Neighbourhood noise / report by the Working Group on the Noise Abatement Act.

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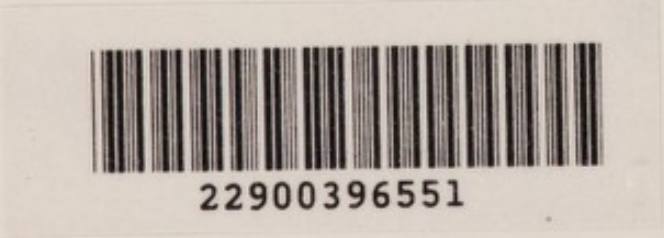

The Noise Advisory Council

Neighbourhood Noise

Report by the working group on the Noise Abatement Act

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SUMMARY AND RECOMMENDATIONS

Introduction

1. Noise is becoming increasingly recognised as an unjustifiable interference with ordinary human comfort and well-being. While noise cannot, of course, be totally eliminated, much can and should be done to reduce it. The law should be framed so as to provide practical and effective assistance to this end (paragraph 40).

2. The Noise Abatement Act 1960 provided for controls which were applicable to a wide variety of sources, ranging from factories and pneumatic drills to ice-cream vans. However experience over the years has revealed a number of deficiencies in the present Act. Accordingly, we were appointed by the Noise Advisory Council in November 1970 ' to study further the working of the Noise Abatement Act ; to formulate proposals for strengthening it ; and to report ' (paragraphs 41 and 42).

The Scope of the Report

3. We have thought it right to regard industrial noise as it affects workers, aircraft noise and traffic noise as outside our terms of reference. There remain a great variety of sources of noise which may cause disturbance and annoyance to the general public. We refer to these collectively as ' neighbourhood noise ' (paragraphs 54 and 55).

The Present Working of the Act

4. We see the Noise Abatement Act 1960 as a necessarily cautious first venture into the field of general legislation on neighbourhood noise. It attempted no more than to extend to noise the well-established concept of ' statutory nuisance ' with some minor adaptation of the accepted procedures. Within those limits it has proved its worth. But in the light of the continuing growth of public sensitivity to noise and of the corpus of knowledge and experience built up by the local authorities in operating the Act, those limits can now be seen to have been somewhat narrow ; and a number of other shortcomings have become apparent. We believe that it is now possible to see the way forward to a new and somewhat more radical measure which would at the same time reinforce the existing nuisance provisions ; offer the

prospect of more comprehensive action at least in areas where there is an acute neighbourhood noise problem ; and reflect the growing public demand that the avoidance of unnecessary noise should be recognised as an essential element in good citizenship (paragraph 93).

Prevention

5. It should be a duty of local authorities in the exercise of development control powers to take account of the noise implications of proposed new development (among other factors) in arriving at their decisions (paragraph 98).

6. Some local planning authorities are now imposing a condition laying down the maximum noise levels to be permitted at the boundary of the site. A condition in this form should be imposed whenever, in its absence, there is reason to fear the creation of a new noise problem (paragraph 100).

7. It is important that local planning authorities should make it a regular practice to consult the public health authority on the noise implications of planning applications ; new guidance along these lines should be issued by the Secretary of State for the Environment (paragraph 101).

8. The making of building regulations with regard to insulation to the outside would not be appropriate. The acoustic characteristics of a proposed building are, however, clearly a relevant consideration which will need to be taken into account by the local authority in considering the noise implications of granting planning permission (paragraph 105).

9. It should be made possible for the licensing justices to attach conditions for the prevention of noise nuisance on renewal as well as on first granting of a liquor licence (paragraph 107).

10. Any advantage there may be in imposing on industrialists a requirement to notify their local authority of proposed installations of new equipment or changes in working methods would be outweighed by the administrative complexities (paragraph 115).

Abatement—A Local or Central Responsibility?

11. Responsibility for the enforcement of statutory requirements for the protection of the general public against excessive neighbourhood noise should remain with the local authorities. At the same time special measures to ensure the progressive quietening of inherently noisy industrial processes and machinery are urgently needed ; such measures can best be initiated in the context of the safety, health and welfare of workers and we recommend

that the Council convey the proposals submitted to us by the CBI, together with our observations on them, to the Committee on Safety and Health at Work, to the Department of Employment and, through them, to the Noise Sub-Committee of the Industrial Health Advisory Committee (paragraph 129).

The Nuisance Approach

12. A new Noise Abatement Act should include provisions enabling local authorities not merely to deal with individual premises which are causing a noise nuisance but to deal with all premises which are (individually and collectively) creating an excessively high level of noise in the neighbourhood of houses and other noise-sensitive establishments (paragraph 136).

A General Duty

13. We believe that public opinion now accepts that there is a general duty on the citizen not to impose unnecessary noise on his neighbours ; and would welcome the declaration of such a duty in a new Noise Abatement Act (paragraph 141).

14. The duty would need to be formulated in terms of an obligation to use " the best practicable means " to minimise the emission of noise (paragraph 142).

15. Any general duty to minimise noise emissions should be subject to a general saving for noise necessary on safety grounds or arising in cases of emergency. This saving should be of universal application (paragraph 210).

16. To look to the direct enforcement of a general duty (in the broad terms in which it would necessarily have to be expressed) as the main pillar of a new Noise Abatement Act, would be unrealistic. Nevertheless we believe that the statutory declaration of a broadly-stated general duty to minimise the emission of noise, coupled with provision for compliance therewith to be a sufficient defence in any proceedings under other parts of the Act, would serve a valuable purpose in giving the stamp of parliamentary authority to the growing recognition of quiet as a social good to which all have a duty to contribute ; and so providing a new and more positive context for the day-to-day decisions of the courts in noise proceedings (paragraph 147).

Areas of Special Control

17. Control of neighbourhood noise by means of nuisance procedures could usefully be supplemented by the application of more comprehensive measures within areas of special control (paragraph 160).

18. We suggest that areas of special control be known as NOISE ABATEMENT ZONES, and that statutory notices and court orders under the special powers applying in those zones should be known respectively as NOISE ABATEMENT NOTICES and NOISE ABATEMENT ORDERS. To avoid confusion this would necessitate a change of nomenclature under noise nuisance procedure, notices and orders under that procedure being known as NOISE NUISANCE NOTICES and NOISE NUISANCE ORDERS (paragraph 161).

19. The purpose of the special regime in Noise Abatement Zones would be to reduce (or perhaps in some cases to hold steady) the ambient noise level. We have, however, been unable to devise any workable system of enforcement directly related to the ambient level. We think that the desired result can best be achieved by setting a target level for noise emissions for premises and requiring firms to take whatever measures are necessary (within the limits set by the general duty we have proposed in Chapter 8) to bring their emissions down to that level. It would be open to the authority to specify the measures to be carried out, as under the current nuisance procedure (paragraph 165).

20. It would be a defence in any proceedings to show that the general duty was already being complied with. We recommend, however, that in the interpretation of best practicable means for this purpose the fact that the premises are within a Noise Abatement Zone should be included among the considerations to be taken into account (paragraph 168).

21. On planning permission being given in a Noise Abatement Zone the local authority should serve notice on the prospective occupier that compliance with the target emission level would be required *ab initio* (paragraph 169).

22. Local authorities should be free to specify different target emission levels for different parts of a proposed Noise Abatement Zone, for different types of premises and for day-time and night-time operation ; the proposed target levels should be laid down in the order designating the zone ; and the order should be subject to confirmation by the Secretary of State for the Environment after considering any objections (paragraph 170).

23. It would be unreasonable to put too short a time-limit on noise abatement notices requiring works to be carried out. We suggest a minimum period of six months. It should be made possible for appeal against a noise abatement notice to be lodged within, say, three months of the service of the notice (paragraph 171).

24. The special powers available in Noise Abatement Zones should be additional to the local authority's nuisance powers (paragraph 174).

25. If a noise abatement notice in respect of particular premises is not accompanied by a noise nuisance notice, the local authority should not subsequently be entitled to serve a noise nuisance notice in respect of those premises unless they could show that the noise emitted had increased since the original abatement notice was served (paragraph 174).

Modifications to Nuisance Procedures

26. There should in all cases be a right of appeal to the magistrates' court against noise nuisance notices (paragraph 181).

27. On the service of a noise nuisance notice the recipient should have to decide quickly (say within a week) whether he wishes to challenge the requirements of the notice. If so he must enter an appeal within that period. The court will then consider his objections and either quash the notice or make a noise nuisance order. If, however, no appeal is entered within the period allowed the local authority should be able, without further delay, to seek an order from the court enforcing the notice and the court should normally be required to make such an order (paragraph 183).

28. The right of appeal to Quarter Sessions against a noise nuisance order by the magistrates' court should be retained only when the order has been made on an appeal by the recipient of a noise nuisance notice (paragraph 184).

29. It has been suggested that power to serve a noise nuisance notice where immediate action is needed should be delegated by the local authority to officers. Unless in the meantime a general power has been introduced enabling this to be done, specific power should be included in a new Noise Abatement Act (paragraph 186).

30. We think that, as a general rule, if there is reasonable prima facie ground for complaint, an aggrieved person should have no difficulty in finding two more who are willing to associate themselves with him in making a complaint to the magistrates; and we consider that any change in the law in this respect would tend to encourage frivolous or vexatious complaints. However, there could be situations in which only one or two occupiers of premises were exposed to the alleged nuisance and we recommend that in those circumstances the court should have discretion to receive and proceed upon a complaint from the one or two occupiers in question (paragraph 189).

31. The maximum penalties available under the nuisance provisions (and also under the special provisions which we propose within noise abatement zones and in relation to demolition and construction works) should be set at a realistic level (paragraph 190).

Noise from Demolition and Construction Works

32. A person wishing to invite tenders for a construction or demolition contract (or a contractor wishing to tender for such a contract) should be enabled to notify the local authority and to require them within a reasonable period (say two weeks) to serve a statutory notice upon him specifying the requirements to be observed in the execution of the works for the prevention or mitigation of nuisance from noise or vibration. It should also be open to a local authority to serve such a notice in respect of works of which they had not had formal notification. There should be provision for prompt appeal to the magistrates' court against the requirements of a notice ; and in appeal proceedings it should be open to the appellant to show that the requirements sought to be imposed were in excess of the general duty (paragraph 198).

33. We think that it would be right to exclude demolition and construction works in respect of which a statutory notice of requirements has been served from the matters on which private citizens may complain direct to the courts under the Act. But if a contractor failed to comply with the requirements of a notice or of a court order, the local authority (or an officer of the authority, under delegated powers) should be able to apply to a justice of the peace who would be empowered if he thought it right after inspecting the works, to order their suspension until such time as the contractor could satisfy a magistrates' court that he was able and willing to comply with those requirements. Similarly if the local authority had not been notified in advance of the works and had not served a notice, but were satisfied that a nuisance was being caused, they should be able to apply to a justice of the peace to order the suspension of the work until the magistrates' court had imposed requirements for the prevention or mitigation of the nuisance (or had decided not to impose any such requirements) (paragraph 199).

Statutory Undertakers

34. In a new Noise Abatement Act there should be no exemption from proceedings for statutory undertakers as such ; but in considering the merits of any requirement which a local authority seeks to impose on (or any complaints by private citizens against) an undertaker the court should have

regard to the compatibility of any order they may be disposed to make with any duty imposed on the undertaker by law (otherwise than under the Noise Abatement Act) (paragraph 215).

Noise in Public Places

35. A comprehensive review of the model byelaws relating to noise in public places should be put in hand in order to ensure that they are adequate in scope and form to meet contemporary needs (paragraph 219).

Machines : Limitation and Rating of Noise Output

36. A new Noise Abatement Act should empower the Secretary of State to require by regulation the sound power level of machinery offered for sale in the United Kingdom to be specified (paragraph 226).

37. A comprehensive statutory framework for the progressive alleviation of the neighbourhood noise problem over the next 10 to 15 years should include a reserve power for the Secretary of State to introduce by regulation (subject to the approval of Parliament) statutory limitations on the noise output of specified classes of machinery (paragraph 228).

38. It should be made an offence (carrying liability to a fine on summary conviction and to further daily fines for as long as the offence continues thereafter) to use, or allow the use of, certain types of mobile equipment unmuffled ; and the Secretary of State for the Environment should be empowered to specify by regulation the classes of equipment to which this provision shall apply (paragraph 229).

39. The provisions we would wish to see incorporated in a new Noise Abatement Act are set out in more detail in the " Outline of Suggested Provisions " following Chapter 14 of this Report.

CHAPTER ONE

INTRODUCTION

40. **Noise is becoming increasingly recognised as an unjustifiable interference with ordinary human comfort and well-being. While noise cannot, of course, be totally eliminated, much can and should be done to reduce it. The law should be framed so as to provide practical and effective assistance to this end.**

41. **The Noise Abatement Act 1960** was the first general legislation in this country for the protection of the public from noise disturbance. **It provided for controls which were applicable to a wide variety of sources, ranging from factories and pneumatic drills to ice-cream vans. Experience over the years** has confirmed that legislation of this sort has a valuable part to play, but **has revealed a number of deficiencies in the present Act.**

42. The working of the Act had therefore a pressing claim to be selected by the Noise Advisory Council as an area for detailed study. **Accordingly, we were appointed by the Council in November 1970 "to study further the working of the Noise Abatement Act; to formulate proposals for strengthening it; and to report".**

43. In the course of our nine formal meetings we have had the benefit of discussions with representatives of the Confederation of British Industry, the Association of Public Health Inspectors, and the British Railways Board. In addition, we have paid a visit to Birmingham where, under the guidance of Mr. F. Reynolds (Chief Air Pollution and Noise Abatement Officer) and with the ready co-operation of a number of industrial and commercial companies operating in the city, we were able to study a wide range of noise abatement problems on the ground. We have also discussed our proposals with the Law Commission.

44. In 1969 the then Ministry of Housing and Local Government, and the Welsh Office, invited local authorities to report on the extent and effectiveness of the measures they had taken to deal with noise from industry—and in particular on any difficulties which they had encountered either because of inadequacies in the law or from any other cause. Reports were received from over 60 per cent of all authorities. Among those replying were over 80 per cent of all County and London Borough Councils. The information in these reports, many of them supported by detailed case studies, has assisted us greatly in arriving at an understanding of the way in which the Noise Abatement Act has operated over the past eleven years and in identifying features of the Act to which our attention should be particularly directed.

45. In arriving at our recommendations we have tried to strike a judicious balance between the interests of the noise sufferer and the noise-maker. But of course everyone, at different times and in different circumstances, both makes and suffers from noise. We are conscious that it has not been possible for us to visualise and take account of all the ways in which any new Noise Abatement Act would impinge upon the commercial and industrial life of the country and on the private life of individuals.

46. We do not expect that any changes in the Noise Abatement Act will of themselves produce immediate or dramatic results. We recognise that the legal enforcement of noise restrictions will always present practical difficulties and that the support of public opinion is essential if a real improvement is to be achieved. We trust that our proposals will receive that support.

47. We hope that, if the Council are disposed to regard our proposals as providing, *prima facie*, an acceptable basis for the formulation of a new Noise Abatement Act, they will think it right to give the general public and interested bodies an opportunity to study and comment upon our recommendations.

48. Our report is based primarily on English and Welsh noise abatement legislation and experience. The position in Scotland is broadly similar. Certain differences however arise, mainly in consequence of the distinctive nature of the Scottish statutory framework and administrative and judicial systems. These differences are discussed in Appendix A to the Report.

CHAPTER TWO

THE SCOPE OF THE REPORT

49. The Noise Abatement Act 1960 is broadly concerned with noise as it affects the general public and is susceptible of control by local authorities.

50. Measures to protect the safety, health and welfare of people working in the premises on which noise is generated are a matter for central government—mainly under the Factories Act 1961 (enforced by HM Factory Inspectorate); and under the Offices, Shops and Railway Premises Act 1963 (enforced by local authorities except for Crown and local authority premises). No regulations with regard to noise have yet been made under these Acts. However a committee appointed by the Secretary of State for Employment and Productivity in 1970, under the chairmanship of Lord Robens are currently reviewing the whole field of safety and health at work; and a sub-committee of the Industrial Health Advisory Committee (which advises the Secretary of State) are considering what action should be taken to prevent loss of hearing of employed persons due to industrial noise.

51. Aircraft noise is clearly not susceptible of control by local authorities (except in so far as a small number of such authorities happen also to be airport owners) and is expressly excluded from the Noise Abatement Act. The noise certification of aircraft types is a matter for the Secretary of State for Trade and Industry under section 19 of the Civil Aviation Act 1968. He also has powers to control aircraft noise at airports owned by the British Airports Authority[1] and recently announced his intention to seek similar powers in relation to other airports[2].

52. The impact of motor vehicle noise on a particular locality is a function of

(*a*) the inherent noisiness of vehicles;

(*b*) the way they are maintained and driven ; and

(*c*) the quantity and distribution of traffic on roads in the locality.

The first two of these factors are governed by regulations under the Road Traffic Acts—the enforcement of construction standards being necessarily a matter for central government ; and of limitations on noise from vehicles in use, for the police authorities. The amount of traffic using particular roads may be directly controlled by local authorities under highway powers (by closure or restriction of access), and may be indirectly influenced by, for example, the provision of alternative routes.

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(1) British Airports Authority Act 1965: Section 14.
(2) Hansard 26th April 1971: vol. 816 no. 128 col. 35.

53. We do not think that the Noise Abatement Act was intended to operate on noise from road vehicles and we are not aware that it has been so used. We are of the opinion that this aspect of the noise problem should continue to be dealt with under other powers.

54. Against this background, **we have thought it right to regard industrial noise as it affects workers, aircraft noise and traffic noise as outside our terms of reference.**

55. **There remain a great variety of sources of noise which may—and frequently do—cause disturbance and annoyance to the general public in their homes and going about their lawful occasions.** They include, for example:

factory noise ;

noise from demolition, construction and road works ;

noise from ventilation and air-conditioning plant in buildings of all kinds ;

noise from sports, entertainment and advertising ;

human noise arising from lack of consideration for others (loudspeakers, noisy parties, slamming of car doors and the like).

In the remainder of our report, we refer to these types of noise collectively as " neighbourhood noise ".

56. Some of them may be the subject of local byelaws ; any of them might be the subject of proceedings for an injunction at common law. But for all of them the Noise Abatement Act 1960 has provided, for the first time, general statutory powers under which action may be taken by a public authority to secure their abatement.

CHAPTER THREE

THE NOISE ABATEMENT ACT 1960

57. This was the first public general Act to deal specifically with noise. Provisions along the same lines had, however, appeared in a number of local Acts at various times from about 1930 onwards. These related to the abatement of noise nuisances generally and to restrictions on the operation of loudspeakers in the streets.

Noise Nuisance (Section 1)

58. This section provides that noise or vibration which is a nuisance shall be a statutory nuisance, and applies with certain modifications the statutory nuisance provisions in Part III of the Public Heath Act 1936.

59. Nuisance in general is nowhere defined by statute but is a well-established concept in common law. It represents an "unlawful interference with a person's use or enjoyment of land, or of some right over or in connection with it"[1]. The nature and extent of interference which constitutes a nuisance has been described, with particular reference to noise[2], as follows:

> ". . . every person is entitled as against his neighbour to the comfortable and healthful enjoyment of the premises occupied by him and in deciding whether, in any particular case, his right has been interfered with and a nuisance thereby caused, it is necessary to determine whether the act complained of is an inconvenience materially interfering with the ordinary physical comfort of human existence not merely according to elegant or dainty modes and habits of living but according to plain and sober and simple notions obtaining among English people."

60. The broad outlines of the procedures laid down in the Public Health Act 1936 as applied by the Noise Abatement Act, for the abatement of noise nuisance are as follows.

61. All local authorities are required to cause their district to be inspected from time to time for the detection of nuisance from noise or vibration (1936 S. 91).

62. Where they are satisfied of the existence of such a nuisance they are required to serve an abatement notice on the person causing the nuisance

(1) Reed *v* Lyons & Co (1945) KB216; Newcastle-under-Lyme Corporation *v* Wolstanton Ltd (1947) Ch 427; Howard *v* Walker (1947) KB 860.

(2) Walker *v* Selfe (1851) 4 De G & S 315 322; Vanderpant *v* Mayfair Hotel (1930) 1 Ch. 138 (at p. 165); Halsey *v* Esso Petroleum (1961) 1 WLR 683; Hampstead & Suburban Properties *v* Diomedous (1969) 1 Ch. 248.

(or, if he cannot be found, on the owner or occupier of the premises on which it arises). The notice will require him to abate the nuisance and, where building or other works are the appropriate means of doing this, will specify the works that may be necessary (1936 S.93). It will normally also specify the time within which its requirements are to be complied with.

63. If the abatement notice is not complied with " or if the nuisance, although abated since the service of the notice, is, in the opinion of the local authority, likely to recur in the same premises ", the local authority must bring " complaint " proceedings in the magistrates' court for its enforcement.

64. If the magistrates, on complaint, are satisfied that a nuisance still exists or, although abated, is likely to recur on the same premises, they must make a " nuisance order " ; and where appropriate may impose a fine in respect of default in complying with the abatement notice. The nuisance order will require the abatement, and/or prohibit the recurrence of the nuisance ; and require the execution of any works necessary for either purpose (1936 S.94).

65. Any person who fails without reasonable excuse to comply with, or knowingly contravenes, a nuisance order is liable to a fine and a continuing daily penalty for as long as the offence continues. In addition the local authority may themselves do whatever is necessary to execute the order (1936 S.95).

66. There is provision for appeal to Quarter Sessions[1] against a nuisance order (1936 S. 301).

67. A local authority who are of the opinion that the summary proceedings set out above would afford an inadequate remedy for a noise nuisance may take action in the High Court for its abatement or prohibition (1936 S. 100).

68. An abatement notice (paragraph 62 above) cannot be served in respect of a noise nuisance which has ceased at the time of service. However, under the Public Health (Recurring Nuisances) Act 1969 a local authority may serve a " prohibition notice " if they are satisfied that a noise nuisance (though it has ceased) is likely to recur in the same premises. Subsequent enforcement procedure follows, *mutatis mutandis*, the same course as for an abatement notice.

69. Any three or more persons who, as occupiers of land or premises are aggrieved by a noise nuisance may complain direct to a magistrate and the proceedings in the magistrates court will then follow the course set out in 64–66 above (1936 S. 99 and 1960 S. 1(2)(*a*)).

70. In any of the proceedings set out above, if the alleged nuisance is caused in the course of a trade or business it is a defence to prove that the best practicable means have been used for preventing or counteracting the effect of the noise or vibration. (1960 S. 1(3)). In deciding whether the best practicable means have been taken the court is required to have regard to cost and to local conditions and circumstances. (1936 S. 110(2)).

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(1) Shortly to be replaced by the Crown Court.

71. The maximum penalties for offences mentioned above are currently (Criminal Justices Act 1967 S. 92 and Schedule III Part I):

For failure to comply with an abatement or prohibition notice—£20.

For failure to comply with a nuisance order—£50 and £5 per day.

72. No notice can be served or proceedings taken in respect of noise or vibration caused by statutory undertakers in the exercise of their statutory powers. (1960 S. 1(4)) In addition, as mentioned in Chapter 2 above, none of the provisions of the Noise Abatement Act applies to noise or vibration caused by aircraft.

73. The procedures and remedies summarised above are in addition to and not in substitution for the remedies available at common law when noise is actionable as a nuisance.

Loudspeakers (Section 2)

74. This section prohibits the use of loudspeakers in the streets at any time for the purpose of advertising any entertainment, trade or business, and between 9 p.m. and 8 a.m., for any other purpose. There are exceptions for public service vehicles, car radios, travelling showmen etc, and for emergencies. In addition there is an exception for ice-cream chimes operated between noon and 7 p.m. so as not to cause annoyance. An offence under the section incurs liability to a fine not exceeding £10. Proceedings may be instituted by the local authority.

CHAPTER FOUR

THE PRESENT WORKING OF THE ACT

Administrative Arrangements

75. Local authority officers investigate complaints of nuisance from noise or vibration ; and advise the appropriate committee of the local authority on abatement measures and where necessary on the service and enforcement of abatement notices.

76. The incidence of noise nuisance problems varies considerably from area to area ; our impression is, however, that those authorities who have major noise problems are taking their statutory responsibilities seriously, and act on the Wilson Committee's recommendation[1] that training in the problems of noise control and in methods of measuring noise should be made available to all local authority officers concerned.

77. We have been impressed, in particular, by the evidence we have seen of successful co-operation between local authorities and industrialists in devising and implementing remedies for industrial noise problems. Experience gained in one industrial context can frequently be applied in other and quite different situations. However, some measures to mitigate the effects of factory noise on people outside (e.g. insulation of structures) may have adverse implications for the working environment within the factory. It is satisfactory that HM Factory Inspectorate make their knowledge and experience available to local authorities and help them as far as possible in dealing with industrial noise ; and that before a local authority take action against noise from industrial premises, they generally consult the Factory Inspector. It may happen, of course, that the Factory Inspector will, himself, be unable to advise—but in that case he will be able to suggest sources from which the necessary specialist advice can be obtained. (Factory Inspectors for their part have been asked to consult the local authority before making recommendations for noise reduction within a factory which might result in increased noise levels outside it.)

Procedure

78. Noise abatement action by local authorities is most commonly prompted by complaints from local people about a particular noise source which is causing them annoyance. All such complaints are investigated by the Public Health Department to ascertain whether a nuisance in fact exists. This will involve a series of visits at different times of the day and night to take noise

(1) Committee on the Problem of Noise: Final Report. Cmnd. 2056 H.M.S.O. 1963 paragraph 388.

readings both of the noise complained of, and of background noise levels. Because individual reactions to noise are highly subjective it will be necessary, in order to establish the existence of a nuisance, to show not merely that one or two individuals claim that they are in fact being disturbed but that the noise is such as to be likely to disturb people of average sensitivity. In making this judgment with regard to industrial noise, the local authority will usually be guided by British Standard 4142: 1967 ("Method of rating industrial noise affecting mixed residential and industrial areas"). This lays down methods for measuring the relevant noise levels and for applying the measurements in determining whether a given noise is "likely to give rise to complaints[1]."

79. If he is satisfied that a nuisance exists, the Public Health Inspector will next call upon the occupier of the premises from which the noise is being emitted, draw his attention to the nuisance and discuss with him what action can, and should, be taken to abate it. In some cases the solution will be readily apparent; in others there may be difficult technical problems and it may be necessary to call in the expert advice of a noise consultant. Only where agreement cannot be reached on the remedial measures which are needed and within the scope of "best practicable means", will the local authority normally need to resort to the formal legal procedures set out in paragraphs 62–67 in Chapter 3 above.

Incidence of neighbourhood noise problems

80. The statistical information available on this subject is very incomplete and caution is necessary in drawing conclusions. It relates in the main to the number of complaints of noise nuisance received by local authorities. The Wilson Committee observed that such information does not always give a reliable guide to the number of people who are annoyed, nor to the degree of their annoyance.

> "For instance many people who are annoyed do not complain for one reason or another, although they may be disturbed as much as those who do complain. Nor is there any means of assessing the seriousness of a complaint or the weight which should be attached to complaints from representative bodies compared with those from individuals"[2].

81. Noise problems arising from anti-social human behaviour are liable to arise anywhere. Industrial noise problems, on the other hand, will normally arise only in the relatively few areas where people are living close by industrial premises in which noisy processes are carried on. This situation arises, typically, in urban areas with a long industrial history where the work force has traditionally lived in houses immediately around the factories in which they work (especially where these houses are now increasingly occupied by people having no connection with the nearby factories); or where recent residential growth has taken place near to local factories for lack of alternative building land.

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(1) For further discussion of BS 4142 see paragraph 132, below.
(2) Noise: Final Report, paragraph 37.

82. The concentration of industrial noise problems is vividly illustrated in the reports of local authorities referred to at paragraph 44 above. Of the 876 English and Welsh authorities reporting, 385 (including all but six of the London borough and county borough councils) said that they had a " serious " industrial noise problem ; 141, that they had a " slight " problem ; and 312 that they had no problem. If it is assumed that few of the authorities who failed to report have a serious problem, this would suggest that 76% of all London and county boroughs have a serious industrial noise problem ; as against less than 25% of other authorities.

83. The figures of complaints received over the two year period June 1967–May 1969, supplied with the reports, vary substantially from authority to authority—ranging from one complaint per 100 population at one extreme to as few as one per 10,000 population, at the other.

84. The Association of Public Health Inspectors also collect certain statistical information from local authorities. Here again only about half of all the local authorities report. The indications are, however, that the number of complaints of noise nuisance received has increased significantly (by nearly ¼ between 1966 and 1969).

Success of abatement measures

85. Figures published by the APHI suggest that in about half of all complaints the existence of a noise nuisance is confirmed by investigation ; and that over 90% of all confirmed nuisances are dealt with informally. It appears that in any year not more than a few hundred noise abatement notices are served and not more than a score or two (at most) of nuisance orders are made by the Courts. Of all noise nuisances confirmed about one half appear to be of industrial origin.

86. The APHI report—and the reports from individual local authorities which we have studied confirm—that the control they exercise:

> " results in the expenditure annually of hundreds of thousands of pounds on the installation of industrial plant and equipment to reduce the noise level from machinery or from industrial processes.
>
> The reduction of noise levels by the application of well-known acoustical principles follows the following pattern:
>
> *Reduction of the noise at source*
>
> Replacement of the noise producing machinery or its modification by, for example, fitting intake and/or exhaust silencers to internal combustion engines, and to systems for the movement of air and gases.
>
> *Acoustic insulation and sound absorption*
>
> Changes in the materials of construction or the provision of acoustically designed structures and the use of sound absorbent materials around noise sources.

Isolation

The use of anti-vibration and resilient materials to isolate machinery and plant from structures, to prevent the transmission of structure-borne noise and vibration.

Some cases are technically more difficult to solve than others and it is necessary to make both an objective and subjective assessment of the problem to obtain the best practicable means of reducing the noise level to acceptable limits.

Plant is never installed with the deliberate intention of causing a noise nuisance, but it is often installed without due consideration to the effect of the noise on neighbours, be the adjoining premises industrial, commercial or residential in character."

87. A number of local authorities have supplied to the Department of the Environment detailed analyses of noise sources giving rise to nuisance or complaint of nuisance. The sources are, as might be expected, extremely diverse. It is noteworthy, however, that pneumatic drills are the most frequent and universal cause of complaint, with air compressors and fans following close behind. Handling of materials (especially metal) and truck deliveries (especially at night) are also prominent. Many authorities also report frequent complaints about noise from coin-operated laundries and freezer motors in shops.

88. In assessing the degree of success being achieved in the operation of the Act, much turns on the interpretation to be placed on the rather striking fact that over 90% of confirmed noise nuisances are being dealt with without resort to the formal service of abatement notices or to the Courts. In so far as this suggests that there is a high level of voluntary co-operation by industrialists and others in abating noise nuisance it is clearly a cause for satisfaction. But it has to be remembered that about half of all complaints are not confirmed by the local authorities as representing a statutory nuisance. Does this mean that all these complaints are frivolous or at any rate without substantial foundation? We doubt it. It seems more likely in at least a proportion of cases to mean no more than that the authority find themselves unable to pin the responsibility for the disturbance suffered on a particular source and to be confident (in the face perhaps of conflicting technical evidence) of satisfying the local court that it is bad enough to amount to a statutory nuisance. One Public Health Inspector whose judgment and ability we respect has told us: "Industrialists recognise the weakness of the [existing] legislation. . . . The difficulty of establishing nuisance has led me to avoid legal proceedings in every possible way".

89. Against this background it seems probable that there are many cases in which a local authority conclude that they must write a case off as "dealt with", though only a minor degree of alleviation has been obtained for the complainant, because they judge that the magistrates are unlikely to support them in pressing for more radical and costly measures. For some smaller councils the costs of court proceedings (especially if there is a possibility of appeal to a higher court) are a real consideration, and are unlikely to be incurred unless there is a good prospect of success.

90. We conclude that the general public are now reasonably well aware that powers are available to local authorities under the Noise Abatement Act and are increasingly ready to seek the local authority's assistance in obtaining relief from excessive noise ; and that within the limits set by their powers local authorities are achieving a substantial measure of success in abating the worst cases of noise nuisance. There can be no doubt that the work of the local authorities within the framework of the Noise Abatement Act has, over the past eleven years, resulted in the expenditure of millions of pounds in bringing much-needed relief to thousands of people who would otherwise still be suffering the intrusion into their homes of excessive noise from machinery and from industrial processes.

91. It is however clear to us, in the light of the local authority reports mentioned at paragraph 44 in Chapter 1 above, of the representations we have received (and to which we refer in detail in later Chapters) and of the personal experience of some of us—that much more remains to be done, and that certain features of the present law inhibit the local authorities from doing it. We list these features below. A fuller discussion of each will be found in the subsequent chapter of this report shown in brackets against it.

(*a*) There is nothing in the Act which contributes effectively to the prevention (as distinct from the subsequent abatement) of excessive noise. (Chapter 5.)

(*b*) It is inherent in the " nuisance " approach that it can be used only to abate disturbance which can be specifically attributed to a particular and identifiable noise source. It provides no machinery for dealing with a multiplicity of sources which collectively create an excessive level of noise affecting the general public. (Chapter 7.)

(*c*) The procedures are slow and cumbersome. Relief for noise sufferers is too long deferred and " transient " nuisances escape altogether. (Chapters 10 and 11.)

(*d*) The defence of " best practicable means " (paragraph 70. above) needs to be more tightly drawn. (Chapter 10.)

(*e*) Penalties are inadequate. (Chapter 10.)

(*f*) The total exemption for statutory undertakers (paragraph 72. above) is unnecessary and unreasonable. (Chapter 12.)

92. We recognise that the state of the law is only one (and not necessarily the most important) of the factors which influence people's readiness, in the interests of the general public, to moderate the noise they make and, in the case of business firms, often to spend considerable sums of money in doing so. A sense of public obligation and the desire to be a good neighbour also play an important part. But the law must necessarily be framed in such a way as to ensure compliance by those who do not take such enlightened views. And it would be unrealistic to suppose that the reaction of even the most public spirited citizen to the Public Health Inspector's informal approaches is not in some degree affected by the extent of the powers which the latter is known to have at his disposal in the last resort.

93. To sum up. **We see the Noise Abatement Act 1960 as a necessarily cautious first venture into the field of general legislation on neighbourhood noise. It attempted no more than to extend to noise the well-established concept of " statutory nuisance " with some minor adaptation of the accepted procedures. Within those limits it has proved its worth. But in the light of the continuing growth of public sensitivity to noise and of the corpus of knowledge and experience built up by the local authorities in operating the Act, those limits can now be seen to have been somewhat narrow : and a number of other shortcomings have become apparent. We believe that it is now possible to see the way forward to a new and somewhat more radical measure which would at the same time reinforce the existing nuisance provisions ; offer the prospect of more comprehensive action at least in areas where there is an acute neighbourhood noise problem ; and reflect the growing public demand that the avoidance of unnecessary noise should be recognised as an essential element in good citizenship.** Our proposals for such a measure are developed in subsequent chapters and the provisions we would wish to see incorporated are set out in more detail in the " Outline of Suggested Provisions " following Chapter 14.

CHAPTER FIVE

PREVENTION

94. Perhaps the most universal criticism of the present state of the law in relation to neighbourhood noise is that it does not effectively prevent the creation of new situations involving a noise problem. This happens, typically, when houses are built near to noisy premises or *vice versa;* and when new and noisier machinery is installed in factory or other premises which have not hitherto created a noise problem for people living in nearby houses.

95. Before considering possible new provisions in noise abatement legislation to deal with this problem we have thought it right to establish how far the events in question are already subject to some other form of statutory control; how far it is in order for the appropriate authority to take noise considerations into account in exercising that control; and how far and how effectively this is in fact done.

96. Three main types of statutory control are in point; viz. control of new development under town and country planning legislation, building regulation control, and the licensing of certain types of premises.

Development control

97. The worst cases of noise nuisance arise where residential property and premises in which noisy processes are carried on, have to co-exist in close proximity. The development control powers of local authorities enable them (within certain limits which we discuss below) to prevent new situations of this kind from arising. If they are to do so effectively, however, it is essential that they should specifically consider, in the case of proposed new commercial and industrial development, whether it is liable to inflict excessive noise on residential and other noise-sensitive property in the vicinity; and in the case of proposed residential development, whether it is liable to be subject to excessive noise from existing industrial and other nearby premises.

98. We have no reason to doubt that this is the practice of most authorities. We have, however, had our attention drawn to some deplorable cases in which new noise nuisance situations have been created by what we can only attribute to inadvertence or indifference on the part of the granting authority. **We therefore recommend that it should be a duty of local authorities in the exercise of development control powers, to take account, of the noise implications of proposed new development (among other factors) in arriving at their decisions.**

99. Where proposed new industrial development is liable to create a noise problem the local authority may either refuse planning permission on that ground or grant it subject to adequate and effective conditions. It is clearly desirable that permission should not have to be refused for industrial development on an otherwise suitable site unless this is absolutely necessary. On the other hand planning permission is given not merely for the particular process (and the particular machinery) which the applicant immediately proposes—but for any form of activity which falls within that same use-class. Consequently if at some future date the original process comes to be carried on more noisily (as a result of re-equipment); or if another noisier activity falling within the same use-class takes its place; there will be nothing that the planning authority can do about it unless they have provided against this contingency by effective conditions imposed as part of the original permission.

100. None of the noise conditions at present in general use by local planning authorities meets this requirement. Some authorities impose a condition requiring that the use should be carried on so as not to cause a nuisance: but this has proved difficult to interpret and enforce. **We are informed, however, that some local planning authorities are now imposing a condition laying down the maximum noise levels to be permitted at the boundary of the site; and we strongly recommend that a condition in this form should be imposed whenever, in its absence, there is reason to fear the creation of a new noise problem.**

101. If a noise problem should arise as a result of the granting of planning permission for new development or for a change of use, it is the public health authority—not the local planning authority—who will have the responsibility for dealing with it under the Noise Abatement Act. Moreover abatement measures which could have been relatively easily and cheaply incorporated if the requirement had been established in good time may be prohibitively costly to introduce after the machinery has been installed. **It is therefore important that local planning authorities should make it a regular practice to consult the public health authority[1] on the noise implications of planning applications; and we recommend that new guidance along these lines be issued by the Secretary of State for the Environment.** This will not only ensure that the PHI's special knowledge is brought to bear on the eventual planning decisions and in the formulation of appropriate noise conditions—but will also enable him (if permission is granted) to make a timely approach to the prospective occupier of the new premises to discuss noise abatement measures.

102. A condition is sometimes attached to a planning permission for industrial use, restricting on noise grounds the hours during which the use is permitted. Such a condition can be useful where there is no intention at the time of application of having shift working. But even where this is the case, special circumstances may occasionally arise later in which it would be unduly onerous not to allow a temporary waiver of the condition

(1) In many cases of course public health and planning are the responsibilities of two departments within a single authority.

for a short period. We suggest therefore that provision for a temporary waiver at the discretion of the local planning authority should be incorporated in any such condition. It should be understood that no such waiver would be granted without prior consultation with the public health authority.

Building regulations

103. Under the present enabling powers the building regulations in England and Wales can be used *inter alia* to impose requirements relating to " the construction of buildings " ; and these may include requirements as to sound resistance. But these requirements must be related to considerations of public health and safety.

104. No requirements relating to insulation to the outside against noise are included in the existing building regulations ; and we are informed that no serious consideration has been given to this possibility.

105. The importance of ensuring that new industrial buildings are so constructed as to minimise the risk of nuisance from noise, is obvious. We have however noted the Wilson Committee's[1] observation that rigid standards of insulation to the outside would be inappropriate since

> " a standard which would provide sufficient insulation to prevent annoyance or disturbance in a nearby school, hospital or residential area would be absurdly onerous upon the owner of a factory which was to be built a great distance from any other building ".

Expressed in these terms, this may now appear a somewhat extreme view. We have, nevertheless, concluded on balance that **the making of building regulations with regard to insulation to the outside would not be appropriate. The acoustic characteristics of a proposed building are, however, clearly a relevant consideration which will need to be taken into account by the local authority in considering the noise implications of granting planning permission.**

Licensing powers

106. Noise problems sometimes arise from public houses, night clubs, discotheques, late-night cafes and the like. Preventive action may be taken under licensing legislation by the attachment of conditions.

107. Under the Licensing Act 1964 the licensing justices may impose on the granting of a new liquor licence such conditions " as they may think proper in the interests of the public ". This provision does not however extend to the renewal of licences ; and we recommend that **it should be made possible for the justices to attach conditions for the prevention of noise nuisance on renewal as well as on first granting of a liquor licence.** We understand that the Home Office Departmental Committee on Liquor Licensing is currently reviewing the relevant legislation.

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(1) Noise: Final Report, paragraph 389.

108. The general legislation governing the granting of licences for music and dancing in both public and private places permits terms and conditions to be specified on granting or re-granting of licences (Public Health Acts Amendments Act 1890 ; Home Counties (Music and Dancing) Licensing Act 1926 ; Private Places of Entertainment (Licensing) Act 1967).

109. Under the Late Night Refreshment Houses Act 1969, the licensing authority are specifically empowered to impose a condition on grant or renewal of a licence for a late-night refreshment house prohibiting it from being open at any specified period falling between the hours of 11 p.m. and 5 a.m. if they are satisfied that it is desirable to do so in order to avoid unreasonable disturbance to the residents of the neighbourhood.

110. We consider that these powers provide a useful safeguard against the occurrence of a noise nuisance associated with these types of premises. We have no reason to suppose that they need to be strengthened for these purposes (except as specified in 107 above) or that licensing justices and authorities fail to make appropriate use of them.

Prior consultation with the Public Health Authority

111. There is then already much that can be done by means of existing statutory controls to prevent new noise problems arising ; and we have suggested certain ways in which planning and licensing controls might be more effectively applied to this end. We turn now to the possibility of providing for further preventive action within the framework of noise abatement legislation.

112. One suggestion made to us was that industrialists should be required to give their local authority prior notice of any proposal to install machinery which was likely to be noisy, or to alter working methods so as to affect adversely the noise climate of the area. This would, it was contended, give authorities the opportunity to suggest noise abatement measures at the stage when they could be incorporated in installations to the best effect and at the least cost.

113. We accept that it is to the advantage not only of the residents in the neighbourhood but also of the industrialist himself that consultation with the local public health department should take place at the earliest possible stage. In our view, however, the difficulties of defining satisfactorily in legislation the classes of installation to which a requirement to consult should apply would be insuperable. We can imagine all too well the perplexity of a magistrate required to decide whether a particular installation should be regarded as " likely to be noisy ". On the other hand, it would be no easier for the legislator to specify every single type of equipment for which consultation might in certain circumstances be appropriate. The straightforward solution to the problem would be to make the requirement apply indiscriminately to all installations ; but as a result public health departments up and down the country would be overwhelmed by largely unnecessary paperwork.

114. Moreover we think that, given a strengthened Noise Abatement Act incorporating a general duty to use best practicable means to minimise the emission of noise (as proposed in Chapter 8 below), the prudent industrialist will recognize that prior consultation with the local authority is in his own —as well as the general—interest.

115. **We conclude therefore that any advantage there may be in imposing on industrialists a requirement to notify their local authority of proposed installations of new equipment or changes in working methods would be outweighed by the administrative complexities.**

116. We feel bound to mention before leaving the subject the embarrassing situation in which a public health inspector may find himself if the measures he has advised an industrialist to take in the installation of new equipment fail in the event to prevent the occurrence of a noise nuisance. The local authority's position in any court proceedings they might then find it necessary to take to secure abatement of the nuisance, would necessarily be a weak one. We trust, however, that the possibility of an occasional contretemps of this nature will not deter public health departments from encouraging industrialists to consult them whenever appropriate.

CHAPTER SIX

ABATEMENT—A LOCAL OR CENTRAL RESPONSIBILITY?

117. Responsibility for the administration of the Noise Abatement Act 1960 falls exclusively upon the local authorities.

118. The Association of Public Health Inspectors have represented to us[1] that, because noise control is essentially a part (and an important part) of the whole complex of environmental health functions which are administered by local authorities, responsibility for it must remain with them.

119. The Confederation of British Industry, while not questioning that local authorities should remain responsible for the abatement of noise emitted in the course of the great majority of activities for which there are "comparatively straightforward means of abatement", have argued strongly that responsibility for certain activities "in which noise abatement inherently calls for a high degree of technical skill" should be transferred to central government.

120. The CBI's proposals are set out at length in a memorandum which they prepared at our request and which we reproduce at Appendix C. In essence they envisage the scheduling of processes and equipment the noise emissions from which are inherently difficult to abate, and of premises in which they are operated; and the establishment of a highly qualified Noise Inspectorate within the Department of the Environment which would be responsible for prescribing and enforcing "best practicable means" of minimising noise emissions from scheduled processes, equipment and premises. The Secretary of State for the Environment would be empowered to prescribe by order measures which would be deemed to satisfy the "best practicable means" requirement. The CBI recognise that it would take 4–5 years to establish and train the Noise Inspectorate and envisage that this period would be devoted to enlisting the voluntary co-operation of the branches of industry concerned, in working out an agreed programme for the improvement of noise abatement techniques.

121. The CBI explained to us that they had consciously based their proposals on the philosophy and procedures of the Alkali &c Works Regulation Act 1906, the success of which they attributed primarily to the expertise and knowledge of the problems of industry which the Alkali Inspectorate had built up over the years and which enabled them to elicit the willing co-operation of industry in implementing the progressively higher standards

(1) Appendix B, paragraph 29.

they prescribed. In addition it was suggested that a centralised system of control was less likely to disturb the relative competitive positions of companies operating the same processes in different areas.

122. We welcome the constructive spirit in which the CBI have put forward their proposals and we note with interest that they are very much in accord with one of the recommendations made by the Wilson Committee in 1963[1] but not taken up by Government.

123. The case for the line of action proposed by the CBI and the Wilson Committee obviously depends heavily upon the validity of the analogy drawn between air pollution and noise pollution. We accept that the analogy is, within limits, an interesting and useful one ; but we see dangers in pressing it too far. Commenting on the Wilson Committee's views in 1967 the then Minister of Housing and Local Government drew attention[2] to two significant distinctions. The first (to which we shall revert later in this chapter) was that industrial noise which is a nuisance to the general public is usually a greater nuisance to the work-people engaged in the process, whereas noxious gases discharged to air will generally affect the worker less than the general public. The second was that the effects of noise pollution are more localised than those of air pollution.

124. This latter distinction seems to us to militate strongly against the extension of central control to noise abatement. It is, as we see it, fundamental to the provisions of the Alkali Act that the emission standards required of two identical factories operating the same process should, in principle, be the same, irrespective of their location. Precisely because the effects of noise are so highly localised we cannot accept that this would be a desirable or politically acceptable basis for noise control. It may be reasonable to require sophisticated and costly noise abatement measures in a factory which is next door to residential property in an otherwise quiet locality ; but unreasonable to require the same level of expenditure by industrialists carrying on the same process whose (otherwise identical) factories are so located that the noise they emit troubles no-one. Yet once it is accepted that local circumstances are a key factor in any judgment of what abatement measures it is appropriate to require, the case for preferring central to local control is considerably weakened.

125. In our discussions with CBI representatives they laid stress on the limited supply of qualified noise control experts in this country and suggested that this might well prove to be a factor limiting progress in the abatement of neighbourhood noise. They argued, in support of their proposal, that the available resources of expertise should be concentrated as far as possible where they are most needed. We agree ; but for reasons which we explain below we do not accept that the creation of a separate Noise Inspectorate is the best way of achieving this.

126. We fully accept the CBI's thesis that there are a certain number of industrial processes which are inherently very noisy and which it will only

(1) Noise: Final Report paragraph 393.
(2) MHLG Circular to Local Authorities No. 22/67, para. 2.

be possible to quieten by the intensive application of technical expertise over a period of years. We recognise that as progress is made in reducing the noise from other less resistant processes, these will increasingly stand out as the "hard core" of the industrial noise problem; and that public pressures will therefore tend rightly to be focused upon them. We accordingly endorse the CBI's view that special measures are needed to deal with this problem. We doubt, however, whether those measures should be, or could conveniently be, instituted in the context of legislation to protect the general public from excessive noise.

127. It must not be overlooked that excessive noise from a machine or process in a factory may represent a threat to the health and welfare of the worker operating it as well as a potential nuisance to the general public. Moreover its effect on the general public is indirect and variable (depending upon distance, the acoustic properties of the factory building, intervening buildings etc.); whereas its effect on the worker operating it is more uniform and direct. Consequently measures (such as might appropriately be taken by central government) to quieten specific types of factory machine or process, can more readily and appropriately be taken in the context of the protection of the worker than of the general public, though their benefit would, of course, be felt by both.

128. Measures for the protection of the safety, health and welfare of the worker in factories are the responsibility of the Department of Employment and their enforcement would fall to HM Factory Inspectorate, who have (we learn) for some time been developing their expertise in noise control. We are of the opinion that within the context we have proposed, the functions envisaged by the CBI for a separate Noise Inspectorate could more satisfactorily and appropriately be performed by the Factory Inspectorate. This would have the very real advantage that it would eliminate the need to introduce yet a third Inspectorate into the business of abating industrial noise. Close co-operation between HMFI and the PHI would, of course, be even more necessary than at present, but this should present no difficulty. Our inquiries have satisfied us that the necessary liaison is already well established and that very few cases of conflict or difficulty arise.

129. **We accordingly recommend that responsibility for the enforcement of statutory requirements for the protection of the general public against excessive neighbourhood noise, should remain with the local authorities. At the same time we record our view that special measures to ensure the progressive quietening of inherently noisy industrial processes and machinery are urgently needed and that such measures can best be initiated in the context of the health and welfare of workers; and we recommend that the Council convey the proposals submitted to us by the CBI, together with our observations on them to the Committee on Safety and Health at Work, to the Department of Employment and, through them to the Noise Sub-Committee of the Industrial Health Advisory Committee.**

CHAPTER SEVEN

THE NUISANCE APPROACH

130. The Noise Abatement Act is about noise nuisances and how to secure their abatement. It does not purport to do anything about noise which cannot be shown to be a nuisance.

131. We shall be considering later how adequate the abatement procedures laid down are, and how they might be improved. But first we need to look more closely at the inherent limitations of the nuisance approach as a tool for controlling neighbourhood noise.

132. In this connection it is necessary to say something more about British Standard 4142:1967 ("Method of rating industrial noise affecting mixed residential and industrial areas") to which we have referred briefly in paragraph 78 above. There can be no absolute quantitative standard by which to determine whether a given noise is a nuisance; and BS. 4142 does not purport to provide such a standard. Its more modest objective is to provide, by generalising from recorded experience, a means of assessing whether a noise of a given level and character will, in given circumstances, "be likely to give rise to complaint". Since, however, a noise which is not likely to give rise to complaint by people of average sensitivity is *prima facie* unlikely to qualify as a nuisance, it is perhaps not surprising that when cases of statutory noise nuisance come before the courts the parties and even the magistrates tend, in the absence of any other criterion with pretensions to objectivity, to lean heavily upon BS. 4142.

133. We do not propose here to recapitulate in detail the methods of calculation laid down in BS. 4142. Suffice it to say that the basic finding is that the likelihood of complaint against a particular noise will usually depend on the margin by which it exceeds the level of background noise; and that for this purpose a margin of 5 dB(A) or less is not likely to be significant.

134. Let us now consider a well-established and very noisy industrial area. It fronts on to a major urban road and embraces, on the side remote from that road, a sizeable residential enclave. The houses are largely protected from traffic noise by the intervening factories but are subjected to noise from the factories themselves. The overall noise level outside the worst-affected properties during working hours is, say, 80 dB(A). This is pretty bad, by any standard. Even if the houses are solidly built the noise level inside them is likely to be of the order of 60 dB(A)—twice as noisy as the Wilson Committee considered tolerable for busy urban areas.[1]

(1) Noise: Final Report. paragraph 117.

135. In this situation—

(*a*) the local authority will be able to take action under the Noise Abatement Act, only against the occupier of factory X the noise from which predominates ;

(*b*) if the magistrates are guided by BS. 4142 they are unlikely to accept that a nuisance exists unless the noise contributed by factory X exceeds the noise from all other sources together by at least 5 dB(A)[1].

(*c*) if the noise from factory X is reduced by the relatively modest amount necessary to bring it within 5 dB(A) of the background level the nuisance will have been abated ;

(*d*) there is nothing to stop any other factory the noise from which is at present below the background level, from re-equipping with noisier machinery—so long as this does not bring it up to more than 5 dB(A) above the background level ;

(*e*) if a number of factories do this the background level will gradually creep up and thus push up the level which a noise in the area has to reach before it can be shown to represent a nuisance.

Pretty clearly the prospects of substantial relief for people living in this area are not bright!

136. We believe that we have said enough to show that the nuisance provisions in the existing law, valuable as they are within their inherent limits, provide no real scope for bringing about a general reduction of ambient noise levels in unacceptably noisy areas ; and, worse still, provide no protection against a "creeping" increase in such levels. We conclude that a new approach is required ; and **we recommend that a new Noise Abatement Act should include provisions enabling local authorities, not merely to deal with individual premises which are causing a noise nuisance, but to deal with all premises which are (individually and collectively) creating an excessively high level of noise in the neighbourhood of houses and other noise-sensitive establishments.** We pursue this line of thought in Chapter 9 below.

(1) We have assumed for simplicity that the corrected criterion as defined in BS 4142, is the same as the background noise level.

CHAPTER EIGHT

A GENERAL DUTY

137. So far we have been studying and noting weaknesses in the present law relating to neighbourhood noise. We have concluded that the traditional concept of " nuisance " from which that law takes its departure, is inadequate for reducing noise and that a new approach is needed. We now review the problem in its wider context.

138. Not only the material standard of life of people in this country, but also many of the intangible satisfactions which they value highly, have come to depend upon the increasingly efficient utilisation of ever-greater amounts of energy in machinery of all kinds—not only in factories but in the home, on the streets and in a variety of other situations. But noise is a by-product —and in some measure an unavoidable by-product—of the utilisation of energy. And noise in excess detracts from people's enjoyment of life and may even make life intolerable.

139. If both the benefits of a particular machine and the noise which it emits were experienced by—and only by—the user, society could safely leave him to weigh the benefits against the disbenefits and decide upon his own course of action. But typically the benefits of the use of factory machinery accrue directly to its owner and indirectly to his employees and to society as a whole ; whereas the disbenefits of the noise emitted fall in different degrees upon the workers concerned and upon a very limited section of the general public in the immediate locality. In these circumstances positive action by public authorities is clearly necessary to redress the balance.

140. A quarter of a century ago this proposition might have seemed radical and questionable. The first cautious and tentative recognition by Parliament of its validity occurred only just over a decade ago. Today it is universally accepted and sounds almost trite. This is a measure of the rate at which both the problem of noise intrusion and public awareness of—and dissatisfaction with—it has grown.

141. **We believe that public opinion now accepts that there is a general duty on the citizen not to impose unnecessary noise on his neighbours ; and would welcome the declaration of such a duty in a new Noise Abatement Act.**

Definition

142. Both the extent to which it is practicable to reduce the emission of noise and the private and social costs of a given measure of quietening, vary greatly from activity to activity and from time to time. The numbers of

people affected by a given noise emission and the seriousness of the effects similarly vary from location to location (cf. paragraph 124 above). It follows therefore that any general formulation of a duty in relation to the emission of noise could not do more than, in the words of the CBI[1], "demand whatever is right taking into account all the circumstances". This leads us to the conclusion that **the duty would need to be formulated in terms of an obligation to use the "best practicable means" to minimise the emission of noise[2].**

143. This concept is well established and understood in the law relating to public health and environmental matters. As early as 1906 a requirement was laid on owners of scheduled works under the Alkali &c. Works Regulation Act, to use the best practicable means for preventing the discharge of noxious or offensive gases and for rendering such discharges harmless and inoffensive. The same formula was later adopted in the Public Health Act 1936 as the basis of a defence in proceedings for statutory nuisance caused in the course of trade or business; and has subsequently been applied for the same purpose to noise and smoke nuisances in the Noise Abatement Act 1960 and Clean Air Acts 1956 and 1968.

144. The courts would reasonably expect some statutory indication of what might constitute "best practicable means" (as has been given in varying forms in the Acts mentioned above). In our view, for the purposes of a Noise Abatement Act, the "means" which would fall within the meaning of the phrase should include the design, installation, maintenance and manner and periods of operation of plant and machinery; and the design, construction and maintenance of buildings and acoustic structures. "Practicable" should be interpreted as meaning "reasonably practicable", taking into account[3]:

(*a*) local conditions and circumstances;

(*b*) the current state of technical knowledge; and

(*c*) the financial implications.

Enforcement

145. The difficulties about enforcement are of two kinds. First there is the problem of timing. The economic implications of enforcing a new general duty which would, by its very nature, require business to treat as a prime economic cost what has hitherto been no more than a contingent liability, are far-reaching and a reasonable transitional period would clearly have to be allowed for all concerned to adjust to the new situation. This, however, could readily be provided for.

146. The second problem is more fundamental. If it is accepted (as we think it must be) that what constitutes full compliance with the general duty for particular premises would necessarily have to be determined in

(1) Appendix B: paragraph 9 (2).
(2) But see also paragraph 210 below.
(3) But see also paragraphs 168 and 215 below.

the light of local conditions and circumstances—it would follow that the direct enforcement of the duty in the courts would introduce a substantial new element of uncertainty into the calculations of every industrial and commercial concern in the country. This would be unacceptable to industry and would not in our view be in the national interest. To go further by seeking to enforce an obligation expressed in such general terms over the whole range of human activity would be neither practicable nor in all cases desirable.

147. **Against this background we have concluded that to look to the direct enforcement of a general duty (in the broad terms in which it would necessarily have to be expressed) as the main pillar of a new Noise Abatement Act, would be unrealistic. Nevertheless we believe that the statutory declaration of a broadly-stated general duty to minimise the emission of noise, coupled with provision for compliance therewith to be a sufficient defence in any proceedings under other Parts of the Act, would serve a valuable purpose in giving the stamp of parliamentary authority to the growing recognition of quiet as a social good to which all have a duty to contribute ; and so providing a new and more positive context for the day-to-day decisions of the courts in noise proceedings.**

CHAPTER NINE

AREAS OF SPECIAL CONTROL

148. It will be recalled that our chief criticism of the " nuisance " approach to the abatement of excessive neighbourhood noise was that it could not prevent a creeping deterioration in the overall noise climate of a neighbourhood—still less bring about a positive improvement. We note that this diagnosis is confirmed by the Association of Public Health Inspectors and we have studied with interest their proposals for making good the deficiency.

The APHI proposals[1]

149. The APHI propose that local authorities should be enabled to make orders (subject to confirmation by the Secretary of State for the Environment after considering any objections) declaring " noise control areas " ; and in areas so declared should have special powers to secure the reduction of noise.

150. The object would be to improve living conditions in mixed areas including factories and commercial premises, a substantial proportion of dwellings, and roads (other than main through roads) carrying a substantial volume of traffic. It is suggested that housing improvement areas under the Housing Act 1969 might be suitable candidates for declaration as noise control areas.

151. Within a noise control area, the local authority would retain their noise nuisance powers ; but, in addition, they would be able to take action where, although a noise was not so great as to constitute a nuisance, it was capable of being reduced by measures which were reasonable and practicable. The local authority would give notice to firms in the area of the required modifications to premises and machinery and, after a reasonable period of grace, would be able to enforce the notices in the courts.

152. In addition firms would be required to give prior notice to the local authority of the installation of machinery which was likely to be noisy and of any change in hours of operation. In the former case the authority would be able to insist on measures to minimise additional noise ; and in the latter to impose conditions.

153. Finally it is envisaged that traffic restrictions and diversions would be introduced to reduce the impact of road vehicle noise ; and it is suggested that the Government might make grants available towards the cost of the necessary work.

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(1) Appendix C.

154. These proposals are expressly based on experience in dealing with air pollution. The Association point out that before 1956 the powers of local authorities to deal with smoke emissions were limited to proceeding against nuisance; and that the dramatic advances made since then in reducing air pollution have been made possible by the machinery of "smoke control areas" introduced by the Clean Air Act 1956.

Views of the CBI

155. The CBI[1] find the analogy drawn by the APHI between smoke and noise control, misleading. They point out that noise is not so readily identifiable and not so easily abated as smoke. They fear that the imposition of a single noise limit throughout an area might compel the closure of inherently noisy factories which were valuable to the national economy; and that such a policy would in any case tend to be frustrated by the effects of noise sources beyond the boundary of the area. In their view the success of "smoke control areas" can be largely attributed to the availability to householders of generous financial assistance for conversion and to the attractiveness of smokeless-fuel systems to the housewife. The CBI believe that legislation based on the APHI proposals would "probably quickly fall into disrepute".

The Working Group's views

156. We share the CBI's view that the analogy between smoke and noise control is imperfect and needs to be applied with caution. We have found it helpful to consider the differences in some detail.

157. The first, and perhaps the most significant, distinction to be drawn is that whereas almost all smoke sources are stationary and therefore susceptible to area control, two of the most troublesome sources of noise are mobile. Traffic noise is only marginally, and aircraft noise is not at all, subject to treatment by way of noise control areas. Noise control areas are therefore unlikely to produce such dramatic results as have smoke control areas; and it would be necessary to make clear their inherent limitations in order to avoid arousing exaggerated expectations. It does not follow however that noise control areas might not be both useful and beneficial.

158. It is practicable to require the occupier of property to stop emitting smoke altogether; and anyone can see at a glance whether he has done so. By contrast, noise can be abated in varying degrees but cannot be totally eliminated. And only careful measurement will establish whether the required degree of abatement has been achieved. Here again we have a factor which affects any proposals for noise control; but not one which tells more strongly against area control than against any other form of control.

159. Finally there is the fact that the effects of noise are more localised than those of smoke. In this respect, however, noise seems even better suited than

(1) Appendix B.

smoke to area control, since such control is less likely to be frustrated by the effects of sources beyond the boundary of the designated area in the case of noise than of smoke.

160. **We conclude that control of neighbourhood noise by means of nuisance procedures could usefully be supplemented by the application of more comprehensive measures within areas of special control.** We base this conclusion on the need to make good the specific deficiencies in the nuisance approach which we identified in Chapter 7 above, rather than on the clean air precedent. But in considering the validity of the analogy between smoke and noise control, we have found no reason to suppose that the creation of areas of special control for noise abatement purposes would not be useful and beneficial.

Nomenclature

161. **We suggest that areas of special control be known as** *Noise Abatement Zones,* **and that statutory notices and court orders under the special powers applying in those zones should be known respectively as** *Noise Abatement Notices* **and** *Noise Abatement Orders.* **To avoid confusion this would necessitate a change of nomenclature under the noise nuisance procedure, notices and orders under that procedure being known as** *Noise Nuisance Notices* **and** *Noise Nuisance Orders.*

How selected

162. We do not favour any precise statutory definition of the criteria by which areas of special control would be selected for designation. It would be sufficient to lay down that they should be areas in which it was desired, for the well-being of those living or going about their lawful occasions there, to abate or restrain the general level of noise or vibration. We would expect, however, that the areas would in the main correspond to the description given by the APHI (paragraph 150 above); and that authorities would select, for initial designation, areas where there was an acute neighbourhood noise problem which they had been unable to deal with effectively under the nuisance provisions of the present Act.

Special powers in Noise Abatement Zones

163. The APHI have suggested that a general duty to minimise noise emissions (defined broadly along the lines envisaged in Chapter 8 above) should be directly enforced in Noise Abatement Zones. This proposal seems to us to be open (though in a somewhat lesser degree) to the objections which we discussed in paragraph 146 above. We feel, in particular, that an industrialist considering building or moving into premises in a Noise Abatement Zone is entitled to know with a reasonable degree of precision what standards of noise emission he will be compelled to comply with.

164. The CBI on the other hand assume that within a Noise Abatement Zone there would be an absolute requirement to comply with a specified noise limit; and rightly point out that this could in extreme cases involve the

closing down of a factory and that the economic consequences of such inflexibility might be serious.

165. **The purpose of the special regime in Noise Abatement Zones would be to reduce (or perhaps in some cases to hold steady) the ambient noise level. We have, however, been unable to devise any workable system of enforcement directly related to the ambient level. We think that the desired result can best be achieved by setting a target level for noise emissions from premises and requiring firms to take whatever measures are necessary (within the limits set by the general duty we have proposed in Chapter 8) to bring their emissions down to that level. It would be open to the authority to specify the measures to be carried out, as under the current nuisance procedure.**

166. There is, however, a theoretical difficulty about this proposition which we have found it necessary to examine with some care. We understand that it is impracticable to measure a noise in the presence of background noise which is at a higher level. Assume then that a target emission level has been set some way below the general level of noise prevailing within a zone ; that the local authority serves on an industrialist a noise abatement notice ; and that the industrialist appeals on the ground that emission from his premises is already at or below the target level. This claim will be susceptible neither of proof nor (unless the emission level is demonstrably higher than the prevailing background level) of disproof. The same difficulty applies, if on receipt of a notice, in which for some reason the authority have not specified in detail the work to be done, he carries out certain works which are sufficient to bring the emission level below the background level, but not in the view of the authority to reduce it as far as the target level.

167. We have concluded that the problem is more apparent than real. The background level will not be constant and it will no doubt often be possible to undertake noise emission measurements during the quieter periods. In any case, no authority is likely to mount its first attack in a newly-designated noise abatement zone on a noise source which is producing emissions which are below the background level. They will rather select those premises from which the noise emissions are highest. As quietening of these egregious noise sources is achieved, so the background noise level will progressively be reduced, bringing into prominence other noise sources which it has previously concealed, and to which the authority can now turn their attention. Over the years, it will thus be possible to bring emission levels progressively down towards the target level. This progressive reduction will, in due course, expose any cases where the requirements of a noise abatement notice have not been satisfied.

168. **It would, of course, be a defence in any proceedings to show that the general duty was already being complied with. We recommend, however, that in the interpretation of best practicable means for this purpose the fact that the premises are within a Noise Abatement Zone should be included among the considerations to be taken into account.**

169. We assume that local planning authorities would not normally give planning permission in a Noise Abatement Zone for new development which could not comply with the appropriate target emission level ; **but in any case we think that on planning permission being given the local authority should serve notice on the prospective occupier that compliance with the target emission level would be required** *ab initio.*

170. **We think that local authorities should be free to specify different target emission levels for different parts of a proposed Noise Abatement Zone, for different types of premises and for daytime and night-time operation ; that the proposed target levels should be laid down in the order designating the zone ; and that the order should be subject to confirmation by the Secretary of State for the Environment after considering any objections.** This procedure would be in line with that laid down for the designation of smoke control areas ; and we think it right that proposed target emission levels should be subject to confirmation in order to ensure a certain measure of consistency of practice. This is a point to which we know that industry attach importance.

Timing

171. We envisage the designation of a Noise Abatement Zone as setting in motion a process of progressive amelioration in the noise climate. The limited resources of Public Health Departments would make it necessary to think in terms of a continuing programme over a number of years. **It would therefore be unreasonable to put too short a time-limit on notices requiring works to be carried out** (except of course in the circumstances discussed in paragraph 169 above). **We suggest a minimum period of six months.** Where a firm are using excessively noisy machinery which is in any case due for replacement within a year or two it would seem unreasonable (provided that no actionable nuisance is being caused) for the firm to be required to incur heavy expenditure in quietening it and the period set for compliance with the target emission level might be set to coincide with the installation of new machinery. Generally, it would be for the local authority to determine the appropriate period (subject to the prescribed minimum) in the light of the particular circumstances. **It should be made possible for appeal against a noise abatement notice to be lodged within, say, three months of the service of the notice.**

172. For reasons which we have explained elsewhere (paragraphs 113-114) we do not favour the APHI's suggestion that within Noise Abatement Zones firms should be required to notify the local authority in advance of the installation of machinery which would be likely to be noisy. We would expect, however, that, knowing that they were in such a zone and that this involved special responsibilities firms would in their own interests consult the local authority in advance about any proposed new installation which might give rise to difficulty and possible legal proceedings.

173. Local planning authorities already enjoy powers under the Planning Acts, subject to Ministerial approval, to close highways (other than trunk or principal roads) or to restrict the access of traffic in order to improve the amenity of part of their area. There would clearly be scope for the exercise

of these powers in the furtherance of noise abatement within designated zones. We note the view of the APHI that the costs of such work within noise abatement zones should be grant aided, but we make no recommendation on this point.

Noise nuisance in Noise Abatement Zones

174. **The special powers available in Noise Abatement Zones would be additional to the local authority's nuisance powers.** It would be incumbent on the PHI in surveying a Noise Abatement Zone with a view to the service of noise abatement notices to identify also cases of statutory nuisance. Where such cases were found he should serve simultaneous notices covering his requirements under both procedures. This is important because the industrialist is entitled to know the full extent of his obligations before incurring expenditure. **And if a noise abatement notice in respect of particular premises is not accompanied by a noise nuisance notice, it is our view that the local authority should not subsequently be entitled to serve a noise nuisance notice in respect of those premises unless they could show that the noise emitted had increased since the original abatement notice was served.**

CHAPTER TEN

MODIFICATIONS TO NUISANCE PROCEDURES

175. We have envisaged that the local authority's existing powers to secure the abatement of noise nuisance will remain in force both outside and (subject to the reservation proposed in paragraph 174 above) within Noise Abatement Zones. We now consider, therefore, how the nuisance procedures might be modified to provide quicker and more effective relief for those suffering noise nuisance.

176. Under the Noise Abatement Act it is no offence to cause nuisance by noise or vibration. An offence is not committed until the responsible person has failed to comply with the requirements of an abatement notice served by the local authority and a court (on complaint by the local authority) have confirmed the existence of the nuisance and endorsed in whole or in part the requirements of the notice.

177. The course of events following receipt of a complaint of noise nuisance by the local authority officer is typically as follows:

(*a*) Officer investigates and confirms nuisance;

(*b*) Officer negotiates informally with the responsible person on abatement measures;

(*c*) Negotiations having failed, officer recommends his authority to serve an abatement notice;

(*d*) On the expiry of the period specified in the notice (the nuisance not having been abated) the local authority complain to the magistrates;

(*e*) Hearing of the complaint by the magistrates. Order made.

(*f*) Appeal to Quarter Sessions. Order confirmed.

(*g*) Nuisance abated.

If substantial works are required to abate the nuisance the period specified in the notice might well be substantial—perhaps three months. In that case the matter may well not come before the magistrates until up to five months after the initial complaint; and even if there is no appeal to Quarter Sessions, abatement is unlikely to be achieved in much under eight months. If there is an appeal to Quarter Sessions it might well be not far short of a year.

178. It is difficult not to agree with those who complain that these procedures are unnecessarily slow and cumbersome.

Nuisance an offence?

179. We have considered whether to cause a nuisance by noise or vibration, should not in itself be an offence; but we are unable to recommend this course. Given that the existence of a nuisance is a matter of judgment and that the obligation to abate is limited (at least in the case of noise caused in the course of a business or trade) to the employment of the best practicable means to that end—it cannot, in our view, be assumed that a person causing a nuisance is necessarily doing so knowingly or through negligence, or that he is not already doing all that the law requires of him to abate it. Nor, of course, would conviction for causing a noise nuisance in itself result in the abatement of the nuisance.

Best practicable means

180. Some local authorities have suggested that the defence of best practicable means, as applied by the courts, tends to provide "an easy way out" for industrialists. We have stated in paragraphs 142-144 above our reasons for believing that a general duty should be limited to the employment of the best practicable means to minimise the emission of noise. For the same reasons we do not think it practicable or reasonable to require any more stringent standard to be applied to the abatement of noise nuisance. However, if our proposals are accepted, the court, in requiring the use of the best practicable means to abate nuisance, will be doing no more than enforcing a general duty declared in the Act. We believe that this knowledge will have the effect of causing magistrates to take a somewhat more stringent view of what constitutes best practicable means where nuisance is proven; and that as a result the concern expressed by some local authorities on this point will increasingly be seen to be unfounded.

Speeding up the procedures

181. At present, it is not possible for a noise nuisance notice[1] to be challenged until the period specified for compliance has expired and the local authority has brought "complaint" proceedings in the magistrates' court for its enforcement. We consider that the state of the law on this point is a cause of unnecessary delay, which is in the interest neither of the sufferers from the alleged nuisance nor necessarily of its perpetrator. We recommend therefore that **there should in all cases be a right of appeal to the magistrates' court against noise nuisance notices.**

182. However, where a local authority have served a noise nuisance notice[1] requiring the execution of substantial works and (recognising that these will necessarily take some time to complete) have specified a long period for compliance with the notice, we consider it quite wrong that the perpetrator of the nuisance should be able to "sit out" the period allowed—neither complying with nor challenging the notice—and yet still retain the right, on a subsequent complaint by the local authority to the court, to have his objections to the notice heard and considered on their merits.

(1) See note on terminology at paragraph 161 above.

183. **We therefore recommend that on the service of a noise nuisance notice the recipient should have to decide quickly (say within a week) whether he wishes to challenge the requirements of the notice. If so he must enter an appeal within that period. The Court will then consider his objections and either quash the notice or make a noise nuisance order.** (There would as always be discretion for the court to defer the hearing to allow reasonable time for the appellant to prepare his case.) **If, however, no appeal is entered within the period allowed the local authority should be able, without further delay, to seek an order from the court enforcing the notice and the court should normally be required to make such an order.**

184. **The right of appeal to Quarter Sessions against a noise nuisance order by the magistrates' court should be retained only when the order has been made on an appeal by the recipient of a noise nuisance notice.**

185. We believe that this procedure would go a long way to eliminate unnecessary delay. It would, besides, provide safeguards against the deliberate adoption of delaying tactics by the recipients of abatement notices without being in any way unfair or unreasonable.

Delegation of authority

186. **It has been suggested** by the APHI (Appendix C; paragraph 26) **that power to serve a noise nuisance notice where immediate action is needed should be delegated by the local authority to officers. Unless in the meantime a general power has been introduced enabling this to be done, we recommend that specific power be included by a new Noise Abatement Act.**

Cessation orders

187. The APHI have also suggested (Appendix C; paragraph 26) that either a PHI or a Justice of the Peace (on application by a PHI) should be able to issue an order requiring immediate cessation of works allegedly causing a nuisance until such time as the matter could be brought before the magistrates' court. We discuss this proposal in so far as it relates to demolition or construction works in Chapter 11 below. In so far as it relates to noise nuisance caused in the course of the continuing operation of an established factory or other permanent business premises, we feel that such a procedure would be unduly draconian. It would be more likely than not to involve the complete suspension of work at the factory in question. Although the interruption of production would no doubt be relatively brief, the financial penalty on the firm concerned could be very substantial and would not be recoverable; and yet it would have been incurred before it could have been known whether the court, after a full hearing, would accept that the firm was in any way at fault.

The right of citizens to complain direct to the magistrates

188. At present three or more persons who, as owners or occupiers of premises, are aggrieved by a noise nuisance may complain direct to the magistrates. We have considered whether this right should be extended to single individuals.

189. **We think that, as a general rule, if there is reasonable** *prima facie* **ground for complaint, an aggrieved person should have no difficulty in finding two more who are willing to associate themselves with him in making a complaint to the magistrates; and we consider that to change the law in this respect would tend to encourage frivolous or vexatious complaints. However, there could be situations in which only one or two occupiers of premises were exposed to the alleged nuisance and we recommend that in those circumstances the court should have discretion to receive and proceed upon a complaint from the one or two occupiers in question.**

Penalties

190. We consider that the effectiveness as a deterrent of the current nuisance provisions is prejudiced by the inadequacy of the maximum penalties which it is open to the courts to impose. **We recommend that the maximum penalties available under the nuisance provisions (and also under the special provisions which we propose within noise abatement zones and in relation to demolition and construction works) should be set at a realistic level.** We have in mind maximum figures of the order of £200 for default in complying with a notice, £500 for failure to comply with a court order, and £50 per day for continuance of that failure after conviction.

CHAPTER ELEVEN

NOISE FROM DEMOLITION AND CONSTRUCTION WORKS

191. The criticism most frequently levelled by local authorities against the present Noise Abatement Act is that it is not effective against "transient" sources of noise nuisance. Almost all the examples quoted relate to demolition and construction works (with which we include road works). The procedures of the Act are said to be so slow and cumbersome that before abatement measures can be enforced against an unco-operative contractor he is likely to have completed the work which gave rise to complaint and to have moved on to a new site to cause a further nuisance with equal impunity. Certain local authorities have expressed the view that some contractors, being well aware of the weakness in the law, tend to be less receptive to informal requests by the local authority for quietening than occupiers of permanent premises.

192. The National Federation of Building Trades Employers, the Federation of Civil Engineering Contractors and the Contractors' Plant Association (through the CBI) have set out their views for us in a memorandum which we reproduce at Appendix F. They point out that certain types of equipment and plant are inherently noisy and that, in the present state of technical knowledge no amount of expenditure on such equipment can have more than a very marginal effect in reducing their noisiness. Since demolition and construction work may have to be carried out almost anywhere—including exceptionally noise-sensitive localities—it is thought to be essential that the contractor should at all times have the defence of best practicable means available to him. Moreover in order to enable builders to price and carry out works and building construction it is essential that they know in advance that they are able to carry out their works without unreasonable restrictions. It is suggested that the imposition of different standards of noise control for different areas would make this impossible. Finally it is stressed that if for any reason a building operation had to be interrupted this would cause "enormous financial difficulties" to the builder and would probably make completion of the operation impossible.

193. We are clear that special arrangements are necessary to deal with the noise problems arising from construction and demolition work. The fact that such operations are, in their nature likely from time to time to have to be carried on in localities where the residents are unaccustomed to noise disturbance, means that the shock and discomfort which are liable to be caused is exceptionally great. The fact that it is also likely to be

limited to a few weeks or months in duration does not, in our view, justify depriving those affected of the opportunity of obtaining such relief as is reasonably possible and as the law provides for—and obtaining it promptly.

194. On the other hand we recognise the justice of the industry's plea for certainty in advance as to what is required of them and for the avoidance as far as possible of interruption or disruption of their work.

195. In considering how these requirements can be reconciled we have noted that for construction and demolition work (unlike continuing industrial operations) there is a clearly defined event—viz. the commencement of operations under a particular contract on a particular site—from which the risk of nuisance stems. There is consequently the possibility of establishing with precision before the nuisance occurs, what steps are to be taken to prevent or mitigate it. This seems to us highly desirable as it would open up the possibility of prompt and effective enforcement.

196. We accordingly considered the idea that before a demolition or construction project is undertaken the person wishing to invite tenders, or the contractor who wishes to tender, should be able to notify the local authority and to require a notice to be served on the parties concerned specifying the requirements as to noise to be observed in the execution of the works, and that the local authority should have the right to serve such a notice on its own initiative. We recognise that it would often be difficult for local authorities to cover everything in such notice of requirements, especially as many factors affecting the volume of noise will differ from site to site. We recognise, moreover, that usually tenders are required to be submitted within a very limited period of time.

197. Any such arrangement would necessarily involve the risk (referred to in another context in paragraph 116 above) that the requirements laid down in advance might in the event prove less effective than had been hoped and that the local authority might well wish to modify them during the course of the work. But we believe that acceptance of that risk would (in the special circumstances of construction and demolition works) be outweighed by the benefits to local residents of quicker and more effective enforcement, and we feel that this experiment should be tried. It will focus the attention of contractors on the necessity for reducing noise ; it is bound also, we think, to make the local authority conscious of the noise problem which will arise within their area and to prepare in advance some measures of protection to the public. We expect that some standardisation of rules and requirements would emerge and we attach great importance to the initial contact between the parties concerned and the local authority, which we believe is in practice the best and perhaps the only effective way for these noise problems to be tackled.

198. **We accordingly recommend that a person wishing to invite tenders for a construction or demolition contract (or a contractor wishing to tender for such a contract) should be enabled to notify the local authority and to require them within a reasonable period (say two weeks) to serve a statutory notice upon him, specifying the requirements to be observed in the execution**

of the works for the prevention or mitigation of nuisance from noise or vibration. It would also be open to a local authority to serve such a notice in respect of works of which they had not had formal notification. There would be provision for prompt appeal to the magistrates' court against the requirement of a notice ; and in appeal proceedings it would be open to the appellant to show that the requirements sought to be imposed were in excess of the general duty (see Chapter 8).

199. So long as the requirements of the notice—or any lesser requirements substituted by order of the court on appeal—were complied with, the contractor should be assured of being able to complete his work without interference from the local authority or the courts ; and to that end **we think it would be right to exclude demolition and construction works in respect of which a statutory notice of requirements has been served from the matters on which private citizens may complain direct to the courts under the Act. But if a contractor failed to comply with the requirements of a notice or of a court order, the local authority (or an officer of the authority, under delegated powers) should be able to apply to a justice of the peace who would be empowered if he thought it right after inspecting the works, to order their suspension until such time as the contractor could satisfy a magistrates' court that he was able and willing to comply with those requirements. Similarly if the local authority had not been notified in advance of the works and had not served a notice, but were satisfied that a nuisance was being caused, they should be able to apply to a justice of the peace to order the suspension of the works until the magistrates' court had imposed requirements for the prevention or mitigation of the nuisance (or had decided not to impose any such requirements).**

200. It would be right for the contractor to be given 24 hours notice of a justice of the peace's intention to inspect his works and to have the right to accompany him.

201. There would be the usual provisions for fines to be imposed for failure to comply with the requirements of a notice and of a court order.

202. The effect of the arrangements recommended above would be that before tendering for a contract for demolition or construction works, a contractor would be able to ascertain with certainty what was required of him by the local authority (or if he appealed, by the courts). He would also know that his competitors were subject to the same requirements. And above all he would know that so long as he scrupulously observed the requirements he would be free from interruption or disturbance. On the other hand the local residents would know that if the prescribed precautions to avoid or mitigate nuisance were not observed they could expect speedy and effective action to be taken to relieve them.

203. The intended effect of the above recommendations could be achieved in a variety of ways. The detailed arrangements would need to be further considered in consultation with representatives of the local authorities and of the construction industry.

CHAPTER TWELVE

STATUTORY UNDERTAKERS

204. Under the Noise Abatement Act 1960 notices may not be served or nuisance proceedings taken in respect of noise or vibration caused by statutory undertakers in the exercise of their statutory powers. A note of the meaning of the phrase " statutory undertakers " in this context is at Appendix D.

205. The CBI, the APHI and a number of local authorities have argued that this exemption is undesirable and/or unnecessary—particularly in view of the availability of the defence of " best practicable means "—and should be repealed.

206. To assist us in weighing the arguments for and against this proposal we invited representatives of the British Railways Board to discuss their noise problems and their views on the present exemption. A summary of the opening statement made by the Chief Legal Adviser to the Board at that meeting is at Appendix E. We were impressed by the evident concern of the senior management of British Rail to do everything possible to avoid inflicting unnecessary noise on the general public and are satisfied that they do not regard the present exemption under the Noise Abatement Act as in any way relieving them of their responsibilities in that respect.

The origin of the exemption

207. The local acts which provided the precedent for the provisions of the Noise Abatement Act 1960 contained an exemption for railway undertakers and this was continued in the Noise Abatement Bill as introduced. Some local act clauses had also applied the saving to statutory undertakers generally ; and to provide a more uniform provision and to meet some representations by other statutory undertakers, an amendment was introduced during Committee proceedings to provide a general exemption for all statutory undertakers on the grounds that they have a statutory obligation to serve the public and that in some instances what they do may necessarily be noisy. Some doubt about the amendment was expressed in Committee, but there was ready acceptance of the advice given by Sir Keith Joseph, who suggested for the Government that the evidence for a final judgment was not yet available and that the position could best be reviewed in the light of the eventual recommendations of the Wilson Committee (then recently appointed). Somewhat ironically therefore, the effect of the Noise Abatement Act, so far as statutory undertakers were concerned, was to extend the already very considerable degree of statutory protection they already enjoyed.

The Wilson Committee's recommendations

208. It will be recalled that the Wilson Committee recommended[1] the registration of specially noisy industrial processes and the control by central government of their noise emissions (along similar lines to the proposals submitted to us by the CBI and discussed in Chapter 6 above). The Committee envisaged that any specially noisy activities of statutory undertakers would be covered by these arrangements ; and on that understanding recommended that the exemption for statutory undertakers should be dropped —since their other activities would differ in no way from those of industry in general.

209. Since the recommendations of the Wilson Committee with regard to specially noisy industries have not been implemented and we are not recommending implementation of the similar proposal by the CBI in the context of a new Noise Abatement Act, we have approached the statutory undertaker problem along different lines.

Safety and emergencies

210. British Rail necessarily have to make certain noises (e.g. whistling by trains) for the safety of their passengers or of the general public. Other statutory undertakers are no doubt in the same position ; but so also are many private firms. **We are clear that any general duty to minimise noise emissions which might be created under a new Noise Abatement Act should be subject to a general saving for noise necessary on safety grounds or arising in cases of emergency ; and that this saving should be of universal application.**

Activities which are not statutory duties

211. Statutory undertakers may be empowered to carry out activities which are not essential to and have no direct bearing on their statutory duties. These activities are for the most part also performed by private concerns which enjoy no exemption. Why for example should British Rail enjoy exemption from proceedings in respect of their hotels? We are clear that if statutory undertakers are to continue to enjoy an exemption under a new Noise Abatement Act it should be confined to noise necessarily emitted in the performance of their statutory duties.

Exemption for statutory duties?

212. The case for exemption is, in essence, that statutory undertakers have an overriding duty, imposed on them by law, to provide an essential service to the general public and that the fulfilment of that duty must not be prejudiced by making them liable to conflicting requirements under other Acts. British Rail, for example, should be allowed to carry out unimpeded work—such as track or bridge repairs—which is essential to the operation of their services.

213. This we broadly accept ; but we are not satisfied that it amounts to a case for exemption from proceedings. Even though a noise which is

(1) Noise: Final Report. paragraph 393.

causing a nuisance is being made in the performance of a statutory undertaker's primary duty, it does not follow that it cannot be abated without prejudice to that duty. And we see no reason why the statutory undertaker should not be required to establish that point to the satisfaction of the courts. To relieve him of that responsibility—and to leave him a judge in his own cause—is to deprive the sufferers of the nuisance (and the local authority acting on their behalf) of the reasonable satisfaction to which they are entitled.

214. The representatives of British Rail told us that they feared that decisions taken by magistrates "in the light of purely local issues and in ignorance of the technical considerations" might inadvertently prejudice a national service such as they run. However, we have no doubt of the competence of British Rail's legal representatives to make the magistrates fully aware of the wider implications of any decision they might be disposed to take; and it would, of course, be open to British Rail to appeal against any decision of the magistrates to Quarter Sessions where the case would be heard by professional judges remote from all local pressures.

215. **We accordingly recommend that in a new Noise Abatement Act there should be no exemption from proceedings for statutory undertakers as such; but that in considering the merits of any requirement which a local authority seeks to impose on (or any complaints by private citizens against) an undertaker the court shall have regard to the compatibility of any order they may be disposed to make with any duty imposed on the undertaker by law (otherwise than under the Noise Abatement Act).**

CHAPTER THIRTEEN

NOISE IN PUBLIC PLACES

216. Noise from road works is covered by our proposals at Chapter 11 above.

217. We have reviewed the provisions of the present Noise Abatement Act with regard to the use of loudspeakers in the street (paragraph 74 above). In our view they provide a reasonable measure of protection for the general public and we have no change to propose.

218. For the rest, noise in public places (in so far as it cannot be satisfactorily dealt with under the provisions we have proposed for a new Noise Abatement Act) can in our view best be controlled by byelaws made by local authorities and confirmed by the Home Secretary under section 249 of the Local Government Act 1933.

219. Model byelaws are published by the Home Office for the guidance of local authorities. Unfortunately, however, those relating to noise in public places are somewhat limited in scope and appear to have been devised to meet the problems of the age of the barrel-organ. **We recommend that a comprehensive review of these model byelaws should be put in hand in order to ensure that they are adequate in scope and form to meet contemporary needs.**

CHAPTER FOURTEEN

MACHINES: RATING AND LIMITATION OF NOISE OUTPUT

220. The existing Noise Abatement Act and all the provisions we have so far proposed for inclusion in a new Act, are concerned with measures to deal with local noise problems where they actually arise. The point of application is the premises from which noise is emitted; and the onus is normally upon the occupier of the premises. This is the first line of defence. But for noise generated by machines of one kind or another—and this represents a major part of neighbourhood noise—we feel that a second line of defence is needed.

221. As it affects the general public, machine noise is the resultant of:

(*a*) the inherent noisiness of the machine;

(*b*) the way in which it is installed, maintained and operated; and

(*c*) the extent to which the public are shielded from the noise it emits.

Obligations placed upon the occupier of premises can "bite" effectively on (*b*) and (*c*). They may also do something to help with (*a*) by encouraging the selection of the quieter of the various types of machine currently available, and also to some extent by stimulating customer demand for quieter machines. It is clear, however, that there is room for measures directly designed to stimulate research into the design of quieter machines and to ensure that as far as possible new machinery produced is as quiet as the current state of technology will permit. We have therefore considered how far these objectives could be furthered by some form of new legislative provision.

222. There seem to us to be two main ways in which Government can operate in this field:

(*a*) by measures designed to stimulate market pressures on manufacturers to produce quieter machines; and

(*b*) by imposing on manufacturers direct statutory requirements (with a time lag to allow for research and development to respond to the demands made on them).

We would prefer, if possible, that the desired result should be achieved without resort to the second of these techniques and, in any case, we are clear that direct statutory limitation will be more effective and acceptable if it is used to supplement and reinforce, rather than as a substitute for, the stimulation of market pressures. On the other hand experience suggests that progress is likely to be more rapid if powers of the second type exist, but are

held in reserve; and indeed, that the availability of such powers in the background may actually make it less likely that compulsion will be necessary.

223. When a new factory is being established or an existing one re-equipped it will (if the proposals in the preceding chapters are implemented) be incumbent upon the industrialist to employ the best practicable means to minimise the emission of noise from his premises. In particular, he will need (if the premises are in a noise abatement zone) to ensure that the specified noise emission level is not exceeded and (in any case) that he is not at risk of causing a noise nuisance. This situation will in itself tend to increase the importance of quietness as a selling point for manufacturers of machinery. It will also create a more general need for reliable and strictly comparable data on the noise characteristics of different machines to be automatically available to potential purchasers. This information will be needed not only because of its bearing on the selection of the machines to be installed, but also to enable the likely level of noise emission from the premises to be predicted and any appropriate remedial measures planned in advance. We recognize that this task of prediction is at present no easy one. Whatever the noise rating of a piece of machinery may be under standard test conditions, the noise emanating from the premises where the machine is ultimately installed will of course be affected by a number of factors such as (for example) the manner and position in which it is mounted; its possible interaction with associated equipment; the structure of the factory; and the disposition of the installation within the premises. It is however reasonable to suppose that expertise in assessing the effects of these factors will develop over the years.

224. It is, at the present time, by no means universal practice for the noise output (or "sound power level") of machines to be specified by the manufacturer and there is no universally accepted system of "noise rating". We believe that the adoption of such a system is a desirable objective. Guidance on methods of measurement is already available in BS 4196: 1967—but this is of a general character only. We understand however that detailed guidance from the British Standards Institution is in preparation in respect of rotating electrical equipment and of hand-held power tools. We hope that they will go on to prepare and publish measurement standards for an increasingly wide range of different classes of machinery as measurement techniques and expertise develop; and that as their standards become available management will be encouraged to adopt the practice of specifying the sound power level of machines which they offer for sale.

225. Clearly a great deal remains to be done before the specification of sound power levels can be adopted as a standard practice. But it is important that, as and when measurement standards become available, they should be put into effect without unnecessary delay. We consider that it would help to achieve this objective if statutory powers were available to the Government to make the specification of sound power levels obligatory. We would not expect, of course, that any such powers would be exercised before the

Government were satisfied, after consultation with industry, that practicable and satisfactory standards for noise measurement existed for the class of machinery in question.

226. **We therefore recommend that a new Noise Abatement Act should empower the Secretary of State to require by regulation the sound power level of machinery offered for sale in the United Kingdom to be specified.**

227. Any action to reinforce market pressures for quieter machines by the imposition of statutory limits on noise output would have to be related to particular classes of machine or plant and would necessarily have to await the establishment of the relevant noise rating standard. For machinery in factories it would in any case be more appropriate to relate such limits to the protection of the worker operating the machine (with whom we are not directly concerned) than of the general public who are affected by the noise it generates only to the extent that it penetrates to them outside the factory premises. On the other hand noise from mobile machinery and domestic machines such as motor mowers, could appropriately be limited in the interests of the general public who are directly exposed to it.

228. **We have thought it right to frame our proposals with a view to the establishment of a comprehensive statutory framework for the progressive alleviation of the neighbourhood noise problem over the next 10 to 15 years. Such a framework should in our view include a reserve power for the Secretary of State to introduce by regulation (subject to the approval of Parliament) statutory limitations on the noise output of specified classes of machinery.** This would ensure that if formal action were to prove necessary at some future date, this would not have to be delayed through lack of powers ; and would, in the meanwhile, provide a valuable stimulus to voluntary action.

229. Meanwhile we have noted that simple and effective means of muffling noise from certain types of mobile equipment (notably air-powered tools and mobile air compressors) are available. Failure to use these means is nevertheless common and causes much unnecessary disturbance and annoyance to the general public. **We recommend that it should be made an offence (carrying liability to a fine on summary conviction and to further daily fines for as long as the offence continues thereafter) to use, or allow the use of, such equipment unmuffled ; and that the Secretary of State for the Environment should be empowered to specify by regulation the classes of equipment to which this provision shall apply.**

OUTLINE OF SUGGESTED PROVISIONS FOR A NEW NOISE ABATEMENT ACT

CONTENTS

Relevant paragraphs in report	*Provisions for a New Act*	*Analogous provisions in PHA 36/ NAA 60 and other legislation*
Chapter 8	**Part 1: General Duty**	
141. 142. 210.	1.1. A general duty would be laid upon all owners and occupiers of premises, and any person upon such premises, to employ at all times the best practicable means to minimise the emission of noise or vibration therefrom, with a saving for emission of noise necessary on safety grounds, or arising in cases of emergency.	
144.	1.2. In the interpretation of " best practicable means ":	
168.	*a.* " practicable " would be taken to mean reasonably practicable having regard to local conditions and circumstances (including whether the premises in question are within a Noise Abatement Area [see	S.110 PHA
215.	Part 3 below]), to the current state of technical knowledge, to the financial implications, and to compatibility with any duty imposed by law otherwise than under the Noise Abatement Act.	S.34(1) Clean Air Act 1956
	b. " means " would be taken as including the design, installation, maintenance and manner and periods of operation of plant and machinery, and the design, construction and maintenance of buildings and acoustic structures.	
	1.3. The foregoing general duty is to be construed as a general code of practice for reducing the emission of noise. It is without prejudice to all existing rights available to any person aggrieved in respect of nuisance by noise but shall not of itself confer any additional right on any person claiming to be aggrieved solely by any breach of such general duty.	
Chapter 10	**Part 2: Noise or Vibration Nuisance**	
	2.1. *Inspection* It would be the duty of the local authority to cause all parts of their district to be inspected from time to time for the identification of noise or vibration which is or may be a nuisance and to take action where appropriate under 2.2–2.6 below.	S.91 PHA 36
	2.2. *Noise Nuisance Notices* Where a local authority are satisfied of the existence of a noise nuisance (under 2.1) they would be required to serve a noise nuisance notice on the person by whose act, default or sufferance the nuisance arose or continued, or if that person could not be found on the owner or occupier of the premises on which the nuisance arose, requiring him within a specified period of time to abate the nuisance and to execute such works and take such steps as might be necessary for that purpose (subject to proviso (*b*) in S.93 of the PHA 36).	S.93 PHA 36

Relevant paragraphs in report	*Provisions for a New Act*	*Analogous provisions in PHA 36/ NAA 60 and other legislation*
	2.3 *Appeal against noise nuisance notice*	
181. 183.	2.3.1. The person on whom a noise nuisance notice was served would have the option, within one week or within the period specified in the notice (whichever was the less) to appeal to the magistrates' court.	
	2.3.2. If, on the hearing of an appeal under 2.3.1. it were proved that the alleged nuisance existed, or that although abated it was likely to recur on the same premises, then subject to 2.3.3. below the court would be required to make a noise nuisance order:	
	a. requiring the appellant within a time specified in the order to comply with all or any of the requirements of the notice appealed against, or otherwise to abate the nuisance, and to execute any works necessary for that purpose:	S.94(2) PHA 36
	and/or	
	b. prohibiting a recurrence of the nuisance, and requiring the appellant, within a time specified in the order, to execute any works necessary for that purpose.	
	2.3.3. But if it were proved that the appellant had complied and was continuing to comply with the general duty at 1.1 no such order could be made.	S.1 NAA 60
	2.4. *Default in complying with noise nuisance notice*	
183.	2.4.1. If the person on whom a noise nuisance notice had been served made default in complying with any of the requirements of the notice (no appeal having been entered) or if the nuisance, although abated since the service of the notice, was, in the opinion of the local authority, likely to recur on the same premises, the authority would be required to cause a complaint to be made to a justice of the peace, who would thereupon be required to issue a summons requiring the person on whom the notice had been served to appear before the magistrates' court.	S.94(1) PHA 36
	2.4.2. On hearing of the complaint, the court:	S.94(2) PHA 36
	a. if it were proved that there had been default in carrying out the requirements of the notice, would be required to make a noise nuisance order requiring the person on whom the notice had been served, within a time specified in the order, to comply with all the requirements of the notice and to execute any works necessary for that purpose; and might impose on the defendant a fine not exceeding [£200];	
190.		
	and/or	
	b. might make a noise nuisance order prohibiting a recurrence of the nuisance.	

Provided that if it was established that the person on whom the notice had been served had in due time appealed to the magistrates' court under 2.3, the court would be required to dismiss the complaint.

2.5. *Failure to comply with a noise nuisance order*

190. Anyone failing without reasonable excuse to comply with, or knowingly contravening, a noise nuisance order would be liable to a fine not exceeding [£500] and to a further fine not exceeding [£50] for each day on which the offence continues after conviction. — S.95(1) PHA 36

2.6. *Other provisions*

Sections 94(3), 94(6), 95(2), 96, 97, 98, 100, 287, 288 and 290 of the PHA 1936 would apply to proceedings under 2.2–2.5 above. There would also be provision for service of "noise nuisance prohibition" notices and subsequent proceedings based on the PH (Recurring Nuisances) Act 1969.

2.7. *Complaints to Magistrates by persons aggrieved by noise nuisance*

189. Any three or more occupiers of land or premises who were aggrieved in that capacity by nuisance from noise or vibration (except as provided in 4.10 below) would be able to complain of the nuisance, to a justice of the peace and the same procedures, penalties, etc. would be applicable as for a complaint by the local authority under the PHA 36 (Ss 94 et seq). — S.99 PHA 36 S.1(2) NAA 60

Provided that if the circumstances were such that only one or two occupiers were exposed to the alleged nuisance the court might at their discretion proceed upon a complaint from the one or two occupiers in question.

Chapter 9

Part 3: Noise Abatement Zones

3.1. *Inspection*

It would be the duty of the local authority to cause their district to be inspected from time to time for the identification of areas in which it was desirable, for the well-being of those living or going about their lawful occasions in the area, to abate the general level of noise or vibration; and to take action, where appropriate, under 3.2–3.5 below.

3.2. *Designation*

170. 161. 3.2.1. Local authorities would have power by order, confirmed by the Secretary of State, to designate [the whole or] any part of their district as a noise abatement zone. — S.11(1) Clean Air Act 1956

170. 165. 3.2.2. In any such order the local authority would be required to specify the level, measured in such manner as

the Secretary of State might prescribe in regulations [see 6.1.a below] to which it was the authority's intention (as far as possible within their powers) to restrict the emission of noise from any premises in the area to be designated.

170. Provided that it would be open to the authority to specify different levels for different parts of the zone, for different types of premises and for daytime and night-time operations.

170. 3.2.3. There would be the usual provisions for the local authority to give public notice of their having made the order; for objections to be submitted to the Secretary of State; for the holding of an inquiry into any such objections; and for the Secretary of State to confirm the order with or without modifications. Schedule 1 Clean Air Act 1956

3.3. *Noise abatement notices*

165. 3.3.1. It would be the duty of the local authority on confirmation of an order designating a noise abatement zone, to survey noise and vibration emissions throughout the zone as quickly as practicable. Where they were satisfied that noise in excess of the appropriate level specified in the order was being emitted from any premises, they would be empowered (after consultation where practicable with such persons as they considered appropriate) to serve a noise abatement notice.

171. 3.3.2. The notice would require the person on whom it was served within a specified time (being not less than six months), to reduce the noise emitted from the premises in question to a specified level, being not less than the appropriate level specified in the designation order, and to execute such works and take such steps as might be necessary for that purpose.

3.4. *Appeal against noise abatement notice*

171. 3.4.1. The person on whom the notice was served could within 3 months give notice of appeal to the magistrates' court on one or more of the following grounds:

a. that he had already complied, and was complying with the requirements of the general duty;

b. that some or all of the works or other steps required by the notice were not necessary either:

i. to reduce the emission of noise to the appropriate specified level; or

ii. to comply with the general duty;

c. grounds (b), (c), (d), (e) or (f) in S. 290(3) of PHA 1936.

3.4.2. On the hearing of an appeal under 3.4.1. the court:

168. a. if they were satisfied that the appellant had already complied and was complying with the requirements of the general duty would be required to quash the notice appealed against;

b. otherwise could make a noise abatement order requiring the appellant within a time specified in the order, to comply with all or any of the requirements of the notice, or such other requirements as they saw fit to impose, and to execute any works necessary for that purpose.

3.5. *Other provisions*

Except as specified in 3.3 and 3.4 above the provisions governing the service of noise abatement notices and any subsequent proceedings would be the same *mutatis mutandis* as for noise nuisance notices and orders (see 2.3–2.6 above).

3.6. *Relation of Part* 3 *to other parts of the Act*

174. The provisions of Part 3 of the Act would apply without prejudice to the provisions of other parts of the Act; except that where a local authority had served a noise abatement notice in respect of premises and had not at the same time served a noise nuisance notice under Part 2 in respect of those premises, the authority would not be empowered to serve a noise nuisance notice in respect of the same premises at any later date unless they were satisfied that the noise emitted from the premises had increased since the serving of the noise abatement notice.

Chapter 11 **Part 4: Control of noise from Building, Demolition and Road Works**

198. 4.1. A person wishing to invite tenders for a contract relating to road works or any engineering or building operations including works of demolition, or a contractor wishing to tender for such a contract, would be enabled on notifying the local authority in whose district the work was to be carried out to require the authority to serve upon him within two weeks a notice specifying the requirements to be observed in the execution of the works for the prevention or mitigation of nuisance from noise or vibration.

198. 4.2. The local authority would be empowered to serve such a notice in respect of works of which they had not received formal notification.

198. 4.3. The person on whom such a notice was served would be enabled to appeal to the magistrates' court within one week.

4.4. If on the hearing of an appeal under 4.3 it were proved that nuisance would result from the carrying out of the works with disregard to all or some of the requirements specified in the notice, the court would be required to make an order requiring the appellant to comply from the commencement of the works with all or some of the requirements of the notice appealed against, or otherwise to prevent the occurrence of nuisance in carrying out the works.

198. 4.5. But no such order should require measures which were in excess of those necessary to comply in carrying out the works with the general duty at 1.1.

199. 4.6. If the person on whom a notice under 4.1 or 4.4 had been served made default in complying with any of its requirements (no appeal having been entered) or with the requirements of a court order the authority should be required to cause a complaint to be made to a justice of the peace, who should be empowered after inspecting the works to order their suspension until such time as the person could satisfy a magistrates' court of his intention to comply with those requirements.

199. 4.7. If a local authority were satisfied that nuisance was arising in the course of works of which they had not been officially notified and in respect of which they had not served a notice under 4.1, they would be enabled to apply to a justice of the peace to order (after inspection) the suspension of the works until a magistrates' court had issued an order specifying requirements for the prevention or mitigation of the nuisance, or had decided not to make such an order.

200. 4.8. There would be a requirement that 24 hours notice should be given to the person responsible for the works of the justice's intention to inspect the works under 4.6 or 4.7. The person responsible for the works would be entitled to accompany the justice during the inspection.

190. 4.9. There would be provision as under 2.4.2 and 2.5 for fines to be imposed for failure to comply with the requirements of a notice or order under 4.2, 4.4, 4.6 and 4.7.

199. 4.10. The provisions of 2.7 above would not apply to nuisance from building, demolition and road works in respect of which a notice had been served by the local authority under 4.1 or 4.2.

229. 4.11. *Reduction of noise from use of mobile equipment*

It would be prohibited to use, cause or permit to be used any air-powered tool or mobile air compressor or such

other class or category of mobile equipment as might from time to time be specified by order of the Secretary of State unless it was equipped with effective means for reducing the noise emitted.

4.12. Any person who contravened 4.11 would be liable to a fine not exceeding [£500] and to a daily fine not exceeding [£50].

Chapter 13 **Part 5: Noise in Public Places**

5.1. *Loudspeakers*

217. As in section 2 NAA 1960, except that the penalty would be increased to [£100].

Part 6: Miscellaneous Provisions

6.1. *Regulation making power*

The Secretary of State would be empowered by regulation (? subject to negative resolution):

226. a. to specify the manner in which emission of noise from premises is to be measured (for the purposes of 3.2.2 above);

b. to require the sound power level of machinery or plant of any specified class offered for sale in the United Kingdom to be specified; and to prescribe in what manner and under what conditions the sound power level shall be calculated;

229. c. to specify classes or categories of mobile machinery for the purposes of 4.11 above;

228. d. to make it an offence with effect from a specified date knowingly to sell or offer for sale by way of trade machinery or plant of any specified class or category with a sound power level (see (b.) above) in excess of a specified level.

6.2. *Exemptions*

Nothing in the Act would apply to noise or vibration caused by aircraft other than model aircraft.

APPENDIX A

NEIGHBOURHOOD NOISE—THE POSITION IN SCOTLAND

1. This appendix sets out the ways in which nuisance from noise and vibration is dealt with in Scotland and details how the practice differs from that of England and Wales; and the effects of these differences on the applicability to Scotland of the Working Group's recommendations. In many ways the legal background in Scotland and in England and Wales is similar so that the differences are often of detail only. There are however two overall differences to which attention must be drawn. References in the report to the Secretary of State for the Environment would in the context of Scotland be references to the Secretary of State for Scotland, and references to the various functions of magistrates' courts and justices of the peace would in the context of Scottish judicial procedures be references to the Sheriff Court and the Sheriff.

The Noise Abatement Act 1960 (Chapter 3)

2. In England and Wales noise and vibration nuisances are dealt with under the statutory nuisance provisions of Part III of the Public Health Act 1936 and of the Public Health (Recurring Nuisances) Act 1969, neither of which applies to Scotland. However section 1(5) of the Noise Abatement Act 1960 provides that in Scotland noise or vibration which is a nuisance "shall be a nuisance liable to be dealt with summarily in the manner provided in Part II of the Public Health (Scotland) Act 1897, in the same way and to the same effect as in the case of a nuisance under paragraph (6) of section 16 of that Act, and a town or county council shall have the like powers and duties in relation to such noise or vibration as they have in relation to a nuisance under that Act".

3. In Scotland, as in England, nuisance is not defined by statute but rests upon the principles set out in the common law. It would seem however that in the context of nuisances which relate to neighbourhood the principles of common law in England and in Scotland are much the same. As Lord Fitzgerald said in *Fleming* v *Hislop* (1886) 13 Rettie (H.L.) 43 at 48: "There is no difference in this respect between the law of England and the law of Scotland; they rest upon the same principle; both acknowledge the undoubted right of the proprietor to the full and absolute use of his own property; but there is this restraint or limitation imposed for the protection of his neighbour, that he is not so to use his property as to create that discomfort or annoyance to his neighbour which interferes with his legitimate enjoyment". That the common law of Scotland embraces nuisance arising from noise or vibration is explicitly recognised by, among others, Erskine, in his *Principles* ii. 9, IA, where he said: "Every landowner has a natural right to have the air which reaches his property free from undue pollution . . . and undue vibration (noise). The question of the amount of allowable pollution and disturbance is one of circumstances. If property or health is materially affected the nuisance

is undoubted, and must be abated. If it only makes the enjoyment of life and property uncomfortable much depends on the nature of the locality . . .".

4. The procedures under Part II of the Public Health (Scotland) Act 1897 applied by the Noise Abatement Act 1960 for dealing with the abatement of noise are broadly as follows:

(*a*) Every local authority has a duty to cause their district to be inspected from time to time for the detection of nuisance from noise or vibration and to enforce the provisions of the Act to remove the same (1897 S.17).

(*b*) Where they have reasonable grounds for believing that a noise nuisance exists in any premises the local authority or its officers may demand admission to enter and inspect such premises (1897 S.18).

(*c*) Any person may and any officer of a local authority or police officer must give information of any noise nuisance to the local authority to enable its existence to be drawn to the attention of any person who may be required to remove it (1897 S.19).

(*d*) If they are satisfied of the existence of a noise nuisance the local authority shall serve a notice on the author of the nuisance (or if he cannot be found on the owner or occupier of the premises on which it arises) requiring him to remove the same within the time specified in the notice and execute such works as may be necessary for that purpose. If the local authority think it desirable (but not otherwise) they may specify in the notice any works to be executed. The local authority may also require by the same or another notice works to be executed to prevent the recurrence of the nuisance, notwithstanding that the nuisance may for the time being have been removed, if they consider that it is likely to recur on the same premises. The local authority is empowered in certain circumstances to remove the nuisance or prevent its recurrence (1897 S.20).

(*e*) If the person on whom the notice has been served fails to comply with it or if the nuisance although removed is in the opinion of the local authority likely to recur on the same premises the local authority shall apply for its removal by summary petition (1897 S.21).

(*f*) Where a noise nuisance is ascertained to the satisfaction of the local authority to exist or is liable to recur they may apply to the sheriff by summary petition provided that such application shall be made only on the production of a medical certificate or a written requisition to the local authority by three or more aggrieved persons who are occupiers of land or premises. If it appears to the satisfaction of the sheriff that the nuisance exists or if removed is likely to recur he shall make a decree for the removal of the nuisance and/or prohibit its recurrence and may require the execution of any necessary works. Where the nuisance arose from wilful fault or culpable negligence of the owner or occupier of the premises and a notice had previously been served on the author the sheriff may, in addition to making a decree, impose a fine not exceeding £20 (1897 S.22 and S.23). (Fines are presently regulated by the Criminal Justice Act 1967).

(*g*) Any party who fails to comply with or infringes such decree shall be liable to a penalty not exceeding £20 for the first offence and not exceeding £50 for the second, and for each subsequent conviction a sum not exceeding

double the amount of the last penalty, but no penalty shall exceed £200 (1897 S.24). (Fines are presently regulated by the Criminal Justice Act 1967).

(*h*) Where it appears to the sheriff that the execution of structural works is required for the removal or remedy of a nuisance he may by order require such works to be carried out under the direction of any person he may appoint and he may before making his order require the local authority to furnish him with an estimate of the cost of the required works (1897 S.25).

(*i*) In case of non-compliance with a decree the sheriff may on application by the local authority grant warrant to such person as he may deem right to enter the premises to enable the nuisance to be removed or remedied. Where the author of the nuisance is not known the decree may at once authorise the local authority to execute the works and in suitable circumstances the cost of such works may be recovered from the author of the nuisance or failing him from the owner of the premises (1897 S.26).

(*j*) If the local authority fail or neglect to perform their statutory duties or if the nuisance exists upon property in which the local authority have an interest, it becomes competent for certain aggrieved persons, the procurator fiscal or the Secretary of State to notify the local authority in writing of the matters in which such neglect exists. If the local authority do not act within fourteen days after such notice one or more of the parties may apply to the sheriff by summary petition. The sheriff is then required to inquire into the circumstances and may take certain steps to enforce the removal or remedy of the nuisance (1897 S. 146).

5. Section 1(3) of the Noise Abatement Act 1960, which provides that in regard to proceedings brought under section 1(1) it shall be a defence to prove that the best practicable means have been used for preventing and for counteracting the effect of noise or vibration caused in the course of a trade or business, applies also to Scotland but there is no definition of the "best practicable means" in the Public Health (Scotland) Act 1897 similar to section 110(2) of the Public Health Act 1936 which applies to England and Wales.

6. Section 1(4) of the Noise Abatement Act 1960, as modified by section 1(5)(*c*), and section 1(7) which confer exemption on statutory undertakers and aircraft respectively apply equally to Scotland. Section 2 which restricts the use of loudspeakers in streets, also applies to Scotland, although the procedure for instituting criminal proceedings set out in section 2(4) differs in Scotland from that which applies in England and Wales.

7. In addition to the statutory procedures and remedies summarised above it is also open to any person to make use of his common law remedies, for example by seeking an interdict to prevent the continuance or recurrence of a nuisance (1897 S. 170).

The Present Working of the Act (Chapter 4)

8. In 1969 the Scottish Development Department invited local authorities in Scotland to report on the extent and effectiveness of the measures they had taken to deal with noise from industry. Replies were received from about 75 per cent of the town and county councils in Scotland and an analysis of these disclosed problems broadly similar to those occurring in England and Wales with regard to noise nuisance arising from particular types of industry, but taking the returns as a whole less emphasis was placed on industrial noise as a serious problem. Sanitary Inspectors in Scotland are the counterpart of Public Health Inspectors in England and Wales and have similar functions.

Prevention (Chapter 5)

9. The recommendations contained in this chapter for local authorities exercising their development control powers to take account of the noise implications of proposed new development could also apply in Scotland as could the other recommendations for using planning powers as a means of preventing the creation of any new noise problem.

10. Statutory licensing powers in Scotland differ from those applying in England and Wales. In particular, licensing courts in Scotland do not have powers under the Licensing (Scotland) Act 1959 to attach conditions to a new certificate. However a Departmental Committee on Scottish licensing law is currently reviewing the relevant legislation. The general legislation governing licences for music and dancing is different in Scotland where the Burgh Police (Scotland) Acts 1892–1903 and various local Acts contain provisions for the control of places of *public* entertainment, including the control of music and dancing in such places. The Private Places of Entertainment (Licensing) Act 1967 and the Late Night Refreshment Houses Act 1969 do not apply in Scotland.

11. It will be seen therefore that the Working Group's conclusion that existing licensing powers do not need strengthening for the purpose of dealing with noise problems cannot be said to apply equally to Scotland.

Areas of Special Control (Chapter 9)

12. In Scotland responsibility for confirming Noise Abatement Zone Orders would rest with the Secretary of State for Scotland.

Modifications to Nuisance Procedures (Chapter 10)

13. Nuisance procedure in Scotland differs, as described in paragraph 2 of this Appendix, from the procedure in England and Wales and in applying the recommendations contained in this chapter it would be necessary to have regard to the different judicial system which exists in Scotland.

Noise from Demolition and Construction Work (Chapter 11)

14. In applying the recommendations of this chapter the provision for appeal would require to take account of the different judicial system in Scotland.

Noise in Public Places (Chapter 13)

15. In Scotland county councils have powers to make byelaws under section 300 of the Local Government (Scotland) Act 1947 and town councils under section 316(1) of the Burgh Police (Scotland) Act 1892. The four cities (Aberdeen, Dundee, Edinburgh and Glasgow) and Greenock have similar powers derived from their own local Acts. No model byelaws relating to noise in public places have been published in Scotland.

Machines : Rating and Limitation of Noise Output (Chapter 14)

16. In Scotland the power to specify by regulations the classes of equipment to be muffled would rest with the Secretary of State for Scotland.

APPENDIX B

MEMORANDUM BY CONFEDERATION OF BRITISH INDUSTRY ON A NOISE INSPECTORATE

The Confederation of British Industry accepts that there is a need to intensify the campaign to reduce noise emissions, whether from industrial premises or from other sources, and for this reason is anxious to assist in the work of the Noise Advisory Council. The Confederation believes that as far as industrial noise is concerned a distinction should be drawn between the noise arising from a number of activities in which noise abatement inherently calls for a high degree of technical skill and the noise arising from the great majority of industrial activities for which there are comparatively straightforward means of abatement.

The Confederation believes also that in dealing with the problems of industrial noise, it is important to adopt the method of control best suited to those problems. Legislation that demands the impossible or depends upon control by officials who lack the appropriate skills will not be successful, and industry as well as the community at large will suffer as a result of its failure.

Noise is one form of pollution and has much in common with other forms of pollution. The Confederation believes therefore that there is something to be learned from a study of the methods of control employed over the years to combat other forms of pollution. These methods have met with varying degrees of success. The Confederation would like to draw attention to two particular methods that have proved outstandingly successful:

(1) The control of noxious and offensive gases from works scheduled under the Alkali &c. Works Regulation Act 1906 as extended by a succession of Alkali Works Orders.

(2) The voluntary co-operation between the Government and industry, co-ordinated by the Standing Technical Committee on Synthetic Detergents which in a very short time and without one word of legislation has brought about a virtually complete changeover from non-biodegradable to biodegradable domestic detergents which have substantially put an end to the severe foaming of rivers caused by the former.

The Confederation hopes that the Noise Advisory Council will ascertain direct from the Department of the Environment the full extent of the success in these two cases.

In the opinion of the Confederation, the way to tackle the problem of noise from the inherently difficult noisy industrial activities referred to above is by a combination of the best features of each of these methods. The Confederation believes that in the short term the emphasis should be on maximising voluntary co-operation to reinforce the provisions of the Noise Abatement Act 1960, as only recently given teeth by the Public Health (Recurring Nuisances) Act 1969, while in the long term the emphasis should be on the establishment and develop-

ment of a highly technical Noise Inspectorate organised on the lines and operating on the philosophy of the Alkali Inspectorate.

Until 1969 the Noise Abatement Act 1960 could not be regarded as an effective instrument of control because of the well-known defect in the statutory nuisance procedure which was remedied by the Public Health (Recurring Nuisances) Act 1969. The defect having been remedied the Confederation considers that an attempt should be made to operate the existing legislation for a period of four to five years before it is assumed to be inadequate. During this period of four to five years, the Government should, through a Committee on the lines of the Standing Committee on Synthetic Detergents, enlist the active co-operation of the branches of industry concerned in reducing the noise levels of emissions from particularly difficult noisy pieces of machinery and equipment and in agreeing a time-scale for the introduction of improvements wherever possible and appropriate. During this period of four to five years, steps should be taken by the Government to establish the highly technical Noise Inspectorate discussed in this paper and to recruit, and train to the level of technical skill required, its first members.

Before detailing proposals for a Noise Inspectorate, the Confederation would like to comment on the proposals for "zoning" which were recently discussed by the Association of Public Health Inspectors with the Working Group. These proposals, which may well have arisen largely as a result of the success achieved by the smoke control area provisions of the Clean Air Acts, are in the Confederation's view inappropriate for dealing with noise and any legislation embodying them would probably quickly fall into disrepute. The Confederation's reasons for this view are as follows:

(1) The sections of the Clean Air Acts dealing with smoke control areas provide in effect that in a smoke control area it is an offence to emit smoke from a chimney, unless the emission of smoke is caused by an authorised fuel. This policy has succeeded because

(*a*) it attacks identifiable smoke from identifiable chimneys,

(*b*) the technology for avoiding smoke emissions is known and relatively straightforward,

(*c*) it has been accompanied by strenuous efforts to make available adequate supplies of smokeless fuel and by a generous scheme of financial assistance to encourage householders to change over to heating systems that burn smokeless fuels. The fact that such systems are in any event more attractive from the point of view of the housewife has made the success of the policy that much more certain.

The policy has had its moments of failure when smokeless fuels have been in short supply. It does not in any event apply to processes under the control of the Alkali Inspectorate where the problems of air pollution control are much more complicated.

(2) Smoke control areas have been successful mainly because of the three factors outlined above. Noise, however, is not so readily identifiable and not so easily abated as smoke. Moreover, it would be difficult to supplement a scheme of noise control areas by measures on the lines of those outlined in (*c*) above, which were largely responsible for the success of the smoke control areas scheme.

(3) Attempts to reduce ambient noise levels to specific limits over the whole of an area would be frustrated by the effects of noise sources outside the boundary of the area. Moreover, industrial processes vary greatly in the degree to which they can be quietened, and the imposition of a single noise limit throughout an area, whether applied to ambient levels or levels of emission would be a very blunt instrument of control that might well compel the closure of inherently difficult noisy factories which are none the less valuable to the national economy ; and unless special exemptions were given, such limits would also cause severe difficulties to contractors using mobile plant for essential building operations and the like.

The problem of noise, particularly noise from inherently difficult noisy equipment and machinery, requires a much more sophisticated and flexible approach and the Confederation believes that in the long term such an approach should be based largely upon the philosophy and procedures of the Alkali Act, the essential features of which are as follows:

(1) Those processes which give rise to particularly difficult air pollution problems are scheduled by order of the Minister and thereafter come under the control not of the local authority but of the Alkali Inspectorate.

(2) Premises on which a scheduled process is operated have to be registered with the Alkali Inspectorate.

(3) The owner of a registered work commits an offence if he does not use the " best practicable means "

(*a*) to prevent the escape of noxious or offensive gases (including smoke, grit and dust) and

(*b*) to render such gases harmless and inoffensive where they are necessarily discharged.

(4) In the phrase " best practicable means " the word " practicable " means practicable having regard, amongst other things, to local conditions and circumstances, to the financial implications and to the current state of technical knowledge, and " practicable means " includes the provision and maintenance of plant and the proper use thereof.

(5) The members of the Alkali Inspectorate, a relatively small Inspectorate within the Department of the Environment, are highly technical and highly qualified. They operate either from their homes or from the Regional offices of the Department and are responsible to the Chief Alkali Inspectorate whose report to the Minister is laid before Parliament. Their personal authority is commensurate with their responsibilities.

The success of the Alkali Act method of control is, in the Confederation's opinion, due to the following factors:

(1) The " best practicable means " philosophy is tough. Over a period it is not possible to do more than employ the " best practicable means ". It has led to very considerable expenditure by industry on air pollution control. In his 1968 Annual Report the Chief Alkali Inspector gives figures of the cost of air pollution control for 10 specific scheduled processes during the 10 year period, 1958-1968, as follows:

Capital	£150,302,000
Research and Development	4,945,000
Working costs	324,434,000
Total	£479,681,000

This expenditure, great by any standards, is the result of the continuing pressure exerted on industry by the Inspectorate to achieve the "best practicable means".

(2) The "best practicable means" philosophy is practical. It demands what is right taking into account all the circumstances.

(3) The "best practicable means" philosophy is administered by Inspectors who talk the same technical language as the most skilled experts in industry; and it provides the legal framework within which the Inspectorate continually requires industry to do better when it is possible to do better and at a rate that can be achieved. The Alkali Inspectorate's authority over industry is derived as much from unquestionable competence of its Inspectors as from the legal powers conferred upon them by the Alkali Act. Furthermore, the competitive positions of companies operating the same processes in different areas are more likely to be uniformly maintained by a centralised system of control.

(4) The method is flexible. It allows for additional processes to be scheduled, and for processes to be de-scheduled (thus coming under the control of local authorities) when technology is such that control is within the competence of local authorities.

The Confederation sets out in the Annex to this paper the way in which it suggests that the principles and philosophy of the Alkali Act should be applied to those industrial processes which present particular problems from the point of view of noise abatement. The proposals would result in heavy expenditure by industry on noise abatement over the years, but the proposed Noise Inspectorate would ensure that the expenditure is incurred at the right places and at the right time and that it will be effective. The proposals are attractive from industry's point of view because they will result in the difficult noise problems being dealt with in a spirit of co-operation between experts of like ability within the controlling authority. Problems will be discussed at the design stage and initial mistakes avoided. Improvements thereafter will be assured as technology improves and the Noise Inspectorate tightens the screw. The Confederation believes that the proposals are equally attractive from the points of view of the Government and of the community at large.

PROPOSALS FOR THE ESTABLISHMENT OF A NOISE INSPECTORATE

(1) The Inspectorate would be established by Act of Parliament and would consist initially of a small number of highly qualified Inspectors, operating on a Regional basis. The Inspectorate would be a separate Inspectorate alongside the Alkali Inspectorate within the Department of the Environment.

(2) The Act would empower the Secretary of State for the Environment by order to schedule processes and equipment which by their nature give rise to noise emissions which in his opinion are inherently difficult to abate, with power to schedule individual premises on which such processes and equipment are operated when in his opinion it is desirable that the whole of the premises should be under the control of the Noise Inspectorate.

(3) The occupier of a scheduled premises or of premises on which a scheduled process or scheduled equipment is installed or operated would be required to use the " best practicable means " to abate the noise emissions therefrom.

(4) It would be a requirement of first registration that the premises, processes or equipment erected, first operated or first installed after a future operative date specified in the Act shall at the time of registration be furnished with such appliances as appear to the Noise Inspectorate, or in case of an appeal to the Secretary of State for the Environment, to be necessary for the operation of the " best practicable means ".

(5) No proceedings would be capable of being brought under the Noise Abatement Act 1960 in respect of registered premises, processes or equipment without the consent of the Secretary of State for the Environment.

(6) Members of the Noise Inspectorate would have the usual powers of entry and inspection, and of enforcement.

(7) The Secretary of State for the Environment would be empowered to prescribe means for reducing the noise emissions from scheduled processes and equipment and the use of such means would, subject to proper maintenance be deemed to constitute the " best practicable means ".

(8) In the phrase " best practicable means " the word " practicable " would mean reasonably practicable having regard, amongst other things, to local conditions and circumstances, to the financial implications and to the current state of technical knowledge, and " practicable means " would include the provision, maintenance and proper use of plant.

(9) The Confederation has given consideration to those processes and equipment which might be scheduled initially but has concluded that, before firm proposals can be offered, it would be desirable to seek the wider views of its membership.

APPENDIX C

MEMORANDUM BY ASSOCIATION OF PUBLIC HEALTH INSPECTORS ON NOISE CONTROL AREAS

Introduction

1. In their final report published in 1963 the Committee on the Problem of Noise (Wilson Committee) expressed the view that the price of sweeping measures to bring about large reductions of noise quickly would not be acceptable to the community. They added that the level of noise was such that some additional cost in money and in restriction of liberty to make noise was justified to prevent further increase and in time to achieve some reduction.

2. The main aim of legislation against noise should be prevention. The Noise Abatement Act, 1960, is not designed to prevent noise but to enable local authorities to take action when noise from individual sources is a nuisance. The prevention of any further increase in the general levels of noise can hardly be ensured by the Act in its present form; there is even less chance that it could bring about a reduction of noise levels.

3. If determined efforts are to be made to reduce general levels by the elimination of unnecessary noise a new approach is required and local authorities will need a substantial extension of their legal powers. The new legislation should enable them not merely to deal with individual sources of noise which are creating a nuisance but to deal in general with all sources of noise which individually or collectively are creating an undesirable and unnecessarily high level of noise in the neighbourhood of houses. In other words, this legislation should empower local authorities to improve the noise climate of residential or predominantly residential areas.

The Principle of Noise Control Areas

4. Whilst in principle it might be attractive to introduce a general duty not to make any unnecessary or unreasonable noise which was disturbing to other people, this would be too sweeping at present to command general public support and would be impracticable to enforce. Action to suppress or eliminate such noise must therefore be taken on a much more limited scale, although once it has been initiated it could be steadily extended.

5. This type of approach has been used with great success in dealing with air pollution. Before the Clean Air Act, 1956, local authorities had power under public health legislation to deal with emissions of smoke from individual premises which constituted a nuisance. In this way they were able to reduce these emissions to less objectionable levels, but they could do little to reduce the general level of air pollution created collectively by a multitude of chimney stacks which individually were not causing a nuisance.

6. The Clean Air Act, 1956, empowered local authorities to declare smoke control areas and this power has been exercised extensively, particularly in the

industrial and highly urbanised parts of the country. The broad effect of declaring a smoke control area is to prohibit the emission of smoke from chimneys in the area, but there has to be some flexibility and for practical reasons areas are not entirely smokeless. In these areas local authorities have additional powers not available to them outside. The establishment of smoke control areas has been gradual but as local authorities have declared an increasing number of areas smoke control has been progressively extended. Smoke control areas vary considerably in size and a local authority may need to declare several to cover its district.

7. Although the problems of noise control by a progressive policy of this kind would present greater technical and administrative problems than have arisen in the case of smoke control areas, the principle of area control is sound. As has been pointed out in paragraph 4, to aim at the elimination of all unnecessary or unreasonable noise throughout the country would not be feasible. This aim could, however, be successfully pursued in limited areas. This would have the merit of concentrating attention on those places where noise levels are now too high and of enabling local authorities to tackle the problem of noise in a progressive and systematic manner, area by area.

8. Local authorities should be given power to make orders declaring noise control areas and in these areas they should have special powers to secure the reduction of noise. Orders should be submitted to the Secretary of State for the Environment for confirmation and an opportunity of objecting would need to be given to those who would be affected.

The Declaration of Noise Control Areas

9. The Committee on the Problem of Noise reported that people are more concerned about noise when they are at home indoors, than when they are outside. The object of declaring a noise control area should, therefore, be to improve living conditions by reducing as far as practicable the volume of noise intruding from outside into houses in the area. Accordingly a substantial proportion of the buildings in the area should be dwellings.

10. The Committee also found that more people are disturbed by noise from external sources, particularly road traffic, than by internal noise, e.g., from neighbours. Road traffic disturbed people in their homes far more than any other source of noise, but industry and aircraft were found to be the cause of a lot of annoyance. Noise from large refrigeration plant in shops and from air conditioning plant in commercial premises caused difficulties and laundrettes are also the subject of noise complaints. It is not envisaged that the declaration of noise control areas could have any effect on aircraft noise, but the reduction of noise from traffic and industry would be possible. Noise control areas, should, therefore, contain factories and commercial premises as well as houses, and also roads which although not through main roads carry a substantial volume of traffic which could be diverted.

11. In appropriate cases there would be advantages if noise control areas were to coincide with general improvement areas declared under the Housing Act 1969. The object of general improvement areas is not solely to raise the standard of the houses within them but also to improve their physical environment. The reduction of noise in these areas would obviously contribute to environmental improvement.

12. In selecting parts of their district which would be suitable as noise control areas, local authorities should take into account current ambient noise levels. A method of rating industrial noise affecting mixed residential and industrial areas is described in British Standard 4142:1967 and this might be used in carrying out surveys of proposed noise control areas. This standard is intended to enable a rating to be made of various noises of industrial origin with respect to their effects on persons living in the vicinity. The measurements are made out-of-doors in the neighbourhood of the dwellings in which people likely to be affected are living. The standard could therefore, be used to provide guidance on areas in which firm action needs to be taken to reduce noise levels.

13. An alternative method of deciding upon the boundaries of noise control areas would be to measure noise levels inside a proportion of the dwellings. The final report of the Committee on the Problem of Noise made tenative suggestions regarding the criteria for intrusive noise acceptable to persons in their homes. The Committee estimated that the following levels inside living rooms and bedrooms should not be exceeded for more than 10 per cent of the time:

Situation	*Day*	*Night*
Country areas	40 dBA	30 dBA
Suburban areas, away from main traffic routes	45 dBA	35 dBA
Busy urban areas	50 dBA	35 dBA

14. On balance the Association favours the measurement of noise levels outside the houses concerned and preferably at the door of the premises.

The Operation of Noise Control Areas

15. The declaration of a noise control area should automatically bring into play in that area various special legal provisions which would be available to the local authority for the suppression of unnecessary noise. In a noise control area a general duty should be imposed on all industrial firms to reduce as far as reasonably possible the volume of noise emitted from their factories into the neighbourhood.

16. Local authorities would retain their powers to deal with individual sources of noise which were creating a nuisance, and, in fact, suggestions are made later for strengthening these powers. In noise control areas, however, it would be possible to take action where, although the noise emitted from a factory was not so great as to constitute a nuisance, it could be reduced by measures which were reasonable and practicable. This could be done in various ways, such as by modifying machinery to make it quieter, or by structural changes to the building to reduce the volume of noise escaping into the surrounding area.

17. Before making an order declaring a noise control area, the local authority would be required to carry out a survey of the proposed area to assess the amount of work which would be necessary to reduce industrial noise. After the order had been made and confirmed by the Secretary of State there should be a specified period before it came into operation. During this time the local authority would notify the firms in the area of the modification to premises and machinery which would need to be carried out. There should be a reasonable period of grace, however, before it became obligatory to meet the requirements of the local authority.

18. After a noise control order has come into operation an obligation should be placed on industrial firms to give the local authority prior notice of the installation of machinery which is likely to be noisy. The local authority should

then be able to insist that adequate steps be taken to ensure that it is operated as quietly as possible and that the additional noise it will create outside the factory is reduced to a minimum.

19. There should also be an obligation on firms to give prior notice to the local authority of any change in their hours of operation which could raise the noise emitted from their premises to such a level, or so alter or extend the hours during which noise is emitted as to have an adverse effect on the noise climate of the area. For example, more intensive operation of the machinery might increase the volume of noise during the day or the introduction of a night shift might create noise at a time when the factory has previously been closed. The local authority should be empowered in these circumstances to impose conditions to safeguard residents in the area.

20. The reduction of traffic noise presents more difficult problems and to achieve this would require some alterations to the road pattern of an area. The aim should be to stop the flow of through traffic in a residential area and where possible to create pedestrian precincts. To do this successfully would mean a careful study of the road pattern and traffic movement to avoid action which would merely divert traffic from one residential road to another of a similar type. To encourage local authorities to incur the expense which would be involved the Government might offer grants towards the cost of the necessary work.

21. It is also envisaged that in some areas it would be possible to place restrictions on traffic. For example, heavy lorries might be banned from using particular roads either completely or during the night. If any kind of controls are to be exercised over traffic in a noise control area, road signs would be needed to warn road users that they were entering such an area.

22. The legislation which would be required to enable local authorities to declare noise control areas should be permissive and should not place an obligation directly on local authorities to use the new powers. The Secretary of State for the Environment, however, should be empowered to impose a duty on individual local authorities to implement their noise control area powers. It is not envisaged that the exercise of these powers should be made mandatory until some experience has been gained of noise control areas.

General Powers of Local Authorities

23. The scheme which has been been outlined in the preceding paragraphs for the creation of noise control areas must be considered in conjunction with the Association's view for the strengthening of the general powers of local authorities to deal with excessive noise. The existing nuisance procedure is cumbersome and protracted and the law, therefore, needs to be revised. It should still be possible to deal with noise as a statutory nuisance, with some modification of the present law, but in addition local authorities will require further powers if they are to control noise effectively.

24. There would be considerable value in the development by the British Standards Institution of standards for new machines which would limit their noise output and for the suppression of noise from existing machines. Eventually it should be an offence to sell or operate a machine which does not comply with the appropriate British Standard and to import such a machine.

25. The preparation and introduction of standards of this kind would obviously take a long time to achieve. In the meantime, manufacturers of machinery should be encouraged to design their products so as to make them capable

of being operated as quietly as possible. Quietness of operation should become an important asset and a valuable selling point. In addition, the Secretary of State should be given power to specify by regulations how noise from particular machines should be reduced to an acceptable level. These regulations should apply to both existing and new machinery.

26. As indicated in paragraph 23, the Association maintains that local authorities should still be able to deal with noise as a statutory nuisance but that their powers under the existing nuisance legislation should be strengthened. One improvement needed is to speed up the service of abatement notices. At present the council's authority is needed and this can cause unacceptable delay. This can be reduced by the delegation of authority but cases occur where the disturbance caused by noise is so great that immediate action is demanded. The public health inspector should be able to apply to a Justice of the Peace for an order requiring the immediate cessation of the works creating the noise. Alternatively the inspector might himself have power to issue such an order. The effect of an order would be to require cessation for a brief period until the case could be brought to court, where proceedings are instituted, either by an inspector acting on his own initiative or by the resolution of the local authority. The court should have power to impose a penalty for the noise already created in addition to the power to make an order prohibiting a noise nuisance in the future.

27. At present three or more private citizens are able to invoke the provisions of the Noise Abatement Act to secure the abatement of noise nuisance. Private citizens should still have the opportunity of initiating proceedings but this power should be extended to single individuals.

28. The Association sees no necessity for the exemption of statutory undertakers from noise abatement proceedings and this should be removed.

Conclusion

29. The proposals made in this memorandum would enable a far stronger attack to be made on the increasingly serious problem of noise than has previously been possible. Noise control is an important part of environmental health work and must continue to be the responsibility of local authorities who are most closely concerned with its problem. It should therefore be allocated to the district councils which are to be formed when the Government's proposals for the reorganisation of local government are implemented.

APPENDIX D

STATUTORY UNDERTAKERS FOR THE PURPOSES OF THE NOISE ABATEMENT ACT 1960

For the purposes of the Public Health Act 1936, and therefore of the Noise Abatement Act, "statutory undertakers" means "any persons authorised by any enactment or statutory order to construct, work, or carry on any railway, canal, inland navigation, dock, harbour, tramway, gas, electricity, water or other public undertaking." This definition is wide enough to cover at least the following:

British Rail.

British Waterways Board.

Inland Navigation Authorities (e.g. the Port of London Authority).

Docks and Harbour Boards.

Gas and Electricity Boards.

The Central Electricity Generating Board.

Statutory water undertakers (e.g. water boards).

National road freight organisations.

The National Bus Company and its subsidiaries.

Passenger Transport Authorities.

The London Transport Board.

The British Airports Authority.

The National Coal Board.

The nationalised iron/steel industry.

The Post Office.

APPENDIX E

SUMMARY OF STATEMENT BY THE CHIEF LEGAL ADVISER, BRITISH RAILWAYS BOARD AT THE WORKING GROUP'S MEETING OF 5TH MAY 1971

1. While the Board, as statutory undertakers, were exempt from proceedings under the Noise Abatement Act, 1960, they were anxious to take all steps compatible with their statutory responsibilities to minimise the emission of noise in the course of their operations.

2. The Board had made considerable progress in this field since giving evidence to the Wilson Committee. The introduction of continuous welded track had proceeded apace, and would be substantially complete by 1975. The last steam locomotive used for ordinary traffic had been withdrawn in 1968. Electric and diesel-powered locomotives were in general much less noisy than steam locomotives, and research was being conducted for the quietening of the air intakes used for cooling the motors of electric locomotives at rest. The number of marshalling yards had been reduced from nearly 1,000 in 1948 to 100 in 1970. Only 32 of these were of any size: they were sited mostly in open country. Disturbance from goods-yards, which were necessarily sited in urban areas, had also been substantially reduced as a result of a reduction in the number of yards (8,300 in 1948 to 2,675 in 1970); in the number of wagons (1,165,000 in 1948 to 359,000 in 1970); the development of automatic couplings, which had made the shunting of wagons a less noisy process; and the introduction of "freightliner" trains for container traffic, which were quiet to load and were kept permanently coupled.

3. The principal source of noise from railways related to engineering works which, of necessity, had to be carried out at night or at weekends. They were generally of two kinds, namely, track maintenance (which was essential to safety of operation) and demolition and construction work. As regards the former it would be appreciated that modern methods of mechanical track maintenance, which were progressively replacing pick and shovel, were noisy, but a particular locality would only be visited about once a year and with improved track design even more infrequently in the future. Demolition and construction included bridge works which were frequently carried out at the wish of the Highway Authority to effect highway improvements in the locality.

4. The Board took great pains to minimise disturbance from engineering works and were pressing the manufacturers of traffic maintenance vehicles to design quieter engines. Residents were informed well in advance of the time and duration of demolition and construction work, and might even be accommodated elsewhere at the Board's expense if the level of disturbance was likely to be high.

5. The use of warning signals was essential on safety grounds, in a number of contexts. The Board endeavoured to preserve a proper balance between the interests of amenity and safety.

6. In fact, the Board were already using the best practicable means to minimise the emission of noise in the course of their operations. There was no

evidence in the Wilson Report, or elsewhere, so far as they were aware, to warrant the removal of their exemption from proceedings under the Noise Abatement Act, 1960. The remedies of the Common Law were in any case available to any person who believed he had a cause for complaint, and in all appropriate cases legal aid was also available.

7. Removal of the exemption would have damaging consequences. The Board did not feel that, operating a national railway system, they should be subject to prosecution on purely local considerations; either by individuals, where the possibility of vexatious prosecution could not be excluded, or by local authorities.

8. Even, however, in cases brought by local authorities, the performance of the Board's statutory obligation to provide a national service might be put at risk by decisions arrived at in the light of purely local issues and in ignorance, or disregard, of the technical considerations involved.

9. In any case, the Board were answerable to Parliament, and their activities were subject to surveillance both by Parliament and by the Department of the Environment. It would be unnecessary to extend the scope for public intervention still further, by a removal of the Board's present exemption from proceedings under the Noise Abatement Act, 1960.

APPENDIX F

NOISE FROM CONSTRUCTION AND DEMOLITION WORKS: VIEWS OF NATIONAL FEDERATION OF BUILDING TRADES EMPLOYERS, FEDERATION OF CIVIL ENGINEERING CONTRACTORS AND CONTRACTORS PLANT ASSOCIATION. (NOTE PROVIDED BY CONFEDERATION OF BRITISH INDUSTRY.)

The building and construction industry by its very nature represents a special case in considering the problem of noise control because unlike factories which are permanently sited, all building and construction work is of a temporary nature but is carried out on the national scale without any possible limitations as to the area in which it operates and consequently it cannot possibly be adapted to fit within the scope of noise controlled areas.

A certain amount of noise is inherent in all types of building and construction operations and it can never be completely eliminated. The amount of noise which is emitted will depend primarily on the type of plant and equipment which has to be used in connection with the particular building and construction operation but other factors, such as the ground and the sub-strata of the building site, could also have a considerable effect, not only on the type of plant and equipment which is used but also the manner in which it is operated and consequently upon the amount of noise which is emitted.

There are many items of building construction equipment and plant such as, for example, air-powered tools and compressors which can be effectively silenced and the building and construction industry have raised no opposition to local authorities who have introduced legislation to that effect but equally it must always be appreciated that there are other items of plant and equipment, such as pile drivers, for which no effective means of silencing is known and although it is true that with certain ground conditions the noise from such equipment might be slightly reduced. However, in the present stage of technical knowledge no amount of expenditure on such equipment can have more than a very marginal effect as far as noise reduction is concerned.

Any new legislation which is brought in to control noise levels from building and construction operations would have to be based on the different types of plant and equipment distinguishing between those which are inherently noisy and those on which satisfactory noise control can be exercised. The position must at all times be made that the builders have the defence of the best practical means which, while ensuring that they are reasonable in suppressing noise, allows for them to have the most reasonable use out of their existing plant and equipment.

It must at all times be borne in mind that in order to enable builders to price and carry out works and building construction it is essential that they know in advance that they are able to carry out their work without unreasonable restrictions. Their operations would become quite impossible if, in fact, there were pre-conceived different standards of zoning noise control.

Building operations are carried out on national basis and all plant and equipment has to be purchased on the basis that it can be used nationally. If for any reason a building operation had to be stopped before completion because

of the level of noise emission from the site, it would not only cause enormous financial difficulties to the builder concerned but it would probably make the completion of the operation impossible. While it is hoped that there will be continuing improvement in the types of plant and equipment which are available for building and construction operations, the defence of best practical means (which takes into account the local conditions and circumstances and the financial implications and current state of technical knowledge, including the provision and maintenance of plant and the proper use thereof), is an essential safeguard for the building and construction industry.

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December, 1970.

O.B., Truro.

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