

COOK ISLANDS
NOISE CONTROL ACT
1986, No. 3

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1986, No. 3

An Act to provide for the abatement of unreasonable or excessive noise

(22 July 1986)

BE IT ENACTED by the Parliament of the Cook Islands in Session assembled, and by the authority of the same, as follows:

1. Short Title - This Act may be cited as the Noise Control Act 1986.

2. Interpretation - In this Act, unless the context otherwise requires,-

"Abatement notice" means a notice issued under section 6 for the abatement of any noise to a reasonable level;

"Constable" includes any member of the Police;

"Excessive noise" means any noise emitted by -

(a) Any musical instrument; or

(b) Any electrical appliance; or

(c) Any vehicle, except aircraft as defined in Section 2 of the Civil Aviation Act 1985; or

(d) Any machine, however powered, while being operated in or at any residential premises; or

(e) Any person or persons, while attending any gathering or meeting in or at any residential premises or place of assembly except where the principle purpose of such gathering or meeting is either -

(i) Religion; or

(ii) The burial or commemoration of a deceased person; or

(iii) To undertake and carry out a community activity; or

(iv) To display cultural performances to which the general public is invited,

where the noise is of such nature as to unreasonably interfere with the peace, comfort, and convenience of any person (other than a person in or at the premises from which the noise is being emitted).

"Noise" includes vibration;

"Occupier" in relation to any premises, includes any tenant, agent, manager, foreman, or other person acting or apparently acting in the general management or control of the premises, or of any plant or machinery on those premises;

"Practicable" means reasonably practicable having regard, among other things, to local conditions and to the current state of technical knowledge;

"Practicable means" include -

(a) The design, construction, and maintenance of buildings and acoustic structures; and

(b) The design, installation, and maintenance, and the manner, periods, and proper supervision of the operation of plant, equipment, and machinery.

3. Crown bound - (1) Except as provided in subsection (2), this Act binds the Crown.

(2) Nothing in this Act shall apply to any military personnel while engaged on military business.

4. Application of Act - The provisions of this Act shall only apply to islands of the Cook Islands as may be determined by the Queen's Representative by order in Executive Council.

5. Noise Control Officer - Every constable appointed under the Police Act 1981 shall by virtue of his office and without further authority than this section, be deemed to be a Noise Control Officer for the purposes of this Act.

[Amended Act 1993-94/14]

General Obligation of Occupiers

6. Occupiers to avoid unreasonable noise - (1) It shall be the duty of the occupier of any premises to adopt the best practicable means to ensuring that the emission of noise from those premises does not exceed a reasonable level.

(2) Every occupier of any premises who fails to comply with subsection (1) commits an offence and is liable to a fine not exceeding \$2,000 and, where the offence is a continuing one, to a further fine not exceeding \$200 for each day or which the offence has continued.

(3) In any prosecution for an offence against this section it shall not be necessary for the prosecution to prove that the defendant intended to commit an offence.

(4) Subject to subsection (6) it shall be a good defence in any such prosecution if the defendant proves-

(a) That the non-compliance complained of was solely due to some mechanical failure; and

(b) That the failure could not reasonably have been provided against; and

(c) That the non-compliance could not reasonably have been prevented by action taken after the failure occurred.

(5) Without limiting subsection (4) but subject to subsection (6), it shall be a good defence in any prosecution for an offence against this section if the defendant proves-

(a) That he did not intend to commit an offence against this section; and

(b) That he took all reasonable steps to comply with the duty imposed on him by subsection (1).

(6) Except as provided in subsection (7), subsections (4) and (5) shall not apply unless, within 7 days after the service of the summons, or within such further time as the Court may allow, the defendant has delivered to the prosecutor a written notice-

(a) Stating that he intends to rely on subsection (4) or (as the case may require) subsection (5); and

(b) Specifying the reasonable steps that he will claim to have taken.

(7) In any such prosecution, evidence that the defendant took a step not specified in the written notice required by subsection (6) shall not, except with the leave of the Court, be admissible for the purpose of supporting a defence under subsection (4) or (as the case may require) subsection (5).

7. Abatement notices - (1) Any noise control officer who believes on reasonable grounds that-

(a) The occupier of any premises is failing to comply with section 6; or

(b) The occupier of the premises is contravening the provisions of any regulations made under this Act; or

(c) A noise being emitted from any premises is such to constitute a nuisance,

may, with such assistants as he considers necessary, give to the occupier of the premises a notice in writing requiring him to abate the noise described in the notice to a reasonable level within 7 days after the date of notice, or within such shorter or longer period as the officer may consider appropriate having regard to the special circumstances of the case.

(2) Every abatement notice shall fairly inform the occupier of -

(a) The manner in which the notice may be enforced under section 8 of this Act; and

(b) The occupier's rights to seek the restitution of any property under section 14; and

(c) The occupier's rights of appeal under section 15.

(3) The failure to comply with the terms of an abatement notice within the period required shall be prima facie evidence of an offence against section 6 by the occupier of the premises.

8. Enforcement of abatement notice - (1) where the terms of an abatement notice are not complied with within the period required, the noise control officer shall, with such assistants as he considers necessary, take all such reasonable steps as he considers necessary to cause the noise described in the notice to be abated to a reasonable level.

(2) Without limiting his discretion under subsection (1), the noise control officer may seize and impound the noise source.

(3) [Repealed]

(4) All expenses incurred in the abatement of a noise under this section shall be recoverable from the occupier of the premises as a debt due to the Crown.

[Amended Act 1993-94/14]

9. –

[Repealed Act 1993-94/14]

Excessive Noise

10. Complainants excessive noise - (1) Any person who considers that excessive noise is being emitted from any premises may complain to a noise control officer.

(2) On receipt, by a noise control officer of any such complaint, the noise control officer, after making all such inquiries as he considers necessary, shall-

(a) Deal with the matter in accordance with subsection (3);

(b) [Repealed]

(3) If, upon investigating any complaint under this section, the noise control officer is of the opinion that the noise is excessive, he shall direct the occupier of the premises from which the sound is being emitted, or such other person as appears to him to be responsible for causing the excessive noise, to forthwith abate the noise to a reasonable level.

[Amended Act 1993-94/14]

11. Effect of direction - (1) Every direction given under section 10(3) shall have the effect of prohibiting the person who is (by virtue of subsection (2)) bound by the direction, from causing or contributing to the emission of excessive noise from or within the vicinity of the premises at any time during the period of 12 hours commencing with the time at which the direction is given, or such shorter period as the noise control officer may specify on giving the direction.

(2) Every person who knows or ought to know that a direction under section 10(3) has been given in respect of particular premises is, while on or in the vicinity of those premises, bound by the direction as if he were the recipient of it.

[Amended Act 1993-94/14]

12. Powers of officers where non-compliance - (1) Where a direction given under section 10(3) is not complied with, the noise control officer may-

(a) Seize and remove from the premises; or

(b) Render inoperable by the removal of any part from; or

(c) Lock or seal so as to make unusable, -

any instrument, appliance, vehicle, or machine that is producing or contributing to the excessive noise.

(2) [Repealed]

[Amended Act 1993-94/14]

13. Offences - (1) Every person commits an offence and is liable on conviction to a fine not exceeding \$2,000 and, where the offence is a continuing one, to a further fine not exceeding \$200 for each day on which the offence has continued who, being bound by a direction given under section 10(3),-

(a) Fails to forthwith abate the a reasonable level; or

(b) Causes or contributes to the emission of excessive noise from or within the vicinity of the premises at any time during the period referred to in section 11(1).

(2) For the purposes of subsection (1) paragraph (b), it is immaterial that the excessive noise is of a different kind from that which gave rise to the issuing of the direction.

(3) Any constable, and all persons he calls to his assistance, may arrest and take into custody without a warrant any person whom he has good cause to suspect of having committed an offence against subsection (1).

(4) Every person commits an offence and is liable to a fine not exceeding \$500 who-

(a) Renders operable; or

(b) Unlocks or unseals so as to make usable,

any instrument, appliance, vehicle, or machine after it has been rendered inoperable or (as the case may require) locked or sealed by a noise control officer acting under paragraph (b) or paragraph (c) of section 12.

[Amended Act 1993-94/14]

General Provisions

14. Restitution of property - (1) Where under section 8 or section 12 any property has been seized and impounded by a noise control officer, the occupier of the premises may at any time apply to the Commissioner of Police for the property to be returned to him.

(2) On receipt of an application under subsection (1) the Director General of Health shall arrange for the restitution of the property upon being satisfied that the return of the property is not likely to lead to the resumption of the emission of noise from the premises beyond a reasonable level.

(3) Any property seized and impounded under section 12 by any constable shall be taken to the nearest police station, and may be recovered by the owner or the person from whom it was seized at any time after the expiration of the period of 72 hours commencing with the

time of its seizure, upon payment of all costs incurred by the Police in seizing, impounding, transporting, and storing the property.

(4) Nothing in this section shall prevent the Commissioner of Police or the Police from handling back any property to which this section applies without awaiting a request to do so.

[Amended Act 1993-94/14]

15. Appeals - (1) Any person who is aggrieved by the issue of an abatement notice under section 3 may appeal to the High Court on the ground that the notice is unreasonable.

(2) Any person who is aggrieved by the refusal of an application for the restitution of any property under section 14 may appeal to the High Court on the ground that the refusal is unreasonable.

(3) On any appeal under subsection (1), the Court may-

(a) By interim order, suspend the operation of the abatement notice to which the appeal relates until the final determination of proceedings; or

(b) Dismiss the appeal, or quash the abatement notice, or modify the notice in such manner as the Court thinks fit.

(4) On any appeal under subsection (2), the Court may dismiss the appeal or make an order for the restitution of any property in such terms as it thinks fit.

(5) On any appeal under this section, the Court may make such order as to costs (if any) as it thinks fit.

(6) Every appeal under this section shall be commenced within 21 days after the issue of the abatement notice or (as the case may require) the refusal of an application for the restitution of any property.

(7) Every appeal under this section shall be made and dealt with by way of originating application, on notice, under the rules and procedures for the time being in force under the Judicature Act 1980-81, and the provisions of those rules shall apply accordingly.

(8) Except as provided in subsection (9), the decision of the High Court under this section (other than an interim order made under subsection (3) Paragraph (a) shall be final).

(9) Any party to proceedings before the High Court under this section who is dissatisfied with the decision or order of the Court as being erroneous in point of law may appeal to the Court of Appeal on a question of law only.

16. Powers of entry - (1) Subject to subsection (2), for the purposes of sections 7, 8, 10 and 12, a noise control officer, may enter the premises to which the abatement notice relates or, as the case may require, from which the noise is being or has been emitted.

(2) A noise control officer shall be entitled to enter any dwellinghouse for the purposes of section 7 or section 10.

(3) On entering any such premises a noise control officer, who is not in uniform, shall, if requested to do so by the occupier of the premises produce evidence of his identity.

[Amendment Act 1993-94/14]

17. Other Police powers not affected - (1) The powers conferred on a constable by this Act are in addition to, and not in derogation from, any other powers that a constable may exercise.

(2) Without limiting subsection (1) any constable exercising his powers under this Act may use such reasonable force as may be necessary in the circumstances.

18. Regulations - The Queen's Representative may from time to time, by Order in Council, make regulations for all or any of the following purposes:

- (a) Specifying the limits of permitted emissions of noise from particular premises, activities, appliances, vehicles, machinery, or articles, and requiring any such appliances, vehicles, machinery, or articles to be labelled to show the specified limits;
- (b) Prescribing standards in respect of alarms and other devices designed to emit noise in certain specific circumstances to ensure that such devices do not emit noise in other circumstances or at a level or for a period beyond that necessary to achieve the purpose for which such devices are used;
- (c) Specifying the times at which specified noises may, or may not, be emitted from particular premises, activities, appliances, vehicles, machinery, or articles;
- (d) Prescribing offences in respect of the contravention of or non-compliance with any regulations made for the purposes of this Act, and the amounts of fines that may be imposed in respect of any such offences, not exceeding \$500 in respect of any offence and, if the offence is a continuing one, to a further fine not exceeding \$50 for every day on which the offence has continued;
- (e) Providing for such other matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for its due administration.
