Chartered
Institute of
Environmental
Health

Artificial light statutory nuisance – continued utility of the current exemptions for certain premises

Response to the DEFRA consultation

February 2012

The Chartered Institute of Environmental Health

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As a **knowledge centre**, we provide information, evidence and policy advice to local and national government, environmental and public health practitioners, industry and other stakeholders. We publish books and magazines; run educational events and commission research.

As an **awarding body**, we provide qualifications, events, and trainer and candidate support materials on topics relevant to health, wellbeing and safety to develop workplace skills and best practice in volunteers, employees, business managers and business owners.

As a **campaigning organisation**, we work to push environmental health further up the public agenda and to promote improvements in environmental and public health policy.

We are a **registered charity** with over 10,500 members across England, Wales and Northern Ireland.

Any enquiries about this response should be directed in the first instance to:

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Background

By way of background, the CIEH was not in favour of creating this category of statutory nuisances. The proposal to do so arising out of comments made to the Lords Science and Technology Committee, we thought it difficult to justify given what was known about the scale and seriousness of the problem, that it risked both stretching the concept of statutory nuisance and raising public expectations unhelpfully, and that it would be inherently difficult to apply. Though it is not to say that we do not recognise the consequences of excessive lighting, research carried out for the Department since tends to confirm some of those concerns including, not least, the very small numbers of complaints (only 30+ in the first three years) made in respect of exempted premises.

The case for removing the exemptions

Notwithstanding, it is true that where exempt premises cause a nuisance without justification, people affected can find it hard to obtain redress. Cases where the local authority might intervene by way of its powers under the Local Government Act are likely to be rare.

It is also true that in every case except that of Prisons, premises currently exempt would effectively continue to enjoy that privilege so long as they adopted (and maintained) the Best Practicable Means (BPM) to prevent or counteract any nuisance. That concession seems to be sufficient in Scotland and the figures for complaints suggest that the operators of most exempt premises do this as a matter of course and in fulfilment of their social and environmental responsibilities. It is clear that no additional burden would attach to removing the exemptions in their case. Such low numbers of complaints as we have seen to date would, if they continued, also represent only a small additional investigation burden for local authorities though we also know, of course, that their capacity to investigate them is diminishing.

The case against removing the exemptions

Though it might be said that the exempt premises provide a community benefit we think that is an over-statement; in many cases they will be run on a commercial basis and even where not, they will be able to pass any costs on. It should not be assumed, either, that any costs of meeting the Best Practicable Means are necessarily high or, as those operations which employ them already show, are unaffordable, or that they would not be off-set to a degree by benefits either to residents, the operations themselves or both.

We do not think the risk of costs arising in the circumstances described in para 2.18 is a real one since local authorities will be mindful of what BPM amounts-to and any disagreements tend to be resolved informally; it is certainly wrong, in our view, to characterise a fine for non-compliance as a burden on business.

Insofar as Prisons should cease to be exempt, in the unlikely event that they might represent a nuisance not justified by BPM and an Abatement Notice result, the Crown exemption against criminal liability in s.159 of the Environmental Protection Act would still apply.

Statutory authority

If exemption were to be removed from premises forming part of projects designated under the Planning Act, we do not agree that the defence of statutory authority would apply to the extent the Department believes. In short, because reference to the *operation* of significant infrastructure projects was removed from the ambit of the defence during the passage of the Bill, we believe it applies now only during the development phase.

Data on costs and benefits

Unfortunately we have no additional data to offer to help inform the Department's conclusion (para 2.30).

The arguments both for and against the current exemptions seem to us not to be strong but if we had to decide, if nothing else, the anomalous nature of the exemptions in the light of the other statutory nuisances suggests they should be removed.