

LAWS OF DOMINICA

NOISE ABATEMENT ACT

CHAPTER 40:99

Act
10 of 1993
Amended by
32 of 1995

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**Note
on
Subsidiary Legislation**

This Chapter contains no Subsidiary Legislation.

**Note
on
Revision Date**

The Revision Date for this Chapter is 1st January, 1994.

CHAPTER 40:99

NOISE ABATEMENT ACT

ARRANGEMENT OF SECTIONS

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CHAPTER 40:99

NOISE ABATEMENT ACT

10 of 1993. **AN ACT to make provisions concerning the control of noise with a view to its abatement.**

Commencement. [30th September 1993]

Short title. **1. This Act may be cited as the –**
NOISE ABATEMENT ACT.

Interpretation. **2. (1) In this Act –**
“contravention” includes a failure to comply with the provision in question, and “contravene” shall be construed accordingly;
“loudspeaker” includes any amplifier, microphone, gramophone or other similar instrument;
“Minister” means the Minister responsible for Health;
“noise” includes vibration;
“Noise Abatement Order” and “Noise Abatement Zone” have the meanings given by section 11;
“noise reduction notice” has the meaning given by section 14;
“Planning Authority” means the Planning Authority established by section 4(1) of the Town and Country Planning Act;
“political meeting” means a meeting for the purpose of discussing or criticising the performance of the government, a local authority or such other institution or authority, or furthering or criticising the aims, objects, action or programme of any political party or for the purpose of supporting or opposing the candidature of any individual as against any other or others at an election;
“person responsible”, in relation to the emission of noise, means the person to whose act, default or sufferance the noise is attributable;

17 of 1975.

“street” means any road, street or open space to which the public is granted access and any bridge over which a street passes, and includes any privately owned road, street or open space to which the public is granted access either generally or conditionally;

“work of engineering construction” means the construction, structural alteration, maintenance, repair or demolition of any dock, harbour, tunnel, bridge, water-works, road, reservoir, pipeline, sewer, sewerage works, gas-holder or telephone lines.

(2) Where more than one person is responsible for noise, this Act shall apply to each of those persons, whether or not the noise for which any one of them is responsible would itself amount to an annoyance or would result in a level of noise justifying action under this Act.

3. (1) This Act does not apply to noise caused –

Exemption from the application of this Act.

(a) at or by an educational class or recreation in or around a school, college, university or other educational institution;

(b) at or by *bona fide* athletics or sports;

(c) at or by *bona fide* cinematography, musical, magical or other theatrical entertainment or other similar entertainment, beauty competition, handicraft show, fair, circus, artistic or cultural show, private dance or party held between 9:00 a.m. and 11:00 p.m. on the same day in an area not designated a Noise Abatement Zone;

(d) at a *bona fide* wedding or celebration thereof between the hours of 9:00 a.m. and 11:00 p.m. on the same day;

(e) by an aircraft;

(f) during a period, or by such cause, or for such purpose as the Minister may by Order specify.

(2) With the exception of sections 5 and 18 this Act does not apply to noise caused in an area which is not a Noise Abatement Zone by –

(a) a public or political meeting held –

(i) between 9:00 a.m. and 11:00 p.m. on the same day;
or

(ii) at any other time permitted by the Commissioner of Police;

(b) a religious service or meeting held between the hours of 9:00 a.m. and 11:00 p.m. on the same day.

Action by Minister to deal with noise.

4. (1) Where the Minister is satisfied that noise amounting to annoyance exists, or is likely to occur or recur in any area of Dominica, he shall serve a notice imposing all or any of the following requirements:

(a) requiring the abatement of the annoyance or prohibiting or restricting its occurrence or recurrence;

(b) requiring the execution of such works, and the taking of such other steps, as may be necessary for the purpose of the notice or as may be specified in the notice;

and the notice shall specify the time or times within which the requirements of the notice are to be complied with.

(2) The notice shall be served on the person responsible for the annoyance or, if that person cannot be found or the annoyance has not yet occurred, on the owner or occupier of the premises from which the noise is emitted or would be emitted.

(3) The person served with the notice may appeal against the notice to a Judge in Chambers within twenty-one days from service of the notice.

(4) Any person on whom a notice is served under this section and who without reasonable excuse contravenes any requirement of the notice, is guilty of an offence.

(5) In proceedings for an offence under subsection (4) in respect of noise 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 for counteracting the effect of the noise and the premises from which the noise is emitted is a place in respect of which the Planning Authority has approved the carrying on of such trade or business.

(6) In proceedings for an offence under subsection (4) it is a defence to prove –

(a) that the act or emission causing the annoyance meet the requirements of a notice served under section 6 or a consent given under section 7; or

(b) where the alleged offence was committed at a time when the premises were subject to a notice under section 14, that the level of noise emanating from the premises at that time was not such as to constitute a contravention of the notice under section 14.

(7) If the Minister is of the opinion that proceedings for an offence under subsection (4) would afford an inadequate remedy he may take proceedings in the High Court for the purpose of securing the abatement, prohibition or restriction of the annoyance, and the proceedings is maintainable notwithstanding that the Minister has suffered no damage from the annoyance; but in any proceedings taken in pursuance of this subsection it is a defence to prove that the noise was authorised by a notice under section 6 or a consent under section 7.

5. (1) A magistrate's court may act under this section on a complaint made by the occupier of any premises on the ground that in his capacity as occupier of the premises he is aggrieved by noise amounting to an annoyance.

Summary
proceedings by
occupier of
premises.

(2) If the magistrate's court is satisfied that an alleged annoyance exists, or that although abated it is likely to recur on the same premises, the Court may make an order for either or both of the following purposes:

- (a) requiring the defendant to abate the annoyance, within a time specified in the order, and to execute any works necessary for that purpose;
- (b) prohibiting a recurrence of the annoyance, and requiring the defendant, within a time specified in the order, to execute any works necessary to prevent its recurrence.

(3) Proceedings under this section shall be brought against the person responsible for the annoyance or, if that person cannot be found or his identity cannot be determined, against the owner or occupier of the premises from which the noise is emitted or would be emitted.

(4) A person who without reasonable excuse contravenes any requirement of an order under subsection (2) is guilty of an offence.

(5) In proceedings for an offence under this section in respect of noise 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

for counteracting the effect of the noise, and that the premises from which the noise is emitted is a place in respect of which the Planning Authority has approved the carrying on of such trade or business.

Control of noise on construction sites.

6. (1) This section applies to works of the following description, that is to say:

- (a) the erection, construction, alteration, repair, or maintenance of buildings, structures or roads;
- (b) breaking up, opening or boring under any road or adjacent land in connection with the construction, inspection, maintenance or removal of works;
- (c) demolition or dredging work; and
- (d) any work of engineering construction.

(2) Where it appears to the Minister that works to which this section applies are being, or are going to be carried out on any premises and the noise emanating or likely to emanate therefrom would amount to an annoyance or would result in a level of noise justifying action under this Act or Regulations made thereunder, he may serve a notice imposing special requirements as to the way in which the works are to be carried out and may publish notice of the requirements in such way as appears to him to be appropriate.

(3) The notice may in particular –

- (a) specify the plant or machinery which is or is not to be used;
- (b) specify the hours during which the works may be carried out;
- (c) specify the level of noise which may be emitted from the premises in question or which may be so emitted during specified hours; and
- (d) provide for any change of circumstances.

(4) In acting under this section the Minister shall have regard –

- (a) to the need for ensuring that the best practicable means are employed to minimise noise;
- (b) before specifying any particular method or plant or machinery, to the desirability, in the interests of any recipients of the notice in question, of specifying other

methods or plant or machinery which would be substantially as effective in minimising noise and more acceptable to them;

(c) to the need to protect any persons in the locality in which the premises in question are situated from the effects of noise.

(5) A notice under this section shall be served on the person who appears to the Minister to be carrying out, or going to carry out, the works, and on such other persons appearing to the Minister to be responsible for, or to have control over, the carrying out of the works.

(6) A notice under this section may specify the time within which the notice is to be complied with, and may require the execution of such works, and the taking of such other steps, as may be necessary for the purpose of the notice, or as may be specified in the notice.

(7) A person served with a notice under this section may appeal against the notice to a Judge in Chambers within twenty-one days from the service of the notice.

(8) If a person on whom a notice is served under this section, without reasonable excuse contravenes any requirement of the notice, he is guilty of an offence.

7. (1) Every person who intends to carry out any work of engineering construction shall apply to the Minister for consent under this section.

Prior consent for work of construction engineering.

(2) An application under this section shall contain particulars of –

(a) the works, and the method by which they are to be carried out; and

(b) the steps proposed to be taken to minimise noise resulting from the works.

(3) If the Minister considers that the application contains sufficient information for the purpose and that, if the works are carried out in accordance with the application, he would not serve a notice under section 6 in respect of those works, the Minister shall give his consent to the application.

(4) In acting under this section the Minister shall have regard to the considerations set out in section 6(4) and shall have power to –

- (a) attach any conditions to his consent; and
- (b) limit or qualify his consent to allow for any change in circumstances; and
- (c) limit the duration of the consent;

and any person who knowingly carries out the works, or permits the works to be carried out, in contravention of any condition attached to a consent under this section is guilty of an offence.

(5) The Minister shall inform the applicant of his decision on the application within twenty-eight days from the receipt of the application; and if the Minister gives his consent to the application he may publish notice of the consent, and of the works to which it relates, in such way as appears to him to be appropriate.

(6) If the Minister –

- (a) does not reply within the said period of twenty-eight days, an unconditional consent shall be deemed to have been given to the applicant;
- (b) gives his consent within the said period of twenty-eight days, but attaches any condition, qualification or limitation thereto, the applicant may appeal to a Judge in Chambers within twenty-one days of the end of that period.

(7) In any proceedings for an offence under section 6(8) it shall be a defence to prove that the alleged contravention amounted to the carrying out of the works in accordance with a consent given under this section.

(8) A consent given under this section shall contain a statement to the effect that the consent does not of itself constitute any ground of defence against any proceedings instituted under section 5.

(9) Where a consent has been given under this section and the works are carried out by a person other than the applicant for the consent, it shall be the duty of the applicant to take all reasonable steps to bring the consent to the notice of that person; and if the applicant fails to comply with this subsection he is guilty of an offence.

Noise in or from
premises adjoining
street.

8. (1) Subject to this Act and any other written law any person who in a street or from any premises adjoining a street or from any premises –

- (a) shouts, sings or sounds;
- (b) plays or operates or causes or permits the playing or the operation of any musical or noisy instrument or of any radio or any instrument, apparatus or device by means of which sounds may be mechanically, electronically or electrically produced or reproduced or other similar instrument, apparatus or device;
- (c) operates or causes or permits the operation of any loudspeaker,

so as to cause annoyance to the inhabitants of the neighbourhood or to any other person therein, is guilty of an offence.

(2) The occupier of any premises on which a contravention of subsection (1) takes place is guilty of an offence.

(3) It is a defence for a person charged under subsection (2) to prove –

- (a) that he did not initiate the annoyance and was not present upon the premises at the time of the contravention; or
- (b) that he took all reasonable steps to prevent the contravention.

9. (1) Subject to any written law, any person who in a motor vehicle, plays or operates or causes or permits the playing or operation of any musical or noisy instrument or of any radio or any instrument, apparatus or device by means of which sounds may be mechanically, electronically or electrically produced or reproduced, so as to cause annoyance to any person in the vicinity thereof or, in the case of a public service vehicle, to any passenger in the motor vehicle, is guilty of an offence.

Playing of musical instrument, etc., in motor vehicle.

(2) The driver of a motor vehicle in which a contravention of subsection (1) takes place is guilty of an offence.

(3) It is a defence for a person charged under subsection (2) to prove that he was not present when the offence was committed or that he took all reasonable steps to prevent the contravention.

10. (1) Subject to this Act a loudspeaker shall not be operated in a street –

Noise in street.

- (a) between the hours of 12:00 midnight and 7:00 a.m. the following morning for any purpose;
- (b) at any other time, except for the purpose of a political or public meeting or religious meeting or service.

Provided that the Commissioner of Police may grant permission for the use of a loudspeaker in a street during such time, for such purposes and subject to such conditions as he may impose.

(2) Subsection (1) shall not apply to the operation of a loudspeaker –

- (a) for police, fire brigade or ambulance purposes, or by a public utility in the exercise of any of its functions;
- (b) for communicating with persons on a vessel for the purpose of directing the movement of that or any other vessel;
- (c) if the loudspeaker forms part of a public telephone system;
- (d) if the loudspeaker –
 - (i) is in or fixed to a vehicle; and
 - (ii) is operated solely for the entertainment of or for communicating with the driver or a passenger of the vehicle or, where the loudspeaker is or forms part of the horn or similar warning instrument of the vehicle, solely for giving warning to other traffic; and
 - (iii) is so operated as not to give reasonable cause for annoyance to persons in the vicinity;
- (e) in cases of emergency;
- (f) for such purposes as the Minister may, by Order, specify.

(3) Any person who contravenes this section is guilty of an offence.

Noise Abatement
Zone.

11. (1) The Minister may by Order designate as a Noise Abatement Zone any area within a radius, specified in the Order of any building, or any other area where the Minister considers it expedient to do so having regard to the character of the area.

(2) A Noise Abatement Zone Order shall –

- (a) describe and delimit the area to which the Order applies; and
- (b) specify the days or hours of the day during which persons are subject to control under section 12,

and, where the Noise Abatement Zone Order is, in respect of an area, within the specified radius of any building, the Noise Abatement Zone Order shall describe and delimit the area by reference to the building and to the radius.

(3) Notwithstanding subsection (2)(b) any building or other area may be designated a Noise Abatement Zone for a definite or an indefinite period.

12. (1) Notwithstanding anything in this Act to the contrary, no person whether within or outside a Noise Abatement Zone, shall, during the specified period, cause or permit to be caused, noise so as to cause annoyance to any person within a Noise Abatement Zone.

Control of noise in
Noise Abatement
Zone.

(2) Subsection (1) does not apply to –

- (a) noise caused by the operation of a loudspeaker for purposes of police, fire brigade, ambulance or the armed forces of Dominica or in case of emergency;
- (b) noise or continuance of noise caused by a person as a result of some temporary or accidental cause which could not have been prevented by the exercise of due diligence and care on the part of that person; or
- (c) noise caused by the horn of a vehicle for the purpose of giving sufficient warning of the approach or position of the vehicle.

(3) Any person who contravenes this section is guilty of an offence.

13. (1) The Minister may direct the Licensing Authority, appointed under section 4(1) of the Vehicles and Road Traffic Act, to cause or permit appropriate Noise Abatement Zone signs to be placed, erected or otherwise marked on or near any street.

Noise Abatement
Zone signs.
Ch. 46:50.
[32 of 1995].

(2) The Noise Abatement Zone signs shall be of such size, colour and type as may be approved by the Minister and shall inform the public that –

- (a) they are approaching a Noise Abatement Zone;
- (b) they are in a Noise Abatement Zone;
- (c) they are leaving a Noise Abatement Zone.

(3) Every Noise Abatement Zone sign erected, placed, marked or retained on or near any street shall, unless the contrary is proved, be deemed –

- (a) to have been lawfully so erected, placed, marked or retained; and
- (b) to be of the approved type and substantially of the approved size and colour, where the size, colour and type of the same have been approved.

(4) Subject to subsection (5), the Traffic Commissioner or a person authorised by him in that behalf shall replace or maintain Noise Abatement Zone signs and may enter any land near to or adjoining a street to do so or to cut branches of trees or other vegetation, or to remove any other thing which obscures or is likely to cause damage to a Noise Abatement Zone sign.

(5) The Traffic Commissioner or a person authorised by him shall not enter any land near to or adjoining a street to exercise his function under subsection (4) until after the expiration of three days' notice in writing, given to the occupier of the land or posted up conspicuously thereon, of the intention to do so.

(6) Any person who –

- (a) unlawfully places, erects, marks or removes or causes to be placed, erected, marked or removed a Noise Abatement Zone sign on or near a street; or
- (b) defaces, damages, alters or obscures, or in any way interferes with, any Noise Abatement Zone sign lawfully placed, erected, marked or retained on or near a street,

is liable on summary conviction to a fine of five hundred dollars and to imprisonment for three months.

(7) If any person owning or having any interest in any property suffers pecuniary loss by reason of any damage to the property resulting from the carrying out by the Traffic Commissioner of the function mentioned in subsection (1), such person is entitled to compensation in respect of the loss.

(8) If any difference arises between a person claiming compensation under subsection (7) and the Traffic Commissioner as to whether the person is entitled to any such compensation or as to the amount of the compensation, such difference shall, on the written application of the person or of the Attorney General, be determined –

(a) if the amount of the compensation claimed does not exceed one thousand dollars, by a magistrate; or

(b) if the amount of the compensation exceeds one thousand dollars, by a judge of the High Court,

in like manner as if the Magistrate or the Judge were a single arbitrator appointed pursuant to the Arbitration Act, and that Act shall apply accordingly. Ch. 4:50.

(9) Compensation payable under this section shall be defrayed out of moneys provided for the purpose by Parliament.

14. (1) If it appears to the Minister –

Reduction of noise levels.

(a) that the level of noise emanating from any premises to which a Noise Abatement Order applies is not acceptable having regard to the purposes for which the Order was made; and

(b) that a reduction in that level is practicable at reasonable cost and would afford a public benefit,

the Minister may serve a notice on the person responsible.

(2) The notice shall require that person –

(a) to reduce the level of noise emanating from the premises to such level as may be specified in the notice;

(b) to prevent any subsequent increase in the level of noise emanating from those premises without the consent of the Minister; and

(c) to take such steps as may be specified in the notice to achieve those purposes.

(3) A notice under this section (in this Act referred to as a “noise reduction notice”) shall specify a time, not being less than six months from the date of service of the notice, within which the noise level is to be reduced to the specified level and, where the notice specifies any steps necessary to achieve that purpose, within which those steps shall be taken.

(4) A noise reduction notice may specify particular times, or particular days, during which the noise level is to be reduced, and may require the noise level to be reduced to different levels for different times or days.

(5) A person who is served with a noise reduction notice may, within three months of the date of service, appeal to a Judge in Chambers against the notice.

(6) A person who without reasonable excuse contravenes a noise reduction notice is guilty of an offence.

(7) In proceedings for an offence under subsection (6) in respect of noise caused in the course of a trade or business, it is a defence to prove that the best practicable means had been used for preventing or for counteracting the effect of the noise and that the premises from which the noise is emanated is a place in respect of which the Planning Authority has approved the carrying on of such trade or business.

Noise from plant or machinery.

15. (1) Provisions may be made by Regulations –

- (a) for requiring the use, on or in connection with any plant or machinery, of devices or arrangements for reducing the noise caused by the plant or machinery;
- (b) for limiting the level of noise which may be caused by any plant or machinery when used for works to which section 5 applies or which may be caused outside a factory by the use of plant or machinery in the factory;

and Regulations under this section may apply standard specifications, descriptions or tests laid down in documents not forming part of the Regulations.

(2) The Minister shall, before he makes Regulations under this section consult persons appearing to him to represent producers and users of plant and machinery with a view to ensuring that the Regulations do not contain requirements which, in his opinion, would be impracticable or involve unreasonable expense.

(3) Any person who contravenes or causes or permits another person to contravene Regulations under this section is guilty of an offence; but in any proceedings for a contravention of Regulations made in pursuance of subsection (1)(a) it is a defence to prove that means were

used for the purpose of reducing the noise in question which were not less effective for that purpose than the means required by the Regulations.

(4) Nothing in this section or in Regulations under this section shall be construed as derogating from any other provision of this Act.

16. (1) Where any provision of this Act provides for an appeal to a Judge in Chambers the procedures shall be by way of originating summons, and the Rules of the Supreme Court 1970 shall apply to the proceedings.

Appeals to Judge in Chambers.

S.I. No. 2 of 1970. Schedule I.

(2) The Minister may make Regulations as to appeals under this Act prescribing the cases in which –

- (a) a notice under this Act is, or is not, to be suspended until the appeal is decided, or until some other stage of the proceedings;
- (b) the decision on appeal may in some respects be less favourable to the appellant than the decision from which he is appealing;
- (c) the appellant may claim that a notice should have been served on some other person;

and prescribing the procedure to be followed in those cases.

17. For the purpose of giving guidance on appropriate methods (including the use of specified types of plant or machinery) for minimising noise, the Minister may by Order –

Codes of practice for minimising noise.

- (a) prepare and approve and issue codes of practice as in his opinion are suitable for the purpose; and
- (b) approve such codes of practice issued or proposed to be issued otherwise than by the Minister as in the opinion of the Minister are suitable for the purpose.

18. A person guilty of an offence against this Act for which no penalty is provided, is liable on summary conviction –

Penalty.

- (a) in the case of a first offence against this Act to a fine not exceeding five hundred dollars; and

(b) in the case of a second or subsequent offence against this Act, to a fine not exceeding two thousand dollars, together, in any case, with a further fine not exceeding fifty dollars for each day on which the offence continues after the conviction.
