

**DRAFT STATUTORY NUISANCES (JERSEY) LAW 199**

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**Lodged au Greffe on 17th March 1998  
by the Health and Social Services Committee**

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**STATES OF JERSEY**

**STATES GREFFE**

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## REPORT

### 1. Introduction

The law of nuisance in Jersey presently is based on customary law principles which impose certain rights and duties on the owners of adjoining properties. Each is under an obligation not to cause damage to the property of the other and, in particular, a land owner is not entitled to do anything on his land which interferes to an unreasonable degree with his neighbour's reasonable enjoyment of his property.

Jersey law, however, contains nothing equivalent to the English concept of a 'statutory nuisance'. There is presently no *duty* on the States, or any Committee of the States, to take action to abate a nuisance except certain statutory duties relating to public health and similar matters. The individual citizen may presently only pursue an action in the Royal Court in respect of a nuisance caused by his neighbour.

The Health and Social Services Committee, against this background, has considered it necessary to promote legislation in the Island that would -

- establish the concept of a statutory nuisance;
- confer powers on the Committee to require statutory nuisances to be abated;
- make it an offence for a person causing the nuisance to contravene or fail to comply with an abatement notice.

The proposed Law would not supplant the customary law right of action in nuisance, but would provide an alternative means by which the Committee could act and perhaps spare those affected by some nuisance a potentially prolonged and costly process of civil litigation.

### 2. The definition of 'statutory nuisance'

The draft Law contains a detailed list of statutory nuisances (see Article 2). It includes a wide range of matters including

smoke, fumes or gas, light energy, dust, steam, smell, accumulations or deposits, animals kept in a manner prejudicial to health, noise (in certain circumstances), water supplies or water courses and temporary habitations, that are in each case prejudicial to health or a nuisance. In relation to noise (which is considered in detail in paragraph 7 below), certain factors such as aircraft noise, traffic noise and noise arising from a political demonstration would not as a matter of practicality fall within the definition of a statutory nuisance.

### **3. Duties of the Committee**

The draft Law places, for the first time, a duty on a Committee to deal with statutory nuisances and to investigate any complaint of statutory nuisances made to it. The Committee would also be empowered to cause inspections to be made to detect any statutory nuisance even though no complaint had been made (see Article 4).

The Committee could deal with a statutory nuisance by serving an 'abatement notice'. Article 5 states that the Committee should serve a notice that requires the abatement of a nuisance, prohibits or restricts its occurrence or recurrence, or requires the execution of works or other necessary steps, wherever it was satisfied that a statutory nuisance existed, or was likely to occur or recur.

Because there are circumstances in which the Health and Social Services Committee itself might be responsible for the creation of a statutory nuisance, there would be a right for any individual to make a representation to the Royal Court to seek the abatement of that nuisance by order of the Court.

### **4. Criminal liability**

It would become a criminal offence for a person on whom an abatement notice had been served to contravene or fail to comply with any requirement or prohibition imposed, unless he could show some reasonable excuse or unless (subject to certain exceptions) he could prove that the best practicable means were used to prevent or counteract the effects of the nuisance (See Article 5(4) to (8)).

Were a nuisance caused by more than one person, or a group of people, the Law would apply to each of the individuals concerned, whether or not that for which any of them was responsible would by itself amount to a nuisance (See Article 7(1)).

## **5. Steps by the Committee to abate nuisance**

The criminal offence referred to above would not be the only sanction to secure abatement of a nuisance. The Committee itself would be able to take proceedings in the Royal Court to secure the abatement, prohibition or restriction of a statutory nuisance (whether or not the Committee itself had suffered damage) and, if an abatement notice were not complied with, the Committee would be empowered to abate the nuisance and do whatever might be necessary in execution of the notice (see Article 7(4) to (6)).

## **6. Matters of procedure**

The draft Law specifies the person on whom an abatement notice should be served and/or the manner in which the notice should be served (for example, in the case of unattended machinery in the street).

Provisions are included in the Schedule for appeal to the Royal Court against a decision of the Committee, specifying the grounds and procedures for an appeal.

## **7. The problem of noise**

The definition of statutory nuisance in Article 2 includes -

- (a) noise emitted from premises so as to be prejudicial to health or a nuisance;
- (b) noise emitted from or caused by a vehicle, machinery or equipment in a street so as to be prejudicial to health or a nuisance.

It is difficult to categorise the different types of noise which

may or may not come within the scope of the Committee's power to issue an abatement notice. In respect of noisy parties or similar events, the issue of an abatement notice may be quite ineffective, except in the case of repetitive noisy parties from particular premises or caused by a particular person.

In regard to noisy events, advice has been taken from the Attorney General who has pointed out that the customary law of Jersey already recognises the offence of public nuisance. It is undoubtedly a public nuisance under the law of Jersey to make noise from premises in such manner as to create a nuisance to the neighbourhood and, because a public nuisance amounts to an offence, the offender can be arrested by the police. Indeed, there have been cases in which the offence of public nuisance has been charged arising from the playing of stereo equipment so loudly that it caused a nuisance to neighbours. In this particular respect, the enforcement of customary law, rather than any new statutory remedy, is thought to be the more appropriate means of seeking to overcome the particular difficulty of noise.

Similar considerations apply to the problem of groups of people in the street causing noise. The abatement notice procedure is not suited to a 'once off' situation where the incident has started and finished before the Committee has had an opportunity to serve a notice. Again there are other legal sanctions already available to counter the problem, such as prosecution for a breach of the peace or the customary law offence of public nuisance.

It should also be recognised that there is a specific exemption in relation to noise from the ordinary run of traffic. It may be, however, that if a noise is created by a particular person on a repetitive basis caused by a vehicle, machinery or equipment in the street so as to be prejudicial to health or a nuisance, a statutory nuisance may exist so that an abatement notice could be issued by the Committee. However, this would only deal with suitably specific and repetitive occurrences.

## **8. Conclusion**

The proposed legislation is intended to regulate occurrences that are prejudicial to health or a nuisance. It does not, however, seek to deal with matters in which there is already a more appropriate customary law remedy. The proposed Statutory Nuisances Law will provide, in relevant circumstances, the public with an alternative to litigation in the Royal Court and is intended to enable the Health and Social Services Committee to deal effectively with the large majority of complaints that are received by the Environmental Health Department.

## Explanatory Note

The purpose of this Law is to provide for statutory nuisances and to establish procedures for dealing with them.

*Article 1* contains interpretation provisions for the purposes of the Law.

*Article 2* sets out those matters which constitute statutory nuisances for the purposes of the Law.

*Article 3* empowers the States to make Regulations to add to and amend the list of statutory nuisances and to state whether or not a defence of best practical means is available.

*Article 4* describes the functions of the Committee, including its duty to investigate complaints of statutory nuisance and empowers it to cause inspections to be made to ascertain whether a statutory nuisance exists in respect of which no complaint has been made.

*Article 5* deals with the procedures for action by the Committee for the abatement of statutory nuisances. If the Committee is satisfied that a statutory nuisance exists or is likely to occur or recur it is required to serve a notice to be known as an abatement notice (*paragraph (1)*). No form of notice is prescribed but it must inform the recipient of his right of appeal under Article 10 and give the time limit for it (*paragraph (3)*). *Paragraph (4)* sets out the persons on whom the notice is to be served. In most cases it will be the person responsible for the nuisance but it may be the owner of the premises where the nuisance arises from a defect of a structural character, and where the person responsible for the nuisance cannot be found the notice may be served on the owner of the premises. Failure to comply with a notice without reasonable excuse is an offence (*paragraph (5)*) punishable for nuisance offences on non-industrial, agricultural, trade or business premises by a fine not exceeding level 4 (£2,000 with a daily penalty of £500 for each day the offence continues) (*paragraph (6)*) and for such offences on industrial, agricultural, trade or business premises by a fine with no daily fines (*paragraph (7)*). *Paragraphs (8) and (9)* state in what circumstances the defence of best practical means (defined in Article 1(1)) is available. The defence is not available at all in the case of fumes or gases emitted from premises (Article 2(1)(c)). In relation to smoke nuisance it is only available where smoke is emitted from a chimney (as defined in

Article 1(1)). In other cases it is only available where the nuisance arises on industrial, agricultural, trade or business premises.

*Article 6* contains provisions dealing with the serving of a notice in respect of noise in the street where the statutory nuisance has not yet occurred or arises from noise emitted from or caused by an unattended vehicle or unattended machinery or equipment. Any other situation is governed by Article 5. Much of this Article concentrates on the circumstances in which the person responsible cannot be found or where the Committee determines that these provisions shall apply, and that notice is fixed to the vehicle, machinery or equipment. Where the person responsible for the vehicle can be found the notice must be served on him (*paragraph (3)*). The Article supplies appeal provisions to a person on whom a notice has been served (*paragraph (5)*) and makes it an offence to remove a notice fixed to a vehicle, machinery or equipment (*paragraph (7)*).

*Article 7* contains provisions supplementary to Articles 2 and 5. *Paragraph (1)* provides for the situation where more than one person is responsible for a statutory nuisance. Action may be taken against each person, regardless of whether or not the matters for which each is responsible would, taken in isolation, constitute a statutory nuisance. *Paragraph (2)* refers to a statutory nuisance falling within Article 2(1)(j) (noise emitted from or caused by a vehicle, machinery or equipment in a street) and cross-refers to Article 6(2)(a) for the purpose of determining service of an abatement notice where more than one person is responsible. In these circumstances Article 6(2)(a) will provide that an abatement notice may be served on any one of the persons responsible for the nuisance in question. *Paragraph (3)* again provides for the situation arising from a statutory nuisance under Article 2(1)(j) but where it is caused by noise emitted from or caused by an unattended vehicle or unattended machinery or equipment for which more than one person is responsible. In such a case Article 6 will apply with the modifications listed in paragraph (3), the purpose being to provide the Committee with a discretion in the choice of person responsible in relation to action permitted by Article 6. *Paragraph (4)* permits the Committee to abate the nuisance whilst *paragraph (5)* provides for the expenses of the Committee so incurred to be recovered as a civil debt from the person by whose act or default the nuisance was caused. *Paragraph (6)* permits the Committee to take proceedings in the Court where the Committee is of the opinion that criminal enforcement would afford an inadequate remedy.



*Article 8* allows any person aggrieved by the existence of a statutory nuisance committed by the Committee to make a representation direct to the Court (*paragraph (1)*). The Court may, by *paragraph (2)*, make an order either requiring abatement of the nuisance or prohibiting its recurrence. The defendant may also be required to execute any works necessary to prevent a recurrence. If the Court is satisfied that the alleged nuisance exists and is such as to render premises unfit for human habitation, the abatement order may prohibit the use of the premises for human habitation until rendered fit for that purpose (*paragraph (3)*).

*Article 9* and the *Schedule* provide for appeals against abatement notices.

*Article 10* gives powers of entry to authorized persons to enter premises to ascertain whether a statutory nuisance exists and to take any action or execute any work authorized or required by the Law (*paragraph (1)*). *Paragraph (3)* authorizes the Bailiff to issue a warrant if he is satisfied as to certain matters, eg. that admission to premises has been refused or that refusal is apprehended or that the premises are unoccupied or that there is an emergency. The warrant authorizes an authorized person to take other persons and equipment as may be necessary into the premises and to take away samples or articles (*paragraph (4)*).

*Article 11* gives powers of entry to authorized persons to a vehicle, machinery or equipment, but only for the purpose of taking any action or executing any work authorized or required under this Law in relation to a statutory nuisance caused by noise emitted from or caused by the vehicle, machinery or equipment. *Paragraph (5)* requires that the Committee notify the police of an intention to take action under this Article whilst *paragraph (7)* provides for the recovery by the Committee of expenses reasonably incurred.

*Article 12* makes it an offence to obstruct persons exercising their powers of entry, and for a person exercising such powers to disclose information relating to trade secrets unless the disclosure is made in the performance of his duty.

*Article 13* provides that directors, managers, secretaries and similar officers of a company which has been convicted of an offence under the Law are also guilty of the offence if they consented to, connived at, or

their neglect contributed to, the commission of the offence (*paragraph (1)*). *Paragraph (2)* provides that the persons who aid and abet in the commission of an offence under this Law are liable to the same treatment as a principal offender.

*Article 14* empowers the Court to make Rules of Court for the purposes of the proposed Law.

*Article 15* empowers the Committee to make Orders for the carrying out of the Law and *Article 16* makes provision for Regulations and Orders made under the Law to make different provision for different circumstances.

*Article 17* makes provision as to the service of notices.

*Article 18* contains saving provisions.

*Article 19* gives the short title to the Law and contains commencement provisions.

Under the Criminal Justice (Standard Scale of Fines) (Jersey) Law 1993 level 1 is £50, level 2 is £500, level 3 is £2000 and level 4 is £5000.

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**ARRANGEMENT OF ARTICLES**

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**A LAW** to provide for statutory nuisances; for procedures for dealing with them; and for connected purposes; sanctioned by Order of Her Majesty in Council of the

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*(Registered on the       day of       199 )*

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**STATES OF JERSEY**

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The       day of       199

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**THE STATES**, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law -

**ARTICLE 1**

**Interpretation**

(1) In this Law, unless the context otherwise requires -

“abatement notice” has the meaning assigned to it by paragraph (1) of Article 5;

“authorized person” means any person authorized by the Committee for the purposes of discharging any or all of the functions contained in this Law;

“best practicable means” is to be interpreted by reference to the following provisions -

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- (a) “practicable” means reasonably practicable having regard among other things to local conditions and circumstances, to the current state of technical knowledge and to the financial implications;
- (b) the means to be employed include the design, installation, maintenance and manner and periods of operation of plant and machinery, and the design, construction and maintenance of buildings and structures;
- (c) the test is to apply only so far as compatible with any duty imposed by law;
- (d) the test is to apply only so far as compatible with safety and safe working conditions, and with the exigencies of any emergency or unforeseeable circumstances;

“chimney” includes structures or openings of any kind from or through which smoke may be emitted;

“the Committee” means the Health and Social Services Committee;

“the Court” means the Royal Court;

“dust” does not include dust emitted from a chimney as an ingredient of smoke;

“equipment” includes a musical instrument;

“fumes” means any airborne solid matter smaller than dust;

“gas” includes vapour and moisture precipitated from vapour;

“industrial, agricultural, trade or business premises” means premises used for any industrial, agricultural, trade or business purposes or premises not so used on which matter is burnt in connection with any industrial, agricultural, trade or business process, and premises are used for industrial purposes where

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they are used for the purposes of any treatment or process as well as where they are used for the purposes of manufacturing;

“injury to health” includes any impairment whether permanent or temporary;

“noise” includes vibration;

“person responsible” -

(a) in relation to a statutory nuisance, means the person to whose act, default or sufferance the nuisance is attributable;

(b) in relation to a vehicle, includes the owner whose vehicle is for the time being registered under the Motor Vehicle Registration (Jersey) Law 1993 and any other person who is for the time being the driver of the vehicle;

(c) in relation to machinery or equipment, includes any person who is for the time being the operator of the machinery or equipment;

“police officer” means a member of the Honorary Police or the States of Jersey Police Force;

“prejudicial to health” means injurious, or likely to cause injury, to health;

“prescribed” means prescribed by Regulations;

“premises” includes land and any vessel;

“private dwelling” means any building, or part of a building, used or intended to be used, as a dwelling;

“smoke” includes soot, ash, grit, and gritty particles emitted in smoke;

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“statutory nuisance” has the meaning assigned to it by Article 2;

“street” means any public road, any other road to which the public has access, any road administered by the Housing Committee, any of the roads on the Rue des Près Trading Estate, any bridge over which a road passes, any road privately maintained and any sea beach;

“water supply” includes public and private water supplies.

(2) In this Law, references to premises and the occupier of premises includes respectively a vessel and the master of a vessel.

(3) Unless the context otherwise requires, references in this Law to any other enactment shall be construed as references to that enactment as amended, extended or applied by or under any other enactment and to any enactment which repeals and re-enacts the first-mentioned enactment with or without further amendment.

(4) A reference in this Law to a numbered Article without further identification is a reference to the Article so numbered in this Law.

(5) A reference in any Article of this Law to a paragraph, sub-paragraph or clause by number or letter only, and without further identification, is a reference to the paragraph, sub-paragraph or clause of that number or letter contained in the Article of this Law in which such reference occurs.

ARTICLE 2

**Matters constituting statutory nuisances**

(1) Subject to paragraphs (2) and (3), the following matters constitute “statutory nuisances” for the purposes of this Law -

(a) any premises in such a state as to be prejudicial to health or a nuisance;

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- (b) smoke emitted from premises so as to be prejudicial to health or a nuisance;
- (c) fumes or gas emitted from premises so as to be prejudicial to health or a nuisance;
- (d) light energy emitted from premises so as to be prejudicial to health or a nuisance;
- (e) any dust, steam, smell, or other effluvia arising on or emanating from industrial, agricultural, trade or business premises or resulting from such processes and being prejudicial to health or a nuisance;
- (f) any accumulation or deposit which is prejudicial to health or a nuisance;
- (g) any animal, bird, insect, reptile or fish kept in such a place or manner as to be prejudicial to health or a nuisance;
- (h) noise emitted from premises so as to be prejudicial to health or a nuisance;
- (j) noise emitted from or caused by a vehicle, machinery or equipment in a street so as to be prejudicial to health or a nuisance;
- (k) any well, tank, cistern, water-butt or other water supply howsoever constructed which is used for the supply of water for domestic purposes which is so placed, constructed or kept or maintained as to render the water therein liable to contamination prejudicial to health;
- (l) any pond, pool, ditch, gutter or watercourse which is so foul or in such a state as to be prejudicial to health or a nuisance;
- (m) any tent, van, shed or similar structure used for human habitation which is in such a state, or so overcrowded, as



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to be prejudicial to the health of the inmates, or the use of which, by reason of the absence of proper sanitary accommodation or otherwise, gives rise, whether on the site or on other land, to a nuisance or to conditions prejudicial to health;

(n) any other matter constituting a statutory nuisance by virtue of Regulations made under Article 3.

(2) Sub-paragraph (c) of paragraph (1) does not apply in relation to premises other than private dwellings.

(3) Sub-paragraph (h) of paragraph (1) does not apply to noise caused by aircraft other than model aircraft.

(4) Sub-paragraph (j) of paragraph (1) does not apply to noise made by -

(a) traffic;

(b) any naval, military or air force of the Crown; or

(c) a political demonstration or a demonstration supporting or opposing a cause or campaign.

## ARTICLE 3

**Power to extend statutory nuisances**

(1) The States may by Regulations modify the list of statutory nuisances set out in Article 2.

(2) Regulations under paragraph (1) may state whether and in what circumstances it shall be a defence to prove that the best practical means were used to prevent or counteract the effect of a nuisance so added or amended.

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ARTICLE 4

**Functions of the Committee**

(1) The Committee shall have the powers conferred on it by this Law and the duty to investigate a complaint of statutory nuisance made to it.

(2) The Committee may cause inspections to be made to detect the presence or existence of any statutory nuisance in respect of which no complaint has been made to it.

ARTICLE 5

**Proceedings for statutory nuisances**

(1) Where the Committee is satisfied that a statutory nuisance exists, or is likely to occur or recur, it shall serve a notice (in this Law referred to as “an abatement notice”) imposing all or any of the following requirements -

- (a) requiring the abatement of the nuisance 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 any of those purposes.

(2) The abatement notice shall -

- (a) specify the time or times within which the requirements of the notice are to be complied with; and
- (b) include a statement -
  - (i) indicating that an appeal against the notice lies; and
  - (ii) specifying the time within which it must be brought.

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(3) Subject to paragraph (1) of Article 6, the abatement notice shall be served -

- (a) except in a case falling within sub-paragraph (b) or (c), on the person responsible for the nuisance;
- (b) where the nuisance arises from any defect of a structural character, on the owner of the premises;
- (c) where the person responsible for the nuisance cannot be found or the nuisance has not yet occurred, on the owner or occupier of the premises.

(4) If a person on whom an abatement notice is served, without reasonable excuse, contravenes or fails to comply with any requirement or prohibition imposed by the notice, he shall be guilty of an offence.

(5) Subject to paragraph (6), a person who commits an offence under paragraph (4) shall be liable to a fine not exceeding level 4 on the standard scale<sup>1</sup> together with a further fine not exceeding level 2 for each day on which the offence continues after conviction for that offence.

(6) A person who commits an offence under paragraph (4) on industrial, trade or business premises shall be liable to a fine.

(7) Subject to paragraph (8), in any proceedings for an offence under paragraph (4) in respect of a statutory nuisance, it shall be a defence to prove that the best practicable means were used to prevent, or to counteract the effects of, the nuisance.

(8) The defence under paragraph (7) is not available -

- (a) in the case of a statutory nuisance falling within sub-paragraph (a), (d), (e), (f), (g) or (h) of paragraph (1) of Article 2, except where the nuisance arises on industrial, agricultural, trade or business premises;

<sup>1</sup> Volume 1992-1993, page 437.

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- (b) in the case of a statutory nuisance falling within subparagraph (j) of paragraph (1) of Article 2, except where the noise is emitted from or caused by a vehicle, machinery or equipment being used for industrial, agricultural, trade or business purposes;
- (c) in the case of a statutory nuisance falling within subparagraph (b) of paragraph (1) of Article 2, except where the smoke is emitted from a chimney; and
- (d) in the case of a statutory nuisance falling within subparagraph (c) of paragraph (1) of Article 2.

## ARTICLE 6

**Abatement notice in respect of noise in street**

(1) In the case of a statutory nuisance within subparagraph (j) of paragraph (1) of Article 2 that -

- (a) has not yet occurred; or
- (b) arises from noise emitted from or caused by an unattended vehicle or unattended machinery or equipment,

the abatement notice shall be served in accordance with paragraph (2).

- (2) The notice shall be served -
  - (a) where the person responsible for the vehicle, machinery or equipment can be found, on that person;
  - (b) where that person cannot be found or where the Committee determines that this paragraph should apply, by fixing the notice to the vehicle, machinery or equipment.
- (3) Where -

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- (a) an abatement notice is served in accordance with sub-paragraph (b) of paragraph (2) by virtue of a determination of the Committee; and
- (b) the person responsible for the vehicle, machinery or equipment can be found and served with a copy of the notice within an hour of the notice being fixed to the vehicle, machinery or equipment,

a copy of the notice shall be served on that person accordingly.

(4) Where an abatement notice is served in accordance with sub-paragraph (b) of paragraph (2) by virtue of a determination of the Committee, the notice shall state that, if a copy of the notice is subsequently served under paragraph (3), the time specified in the notice as the time within which its requirements are to be complied with is extended by such further period as is specified in the notice.

(5) Where an abatement notice is served in accordance with sub-paragraph (b) of paragraph (2), the person responsible for the vehicle, machinery or equipment may appeal against the notice as if he had been served with the notice on the date on which it was fixed to the vehicle, machinery or equipment.

(6) Paragraph (4) of Article 5 shall apply in relation to a person on whom a copy of an abatement notice is served under paragraph (3) as if the copy were the notice itself.

(7) A person who removes or interferes with a notice fixed to a vehicle, machinery or equipment in accordance with sub-paragraph (b) of paragraph (2) shall be guilty of an offence, unless he is the person responsible for the vehicle, machinery or equipment or he does so with the authority of that person.

(8) A person who commits an offence under paragraph (7) shall be liable to a fine not exceeding level 2 on the standard scale.

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## ARTICLE 7

**Supplementary provisions**

(1) Subject to paragraph (2), where more than one person is responsible for a statutory nuisance, Article 5 shall apply to each of those persons whether or not what any of them is responsible for would by itself amount to a nuisance.

(2) In relation to a statutory nuisance within sub-paragraph (j) of paragraph (1) of Article 2 for which more than one person is responsible (whether or not what any one of those persons is responsible for would by itself amount to such a nuisance), sub-paragraph (a) of paragraph (4) of Article 5 shall apply with the substitution of “any one of the persons” for “the person”.

(3) In relation to a statutory nuisance within sub-paragraph (j) of paragraph (1) of Article 2 caused by noise emitted from or caused by an unattended vehicle or unattended machinery or equipment for which more than one person is responsible, Article 6 shall apply with the substitution -

- (a) in sub-paragraph (a) of paragraph (2), of “any one of the persons” for “the person” and of “one such person” for “that person”;
- (b) in sub-paragraph (b) of paragraph (2), of “such a person” for “that person”;
- (c) in paragraph (3), of “any of the persons” for “the person” and of “one such person” for “that person”;
- (d) in paragraph (5), of “any person” for “the person”; and
- (e) in paragraph (7), of “a person” for “the person” and of “such a person” for “that person”.

(4) Where an abatement notice has not been complied with, the Committee may, whether or not proceedings are taken for an offence

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under paragraph (4) of Article 5, abate the nuisance and do whatever may be necessary in execution of the notice.

(5) Any expenses reasonably incurred by the Committee in abating, or preventing the recurrence of, a statutory nuisance under paragraph (4) shall be recoverable as a civil debt from the person or persons by whose act or default the nuisance was caused, and the Court may apportion expenses between persons by whose acts or defaults the nuisance is caused in such manner as the Court considers fair and reasonable.

(6) If the Committee is of the opinion that proceedings for an offence under paragraph (4) of Article 5 would afford an inadequate remedy in the case of any statutory nuisance, they may take proceedings in the Court for the purpose of securing the abatement, prohibition or restriction of the nuisance, and the proceedings shall be maintainable notwithstanding the Committee has suffered no damage from the nuisance.

**ARTICLE 8****Proceedings by persons aggrieved by statutory nuisances  
by Committee**

(1) The Court may act under this Article on a representation made by any person on the ground that he is aggrieved by the existence of a statutory nuisance for which the Committee is responsible.

(2) If the Court is satisfied that the alleged nuisance exists, or that although abated it is likely to recur on the same premises or, in the case of a nuisance within sub-paragraph (j) of paragraph (1) of Article 2, in the same street, the Court may make an order for either or both of the following purposes -

- (a) requiring the Committee to abate the nuisance, within a time specified in the order, and to execute any works necessary for that purpose;

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- (b) prohibiting a recurrence of the nuisance, and requiring the Committee, within a time specified in the order, to execute any works necessary to prevent the recurrence.

(3) If the Court is satisfied that the alleged nuisance exists and is such as, in the opinion of the Court, to render premises unfit for human habitation, an order under paragraph (2) may prohibit the use of the premises for human habitation until the premises are, to the satisfaction of the Court, rendered fit for that purpose.

ARTICLE 9

**Appeals and compensation**

(1) A person aggrieved by the service of an abatement notice has a right of appeal in the manner and on a ground set out in the Schedule and the Schedule shall have effect with regard to such appeals.

(2) Where, pursuant to an appeal under this Article, an abatement notice is cancelled or modified, the Court shall have power to award compensation to the appellant.

ARTICLE 10

**Powers of entry to premises etc.**

(1) Subject to paragraph (2), any authorized person may, on production, if so required, of his authority, enter any premises at any reasonable time -

- (a) for the purpose of ascertaining whether a statutory nuisance exists; or
- (b) for the purpose of taking any action, or executing any work, authorized or required by this Law.

(2) Admission by virtue of paragraph (1) to any premises used wholly or mainly for residential purposes shall not except in an emergency be demanded as of right unless twenty-four hours notice of the intended entry has been given to the occupier.



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(3) If it is shown to the satisfaction of the Bailiff by information on oath that -

- (a) admission to any premises has been refused, or that refusal is apprehended, or that the premises are unoccupied or that the occupier is temporarily absent, or that the case is one of emergency, or that an application for admission would defeat the object of the entry; and
- (b) there is reasonable ground for entry into the premises for the purpose for which entry is required,

the Bailiff may issue a warrant under this Article authorizing the Committee by any authorized person to enter the premises, if need be by force.

(4) An authorized person entering any premises by virtue of paragraph (1) or a warrant under paragraph (3) may -

- (a) take with him such other person and such equipment as may be necessary;
- (b) carry out such inspections, measurements and tests as he considers necessary for the discharge of any of the Committee's functions under this Law; and
- (c) take away such samples or articles as he considers necessary for that purpose.

(5) On leaving any unoccupied premises which he has entered by virtue of paragraph (1) or a warrant under paragraph (3) the authorized person shall leave them as effectively secured against unauthorized entry as he found them.

(6) A warrant issued in pursuance of paragraph (3) shall continue in force until the purpose for which the entry is required has been satisfied.

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(7) Any reference in this Article to an emergency is a reference to a case where the person requiring entry has reasonable cause to believe that circumstances exist which are likely to endanger life or health and that immediate entry is necessary to verify the existence of those circumstances or to ascertain their cause and effect a remedy.

## ARTICLE 11

**Powers of entry to vehicles, machinery or equipment**

(1) Any authorized person may, on production, if so required, of his authority -

- (a) enter or open a vehicle, machinery or equipment, if necessary by force; or
- (b) remove a vehicle, machinery or equipment from a street to a secure place,

for the purpose of taking any action, or executing any work, authorized by or required under this Law in relation to a statutory nuisance within sub-paragraph (j) of paragraph (1) of Article 2 caused by noise emitted from or caused by the vehicle, machinery or equipment.

(2) Subject to paragraph (3), on leaving any unattended vehicle, machinery or equipment that he has entered or opened under paragraph (1), the authorized person shall leave it secured against interference or theft in such a manner and as effectually as he found it.

(3) If the authorized person is unable to comply with paragraph (2), he shall for the purpose of securing the unattended vehicle, machinery or equipment either -

- (a) immobilise it by such means as he considers expedient; or
- (b) remove it from the street to a secure place.

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(4) In carrying out any function under paragraph (1), (2) or (3), the authorized person shall not cause more damage than is necessary.

(5) Before a vehicle, machinery or equipment is entered, opened or removed under paragraph (1), the Committee shall notify a police officer of the intention to take action under that paragraph.

(6) After a vehicle, machinery or equipment has been removed under paragraph (1) or (3), the Committee shall notify a police officer of its removal and current location.

(7) For the purposes of paragraph (5) of Article 7, any expenses reasonably incurred by the Committee under paragraph (2) or (3) shall be treated as incurred by the Committee under paragraph (4) of Article 7 in abating or preventing the recurrence of the statutory nuisance in question.

## ARTICLE 12

**Offences relating to entry**

(1) A person who wilfully obstructs any person acting in the exercise of any powers conferred by Article 10 or 11 shall be guilty of an offence and liable to a fine not exceeding level 3 on the standard scale.

(2) If a person discloses any information relating to any trade secret obtained in the exercise of any powers conferred by Article 10 or 11, he shall, unless the disclosure was made in the performance of his duty, or with the consent of the person having the right to disclose the information, be guilty of an offence and liable to a fine not exceeding level 4 on the standard scale.

## ARTICLE 13

**Criminal liability of officers; aiders and abettors**

(1) Where an offence under this Law committed by a company is proved to have been committed with the consent or

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connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary, or other similar officer of the company or any person who was purporting to act in any such capacity, he, as well as the company, shall be guilty of that offence and shall be liable to be prosecuted and punished accordingly.

(2) Without prejudice to paragraph (1), any person who knowingly and wilfully aids, abets, counsels, causes, procures or commands the commission of an offence under this Law shall be liable to be dealt with, tried and punished as a principal offender.

## ARTICLE 14

**Rules of Court**

Rules may be made in the manner prescribed by the Royal Court (Jersey) Law 1948<sup>2</sup> to make such provision as appears to the Superior Number of the Royal Court to be necessary or expedient for the purposes of this Law.

## ARTICLE 15

**Orders**

(1) The Committee may make Orders for any purpose for which Orders may be made under this Law and generally for the purposes of carrying this Law into effect.

(2) The Subordinate Legislation (Jersey) Law 1960<sup>3</sup> shall apply to Orders made under this Law.

## ARTICLE 16

**General provisions as to Regulations and Orders**

Except insofar as this Law otherwise provides, any power conferred by it to make any Regulations or Order may be exercised -

<sup>2</sup> Tome VII, page 510, and Volume 1996-1997, page 147.

<sup>3</sup> Tome VII, page 849.

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- (a) either in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of case; and
- (b) so as to make in relation to the cases in relation to which it is exercised -
  - (i) the full provision to which the power extends or any less provision (whether by way of exception or otherwise), or
  - (ii) the same provision for all cases in relation to which the power is exercised or different provisions for different cases or classes of case, or different provisions as respects the same case or class of case for different purposes of this Law, or
  - (iii) any such provision either unconditionally or subject to any specified conditions.

ARTICLE 17

**Service of notices**

(1) This Article shall have effect in relation to any notice or other document required or authorized by or under this Law to be given to or served on any person.

(2) Any such document may be given to or served on the person in question -

- (a) by delivering it to him;
- (b) by leaving it at his proper address; or
- (c) by sending it by post to him at that address.

(3) Any such document may -

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- (a) in the case of a company, be given to or served on the secretary, clerk or other similar officer of the company or any person who purports to act in any such capacity, by whatever name called;
- (b) in the case of a partnership, be given to or served on a partner or a person having the control or management of the partnership business.

(4) For the purposes of this Article and Article 12 of the Interpretation (Jersey) Law 1954<sup>4</sup> (meaning of service by post) in its application to this Article, the proper address of any person to or on whom a document is to be given or served shall be his last known address, except that -

- (a) in the case of a company or its secretary, clerk or other officer or person referred to in sub-paragraph (a) of paragraph (3), it shall be the address of the registered or principal office of the company;
- (b) in the case of a partnership or a person having the control or management of the partnership business, it shall be that of the principal office of the partnership,

and for the purposes of this paragraph the principal office of a company registered outside the Island or of a partnership carrying on business outside the Island shall be their principal office within the Island.

(5) If the person to be given or served with any document mentioned in paragraph (1) has specified an address within the Island other than his proper address within the meaning of paragraph (4) as the one at which he or someone on his behalf will accept documents of the same description as that document, that address shall also be treated for the purposes of this Article and Article 12 of the Interpretation (Jersey) Law 1954 as his proper address.

<sup>4</sup> Tome VIII, page 381.

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ARTICLE 18

**Saving provisions**

This Law shall be in addition to and not in derogation of -

- (a) the “Loi (1934) sur la Santé Publique<sup>5</sup>”; and
- (b) any other law relating to public health.

ARTICLE 19

**Short title and commencement**

This Law may be cited as the Statutory Nuisances (Jersey) Law 199 and shall come into force on such day as the States may by Act appoint.

<sup>5</sup> Tome VII, page 114.

*Statutory Nuisances (Jersey) Law 199**SCHEDULE***(Article 9)**

## APPEALS

(1) A person served with an abatement notice under Article 5 may appeal against the notice to the Court within the period of twenty-one days beginning with the day on which he was served the notice.

(2) A person referred to in paragraph (1) may appeal on any one or more of the grounds set out in paragraph (3) that are appropriate in the circumstances of the particular case.

(3) The grounds referred to in paragraph (2) are -

(a) that the abatement notice is not justified by Article 5;

(b) that there has been some informality, defect or error in, or in connection with, the abatement notice, or in, or in connection with, any copy of the abatement notice served under paragraph (3) of Article 6;

(c) that the Committee has refused unreasonably to accept compliance with alternative requirements, or that the requirements of the abatement notice are otherwise unreasonable in character or extent, or are unnecessary;

(d) that the time, or where more than one time is specified, any of the times, within which the requirements of the abatement notice are to be complied with is not reasonably sufficient for the purpose;

(e) where the nuisance to which the notice relates -

(i) is a nuisance falling within sub-paragraph (a), (d), (e), (f), (g) or (h) of paragraph (1) of Article 2 and arises on industrial, trade or business premises; or



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- (ii) is a nuisance falling within sub-paragraph (b) of that paragraph and the smoke is emitted from a chimney; or
- (iii) is a nuisance falling within sub-paragraph (j) of that paragraph and is noise emitted from or caused by a vehicle, machinery or equipment being used for industrial, agricultural, trade or business purposes.

that the best practicable means were used to prevent, or to counteract the effects of, the nuisance;

- (f) that the abatement notice should have been served on some person instead of the appellant, being -
  - (i) the person responsible for the nuisance; or
  - (ii) the person responsible for the vehicle, machinery or equipment; or
  - (iii) in the case of a nuisance arising from any defect of a structural character, the owner of the premises; or
  - (iv) in the case where the person responsible for the nuisance cannot be found or the nuisance has not yet occurred, the owner or occupier of the premises;
- (g) that the abatement notice might lawfully have been served on some person instead of the appellant being -
  - (i) in the case where the appellant is the owner of the premises, the occupier of the premises; or
  - (ii) in the case where the appellant is the occupier of the premises, the owner of the premises,

and that it would have been equitable for it to have been so served;

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- (h) that the abatement notice might lawfully have been served on some person in addition to the appellant, being -
  - (i) a person also responsible for the nuisance; or
  - (ii) a person who is also owner of the premises; or
  - (iii) a person who is also an occupier of the premises; or
  - (iv) a person who is also the person responsible for the vehicle, machinery or equipment,

and that it would have been equitable for it to have been so served.

(4) If and so far as an appeal is based on the ground of some informality, defect or error in, or in connection with, the abatement notice, or in, or in connection with, any copy of the notice served under paragraph (3) of Article 6, the Court shall dismiss the appeal if it is satisfied that the informality, defect or error was not a material one.

(5) Where the grounds upon which an appeal is brought include a ground specified in sub-paragraph (g) or (h) of paragraph (3), the appellant shall serve a copy of his notice of appeal on any other person referred to, and in the case of any appeal to which these regulations apply he may serve a copy of his notice of appeal on any other person having an estate or interest in the premises, vehicle, machinery or equipment in question.

- (6) On the hearing of the appeal the Court may -
  - (a) quash the abatement notice to which the appeal relates; or
  - (b) vary the abatement notice in favour of the appellant in such manner as it thinks fit; or
  - (c) dismiss the appeal,

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and an abatement notice that is varied under sub-paragraph (b) shall be final and shall otherwise have effect, as so varied, as if it had been so made by the Committee.

(7) Subject to paragraph (8), on the hearing of an appeal the Court may make such order as it thinks fit -

- (a) with respect to the person by whom any work is to be executed and the contribution to be made by any person towards the cost of the work; or
- (b) as to the proportions in which any expenses which may become recoverable by the Committee under the Law are to be borne by the appellant and by any other person.

(8) In exercising its powers under paragraph (7) the Court -

- (a) shall have regard, as between an owner and an occupier, to the terms and conditions of any relevant tenancy and to the nature of the works required; and
- (b) shall be satisfied before it imposes any requirement thereunder on any person other than the appellant, that that person has received a copy of the notice of appeal in pursuance of paragraph (5).

(9) Where -

- (a) an appeal is brought against an abatement notice served under Article 5 or 6; and -
- (b) either -
  - (i) compliance with the abatement notice would involve any person in expenditure on the carrying out of works before the hearing of the appeal; or
  - (ii) in the case of a nuisance under sub-paragraph (h) of paragraph (1) of Article 2, the noise to which the abatement notice relates is noise necessarily caused

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in the course of the performance of some duty imposed by law on the appellant; and

- (c) either paragraph (10) does not apply, or it does apply but the requirements of paragraph (11) have not been met,

the abatement notice shall be suspended until the appeal has been abandoned or decided by the Court.

(10) This paragraph applies where -

- (a) the nuisance to which the abatement notice relates -
  - (i) is injurious to health; or
  - (ii) is likely to be of a limited duration such that suspension of the notice would render it of no practical effect; or
- (b) the expenditure which would be incurred by any person in the carrying out of works in compliance with the abatement notice before any appeal has been decided would not be disproportionate to the public benefit to be expected in that period from such compliance.

(11) Where paragraph (10) applies the abatement notice -

- (a) shall include a statement that paragraph (10) applies, and that as a consequence it shall have effect notwithstanding any appeal to the Court which has not been decided by the Court; and
- (b) shall include a statement as to which of the grounds set out in paragraph (10) apply.