

CHAPTER No. 6

NOISE ACT 2006

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NOISE ACT 2006

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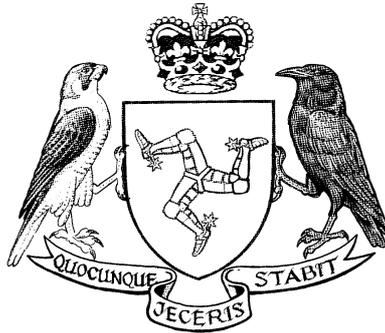
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Isle of Man } Signed in Tynwald: 11th July 2006
 to Wit } Received Royal Assent: 11th July 2006
 Announced to Tynwald: 11th July 2006

AN ACT

to make provision for the reduction of unreasonable noise at night and for the reduction of noise caused by vehicle alarms; and for connected purposes.

WE, your Majesty's most dutiful and loyal subjects, the Council and Keys of the said Isle, do humbly beseech your Majesty that it may be enacted, and be it enacted, by the Queen's Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows (that is to say):—

PART 1

Noise at night

1. (1) If a constable or an authorised officer is satisfied, in consequence of an investigation into a complaint made by a person present in a dwelling during night hours, that noise is being emitted from other premises during night hours (in this Part referred to as "the offending premises"), and the level of that noise is unreasonable, a notice may be served under section 2 (in this Part referred to as "a warning notice").

Investigation of complaints of noise from premises at night.

(2) A complaint under subsection (1) may be made by any means.

(3) In this Part, "night hours" means the period beginning with 11 p.m. and ending with the following 7 a.m.

(4) The provisions of this Part do not apply to —

- [XIX p,486]
- [c. 8]
- (a) the lawful duties of the Department of Transport, the police, fire brigade or ambulance services;
 - (b) a local authority discharging its duties within its district;
 - (c) a licensed place, within the meaning of section 3 of the Music and Dancing Act 1961;
 - (d) licensed premises in respect of which provision has been added to an on-licence under section 28 of the Licensing Act 1995; or
 - (e) club premises in respect of which an order has been made under section 55 of that Act.

(5) The Department may by order exempt any Department or Statutory Board from the provisions of this Part for any period not exceeding 6 months from the date the order is made.

Warning notices.

2. (1) A warning notice in the prescribed form under this section must —

- (a) state that a constable or an authorised officer considers that unreasonable noise is being emitted from the offending premises during night hours,
- (b) that the level of noise must be reduced to an acceptable level, and
- (c) give warning that any person who is responsible for the unreasonable noise which is emitted from the offending premises, in the period specified in the notice, may be guilty of an offence.

(2) The period specified in a warning notice must be a period —

- (a) beginning not earlier than ten minutes after the time when the notice is served, and
- (b) ending with the following 7 a.m.

(3) A warning notice must be served —

- (a) by delivering it to any person present at or near the offending premises and appearing to the constable or the authorised officer to be responsible for the unreasonable noise, or
- (b) if it is not reasonably practicable to identify any person present at or near the offending premises as being a

person responsible for the unreasonable noise on whom the notice may reasonably be served, by affixing the notice addressed to the occupier in a conspicuous position on the offending premises.

(4) A warning notice must state the date and the time at which it is served and the consequences under this Part of non-compliance.

(5) For the purposes of this Part, a person is responsible for unreasonable noise emitted from the offending premises if he or she is a person to whose act, default or sufferance the emission of the noise is wholly or partly attributable.

(6) Warning notices may be served in accordance with subsection (3) upon any number of persons responsible for unreasonable noise under subsection (5).

3. (1) After a warning notice has been served under section 2, any person who is responsible for the unreasonable noise in the period specified in the notice, is guilty of an offence.

Offence where noise continues after service of notice.

(2) It is a defence for a person charged with an offence under this section to show that there was a reasonable cause or lawful excuse for the act, default or sufferance in question.

(3) A person guilty of an offence under this section is liable on summary conviction to custody for a term not exceeding 3 months or to a fine not exceeding £2,500, or to both.

4. (1) Where a constable or an authorised officer has reason to believe that a person is committing or has just committed an offence under section 3, he or she may give that person a notice in the prescribed form (in this Part referred to as “a fixed penalty notice”) offering that person the opportunity of discharging any liability to conviction for that offence by payment of a fixed penalty.

Fixed penalty notices.

(2) A fixed penalty notice may be given to a person —

(a) by delivering the notice to them, or

(b) if it is not reasonably practicable to deliver it to that person, by addressing it to them or to the occupier and by affixing the notice in a conspicuous position on the offending premises.

(3) Where a person is given a fixed penalty notice in respect of such an offence —

- (a) proceedings for that offence must not be instituted before the end of the period of 14 days following the date of the notice, and
 - (b) that person cannot be convicted of that offence if that person pays the fixed penalty before the end of that period.
- (4) A fixed penalty notice must give such particulars of the circumstances alleged to constitute the offence as are necessary for giving reasonable information of the offence and must state, in addition to the particulars required under subsection (5), the consequences under this Part of non-compliance.
- (5) A fixed penalty notice must state —
- (a) the period during which, because of subsection (3)(a), proceedings will not be taken for the offence,
 - (b) the amount of the fixed penalty, and
 - (c) the person to whom and the address at which the fixed penalty may be paid.
- (6) Payment of the fixed penalty may (among other methods) be made by pre-paying and posting to the person and to the address specified under subsection (5)(c) a letter containing the amount of the penalty.
- (7) Where a letter containing the amount of the penalty is sent in accordance with subsection (6), payment is to be regarded as having been made at the time at which that letter would be delivered in the ordinary course of post.
- (8) The fixed penalty payable under this section is £100 or such sum as may be prescribed by order and the Department may make regulations prescribing increased fixed penalties in respect of further offences under section 3 which are committed within 3 months of the date of the warning notice served under section 2(3).

Provisions
supplementary
to section 4.

5. (1) If a form for a fixed penalty notice is prescribed in an order made by the Department, a fixed penalty notice must be in that form.

(2) If a fixed penalty notice is given to a person in respect of noise emitted from the offending premises in any period specified in a warning notice —

- (a) no further fixed penalty notice may be given to that person in respect of unreasonable noise emitted from the offending premises during that period, but

- (b) that person may be convicted of a further offence under section 3 in respect of unreasonable noise emitted from the offending premises after the fixed penalty notice is given and before the end of that period.

(3) In proceedings for an offence under section 3, evidence that payment of a fixed penalty was or was not made before the end of any period may be given by the production of a certificate which —

- (a) purports to be signed by or on behalf of the person having responsibility for the financial affairs of the Department, and
- (b) states that payment of a fixed penalty was made on any date or, as the case may be, was not received before the end of that period.

Seizure, etc. of equipment used to make noise unlawfully

6. (1) The power conferred by subsection (2) may be exercised where a constable has reason to believe that —

Powers of entry and seizure etc.

- (a) a warning notice has been duly served in respect of unreasonable noise emitted from offending premises, and
- (b) at any time in the period specified in the notice, unreasonable noise has continued to be emitted from the offending premises.

(2) A constable may enter the offending premises from which the unreasonable noise in question is being or has been emitted and may disarm or seize and remove any equipment or other source of noise (in this Part referred to as “a noise source”) which it appears to the constable is emitting or has been emitting the unreasonable noise.

(3) An officer of the Isle of Man Constabulary, not below the rank of sergeant, may give any other officer or member of the constabulary written authority to enter any offending premises, if necessary using reasonable force, if —

- (a) a warning notice has been duly served in respect of unreasonable noise emitted from the offending premises, and
- (b) at any time in the period specified in the notice, unreasonable noise has continued to be emitted from the offending premises, and

- (c) entry of a constable or an officer of the Department to the offending premises under subsection (2) has been refused, or such a refusal is apprehended, or a request by a constable or an authorised officer for admission would defeat the object of the entry; and
 - (d) the person in occupation of the offending premises has failed to reduce the level of the noise to an acceptable level and the level of the noise which continues to be emitted is in the reasonable opinion of the constable likely to cause a breach of the peace; or
 - (e) such an officer is satisfied that the offending premises are unoccupied and the premises have been occupied by a person upon whom notice has been duly served in accordance with section 2(3) and the level of the noise which continues to be emitted is in the reasonable opinion of the constable likely to cause a breach of the peace.
- (4) Sections 18(5) to (8) and 19 of the 1998 Act (search warrants : safeguards and execution) shall apply in respect of a written authority under subsection (3) as they apply in respect of any warrant to enter and search premises under any enactment.
- (5) A constable who enters any premises under subsection (2), or by virtue of a written authority issued under subsection (3), may take with him or her such other persons and such equipment as may be necessary; and if, when that or those persons leave, the premises are unoccupied, they must leave them as effectively secured against trespassers as they were found.
- (6) A written authority issued under subsection (3) continues in force until the purpose for which the entry is required has been satisfied.
- (7) A person who wilfully obstructs any person exercising any powers conferred under subsection (2) is liable, on summary conviction, to custody for a term not exceeding 3 months or to a fine not exceeding £2,500, or to both.
- (8) The Schedule to this Act (which makes further provision in relation to anything seized and removed by virtue of this section) has effect.

7. (1) Nothing done by a constable under section 6 or by such other persons assisting a constable by virtue of section 6(5), shall, if done in good faith for the purposes of this Part subject them or any of them personally to any action, liability, claim or demand whatsoever.

(2) This section does not exempt any person from liability under section 7 (powers of auditor and the court) of the Audit Act 1983 or the Chief Constable from liability under section 14 (liability for wrongful acts of constables) of the Police Act 1993. [c.20]
[c.11]

General

8. In this Part —

Interpretation
of Part 1.

- (a) “dwelling” means any accommodation, or part of accommodation, used or intended to be used as human accommodation, whether on a temporary or permanent basis;

“night hours” has the meaning given by section 1(3);

“noise source” means any thing capable of emitting noise and includes any animal or bird;

“occupier” means the person in actual occupation of the offending premises;

“offending premises” has the meaning given by section 1(1);

“premises” means any building or structure, permanent or temporary, whether or not used or intended to be used as a dwelling and includes road vehicles, trailers and caravans, whether or not converted to use as dwellings;

“unreasonable noise” means a level of noise of any kind which adversely affects the amenity of any person present in a dwelling;

“warning notice” has the meaning given by section 1(1); and

- (b) references to unreasonable noise emitted from offending premises include noise emitted from any garden, yard, outhouse or other appurtenance belonging to or enjoyed with the premises.

9. The provisions of this Part shall not affect the right of the Department to apply by complaint to a court of summary jurisdiction for an anti-social behaviour order in accordance with section 28 of the Criminal Justice Act 2001. [c.4]

Anti-social
behaviour
orders.

Land used for agricultural purposes.

[c.22]

10. The provisions of this Part do not apply to any noise emitted from agricultural land within the meaning of section 33 of the Animal Health Act 1996.

PART 2

Vehicle alarms

Unattended vehicles and alarms.

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Sch. 3

11. (1) Where —

- (a) an alarm installed in any vehicle is operating audibly for such a period of time as to give persons living or working in the vicinity of the vehicle reasonable cause for annoyance, and
- (b) a constable or an authorised officer has, after making reasonable enquiry in the vicinity of the vehicle, been unable to locate the owner, or
- (c) having located the owner, the owner has failed to take action to turn off the alarm within a reasonable time having been asked to do so by a constable or an authorised officer

a constable or an authorised officer may enter the vehicle to turn off the alarm.

(2) A constable or an authorised officer may not enter the vehicle by force under this section.

(3) In this Part —

“owner” means the registered owner or other lawful user of the vehicle and in the case of a hiring agreement, the hirer or lawful user under that hiring agreement; and

“vehicle” means a mechanically propelled vehicle intended or adapted for use on roads.

Forced entry of vehicle.

12. (1) An officer of the Isle of Man Constabulary, not below the rank of sergeant, may give any other authorised officer or constable written authority to gain access to a vehicle, if necessary using reasonable force, if he or she is satisfied —

- (a) that an alarm installed in any vehicle is operating audibly for such a period of time as to give persons living or working in the vicinity of the vehicle reasonable cause for annoyance,

- (b) that all reasonable steps have been taken to locate and notify the owner of the vehicle, and
- (c) that the constable or the authorised officer has been unable to gain access to the vehicle to turn off the alarm without the use of reasonable force.

(2) Sections 18(5) to (8) and 19 of the 1998 Act (search warrants : safeguards and execution) shall apply in respect of a written authority under subsection (1) of this section as they apply in respect of a warrant to enter and search premises under any enactment.

(3) Before applying for an authority under subsection (1) , the constable shall affix a notice to the vehicle stating —

- (a) that the audible operation of the alarm is such as to give persons living or working in the vicinity of the vehicle reasonable cause for annoyance, and
- (b) that an application is to be made for an authority under subsection (1) authorising the constable to gain access to the vehicle, if need be by reasonable force, to turn off the alarm.

(4) An authority under this section shall continue in force until the alarm has been turned off and the constable has complied with section 15.

(5) For the purposes of Part I of the Local Government (Miscellaneous Provisions) Act 1984 (removal and disposal of vehicles) and any regulations made thereunder, where it is found impossible to turn off or disarm a vehicle alarm and all reasonable steps have been taken to locate and notify the owner of the vehicle in accordance with this section, the vehicle may be deemed to have been abandoned. [c.5]

13. A constable or authorised officer who gains entry to a vehicle by virtue of section 11 or in the case of a constable, by virtue of section 12, may take with him or her such other persons and such equipment as may be necessary to turn off the alarm. Entry and assistance.

14. A person who gains entry to a vehicle by virtue of section 11, 12 or 13 shall not cause more damage than is reasonable, taking account of all the circumstances. Necessary damage.

15. A constable or authorised officer who has entered a vehicle by virtue of section 11 or in the case of a constable, section 12 shall — Notices.

- (a) leave a notice in a conspicuous position in the vehicle stating what action has been taken, and
- (b) leave the vehicle, so far as reasonably practicable, as effectually secured against trespassers as they found it.

Expenses.

16. Where a vehicle is entered by virtue of section 11 or 12, any expenses incurred in connection with the entry, turning off the alarm or complying with sections 11 to 12 may be recovered from the owner of that vehicle as a civil debt.

Part 2 :
protection
from personal
liability.

17. Nothing done by a constable or an authorised officer, or the Department or by such other persons assisting any of them under section 13, shall, if done in good faith for the purposes of this Part subject them or any of them personally to any action, liability, claim or demand whatsoever.

PART 3

Miscellaneous and supplementary

General
interpretation.

[c. 9]

18. (1) In this Act —

- (a) “the 1998 Act” means the Police Powers and Procedures Act 1998;
- (b) “authorised officer” means an officer of the Department duly authorised by it in writing to act on its behalf in relation to any matter under this Act and an environmental health officer of the Department shall be deemed to be an authorised officer for any purpose of this Act;
- (c) “constable” includes any person having the powers and privileges of a constable;
- (d) “the Department” means the Department of Local Government and the Environment;
- (e) “prescribed” means prescribed by order or by regulation made by the Department.

Expenses
and receipts.

19. (1) There is to be paid out of money provided by Tynwald any increase attributable to this Act in the sums payable out of money so provided under any other enactment.

(2) Any sums received by virtue of any provision of this Act shall be paid into the general revenue of the Island.

20. All fines and penalties imposed in respect of offences under this Act shall be paid into the general revenue of the Island.

Destination of fines and penalties.

21. (1) Subject to subsection (2) the Department may make orders or regulations for any purpose for which an order or regulations may be made under this Act and for prescribing anything which may be prescribed under this Act and generally for the purpose of carrying this Act into effect.

Power to make orders and regulations.

(2) Orders and regulations made by the Department shall not take effect until they have been approved by Tynwald.

22. The provisions of this Act shall not prejudice the rights of the Department regarding the abatement of noise under Part I of the Public Health Act 1990.

Saving : Public Health Act 1990.
[c.10]

23. (1) This Act may be cited as the Noise Act 2006.

Short title and commencement.

(2) This Act shall come into operation on such day or days as the Department may after consultation with the Department of Home Affairs, by order appoint.

Section 6(8)

SCHEDULE

POWERS IN RELATION TO SEIZED EQUIPMENT
AND NOISE SOURCES*Introductory***1.** In this Schedule —

- (a) a “noise offence” means in relation to equipment seized under section 6(2) of this Act, an offence under section 3 of this Act,
- (b) “seized equipment or noise source” means any equipment or noise source seized in the exercise of the power of seizure and removal conferred by section 6 of this Act,
- (c) “related equipment or noise source”, in relation to any conviction of or proceedings for a noise offence, means seized equipment or noise source used or alleged to have been used in the commission of the offence.

*Retention***2.** (1) Any seized equipment or noise source may be retained —

- (a) during the period of 28 days beginning with the seizure, or
- (b) if it is related equipment or noise source in proceedings for a noise offence instituted within that period against any person, until —
 - (i) that person is sentenced or otherwise dealt with for the offence or acquitted of the offence, or
 - (ii) the proceedings are discontinued.

(2) Sub-paragraph (1) does not authorise the retention of any seized equipment or noise source if —

- (a) a person has been given a fixed penalty notice under section 4 in respect of any noise,
- (b) the equipment or noise source was seized because of its use in the emission of the noise in respect of which the fixed penalty notice was given, and
- (c) that person has paid the fixed penalty before the end of the period allowed for its payment.

*Forfeiture***3.** (1) Where a person is convicted of a noise offence the court may make an order (“a forfeiture order”) for forfeiture of any related equipment or noise source.

(2) The court may make a forfeiture order whether or not it also deals with the offender in respect of the offence in any other way and without regard to any restrictions on forfeiture in any enactment.

(3) In considering whether to make a forfeiture order in respect of any equipment or noise source a court must have regard —

- (a) to the value of the equipment or noise source, and
- (b) to the likely financial and other effects on the offender of the making of the order (taken together with any other order that the court contemplates making).

(4) A forfeiture order operates to deprive the offender of any rights in the equipment or noise source to which it relates.

Consequences of forfeiture

4. (1) Where any equipment or noise source has been forfeited under paragraph 3, a court may, on application by a claimant of the equipment or noise source (other than the person in whose case the forfeiture order was made) make an order for delivery of the equipment or noise source to the applicant if it appears to the court that the applicant is the owner of the equipment or noise source.

(2) No application may be made under sub-paragraph (1) by any claimant of the equipment or noise source after the expiry of the period of 6 months beginning with the date on which a forfeiture order was made in respect of the equipment or noise source.

(3) Such an application cannot succeed unless the claimant satisfies the court —

- (a) that he or she had not consented to the offender having possession of the equipment or noise source, or
- (b) that the claimant did not know, and had no reason to suspect, that the equipment or noise source was likely to be used in the commission of a noise offence.

(4) Where the Department is of the opinion that the person in whose case the forfeiture order was made is not the owner of the equipment or noise source, it must take reasonable steps to bring to the attention of persons who may be entitled to do so their right to make an application under sub-paragraph (1).

(5) An order under sub-paragraph (1) does not affect the right of any person to take, within the period of 6 months beginning with the date of the order, proceedings for the recovery of the equipment or noise source from the person in possession of it in pursuance of the order, but the right ceases on the expiry of that period.

(6) If on the expiry of the period of 6 months beginning with the date on which a forfeiture order was made in respect of the equipment or noise source no order has been made under sub-paragraph (1), the Department may dispose of the equipment or noise source.

Return etc. of seized equipment or noise source

5. If in proceedings for a noise offence no order for forfeiture of related equipment or noise source is made, the court (whether or not a person is convicted of the offence) may give such directions as to the return, retention or disposal of the equipment or noise source by the Department as it thinks fit.

6. (1) Where in the case of any seized equipment or noise source no proceedings in which it is related equipment or noise source are begun within the period mentioned in paragraph 2(1)(a) —

- (a) the Department must return the equipment or noise source to any person who —
 - (i) appears to it to be the owner of the equipment or noise source, and
 - (ii) makes a claim for the return of the equipment or noise source within the period mentioned in sub-paragraph (2), and
- (b) if no such person makes such a claim within that period, the Department may dispose of the equipment or noise source.

(2) The period referred to in sub-paragraph (1)(a)(ii) is the period of 6 months beginning with the expiry of the period mentioned in paragraph 2(1)(a).

(3) The Department must take reasonable steps to bring to the attention of persons who may be entitled to do so their right to make such a claim.

(4) Subject to sub-paragraph (6), the Department is not required to return any seized equipment or noise source under sub-paragraph (1)(a) until the person making the claim has paid any such reasonable charges for the seizure, removal and retention of the equipment or noise source as the Department may demand.

(5) If —

- (a) any equipment or noise source is sold in pursuance of —
 - (i) paragraph 4(6),
 - (ii) directions under paragraph 5, or
 - (iii) this paragraph, and
- (b) before the expiration of the period of one year beginning with the date on which the equipment or noise source is sold any person satisfies the Department that at the time of its sale that person was the owner of the equipment or noise source,

the Department must pay him or her any sum by which any proceeds of sale exceed any such reasonable charges for the seizure, removal or retention of the equipment or noise source as the Department may demand.