



Department
for Environment
Food & Rural Affairs



Llywodraeth Cymru
Welsh Government

Environmental Permitting (England and Wales) Regulations 2016

Interaction between Environmental Permitting and local authorities' statutory nuisance duties

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Summary

This reference document sets out government's interpretation of the relationship between Environmental Permitting and local authorities' statutory nuisance duties in England and Wales.

This relates to:

- activities subject to permits granted by the Environment Agency, Natural Resources Wales or local authorities, or excluded or exempt activities under the Environmental Permitting (England and Wales) Regulations 2016 (the EPR); and
- local authorities' powers and duties relating to statutory nuisance under Part III of the Environmental Protection Act 1990 (the EPA).

This document expands on paragraph A.1.19 of the EPR core reference document.

Statutory nuisance

Local authorities (under Part III EPA) must:

- inspect their area from time to time, to detect anything that might be a statutory nuisance;
- take such steps as are reasonably practicable to investigate any complaint of a statutory nuisance made by a person living within their area; and
- if satisfied that a statutory nuisance exists or is likely to occur or recur, serve an abatement notice (in accordance with section 80 EPA).

A local authority **may** bring summary proceedings¹ (prosecute) a person who contravenes, or fails to comply with an abatement notice without reasonable excuse.

However, where the same event might also be prosecuted by the regulator under the EPR, a local authority must obtain the Secretary of State's or Welsh Ministers' consent before prosecuting under Part III EPA.

Section 79(10) EPA states:

¹ The EPA does not define "summary proceedings", but government considers that it means prosecution in a Magistrates' court (*R (Ethos Recycling) v Barking and Dagenham Magistrates' Court* (2009) EWHC 2885 Admin).

"A local authority shall not without the consent of the Secretary of State [or, in Wales, Welsh Ministers] institute summary proceedings under this Part in respect of a nuisance falling within paragraph (b), (d), (e), (fb) or (g) ... of subsection (1) above if proceedings in respect thereof might be instituted under ... regulations under section 2 of the Pollution Prevention and Control Act 1999".

The EPR were made under section 2 of the Pollution Prevention and Control Act 1999, and this provision aims to prevent the operator facing two separate prosecutions over the same event.

The statutory nuisances referred to by section 79(10) EPA are, so far as they are prejudicial to health or a nuisance:

- smoke emitted from premises (b);
- any dust, steam, smell or other effluvia arising on industrial, trade or business premises (d);
- any accumulation or deposit (e);
- artificial light emitted from premises (fb); and
- noise emitted from premises (g).

Local authorities do **not** need consent from the Secretary of State or Welsh Ministers in exercising their functions under Part III EPA, including taking actions up to and including serving an abatement notice.

Questions to ask

Where an activity is subject to an environmental permit – at least for certain types of regulated facility - or waste exemption, it is quite likely that the regulator could prosecute in relation to the cause of a statutory nuisance mentioned in section 79(10) EPA. But for other activities, this is less certain and, in every case, the local authority needs to address the following two questions:

1. **Is the nuisance one listed in section 79(10) EPA?** Local authorities require prior consent before prosecuting only where one or more of those nuisances is involved. Read the list of nuisances in the section *Statutory nuisance* above.
2. **Could proceedings be brought under the EPR?** In other words, does the permit or exemption in question actually allow the regulator to prosecute? For example, if the conditions of a specific permit do not in fact address the statutory nuisance (or there is no condition implied by law), then the local authority does not need prior consent.

Environmental Permitting

In order to decide when to seek permission to prosecute, local authorities need to understand when an event could also lead to a prosecution under the EPR.

The EPR (see [regulation 8](#)) apply to a wide range of activities, including “regulated facilities” that require a permit, and “exempt facilities” and “excluded waste operations” that do not.

Activities requiring a permit

It is an offence under regulation 38 EPR to contravene regulation 12 by operating a regulated facility, or to cause or knowingly permit a water discharge activity or a groundwater activity, except under and to the extent authorised by a permit. (“Regulated facility” as defined by regulation 8 includes (among others) installations, waste operations and mining waste operations.) Regulation 38 also makes it an offence to fail to comply with, or to contravene an environmental permit condition.

Environmental permits for some regulated facilities, such as waste operations, installations and mining waste operations, will normally include specific conditions that address potential relevant statutory nuisances (see the list in the section *Statutory nuisance* above). These permits allow the regulator to take enforcement action where such conditions are breached. It follows that, normally, a local authority will need prior permission to prosecute under Part III EPA.

Other types of regulated facility, such as water discharge activities, groundwater activities or radioactive substances activities also have permits. However, those permits will **not** normally include conditions or objectives that would address the relevant statutory nuisances. If a statutory nuisance is caused by these types of activity, it is likely that a local authority will **not** need permission to prosecute, as we explain in the following sections.

This is, however, only a rule of thumb: local authorities considering prosecution under Part III EPA should liaise with the EPR regulator to determine whether in fact the permit addresses the relevant statutory nuisance.

Exempt or excluded activities

The EPR also include a series of exclusions and exemptions that mean operators, as long as the exclusion or exemption applies to their activity, do not need to obtain a permit. The absence of a permit does not, however, automatically remove the requirement for prior permission for a prosecution by a local authority under Part III EPA.

This is because, in some cases, the terms of an exemption should in fact ensure that no statutory nuisance arises. If the activity in fact causes a statutory nuisance, the exemption would no longer apply.

For example, exempt waste operations must, under paragraph 4(1) of Schedule 2 to the EPR, be carried out in a way that is consistent with the need to attain the objectives in

Article 13 of the Waste Framework Directive. These are that waste management is carried out without endangering human health, without harming the environment and, in particular:

- without risk to water, air, soil, plants or animals;
- without causing a nuisance through noise or odours; and
- without adversely affecting the countryside or places of special interest.

Compliance with these objectives should in principle prevent any statutory nuisance.

Where an exemption or exclusion no longer applies to an activity, the requirement for a permit immediately arises, and the operator is acting unlawfully in continuing to operate without one. The EPR regulator may be able to prosecute.

What this means for a local authority considering a prosecution under Part III EPA is explained in the next section *Prosecuting for a failure to obtain a permit*.

Finally, activities that are subject to a water discharge, groundwater, radioactive substances or flood risk exemption will **not** normally be subject to requirements that would prevent a statutory nuisance, and local authorities are therefore unlikely to need permission to prosecute under Part III EPA. However, it is always sensible for local authorities to liaise with the EPR regulator, to confirm whether they can prosecute without prior permission.

Prosecuting for a failure to obtain a permit

If an installation, mobile plant or waste operation is being operated without the necessary environmental permit or registration, the EPR regulator can take appropriate action for that offence. As we explained in the previous section, that may also include operation of an activity that is subject to a waste exemption, but where the terms of that exemption are being breached. However, local authorities also need to consider whether the prosecution would directly relate to the relevant statutory nuisance:

- If the EPR regulator prosecutes for a failure to obtain the relevant permit or register the relevant exemption, as opposed to for causing a statutory nuisance, this does **not** constitute proceedings for the purpose of section 79(10) EPA 1990. Where this is the case, the local authority does **not** need permission to prosecute.
- But if the prosecution is because the operator has failed to meet the requirements for an exempt waste operation **because the activity is causing a statutory nuisance**, then it **is** for the purposes of section 79(10) EPA, and the local authority **will** need prior permission to prosecute under Part III EPA.

Local authorities should therefore liaise with the EPR regulator to confirm the position.