
- to take such steps as are reasonably practicable to investigate complaints; and
- to serve an abatement notice where they are satisfied that a statutory nuisance exists.

They may also be able to resolve complaints informally and will often use this approach in the first instance particularly where problems are of a less serious nature.

Contacting a local authority's environmental health department to complain about a nuisance can therefore be one potential way of remedying a problem.

Local authorities may also produce their own guidance on statutory nuisance which may include information on how complaints will be handled, including in specific areas.

Investigations

The EPA requires local authorities to "take such steps as are reasonably practicable" to investigate complaints of statutory nuisance.

It also provides local authorities with discretionary powers to enter any premises at a reasonable time to determine if a statutory nuisance exists or to carry out work to stop it.ⁱⁱ This includes the power to apply to the sheriff court for a warrant to enter the premises if entry is refused or the premises are unoccupied.

Although local authorities are under a duty to investigate statutory nuisances, there is an element of discretion in assessing whether a statutory nuisance exists in the first place. In addition, the investigative steps which local authorities must take only need to be "reasonably practicable". As a result, whether a local authority investigates, and the level of investigation, will often depend on the circumstances and the degree to which matters are considered to be a priority. As an example, [West Lothian Council's information on statutory nuisance](#) states that:

“ Because Statutory Nuisance could apply to such a wide range of situations, responses are prioritised on the type of nuisance concerned. Some minor matters may not be routinely investigated and investigations may only take place if levels of other higher priority work permit and the problem is serious and persistent.”

West Lothian Council, 2023⁸

Local authority environmental health departments often have information on their websites outlining the procedures they use when investigating specific types of nuisance

ⁱⁱ EPA, Schedule 3, paragraph 2

complaints. They can also be contacted for more detailed information on the options.

Abatement notices

If a local authority is satisfied that a statutory nuisance exists, or is likely to occur or recur, then it must serve an abatement notice on the responsible person or owner or occupier of the premises imposing any or all of the following requirements—

1. the abatement of the nuisance or prohibition or restriction of its occurrence or re-occurrence;
2. the carrying out of such works and other steps necessary for any of those purposes.ⁱⁱⁱ

Abatement notices have to specify time-frames for compliance.

Appeals

The person who is served with the notice may appeal to the sheriff court within 21 days of the date the notice was served. Details of the appeal procedures are included in Schedule 3 of the EPA and the regulations made under that Schedule: the Statutory Nuisance (Appeals) (Scotland) Regulations 1996. These regulations also provide the grounds of appeal.

Failure to comply with an abatement notice

It is an offence to contravene or to fail to comply with an abatement notice without reasonable excuse. It is, however, a defence to show that "the best practicable means were used to prevent, or to counteract the effects of, the nuisance."^{iv} This defence is not available for certain nuisances listed in section 80(8) of the EPA, although there are exceptions for industrial and trade premises which, as a result, are often able to rely on the "best practicable means" defence.

Although prosecutions are possible, in the majority of cases (particularly in relation to low-level offences) local authorities will first issue a fixed penalty notice for non-compliance^v rather than use their criminal enforcement powers. [The Scottish Government's guidance on statutory nuisance](#) states that:

“ 8.6 There will be circumstances in which the local authority will wish to seek a prosecution under the EPA. However, it is anticipated that in the vast majority of cases, local authorities will in the first instance offer a fixed penalty for non-compliance with the requirements of an abatement notice and that recourse to the existing enforcement proceedings will be the exception to the rule, reserved for exceptional or persistent cases of non-compliance.”

Scottish Government, 2009⁶

If the fixed penalty notice is not paid, or the abatement notice not complied with, a local

iii EPA, section 80(1)

iv EPA, section 80(7)

v EPA, section 80(4A)

authority can still refer the matter to [the Procurator Fiscal](#) for prosecution as a criminal offence.

Others options open to a local authority when faced by non-compliance are:

1. To carry out the works itself and recover reasonable expenses from the person responsible for the nuisance (sections 81(3) and (4) of the EPA)
2. To take civil proceedings in court for the purpose of securing the abatement, prohibition or restriction of the nuisance (section 81(5) of the EPA). This will normally involve applying for an "interdict" against the person responsible for the statutory nuisance, i.e. a court order preventing something being done.

Complaints about local authorities - the Scottish Public Services Ombudsman

Local authorities may have valid reasons for not taking up a statutory nuisance complaint. However, if an individual is unsatisfied by a council's approach, and has gone through the council's internal complaints process, it may be possible to complain to [the Scottish Public Services Ombudsman](#) (SPSO). The SPSO has information on its website '[What to do if you have a complaint about antisocial behaviour or neighbour nuisance](#)'⁹ which provides more details on the options.

What role do individuals have? Private actions

In addition to the powers which local authorities have, section 82 of the EPA also gives individuals the right to bring their own statutory nuisance actions in the sheriff courts. Individuals can therefore take action where a local authority has chosen not to act, although it will still be necessary to demonstrate to the court that something is a statutory nuisance.

The court has a range of powers including requiring work to be undertaken to address the nuisance. [The Scottish Government's guidance on statutory nuisance](#) summarises the provisions as follows:

“ 3.33 Section 82 permits any person aggrieved by the existence of a nuisance to seek an order from the sheriff after giving the person against whom the order is sought 21 days notice. This order can require the person to abate the nuisance or to prohibit a recurrence of the nuisance. In cases of premises in such a state as to be unfit for human habitation the sheriff may prohibit the use of the premises until rendered fit. Contravention of an order of the sheriff is an offence ... The sheriff may also direct the authority to do anything which the person convicted was required to do by the order and may also order the defender to pay to the aggrieved person compensation.”

Scottish Government, 2009¹⁰

A recent example of a successful private action is the case of [Milne v Stuartfield Windpower](#)^{vi} where the sheriff court in Aberdeen held, in a case brought by neighbours, that the noise created by wind turbines was a statutory nuisance.¹¹

Permits under the Pollution Prevention and Control (Scotland) Regulations 2012 and statutory nuisance

Certain industrial activities (e.g. emissions to air, water and land as well as a range of other environmental effects) are regulated under the Pollution Prevention and Control (Scotland) Regulations 2012 ("PPC Regulations") made under section 2 of the Pollution Prevention and Control Act 1999.

Operators of installations that fall under the PPC Regulations must have a permit granted by the Scottish Environment Protection Agency ("SEPA") in order to operate.¹² SEPA has a range of powers to enforce compliance with the conditions in these permits.¹³

Activities falling under a PPC permit can potentially constitute a statutory nuisance. However, under the Environmental Protection Act 1990, unless the Scottish Ministers consent, local authorities are prohibited from bringing "summary proceedings" (i.e. prosecutions) in relation to statutory nuisances where proceedings can instead be brought under the PPC regime.^{vii}

Local authority action up to and including abatement notices is, however, still possible as are [private statutory nuisance actions under section 82 of the EPA](#).

[SEPA's Technical Guidance on Pollution Prevention and Control \(PPC\)](#) explains the relationship between the PPC regime and statutory nuisance as follows:

“ Local authorities regulate Part III of the Environmental Protection Act (EPA) 1990 concerning ‘statutory nuisance’. Unless the Scottish Ministers have granted consent, a local authority may not introduce summary proceedings in respect of a nuisance where proceedings can instead be brought under the PPC regime. This is to avoid ‘double jeopardy’ for PPC operators, and is consistent with the previous arrangements under the Integrated Pollution Control (IPC) regime. However, activities on PPC installation sites not covered by PPC (ie, not part of the installation) may be regulated under the statutory nuisance provisions. For example, a dog barking or a burglar alarm would not be covered by the PPC, and instead would be regulated as a statutory nuisance by the local authority. The PPC Regulations also do not restrict the scope of aggrieved persons to take action under Section 82 of the EPA 1990. Members of the public will still be able to use summary proceedings under that section.”

SEPA, 2017¹³

vi [2019] SC ABE 25

vii See section 79(10) of the EPA

Further information on statutory nuisance

For further information on statutory nuisance see:

- [the Scottish Government's guidance on statutory nuisance](#) ¹⁰
- information on local authority websites - as an example, [the website of West Lothian Council includes a detailed summary of the rules](#) ¹⁴
- [the House of Commons Library's briefing paper on nuisance complaints](#). (note that much of the focus of this briefing is on the law in England and Wales). ¹⁵

Housing

Nuisance complaints are often related to problems in housing, in particular flats. A brief overview follows of some of the options for resolving problems for tenants, neighbours and homeowners.

Tenants' rights

Tenants can be confronted with various problems in their properties such as poor maintenance or repairs, damp, leaks, appliances not working etc.

Various different statutory housing standards apply depending on the type of tenancy involved (e.g. whether the tenancy is with a social landlord or a private landlord) ¹⁶

Private rented houses are required to meet "[the Repairing Standard](#)" which is the minimum level of repair for privately rented accommodation in Scotland. ¹⁷ Where this standard isn't met, tenants can potentially bring a case to [the First-tier Tribunal for Scotland \(Housing and Property Chamber\)](#). ¹⁸

Social landlords must ensure that their properties meet [the Scottish Housing Quality Standard \(SHQS\)](#) ¹⁹

There is also a minimum basic standard, "[the Tolerable Standard](#)", which applies to all residential dwellings including social and privately rented homes and owner-occupied properties. Local authorities have a statutory duty and specific powers to deal with houses that fall below the Tolerable Standard. ²⁰

A wide range of other regulations may be relevant. For example, private landlords in Scotland are [required to register with the relevant local authority](#), which involves passing "a fit and proper person test". ^{21 22} Similar rules apply to letting agents. ²³ Various sanctions (including fines) exist where landlords rent out property without being registered ²⁴ or where they are no longer considered to be a fit and proper person. ²⁵

Landlords also aren't permitted to rent out properties to three or more people unless they have a House in multiple occupation (HMO) licence from the local authority (Housing (Scotland) Act 2006). ²⁶ Licences can be revoked or varied if the conditions of the licence are breached.

The level of regulation, and the need to also consider the content and scope of the lease, mean that legal advice from a housing solicitor is recommended. [Shelter Scotland has a free helpline and can provide practical advice and guidance.](#)

For more information see :

- [SPICe briefing 'Housing: subject profile'](#) ²⁷
- [SPICe blogpost on 'Repairs in Private Rented Property'](#) ²⁸
- [SPICe blogpost on 'Dampness in Scottish social housing'](#) ²⁹

- [SPICe briefing on 'Housing Conditions and Standards \(Updated\)'](#) ³⁰
- [Shelter Scotland's website on 'Your rights if you rent your home'](#). ¹⁶

Antisocial behaviour in housing

Antisocial behaviour, such as noise, parties, abuse of drugs or alcohol, damage to property etc. can also be a problem in housing (for example, affecting neighbours in flats).

There may be instances where the right approach is to first discuss the issue with the neighbour to see if a solution can be found (e.g. where the issue is linked to noise).

However, this will depend on the circumstances and other more formal approaches are also available (for example, where a problem is a recurring one without any obvious solution).

Private rented housing

If the problem is caused by a tenant in private rented housing and informal approaches haven't solved the problem, approaching the landlord can help.

Tenancy agreements in private tenancies will require tenants not to act in an antisocial way. Antisocial behaviour can therefore breach the tenancy agreement and be a reason for a landlord to take steps to address the problem (with the ultimate remedy potentially being eviction).

Sometimes landlords don't take action to address problems. Their actions may also not work as they can depend on the attitude of the tenants.

In these cases, local authorities have powers under the Antisocial Behaviour etc. (Scotland) Act 2004 ("2004 Act") to make private landlords address the antisocial behaviour of their tenants.

These include powers to serve private landlords with an antisocial behaviour notice (ASBN) which sets out the steps needed to address the antisocial behaviour of the tenant. If the landlord does not comply with the ASBN, the local authority can:

- apply to the sheriff court for an order that no rent should be paid (the aim being to stop the flow of money to the landlord so as to encourage them to comply); or
- charge the landlord for certain costs which resulted from their failure to comply.

Councils also have powers to take over the management of a property using a management control order. However, these are only used as a last resort when other approaches have not worked. As an example, Edinburgh Council used a management control order in 2013 to take over the management of two properties which were rented out as short-term lets for the purpose of accommodating stag and hen parties. ³¹ The problems had been in existence for several years and had not been addressed by the landlord despite efforts by the police and local authority.

The local authority can also refer the case to the Procurator Fiscal for prosecution as it is a

criminal offence to fail to comply with an ASBN.

Where a landlord has used the [Scottish Government's Model Tenancy Agreement](#), tenants should be provided with [the Easy Read Notes for the Scottish Government Model Private Residential Tenancy Agreement](#) as these explain tenants' rights, and the things tenants should and should not be doing during the tenancy .

In relation to housing (Parts 7 and 8 of the 2004 Act), "antisocial behaviour" is defined as follows:

"a person engages in antisocial behaviour if the person—

(a) acts in a manner that causes or is likely to cause alarm, distress, nuisance or annoyance; or

(b) pursues a course of conduct that causes or is likely to cause alarm, distress, nuisance or annoyance,

to a person residing in, visiting or otherwise engaging in lawful activity at, or in the locality of, a house ..." (sections 81 and 101 of the 2004 Act)

Social housing

Social landlords will have their own policies for dealing with antisocial behaviour caused by their tenants. They will often work in partnership with other agencies to tackle any problems (for further details see the [antisocial behaviour section of the briefing](#)).

Social landlords' own policies will be set in the context of existing legal and regulatory requirements.

The [Scottish Social Housing Charter](#) sets out the standards which tenants and other customers can expect from social landlords.

The management of antisocial behaviour is covered in standard 6 relating to estate management, antisocial behaviour, neighbour nuisance and tenancy disputes:

“ 6: Estate Management, Anti-Social Behaviour, Neighbour Nuisance And Tenancy Disputes Social landlords, working in partnership with other agencies, help to ensure as far as reasonably possible that:

- tenants and other customers live in well-maintained neighbourhoods where they feel safe.”

This *outcome* covers a range of actions that social landlords can take on their own and in partnership with others. It covers support for victims/survivors of domestic abuse, action to enforce tenancy conditions on estate management and neighbour nuisance, resolving neighbour disputes, and arranging or providing tenancy support where this is needed. It also covers the role of landlords in working with others to tackle anti-social behaviour.”

Source: Scottish Government , 2022³²

[Social landlords must report to the Scottish Housing Regulator](#) on how they meet the standards and outcomes in the Charter.

The standard tenancy agreement used in social housing in Scotland, the [Scottish Secure Tenancy \(SST\)](#), requires tenants and visitors not to "harass or act in an antisocial manner to, or pursue a course of antisocial conduct against, any person in the neighbourhood."³³ If a tenant fails to adhere to their tenancy agreement, this could lead to the landlord, for example, issuing the tenant with a warning; changing the tenancy agreement to a short, less secure one; applying for an Antisocial Behaviour Order; or asking the court to grant an eviction order where the circumstances are sufficiently serious.

Social housing - eviction for antisocial behaviour

Social landlords can seek to evict a tenant if they (or someone visiting them or living with them) cause antisocial behaviour. In practice, this would only happen as a last resort. Social landlords would try to resolve the problem before taking this action.

Social landlords must gather sufficient evidence for the court to consider granting an eviction order. This is why it is useful for anyone affected by a tenant's antisocial behaviour to keep a record of all incidents and report these to the social landlord, and police, where appropriate

The most common social housing tenancy agreement, the Scottish Secure Tenancy, governed by the Housing (Scotland) Act 2001, provides two grounds on which the court may grant an eviction order for antisocial behaviour (grounds 7 and 8 as set out in Schedule 2 of the Act). To grant such an eviction, the court must consider the nature, frequency, and duration of the behaviour in question. The court will consider whether it is reasonable in the circumstances to grant an eviction. To do that, it will also want to know from the landlord what lesser measures have been attempted. This may include some of the options mentioned in [the section of the briefing on antisocial behaviour](#).

Social landlords can also use eviction ground 2 in Schedule 2 of the Housing (Scotland) Act 2001 where the tenant, or someone living with or visiting them, has been convicted of:

- using the house or allowing it to be used for immoral or illegal purposes; or
- an offence punishable by imprisonment, which was committed in the locality of the house.

[This would include, for example, drug dealing, violence and criminal damage.](#)³⁴

There is also a streamlined eviction process where there has been a recent criminal conviction punishable by imprisonment for tenancy-related antisocial or criminal behaviour within the previous 12 months. This streamlined process is intended to help to speed up eviction in cases where:

- serious antisocial or criminal behaviour has already been proven in court
- the behaviour which led to the conviction was in, or in the locality of the tenant's house; and
- the landlord considers that eviction action is proportionate, such as to protect neighbours and other people living or working in or near a social housing property

from harm.³⁵

Antisocial behaviour - Short Scottish Secure Tenancy

Social landlords can use a specific type of tenancy, a short Scottish secure tenancy ("short SST") in certain instances of antisocial behaviour. The short SST is a less secure form of tenancy than the normal SST.

Social landlords have powers to:

- give a tenant a short SST in certain situations where there has been previous antisocial behaviour
- extend the term of some short SSTs by six months, including those related to previous antisocial behaviour, where housing support services are being provided
- convert an SST to a short SST in certain circumstances related to antisocial behaviour.

[The Scottish Government's statutory guidance on short SSTs for antisocial behaviour](#)

states that "these powers enable landlords to make it clear to new and existing tenants ... that their past behaviour is not acceptable and that if it is repeated they risk losing their home."³⁶

[The statutory guidance](#) also explains that there are a range of factors landlords should consider before using a short SST, including

“ • Who has behaved antisocially and their connection to the property; • How long the antisocial behaviour has been going on and the persistence of the behaviour; • The person affected by the antisocial behaviour and their connection to housing; • Whether and to what extent the behaviour has affected household members, neighbours or others in the community; • The impact on neighbours and communities over time and the impact on the stability of the community; • What action, if any, the person behaving antisocially is taking to make positive change; • Any issues around the vulnerability of the tenant, members of their household or those directly affected by the antisocial behaviour; • Other steps which have been taken/which could be taken by the landlord or partner agencies to address the antisocial behaviour.”

Scottish Government, 2019³⁷

Short term lets

The Scottish Parliament approved the Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2022 ("the Licensing Order") in January 2022. This required all Scottish local authorities to introduce a licensing system for short-term lets within their area by 1 October 2022.

A key purpose of the licensing system is to tackle the antisocial behaviour caused by a very small number of short-term let guests. The [policy note](#), which accompanies the Licensing Order, explains that:

“ The Licensing Order establishes a licensing scheme to ensure short-term lets are safe and address issues faced by neighbours; and to facilitate local authorities in knowing and understanding what is happening in their area as well as to assist with handling complaints effectively.”

Scottish Government [guidance to licensing authorities, letting agencies and platforms](#) advises that:

“ Licensing authorities may wish to include a condition requiring the licence holder to manage their premises in a way to prevent anti-social behaviour as far as reasonably practicable, and to effectively deal with any instances of anti-social behaviour.”

The enforcement of short-term let licensing conditions is a matter for the relevant licensing authority.

Property law - flats and housing estates

In buildings which contain flats, various repair and maintenance problems can arise which can constitute a nuisance. For example, roofs and gutters may have leaks affecting all the flats, stairwells might be poorly maintained, and gardens might be unkempt or used for dumping rubbish.

Similar problems can occur in housing estates as these normally have areas of land which are used by, or benefit, all the homeowners in the estate (for example, play parks, green spaces, parking areas, communal bins and drainage systems). Sometimes these areas in housing estates will be managed by a 'property factor' (i.e. a property manager) on behalf of the homeowners. [A recent SPICe blog discusses the Competition and Market Authority's proposals on property factoring arrangements on housing estates.](#) ³⁸

Depending on the facts, in some cases local authority powers (e.g. in relation to antisocial behaviour) may be more relevant for finding solutions to these problems.

However, where a nuisance is more linked to poor maintenance in flats/housing estates or misuse of common areas in property, there may be options for dealing with these problems based on property legislation and [the title deeds](#) (these are the legal documents associated with ownership held by [Registers of Scotland](#)). If a property factor manages a property, the rules in [the Property Factors \(Scotland\) Act 2011](#) and [the Code of Conduct for Property Factors](#) may also be relevant. ³⁹

More details on the options can be found in:

- [SPICe briefing 'Flats: Management, Maintenance and Repairs'](#) ⁴⁰
- [SPICe briefing 'Property Factors - Frequently Asked Questions'](#) ⁴¹

Antisocial behaviour

Antisocial behaviour such as noise, parties, abuse of drugs or alcohol, damage to property etc. can be a source of nuisance in a local area.

[As outlined elsewhere in this briefing](#) , a range of options exist where antisocial behaviour is linked to rented housing.

Antisocial behaviour can, however, be a problem more generally, or can derive from an owner-occupied property. In that case, if the problem can't be dealt with through more informal methods, contacting the relevant local authority can be an option as they have powers to deal with antisocial behaviour under the Antisocial Behaviour etc. (Scotland) Act 2004 (the '2004 Act') and have to publish an Antisocial Behaviour (or Community Safety) strategy for preventing and dealing with antisocial behaviour in their area. Local authorities can also contact, and work in partnership with, other relevant agencies for support (e.g. the police, or the NHS where antisocial behaviour may be the result of mental health problems).

Methods which local authorities have for dealing with antisocial behaviour will depend on the circumstances but include:

- Meeting with the people who are causing the problems and/or mediation. Many councils offer free mediation services for neighbour disputes (see for example [Glasgow City Council's mediation service](#)).
- Agreeing an acceptable behaviour contract (ABC) – i.e. 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. ⁴²
- Warning letters.
- Obtaining an antisocial behaviour order (ASBO) for people aged 12 or over requiring a person to act in a certain way or providing other restrictions (part 2 of the 2004 Act).
⁴²
- Referring the matter to the police if criminal behaviour is involved.

[The police can also be contacted directly](#) where antisocial behaviour involves a criminal offence. The 2004 Act also gives the police certain specific powers to address antisocial behaviour, for example to disperse groups of people. ⁴³

"Antisocial behaviour" is defined widely in the 2004 Act. [With the exception of the powers in relation to housing \(Parts 7 and 8 of the Act\)](#) which have a slightly different definition, it covers situations where a person:

"(a) acts in a manner that causes or is likely to cause alarm or distress; or

(b) pursues 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 ..." (section 143 of the 2004 Act)

- "conduct" includes speech; and a course of conduct must involve conduct on at least two occasions.

[The previous Scottish Executive's Guidance on Antisocial Behaviour Strategies](#) expands on the definition as follows:

" 16. In practice, antisocial behaviour can mean different things to different people. It can cover a wide range of behaviours from litter to serious harassment, from dog fouling to criminal damage to property. Behaviour regarded as acceptable by some can be seen as antisocial and can be completely unacceptable to others. Expectations of standards of behaviour can also vary between communities and groups within communities. In addition, antisocial behaviour is not necessarily behaviour that is merely different, or that is the result of a medical or developmental condition or a mental health problem. So, tolerance and awareness of others' needs is an important part of tackling antisocial behaviour ..."

Scottish Government, 2004⁴⁴

Further information on antisocial behaviour

For more information see:

- [Shelter Scotland's website on 'How to deal with antisocial behaviour by a neighbour'](#) ⁴⁵
- [Citizens Advice Scotland's website on 'Antisocial behaviour'](#) ⁴⁶
- [The previous Scottish Executive's Guide to the Antisocial Behaviour etc. \(Scotland\) Act 2004.](#) ⁴⁷
- [The previous Scottish Executive's Guidance on Antisocial Behaviour Strategies](#) ⁴⁴
- [The 2023 report by the Scottish Community Safety Network and the Scottish Government entitled 'Reviewing Scotland's Approach to Antisocial Behaviour'.](#) ⁴⁸ This led to the formation of an [Independent Working Group on Antisocial Behaviour](#) to undertake more in-depth work. It will report its findings by the end of 2024.

Civil law remedies

If a dispute cannot be resolved informally or through the relevant local authority or regulatory body then, depending on the circumstances, there are a range of civil law options which can potentially be used in the courts in relation to nuisance. Options include:

- common law nuisance
- the law on title deeds;
- the law of negligence.

Although not dealt with in this briefing, the court procedure known as judicial review can sometimes be relevant - for example, in relation to challenging decisions by local government or public bodies. For details, see [the SPICe briefing on Judicial Review](#).⁴⁹

The onus is on the individuals involved to assess what their rights and obligations are under the civil law rules (there isn't a statutory body which does this). [Local Citizens Advice Bureaux](#) can potentially provide free advice, as can [the Citizens Advice Helpline](#). A solicitor can provide legal advice.

In some cases a letter from a solicitor reminding the neighbour of the relevant law may be sufficient to prompt action. However, there are situations where it can be necessary for individuals to bring actions in the civil courts.

Legal advice and support would normally be needed if an individual intends to bring a court action. [The website of the Law Society of Scotland has a "Find a Solicitor" function which lets people search for solicitors in Scotland based on location and/or expertise](#).⁵⁰

Typical remedies (outcomes of a case) that can be granted where a civil court action is successful include:

- 'interdict' (a court order preventing a named individual from doing something)
- 'implement' (a court order compelling a named individual to do something)
- damages (compensation for loss).

Unless all, or part of, the costs are covered by legal aid, or for example supported by crowdfunding,⁵¹ civil court actions can be expensive and, as with any court action, there is no guarantee of success. For more details, see [the information 'New to legal aid' on the website of the Scottish Legal Aid Board](#).³ Court actions can also potentially aggravate relations with the person defending the case. They can, however, be worth considering in situations where public bodies have chosen not to act or where they do not have the powers to deal with the nuisance in question.

Common law nuisance

In addition to statutory nuisance, there is a separate body of law known as "common law nuisance" which has to be enforced in the courts by the individuals affected.

Common law nuisance is based on rules in case law and places limits on property owners' rights. Although property owners generally have the right to the free use of their property, they have to ensure that they do not disturb or intrude upon their neighbours' enjoyment of their property. This can cover intentional harm, but also acts of negligence.⁵²

The test for common law nuisance is complicated and is not the same as the colloquial meaning of the term "nuisance". According to the Stair Memorial Encyclopaedia, the key test is as follows:

“ An invasion of an interest in the use and enjoyment of land will only be actionable under the distinctive test for nuisance if the invasion is so unreasonable that the complainer should not be required to tolerate it.”

Stair's Laws of Scotland (Stair Memorial Encyclopaedia), 2023⁵³

Whether there is a common law nuisance will depend on the facts and will involve weighing up factors such as the extent of the harm involved, the nature of the locality in question and the practicality of taking remedial measures.^{54 55} A key factor will be whether a reasonable person would tolerate the nuisance caused.^{5 56} Fault (*culpa*) also needs to be proved, which includes deliberate acts, negligence or other relevant conduct.^{viii}

An example of a recent court case is the 2020 case of [McBean v Scottish Water](#)^{ix} which related to odours from a waste water treatment plant in Boat of Garten.

The Court of Session initially found that there was a nuisance but later held, following remedial work by Scottish Water, that while the plant still emitted odours, these weren't intolerable to a reasonable person.⁵⁷ The court also took account of evidence that relatively few complaints had been made about the odour and that the plant "performs an important public service which would create major disruption if it had to move elsewhere or cease operations."

Another example is the 2017 case [McKenna and McAllister v O'Hare](#)^x where the Sheriff Appeal Court found that a kerosene spillage from a neighbour's oil heating tank was a nuisance and that the sheriff was correct to infer fault from the facts.⁵⁸

Title deeds

The [title deeds](#) to properties are the legal documents associated with ownership held by [Registers of Scotland](#) (they can be obtained from [the owner's mortgage lender/solicitor or Registers of Scotland](#))

Title deeds sometimes include "title conditions" (also known as "burdens") which impose obligations on one property designed to benefit another property. If constituted properly,

viii Kennedy v Glenbelle 1996 SC 95

ix [2020] CSOH 55

x [2017] SAC (Civ) 16

title conditions can survive changes of ownership (e.g. the sale of a property).

Title conditions can require property owners not to do certain things, for example not to cut off a neighbour's light or view or not to use a property for a trade, business or profession. In addition, they can also require a property owner to do something, for example, to maintain the property in good condition for the benefit of neighbouring property owners. They can therefore be relevant in nuisance cases.

People with enforcement rights can bring actions for breaches of title conditions in the civil courts. Neighbouring property owners can potentially have enforcement rights, although there are complex legal rules for establishing this,⁵⁹ Each case is likely to depend heavily on the facts and circumstances.

If title conditions do include relevant obligations, it is recommended that they are examined by a solicitor, who can provide legal advice on their scope and whether they can be enforced by neighbours.

Cases often relate to title conditions which place restrictions on how private houses are used.

One example is the 2022 case of [Inspire Scotland CC Limited v Wilson & others](#) where a company wanted to turn a house into a residential care home for young people^{xi} The title conditions restricted the use of the property to a "private dwellinghouse ... for the accommodation of one family only". The company therefore had to apply to the Lands Tribunal for Scotland for the condition to be varied (i.e. amended) under the relevant law (section 98 of the Title Conditions (Scotland) Act 2003).

Neighbours argued that the title condition was necessary to maintain the amenity of the housing development and that varying it would create a risk of anti-social behaviour. The Lands Tribunal disagreed and allowed it to be varied finding that any anti-social behaviour could be dealt with through established procedures and also giving weight to the public interest in ensuring the availability of accommodation for young people in care.⁶⁰

Cases depend heavily on the facts and circumstances. In an earlier case, *Kettlewell and Others v Turning Point Scotland*,^{xii} the sheriff court prohibited a charity from using a property to provide accommodation and care for people with physical or mental disabilities (the title conditions only allowed the property to be used as a private dwelling house by one family). The court held that the proposed use would depress the value of the neighbouring houses and would be detrimental to the neighbours' enjoyment of their properties.⁶¹

xi LTS/TC/2021/0007
xii 2011 S.L.T (Sh Ct) 143

Negligence

The law of negligence covers cases where there is a duty to take care and failure to take care has caused loss.⁶² The law is complex. However, one of the key questions for liability is whether damage could be reasonably foreseeable or not. Negligence can therefore be relevant in cases where a nuisance was not caused intentionally but was the result of some sort of carelessness. Such cases may also fall within the rules on common law nuisance.

Common nuisances

A short overview follows of some common nuisances and key elements of regulation by statute. [As outlined elsewhere in this briefing](#), civil law rules, in particular common law nuisance, as well as property law and housing law, may also be relevant.

Noise

Provisions which can be used to deal with noise include the following.

Statutory nuisance

Local authorities can use their statutory nuisance powers to investigate noise generally as the EPA includes as statutory nuisances "noise emitted from premises so as to be prejudicial to health or a nuisance" as well as "noise that is prejudicial to health or a nuisance and is emitted from or caused by a vehicle, machinery or equipment in ... a road".

Local authorities are under a duty to investigate complaints, but have discretion in assessing whether or not there is a noise nuisance. Although objective noise measurements can be relevant, there is no set level for a statutory nuisance as the key is whether the noise is prejudicial to health or a nuisance based on factors such as the time of occurrence, duration, frequency, volume etc.⁶³

If the local authority proceeds to an abatement notice and this has not been complied with, it can take action to abate the nuisance. This includes seizing any equipment used in the emission of noise.

Antisocial behaviour

Local authorities also have powers to deal with noise in accommodation (i.e. dwellings) under Part 5 of the Antisocial Behaviour etc. (Scotland) Act 2004.^{xiii} This includes connected land and common property (e.g. communal gardens).

The Act allows local authorities to implement noise control provisions for dwellings, allowing them to specify times and days during which noise is to be controlled. Unlike statutory nuisance, the system works on the basis of "permitted noise levels" for different times of the day which are defined in decibels in [the Antisocial Behaviour \(Noise Control\) \(Scotland\) Regulations 2005](#).

Local authorities can issue a warning notice if they consider that the noise being emitted from a dwelling exceeds, or may exceed, the relevant permitted noise level. Failure to comply with a warning notice is an offence. Local authorities can also issue fixed penalty notices as an alternative to prosecution. Local authorities also have certain powers to seize equipment which is being, or appears to have been used, in the emission of noise.

Further details can be found on council websites and in [the previous Scottish Executive's](#)

xiii Referred to as "relevant property" and defined further in section 53 of the Act

[Guidance on Noise Nuisance in the Antisocial Behaviour etc. \(Scotland\) Act 2004.](#)

Noise from musical instruments, loudspeakers etc.

Section 54 of the Civic Government Scotland Act 1982 makes it an offence to persist, to the annoyance of others, in playing musical instruments, singing, playing radios etc. on being required to stop by a police constable. The police can be contacted in these situations, for example, where noise is coming from a party.⁶⁴

The Control of Pollution Act 1974 also gives local authorities powers to deal with noise from loudspeakers in streets. Although certain exceptions apply, section 62 of the Act prohibits the use of loudspeakers in streets:

- between the hours of 9pm and 8am for any purpose;
- at any other time, for the purpose of advertising any entertainment, trade or business.

Non-compliance is an offence.

Noise from premises licensed to sell alcohol

The alcohol licensing regime can be used to control noise from licensed premises in several ways.

Controls on noise from licence conditions

There may be controls on noise from pubs and other licensed venues as part of the conditions attached to the licence. Licences to sell alcohol are issued by the local licensing board, which can be contacted via the local authority.

Restrictions on noise via licensing conditions can take various forms. For example, there may be time limits on amplified music; specific decibel levels which must not be exceeded; or a requirement for noise management plans. However, not all licences will have relevant conditions.

Controls on noise from the licensing objectives

The Licensing (Scotland) Act 2005 contains five licensing objectives:

- preventing crime and disorder
- securing public safety
- preventing public nuisance
- protecting and improving public health
- protecting children and young people from harm.

Licensing boards must consider these objectives when making decisions under the 2005 Act, including when granting or reviewing licences.

It may therefore be possible to request a review of a licence on the basis that noise from licensed premises constitutes a public nuisance. However, there can be challenges to meeting the requirements of the 2005 Act - for example, that the problem is linked to the sale of alcohol and that it affects an identifiable class of the public.

Where a licensing board finds that grounds for review have been established, it can:

- issue a written warning
- vary the licence (e.g. by adding a condition or changing opening times)
- suspend the licence
- revoke the licence.

Making a complaint

All local authorities must employ at least one licensing standards officer. The functions of this post are set in legislation. They include supervising compliance with licence requirements, including licence conditions and the licensing objectives, and supporting the resolution of disputes between licence holders and other affected people.

Complaints about noise from premises licensed to sell alcohol can be made to the relevant local authority or licensing board contact. A licensing standards officer may be able assist with resolving issues.

Transport noise

The rules on statutory nuisance cover noise from individual vehicles on premises or roads but exclude noise caused by general road traffic and aircraft (but not model aircraft). The following section briefly outlines rules governing noise from rail, road and aviation sources.

Rail: There are no legal limits to noise from existing railways. [Network Rail](#) and train operating companies are subject to the statutory nuisance provisions described above. However, Section 122 of the Railways Act 1993 provides Network Rail and train operators with a statutory defence to legal proceedings for nuisance. This defence is qualified, which means Network Rail or the train operator must be able to demonstrate that they have used 'reasonable diligence' to control the noise if they are to claim the statutory immunity defence.

Network Rail provides information on dealing with noise issues arising from railway workings on the [noise and vibration pages of its website](#).

Roads: There are no legal limits for noise from existing roads. However, noise from individual vehicles has been regulated in the UK since the enactment of the Motor Cars (Excessive Noise) Regulations 1929. The current equivalent of these regulations, the Road Vehicle (Construction and Use) Regulations 1986, as amended, and the Europe-wide Regulation (EU) No 540/2014 provide the statutory basis for the regulation of noise from motor vehicles across Britain.

Police Scotland are responsible for enforcing contraventions of vehicle noise restrictions.

Aviation: Noise from civil or military aircraft is not defined as a statutory nuisance. Scottish

Ministers have a notional power to “specify the maximum number of occasions on which aircraft of descriptions so specified may be permitted to take off or land” at airports designated under section 80 of the Civil Aviation Act 1982. However, no Scottish airports are subject to such a designation and Scottish Ministers have no plans to designate any Scottish airport for such purposes.

The [Civil Aviation Authority provides online advice](#) and contact details for those with concerns about aircraft noise.

Planning permissions

Where a new development receives planning permission, that permission may be subject to conditions which can be about a range of matters, for example, noise. However, these would commonly take the form of conditions limiting the hours or days on which the premises may be used for potentially noisy activities rather than setting actual noise levels. Conditions of planning permission may be enforced through the Town and Country Planning (Scotland) Act 1997. Suspected breaches of conditions of planning permission should be notified to the relevant planning authority for the area.

Construction noise

The Control of Pollution Act 1974 ("1974 Act") gives local authorities powers to deal with noise from construction sites. Councils are able to serve notices setting the times during which work may be carried out, the methods of work to be used, and the noise levels which are permitted (section 60 of the 1974 Act). These requirements can also be wrapped up in building control consents (section 61 of the 1974 Act). Non-compliance without reasonable excuse is an offence.

Noise from construction sites can also be a statutory nuisance.

Light

Artificial light can potentially be a statutory nuisance. [The Scottish Government's guidance on statutory nuisance](#) explains the scope as follows:

“ 6.2 It is important to note that these provisions only apply to artificial light and cannot be used in respect of direct or reflected sunlight or moonlight. The intention is to ensure that artificial light from sources such as streetlighting, domestic and commercial security lighting, advertising lighting, car parks, sports stadia, domestic decorative lighting, exterior lighting of buildings, laser shows, sky beams and even temporary works such as roadworks are included where the light is causing nuisance ...”

Scottish Government, 2009¹⁰

Artificial light from airports, harbours, railway and tram premises, bus stations, other passenger and goods transport facilities, lighthouses and prisons is exempted from the statutory nuisance rules.

Water

Nuisance linked to water can potentially be covered by the statutory nuisance rules as these include "water covering land or land covered with water which is in such a state as to be prejudicial to health or a nuisance".

The rules don't, however, cover all forms of nuisance linked to water as they do not apply to water supply pipes, sewerage pipework, the foreshore/seabed (section 79(5ZA) of the EPA), or water pollution more generally. [The Scottish Government's guidance on statutory nuisance](#) notes that the principle behind the rules is:

“ 7.5 ... to regulate nuisance and risk to health but not that arising from chemical characteristics of water, or by regulating discharges, drinking water or water quality standards.”

[The guidance](#) also stresses that the rules are focused on the state of ponds, pools, ditches or watercourses, or obstructions of watercourses noting that:

“ 7.10 Issues that could fall within this new nuisance might include water that is foul, obstructed or in any other condition creating a nuisance, perhaps because of something in or on the water (such as algae and bacteria) and anything emanating from the land covered by water (such as gases). It can also be used in conjunction with the new section 79(1)(fa) to control conditions that may result in proliferation of insects such as mosquitoes. 7.11 It is not anticipated that this provision will apply to the impacts of flooding (such controls already lie with SEPA) but rather the state of any pond, pool, ditch or watercourse or obstruction of a watercourse.”

It is a landowner's responsibility to manage flood risk in relation to their property. However, there are also powers and responsibilities held by public bodies. The Flood Risk Management (Scotland) Act 2009 is the key piece of legislation. Local authorities, for example, have a responsibility under this Act to assess whether "relevant bodies of water" give rise to a risk of flooding and to draw up schedules of clearance and repair work to reduce this risk. ^{65 66}

Where concerns relate to pollution through discharges being made into the water environment, this is likely to fall under the regulatory remit of SEPA either via [the PPC regime](#) or the Water Environment (Controlled Activities) (Scotland) Regulations 2011 – more commonly known as the Controlled Activity Regulations or 'CAR' regime.

The CAR regime covers rivers, lochs, transitional waters (estuaries), coastal waters, groundwater, and groundwater dependant wetlands. There are three 'tiers' of regulatory oversight by SEPA, where:

- activities considered to be low risk must follow 'General Binding Rules' but do not need a licence or to go through any registration
- activities also considered to be low risk but which cumulatively pose a risk to the environment must be registered with SEPA
- a specific licence is required from SEPA for other activities considered to be higher risk or where site-specific control is required.

Concerns about pollution to the water environment [can be reported to SEPA as an](#)

[environmental event](#).

Odour issues in relation to public sewage systems are considered in [the section of this briefing on fumes and smells or odour](#).

Smoke

Smoke, for example from bonfires etc., can potentially be a statutory nuisance as the rules cover "smoke emitted from premises so as to be prejudicial to health or a nuisance". Smoke is defined in section 79(7) of the EPA as including "soot, ash, grit and gritty particles emitted in smoke".

There are, however a number of exemptions in the statutory nuisance rules as they are covered by other legislation. [The Scottish Government's guidance on statutory nuisance](#) explains that:

“ 3.14. These are premises occupied on behalf of the Crown or a visiting force for naval, military or air force purposes or for the purposes of the department of the Secretary of State having responsibility for defence and:- (i) smoke emitted from a chimney of a private dwelling within a smoke control area, (ii) dark smoke emitted from a chimney of a building or a chimney serving the furnace of a boiler or industrial plant attached to a building or for the time being fixed to or installed on any land, (iii) smoke emitted from a railway locomotive steam engine, or (iv) dark smoke emitted otherwise than as mentioned above from industrial or trade premises ... In effect this section mainly covers smoke from domestic premises (other than from chimneys in a smoke control area) and smoke other than dark smoke from industrial and trade premises [sic: read "premises"]”

Scottish Government, 2009¹⁰

Dark smoke from industrial premises can potentially be dealt with under [the PPC regime](#). Concerns about industrial emissions [can be reported to SEPA as an environmental event](#).

The Clean Air Act 1993 prohibits and makes it an offence to emit “dark smoke” from a domestic or commercial chimney, regardless of method of combustion (i.e. including wood burning stoves). The Act also permits local authorities to declare all or part of their area as a “smoke control area” which makes it an offence to emit smoke from a chimney of a building, from a furnace, or from any fixed boiler unless specifically exempted.

The Scottish Government has committed to review the Clean Air Act 1992 in consultation with SEPA and local authorities. Timescales for this review are unclear however [updates are provided through progress reports under the Cleaner Air for Scotland 2 Strategy](#).

In a “smoke control area”, authorised fuel can be burnt in an open fireplace. Wood is not an authorised fuel, however it can be burnt in an authorised appliance, such as a wood burning stove. Public policy and regulation of domestic fuel burning is a developing area as the evidence base develops regarding the health implications of associated particulate matter. The Scottish Government has commissioned research on the air quality and associated health implications of domestic fuel burning, including in wood burning stoves, and also consulted on permitted development rights for flues for stoves in 2023. For further details, see [the Cleaner Air for Scotland 2 Towards a Better Place for Everyone 2023/24 Progress Report](#) and the website of the [UK Government Department for Environment](#),

Food & Rural Affairs.⁶⁷

Cigarette smoke is regulated by the Smoking, Health and Social Care (Scotland) Act 2005 which makes it an offence to smoke or to permit someone else to smoke in enclosed premises. These "no smoking premises" are listed in Schedule 1 of the Prohibition of Smoking in Certain Premises (Scotland) Regulations 2006. Unlike the situation in England and Wales,⁶⁸ no smoking premises in Scotland do not cover common areas in blocks of domestic flats (e.g. stairwells).⁶⁹

Fumes and smells or odour

Fumes and smells can constitute a statutory nuisance as the rules in the EPA cover "fumes or gases emitted from premises so as to be prejudicial to health or a nuisance" (this provision only applies to private dwellings) and "any dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or a nuisance". [In the last case there is, however, a statutory defence that the 'best practicable means' have been used.](#)

[The Scottish Government's guidance on statutory nuisance](#) stresses that other provisions can also be relevant for domestic premises, noting that:

“ The nuisance provisions provide a number of methods for dealing with smell from domestic premises – under section 79(1)(a) caused by the state of the premises, section 79(1)(b) when associated with smoke, section 79(1)(e) when associated with accumulations or deposits and finally under section 79(1)(c) as fumes or gases.”

In many cases, fumes and smells will come from industrial or trade premises. [As outlined elsewhere in this briefing, such premises may fall under the PPC Regulations](#) and operate under a permit granted by SEPA. In these cases enforcement by SEPA rather than through the statutory nuisance regime will normally be necessary.

Issues of smells or odour related to public sewerage ('sewage') systems might also fall under the Water Services etc. (Scotland) Act 2005, which gives Scottish Ministers powers to make an order (i.e. pass) secondary legislation containing a code of practice "for the purposes of assessing, controlling and minimising sewerage nuisance". "Sewerage nuisance" can refer to odour, discharges, insects or any other thing emanating from the sewerage system.

The Scottish Government used these powers to introduce the Sewerage Nuisance (Code of Practice) (Scotland) Order 2006, which sets out a number of odour control measures aimed at preventing or addressing instances of odour nuisance (including a requirement for a documented complaints procedure), and puts duties on Scottish Water in respect of Waste Water Treatment Works.

In the first instance, it is possible that concerns about a water treatment works could be resolved through [reporting a problem to Scottish Water](#).

Litter, waste, infestations and conditions of

premises

Statutory nuisance

Depending on the circumstances, problems such as animal infestations, litter, rubbish and waste on property can potentially be a statutory nuisance as the EPA includes a catch-all provision covering "any premises in such a state as to be prejudicial to health or a nuisance", as well as a specific insect nuisance and rules on accumulations or deposits which are prejudicial to health or a nuisance.

The statutory nuisance powers are discretionary and are not directly focused on the amenity of an area. Councils are unlikely to use them when waste on private property is inert, e.g. building rubble or household items, or where a garden is simply overgrown/messy, as in such cases there may not be a nuisance or something which is prejudicial to health.

Other waste and litter regulation

Concerns about litter and waste can sometimes also be addressed through environmental legislation and enforcement routes.

Section 87 of the EPA defines the offence of leaving litter. Littering is a criminal offence, throwing down or dropping an item in any public open space is classed as littering.

If a person is found guilty of the offence, they can be issued with a Fixed Penalty Notice (FPN) of £80 or could be potentially prosecuted and risk a fine of up to £2,500.

The key legislation setting out individuals and commercial organisations' responsibilities for waste is the EPA and the Waste (Scotland Regulations) 2012.

Section 34 of the EPA puts a 'duty of care' on individuals and businesses for their waste (which is more extensive for businesses). The Waste (Scotland) Regulations 2012 expanded waste requirements on businesses, setting out requirements, for example, to segregate and present certain recyclates for separate collection.

The Scottish Government has published a [Duty of Care Code of Practice](#) which sets out information on how commercial waste producers can meet their duties. For example, the Code states that waste producers must securely store their waste and take reasonable measures to ensure that their waste does not cause pollution or harm to human health.

Enforcement roles in relation to waste management are distributed between SEPA and local authorities. Trade waste practices are, in practice, enforced by local authorities, as are issues generally relating to household waste.

In relation to concerns about dumped waste, this might constitute 'fly-tipping' which is an offence under section 33 of the EPA.

In relation to enforcement, Fixed Penalty Notices (FPNs) can be issued by local authorities, Loch Lomond and Trossachs National Park, or Police Scotland for littering and fly-tipping.

If an FPN is rejected, or is not paid within the notice period, the issuing authority can refer the case to the Crown Office and Procurator Fiscal Service (COPFS) who will make a decision on the case.

Under the Regulatory Reform (Scotland) Act 2014, SEPA has various enforcement powers including to serve a Fixed Monetary Penalty on businesses or organisations for fly-tipping or a breach of their duty of care for their waste, higher level Variable Monetary Penalties or referring to the Crown Office and Procurator Fiscal Service for potential prosecution. A section 59 notice (powers to require removal of waste unlawfully deposited) under the EPA can also be served where waste has been deposited on land illegally.

In more serious cases, local authorities, SEPA and Police Scotland may also refer various waste and litter cases to the Crown Office and Procurator Fiscal Service for prosecution.

Amenity and condition of premises

Local authorities have other powers in relation to the amenity of land and premises which can be relevant if a problem is not a statutory nuisance.

Under section 179 of the Town and Country Planning (Scotland) Act 1997, if a local planning authority considers that the amenity of any part of its area is being adversely affected by the condition of any land, it can serve a notice, known as an "amenity notice" on the owner or occupier of that land requiring them to take specific action to abate the adverse effect.⁷⁰ A recent example of the use of an amenity notice is East Dunbartonshire Council requiring a house's boundary wall to be repainted and waste in its garden to be removed.⁷¹

The Housing (Scotland) Act 2006 (2006 Act) also gives local authorities powers to order a house owner to prepare a plan for securing the maintenance of the house to a reasonable standard for a period of up to 5 years. Councils tend to interpret this legislation as being needed for dealing with major maintenance issues. [North Lanarkshire Council's information on private sector housing maintenance](#) states for example that:

“ It is intended that these powers will be used where major maintenance works are identified, not for minor works such as gardens, paths or fences.”

North Lanarkshire Council , 2024⁷²

For more details on maintenance orders see:

- the Scottish Government document '[Implementing the Housing \(Scotland\) Act 2006: Advisory Guidance for Local Authorities: Volume 3 Maintenance](#)'⁷³
- [Shelter Scotland's information on maintenance orders](#).⁷⁴

[As outlined elsewhere in this briefing](#), there are various options based on property law and legislation for dealing with maintenance and repair issues in flats and housing estates .

Infestations

The owner or occupier of land has the main responsibility for ensuring that infestations are eradicated. However, local authorities also have certain duties under the Prevention of Damage by Pests Act 1949 in relation to infestations of rats and mice. Specifically, section 2 of the Act states that:

“ (1) It shall be the duty of every local authority to take such steps as may be necessary to secure so far as practicable that their district is kept free from rats and mice, and in particular— (a) from time to time to carry out such inspections as may be necessary for the purpose aforesaid; (b) to destroy rats and mice on land of which they are the occupier and otherwise to keep such land so far as practicable free from rats and mice; (c) to enforce the duties of owners and occupiers of land under the following provisions of this Part of this Act, and to carry out such operations as are authorised by those provisions.”

Local authorities can serve a notice on owners or occupiers specifying treatment at prescribed times and/or the carrying out of structural or other works. They also have the power, after giving at least 24 hours' notice, to enter any land and to inspect or enforce notices, including the carrying out of treatment or works.⁷⁵ Local authorities can recover expenses for this work.

Local authority pest control services can often also treat a variety of pest problems for a fee, as can private businesses.

Trees and hedges

Local authorities have a range of powers to deal with trees and hedges, including the power to issue a high hedge notice under the High Hedges (Scotland) Act 2013. Depending on the facts of individual cases, certain civil law remedies can also be relevant. The [SPICe Briefing 'Trees, forests and hedges - some frequently asked questions'](#) provides further details.⁷⁶

Annexe - list of statutory nuisances

Statutory nuisances

Under Section 79 of the Environmental Protection Act 1990 ("EPA") the following are statutory nuisances:

- any premises in such a state as to be prejudicial to health or a nuisance
- smoke emitted from premises so as to be prejudicial to health or a nuisance
- fumes or gases emitted from premises so as to be prejudicial to health or a nuisance
- any dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or a nuisance
- any accumulation or deposit which is prejudicial to health or a nuisance
- any water covering land or land covered with water which is in such a state as to be prejudicial to health or a nuisance
- any animal kept in such a place or manner as to be prejudicial to health or a nuisance
- any insects emanating from premises and being prejudicial to health or a nuisance
- artificial light emitted from (i) premises; (ii) any stationary object so as to be prejudicial to health or a nuisance
- noise emitted from premises so as to be prejudicial to health or a nuisance;
- noise that is prejudicial to health or a nuisance and is emitted from or caused by a vehicle, machinery or equipment in a street or in Scotland, road
- any other matter declared by any enactment to be a statutory nuisance.

Section 79 of the EPA also exempts various matters from the statutory nuisance rules.

Bibliography

- 1 East Ayrshire Council . (2018). Public Health. Retrieved from <https://www.east-ayrshire.gov.uk/LawAndLicensing/PollutionAndWaste/PollutionControlPublicHealth.aspx> [accessed 19 June 2024]
- 2 Bremner, A. (2021). Legal aid - how it works. Retrieved from <https://digitalpublications.parliament.scot/ResearchBriefings/Report/2021/8/19/d60c5da7-11e1-49d1-b8df-aa0bb65cf9e5> [accessed 25 August 2021]
- 3 Scottish Legal Aid Board. (2024). New to legal aid. Retrieved from <https://www.slab.org.uk/new-to-legal-aid/> [accessed 7 March 2024]
- 4 Haley, L. (2024, May 16). Legal advice - where to go and how to pay. Retrieved from <https://digitalpublications.parliament.scot/ResearchBriefings/Report/2024/5/16/3d4eb61f-2f9e-4078-98b6-b161db1a65c2> [accessed 20 May 2024]
- 5 Kennedys. (2021, August 13). Actionable nuisance in Scotland – how bad does a smell need to be?. Retrieved from <https://kennedyslaw.com/en/thought-leadership/case-review/actionable-nuisance-in-scotland-how-bad-does-a-smell-need-to-be/> [accessed 14 December 2023]
- 6 Scottish Government. (2009, January 26). Nuisance provisions of the Public Health etc (Scotland) Act 2008: guidance. Retrieved from <https://www.gov.scot/publications/guidance-accompany-statutory-nuisance-provisions-public-health-etc-scotland-act/pages/5/> [accessed 14 December 2023]
- 7 SEPA. (2023). Contaminated land - Legislative framework. Retrieved from <https://www.sepa.org.uk/regulations/land/contaminated-land/legislative-framework/> [accessed 15 December 2023]
- 8 West Lothian Council. (2023). Statutory Nuisance. Retrieved from <https://www.westlothian.gov.uk/article/34827/Statutory-Nuisance#:~:text=This%20deals%20with%20the%20unreasonable,used%20for%20safety%20related%20issues.> [accessed 18 December 2023]
- 9 Scottish Public Services Ombudsman . (2024). What to do if you have a complaint about antisocial behaviour or neighbour nuisance. Retrieved from <https://www.spsso.org.uk/sites/spsso/files/leaflets/InfoASB.pdf> [accessed 9 January 2024]
- 10 Scottish Government. (2009, January 26). Nuisance provisions of the Public Health etc (Scotland) Act 2008: guidance. Retrieved from www.gov.scot/publications/guidance-accompany-statutory-nuisance-provisions-public-health-etc-scotland-act/pages/5/ [accessed 7 December 2023]
- 11 Jackson Boyd. (2019, April 1). INTOLERABLE WIND. Retrieved from <https://www.jacksonboyd.co.uk/intolerable-wind/> [accessed 12 January 2024]
- 12 SEPA. (2024). Pollution prevention and control. Retrieved from <https://www.sepa.org.uk/regulations/pollution-prevention-and-control/> [accessed 9 January 2024]

- 13 SEPA. (2017, October). IED-PPC-TG4 - Pollution Prevention and Control (PPC) Technical Guidance: A practical guide for Part A activities. Retrieved from <https://www.sepa.org.uk/media/335958/ied-ppc-tg4-ppc-part-a-practical-guide.pdf> [accessed 9 January 2024]
- 14 West Lothian Council . (2023). Statutory Nuisance. Retrieved from <https://www.westlothian.gov.uk/article/34827/Statutory-Nuisance#:~:text=This%20deals%20with%20the%20unreasonable,used%20for%20safety%20related%20issues.> [accessed 15 December 2023]
- 15 House of Commons Library. (2018, March 6). Nuisance complaints. Retrieved from <https://researchbriefings.files.parliament.uk/documents/CBP-8040/CBP-8040.pdf> [accessed 9 January 2024]
- 16 Shelter Scotland. (2023, November 2). Your rights if you rent your home. Retrieved from [tenants_rights](https://www.shelter.org.uk/tenants_rights) [accessed 17 January 2024]
- 17 Scottish Government. (2023, March 1). Repairing standard: statutory guidance. Retrieved from <https://www.gov.scot/publications/repairing-standard-statutory-guidance-landlords/pages/3/> [accessed 24 January 2024]
- 18 The First-tier Tribunal for Scotland (Housing and Property Chamber). (2024). Repairs. Retrieved from <https://housingandpropertychamber.scot/apply-tribunal/repairs> [accessed 25 January 2024]
- 19 Scottish Government. (20). Social housing - Improving housing standards. Retrieved from [https://www.gov.scot/policies/social-housing/improving-standards/#:~:text=quality%20in%20Scotland.-,Scottish%20Housing%20Quality%20Standard%20\(SHQS\),that%20are%20in%20good%20condition](https://www.gov.scot/policies/social-housing/improving-standards/#:~:text=quality%20in%20Scotland.-,Scottish%20Housing%20Quality%20Standard%20(SHQS),that%20are%20in%20good%20condition) [accessed 25 January 2024]
- 20 Scottish Government. (2023, March 1). Repairing standard: statutory guidance - Annex A – Meeting the Tolerable Standard. Retrieved from <https://www.gov.scot/publications/repairing-standard-statutory-guidance-landlords/pages/10/> [accessed 25 January 2024]
- 21 Scottish Government. (2017, August 2017). Landlord Registration Statutory Guidance for Local Authorities. Retrieved from <https://www.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2017/09/landlord-registration-statutory-guidance-local-authorities-2017-statutory-guidance-local/documents/00524140-pdf/00524140-pdf/govscot%3Adocument/00524140.pdf> [accessed 25 January 2024]
- 22 Scottish Government. (2022, July 4). Renting your property out - Registration. Retrieved from <https://www.mygov.scot/renting-your-property-out/registration#:~:text=It's%20a%20criminal%20offence%20if,your%20local%20council's%20housing%20department.> [accessed 25 January 2024]
- 23 Scottish Government. (2021, December 14). Letting agent regulation (information for landlords). Retrieved from <https://www.mygov.scot/letting-agent-registration-landlords> [accessed 25 January 2024]
- 24 Shelter. (2017, November 29). Failure to register. Retrieved from https://scotland.shelter.org.uk/professional_resources/legal/security_of_tenure/private_landlord_registration/failure_to_register [accessed 25 January 2024]

- 25 Shelter. (2017, December 4). Removal from the register. Retrieved from https://scotland.shelter.org.uk/professional_resources/legal/security_of_tenure/private_landlord_registration/removal_from_the_register [accessed 25 January 2024]
- 26 Scottish Government. (2012, January). Licensing of Houses in Multiple Occupation: Statutory Guidance for Scottish Local Authorities. Retrieved from <https://www.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2012/02/licensing-multiple-occupied-housing-statutory-guidance-for-scottish-local-authorities/documents/licensing-houses-multiple-occupation-statutory-guidance-scottish-local-authorities-pdf/licensing-houses-multiple-occupation-statutory-guidance-scottish-local-authorities-pdf/govscot%3Adocument/Licensing%2Bof%2Bhouses%2Bin%2Bmultiple%2Boccupation%2B-%2Bstatutory%2Bguidance%2Bfor%2BScottish%2Blocal%2Bauthorities.pdf> [accessed 24 January 2024]
- 27 Berry, K. (2021, June 14). Housing: subject profile. Retrieved from <https://digitalpublications.parliament.scot/ResearchBriefings/Report/2021/6/22/57e519e2-55b4-4c58-9723-1d41a5c2a0f0-1#Executive-Summary> [accessed 19 January 2024]
- 28 Berry, K. (2018, May 10). SPICe FAQ – Repairs in Private Rented Property. Retrieved from <https://spice-spotlight.scot/2018/05/10/faq-repairs-in-private-rented-property/> [accessed 19 January 2024]
- 29 Berry, K. (2022, December 5). Dampness in Scottish social housing. Retrieved from <https://spice-spotlight.scot/2022/12/05/dampness-in-scottish-social-housing/> [accessed 19 January 2024]
- 30 Scottish Parliament. (2021, October 13). HOUSING CONDITIONS AND STANDARDS (UPDATED). Retrieved from <https://digitalpublications.parliament.scot/ResearchBriefings/Report/2021/10/13/43a5d8fb-e099-401f-aff6-38f34be2b8ed#c59bf408-3d66-11e8-8e26-000d3a23af40.dita> [accessed 10 April 2024]
- 31 City of Edinburgh Council . (2020, November). The City of Edinburgh Council's Response to the Scottish Government's Consultation on Short Term Lets. Retrieved from <https://www.edinburgh.gov.uk/downloads/file/26365/response-to-the-consultation-on-short-term-lets> [accessed 22 January 2024]
- 32 Scottish Government . (2022, November). Scottish Social Housing Charter. Retrieved from <https://www.gov.scot/publications/scottish-social-housing-charter-november-2022/> [accessed 24 June 2024]
- 33 Scottish Government. (2019, January 31). Scottish secure tenancy: model agreement 2019. Retrieved from <https://www.gov.scot/publications/model-scottish-secure-tenancy-agreement-2019/pages/5/> [accessed 22 January 2024]
- 34 Shelter Scotland. (2023, February 7). Repossession grounds - conduct. Retrieved from https://scotland.shelter.org.uk/professional_resources/legal/security_of_tenure/scottish_secure_tenancy/repossession_grounds_-_conduct#title-5 [accessed 26 June 2024]

- 35 Scottish Government . (2019, May 1). Streamlined eviction process - criminal or antisocial behaviour: statutory guidance for social landlords. Retrieved from <https://www.gov.scot/publications/streamlined- eviction-process-criminal-antisocial-behaviour-statutory-guidance-social-landlords/pages/4/> [accessed 2 April 2024]
- 36 Scottish Government . (2019, May 1). Short Scottish Secure Tenancies for antisocial behaviour and miscellaneous changes: statutory guidance for social landlords. Retrieved from <https://www.gov.scot/publications/short-scottish-secure-tenancies-antisocial-behaviour-miscellaneous-changes-statutory-guidance-social-landlords/pages/3/> [accessed 2 April 2024]
- 37 Scottish Government. (2019, May 1). Short Scottish Secure Tenancies for antisocial behaviour and miscellaneous changes: statutory guidance for social landlords (para 4.10). Retrieved from <https://www.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2019/05/short-scottish-secure-tenancies-antisocial-behaviour-miscellaneous-changes-short-scottish-secure-tenancies-statutory-guidance-social-landlords/documents/short-scottish-secure-tenancies-antisocial-behaviour-miscellaneous-changes-short-scottish-secure-tenancies-statutory-guidance-social-landlords-housing-scotland-act-2001-2014/short-scottish-secure-tenancies-antisocial-behaviour-miscellaneous-changes-short-scottish-secure-tenancies-statutory-guidance-social-landlords-housing-scotland-act-2001-2014/govscot%3Adocument/short-scottish-secure-tenancies-antisocial-behaviour-miscellaneous-changes-short-scottish-secure-tenancies-statutory-guidance-social-landlords-housing-scotland-act-2001-2014.pdf> [accessed 24 June 2024]
- 38 Scottish Parliament. (2024, April 24). Can they fix it? CMA report looks at property factoring arrangements on housing estates. Retrieved from <https://spice-spotlight.scot/2024/04/24/can-they-fix-it-cma-report-looks-at-property-factoring-arrangements-on-housing-estates/> [accessed 30 April 2024]
- 39 Scottish Government. (2021, July 14). Property Factors (Scotland) Act 2011: Code of Conduct for Property Factors. Retrieved from <https://www.gov.scot/publications/property-factors-scotland-act-2011-code-conduct-property-factors-2/> [accessed 22 June 2024]
- 40 Harvie-Clark, S. (2021, September 9). Flats: management, maintenance and repairs. Retrieved from <https://digitalpublications.parliament.scot/ResearchBriefings/Report/2021/9/9/e001b7a4-97b4-11e7-b57f-000d3a23af40> [accessed 20 June 2024]
- 41 Evans, A. (2022, December 15). Property Factors - Frequently Asked Questions. Retrieved from <https://digitalpublications.parliament.scot/ResearchBriefings/Report/2022/12/15/e707079e-18b3-11e9-a576-000d3a23af40#> [accessed 20 June 2024]
- 42 Scottish Government. (2004, October 28). Antisocial Behaviour etc. (Scotland) Act 2004: Guidance on Antisocial Behaviour Orders. Retrieved from <https://www.gov.scot/publications/antisocial-behaviour-etc-scotland-act-2004-guidance-antisocial-behaviour-orders/#3> [accessed 26 January 2024]
- 43 Police Scotland. (2021, June 30). Antisocial behaviour Standard Operating Procedure. Retrieved from <https://www.scotland.police.uk/spa-media/3pul1gjf/antisocial-behaviour-sop-v9.pdf> [accessed 15 February 2024]

- 44 Scottish Government. (2004). Guidance on Antisocial Behaviour Strategies - Antisocialbehaviour etc. (Scotland) Act 2004. Retrieved from <https://webarchive.nrscotland.gov.uk/20190126031745/http://www2.gov.scot/Publications/2003/07/17686/23196> [accessed 22 March 2024]
- 45 Shelter Scotland. (2023, March 17). How to deal with antisocial behaviour by a neighbour. Retrieved from https://scotland.shelter.org.uk/housing_advice/living_with_others/experiencing_antisocial_behaviour [accessed 19 January 2024]
- 46 Citizens Advice Scotland. (2024). Antisocial behaviour. Retrieved from <https://www.citizensadvice.org.uk/scotland/housing/problems-where-you-live-s/antisocial-behaviour-s/> [accessed 19 January 2024]
- 47 Scottish Government. (2004, October 28). Guide to the Antisocial Behaviour etc. (Scotland) Act 2004. Retrieved from <https://www.gov.scot/publications/guide-antisocial-behaviour-etc-scotland-act-2004/#8> [accessed 19 January 2024]
- 48 Scottish Government. (2023, November). Reviewing Scotland's Approach to Antisocial Behaviour - A report by the Scottish Community Safety Network and the Scottish Government. Retrieved from <https://www.gov.scot/binaries/content/documents/govscot/publications/research-and-analysis/2023/11/reviewing-scotlands-approach-antisocial-behaviour/documents/reviewing-scotland-39-s-approach-antisocial-behaviour-report-october-2023/reviewing-scotland-39-s-approach-antisocial-behaviour-report-october-2023/govscot%3Adocument/reviewing-scotland-39-s-approach-antisocial-behaviour-report-october-2023.pdf> [accessed 15 February 2024]
- 49 Harvie-Clark, S. (2022, June 27). Judicial Review. Retrieved from <https://digitalpublications.parliament.scot/ResearchBriefings/Report/2022/6/27/0ea1f532-8a16-11ea-a4bf-000d3a23af40> [accessed 1 March 2024]
- 50 Law Society of Scotland. (2023). Find a Solicitor. Retrieved from <https://www.lawscot.org.uk/find-a-solicitor/> [accessed 15 January 2024]
- 51 Tickell, A. (2022, January). The Continuation of Politics by Other Means: Crowdfunded Litigation in Scotland (2015–2021), *Edinburgh Law Review*, Volume 26 Issue 1, Page 100-106. Retrieved from <https://www.eupublishing.com/doi/full/10.3366/elr.2022.0742> [accessed 16 January 2024]
- 52 *Stair's Laws of Scotland (Stair Memorial Encyclopaedia). Nuisance (Reissue) para. 104* . (2023). (n.p.): LexisNexis.
- 53 *Stair's Laws of Scotland (Stair Memorial Encyclopaedia). (2023). Nuisance (Reissue), para. 39*. (n.p.): LexisNexis.
- 54 *Stair's Laws of Scotland (Stair Memorial Encyclopaedia), NUISANCE (Reissue), para. 67*. (2023). (n.p.): LexisNexis.
- 55 Craig, G. (2020, January 13). Nuisance: when should you worry?. Retrieved from <https://www.lawscot.org.uk/members/journal/issues/vol-65-issue-01/nuisance-when-should-you-worry/> [accessed 22 December 2023]

- 56 Cameron, G. (2005). MAKING SENSE OF NUISANCE IN SCOTS LAW - Northern Ireland Legal Quarterly [Vol. 56, No. 2] . Retrieved from <https://nilq.qub.ac.uk/index.php/nilq/article/download/798/632/1747#:~:text=Following%20Smith's%20view%2C%20nuisance%20could,the%20occupiers%20of%20neighbouring%20property.> [accessed 12 January 2024]
- 57 Brodies. (2020, June 15). What is a nuisance?. Retrieved from <https://brodies.com/insights/alternative-dispute-resolution/what-is-a-nuisance/> [accessed 11 January 2024]
- 58 Jackson Boyd. (2017, May 3). NEIGHBOURS FROM SMELL. Retrieved from <https://www.jacksonboyd.co.uk/neighbours-from-smell/> [accessed 12 January 2024]
- 59 Scottish Law Commission. (2019). Section 53 of the Title Conditions (Scotland) Act 2003. Retrieved from <https://www.scotlawcom.gov.uk/law-reform/law-reform-projects/completed-projects/section-53-of-the-title-conditions-scotland-act-2003/#:~:text=Section%2053%20gives%20implied%20rights,common%20scheme%E2%80%9D%20of%20real%20burdens.> [accessed 16 January 2023]
- 60 Brodies. (2023, March 23). Lands Tribunal varies title condition to allow care home to operate. Retrieved from <https://brodies.com/insights/real-estate-litigation/lands-tribunal-varies-title-condition-to-allow-care-home-to-operate/> [accessed 11 January 2024]
- 61 Morton Fraser. (2013, July 15). Do you have sufficient interest to enforce a Use Restriction on your neighbour's property?. Retrieved from <https://www.morton-fraser.com/insights/do-you-have-sufficient-interest-enforce-use-restriction-your-neighbours-property> [accessed 12 January 2024]
- 62 *Stair's Law of Scotland (Stair Memorial Encyclopaedia). Obligations (Volume 15) para. 255.* (2023). (n.p.): LexisNexis.
- 63 Scottish Government. (2009, January 26). Nuisance provisions of the Public Health etc (Scotland) Act 2008: guidance. Retrieved from www.gov.scot/publications/guidance-accompany-statutory-nuisance-provisions-public-health-etc-scotland-act/pages/5/ [accessed 19 April 2023]
- 64 Police Scotland. (2024). Loud Noise. Retrieved from <https://www.askthe.scottish.police.uk/view-category/?id=%20ce59a670-06f6-eb11-94ef-002248405a51> [accessed 21 February 2024]
- 65 Scottish Environmental Protection Agency . (2024). Responsibilities for flooding. Retrieved from <https://beta.sepa.scot/flooding/prepare-for-flooding/responsibilities-for-flooding/#LA> [accessed 1 March 2024]
- 66 Sutherland, R. (2015, February 3). FLOOD MANAGEMENT CASE LAW REVIEW Sniffer Conference 3rd and 4th February 2015. Retrieved from <https://www.terrafirmachambers.com/articles/FloodManagementCaseLawReview.pdf> [accessed 1 March 2024]
- 67 Department for Environment, Food & Rural Affairs. (2024). Smoke control areas. Retrieved from <https://smokecontrol.defra.gov.uk/fuels.php?country=s> [accessed 26 February 2024]

- 68 House of Commons Library. (2015, March 27). Smoking in public places. Retrieved from <https://commonslibrary.parliament.uk/research-briefings/sn04414/> [accessed 26 February 2024]
- 69 Scottish Government. (2018, June 20). Raising Scotland's tobacco-free generation: our tobacco control action plan 2018. Retrieved from <https://www.gov.scot/publications/raising-scotlands-tobacco-free-generation-tobacco-control-action-plan-2018/pages/3/>
- 70 Scottish Government. (2009, September 18). Planning Circular 10/2009: Planning Enforcement. Retrieved from <https://www.gov.scot/publications/planning-circular-10-2009-planning-enforcement/pages/14/#:~:text=Section%20179%20of%20the%201997,the%20amenity%20of%20the%20area.> [accessed 28 February 2024]
- 71 East Dunbartonshire Council. (2021, March 23). NOTICE REQUIRING PROPER MAINTENANCE OF LAND (AMENITY NOTICE) - REFERENCE NUMBER: ED2022/0041/ENF . Retrieved from https://www.eastdunbarton.gov.uk/filedepot_download/86332/4180 [accessed 26 June 2024]
- 72 North Lanarkshire Council . (2024). Private sector housing maintenance. Retrieved from <https://www.northlanarkshire.gov.uk/housing/private-housing/owners/private-sector-housing-maintenance#:~:text=It%20is%20good%20practice%20to,to%20oversee%20any%20comm on%20works.> [accessed 28 February 2024]
- 73 Scottish Government. (2009, March 24). <https://webarchive.nrscotland.gov.uk/20190119202637/http://www2.gov.scot/Publications/2009/03/25154634/3>. Retrieved from <https://webarchive.nrscotland.gov.uk/20190119202637/http://www2.gov.scot/Publications/2009/03/25154634/3> [accessed 27 February 2024]
- 74 Shelter Scotland. (2014, December 29). Maintenance orders. Retrieved from https://scotland.shelter.org.uk/professional_resources/legal/housing_conditions/local_authority_duties_and_powers_for_disrepairs/maintenance_orders [accessed 28 February 2024]
- 75 Shelter Scotland. (2020, February 13). Infestation. Retrieved from https://scotland.shelter.org.uk/professional_resources/legal/housing_conditions/hazards/infestation#:~:text=Under%20the%20Prevention%20of%20Damage,of%20structural%20or%20other%20works. [accessed 28 February 2024]
- 76 Scottish Parliament. (2023, October 5). Trees, forests and hedges - some frequently asked questions. Retrieved from <https://digitalpublications.parliament.scot/ResearchBriefings/Report/2023/10/5/8f444a83-45fd-4ec1-bda9-7028e732c734-1#Executive-Summary> [accessed 10 January 2024]

Scottish Parliament Information Centre (SPICe) Briefings are compiled for the benefit of the Members of the Parliament and their personal staff. Authors are available to discuss the contents of these papers with MSPs and their staff who should contact Angus Evans on telephone number 85356 or angus.evans@parliament.scot.

Members of the public or external organisations may comment on this briefing by emailing us at SPICe@parliament.scot. However, researchers are unable to enter into personal discussion in relation to SPICe Briefing Papers. If you have any general questions about the work of the Parliament you can email the Parliament's Public Information Service at sp.info@parliament.scot. Every effort is made to ensure that the information contained in SPICe briefings is correct at the time of publication. Readers should be aware however that briefings are not necessarily updated or otherwise amended to reflect subsequent changes.

