

# **The New Law: Exterior Lighting as a Statutory Nuisance**

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# Light?

- Symbolises life, enlightenment, safety and security
- **BUT...**

# The New Law

- Makes artificial lighting subject to the criminal law of statutory nuisance
- S. 102 Clean Neighbourhoods and Environment Act 2005:  
**“artificial light emitted from premises so as to be prejudicial to health or a nuisance”**

# The New Law

- Lighting added to the existing remit of the Environmental Protection Act 1990, cf noise
- Commencement 6<sup>th</sup> April 2006 in England (does not apply in Scotland)

# Origins

- Follows the Parliamentary Select Committee Report into Science and Technology 2003, “Light Pollution and Astronomy”
- Plus ODPM (now Department for Communities and Local Government) Consultations
- A lot of hard campaigning from the CfDS etc

# Definition

- Light pollution definition in the DEFRA guidance:
- “Any form of artificial light which shines outside the area it is intended to illuminate, including light that is directed above the horizontal into the night sky creating skyglow (which blocks out the night time stars) or which creates a danger by glare .”

- Deliberate lighting?
- Illuminating moths etc, or a building frontage so no intention to illuminate the sky
- However, deliberately shining light into the sky may not meet the **legal** criteria of a **statutory** nuisance

- DEFRA: “The statutory nuisance regime is not an appropriate tool with which to address light pollution per se, such as skyglow”

# How Does it Fit in?

- Augments case-law on **common law** nuisance
- Successful action in common law nuisance (Stonehaven, Bonwick, Bacon etc)
- Sports ground lights: Bacon v. Gwynedd CC Tywyn (2004)AB 300050
- Public nuisance

- Not the same as light “trespass”- which is as yet, untested in the UK
- Terminology often confusingly used interchangeably

# Criteria

- What are the **criteria** for a statutory nuisance?
- **“Prejudicial to health, or a nuisance”**
- So a dual route

# Statutory Nuisance: What is Required?

- **HEALTH**
- Lighting can keep people awake- depression, loss of functionality socially, at work, accidents?
- Cf noise
- Night time lighting has been linked to **cancer**

# Statutory Nuisance: What is Required?

- Blask et al, “Melatonin-depleted blood from premenopausal women exposed to light at night stimulates growth of human breast cancer xenografts in nude rats,” *Cancer Res.* 2005 Dec 1; 65(23) 11174-84
- Blask et al, “Putting cancer to sleep at night: the neuroendocrine/ circadian melatonin signal,” 2005 Jul; 27(2): 179-88;
- Pauley, “Lighting for the human circadian clock: recent research indicates that lighting has become a public health issue” (2004) 63 *Medical Hypotheses* 588– 596

# Statutory Nuisance: What is Required?

- Noise (like light) is unlikely to result in the public health effects envisaged by the original laws of the mid 19<sup>th</sup> Century (infection and contagion)
- So, if light cannot be a statutory nuisance then nor can noise
- Noise is cloaked in the statutory nuisance enforcement regime for practical reasons
- Shows development of the law – to lighting

# Statutory Nuisance: What is Required?

- **“OR A NUISANCE” LIMB**
- Does not need a negative health effect other than “personal comfort” (Malcolm & Pointing)
- Must involve interference with the use of property

# Statutory Nuisance: What is Required?

- So, a negative personal comfort effect, but more than “mere irritation” is needed
- Nor should the cost of abatement be given over to the complainant, c.f. pegs for smells, ear plugs for noise

# Defences?

- **“Best practicable means”**
- Available to all businesses and sports grounds
- The latter due to positive public health effects
- Balances the social utility v. effects

# Justifications

- CORE: “lighting is safety and security, so the more the better” is a common justification for lighting
- Perception is often polar- where complaint may be seen as a personal threat
- Should these perceptions trump all other considerations?

# Justifications

- Reducing light nuisance need not reduce safety, it may increase it (passive surveillance/visibility)
- Just because a light has a social utility does not stop it being a nuisance light

- There has been at least one death caused at least in part by lighting
- (Oxfordshire pub floodlight)
- Lighting engineers could be liable in contract or tort for unsuitable/dangerous designs



# New Law: Exclusions

- “... does not apply to artificial light emitted from—
- An airport, harbour premises, railway tramway and bus premises, a public service vehicle operating centre, a goods vehicle operating centre, a lighthouse, a prison
- The power of lobbying

# Exclusions: Street Lighting?

- **Silent on street lights**
- Coverage depends whether street lights are “premises”?
- Street lights are still a major source of complaint, entering windows

# Exclusions and Street Lighting

- Many cities are using PFI money to replace street lighting
- New lights usually brighter, on taller masts
- Light can shine into bedroom windows/ gardens (bad for the micro nuisance problem)
- CO/ FCO good for light pollution (good for the macro sky glow problem)

# Exclusions and Street Lighting

- Potential conflict here-
- Many authorities have refused to shield lights without a doctor's note
- Or stated the purposes of street lighting as safety and security, and repeated it louder when questioned

# Street Lighting

- Caution over non action- successful private nuisance case-law/ hatred
- Balance possible
- **Local authorities cannot prosecute themselves**

# Defences: Hypersensitivity

- There is no nuisance if an ordinary person would not be affected in their day-to-day life
- It must be “...an inconvenience materially interfering with the ordinary physical comfort of human existence, not merely according to elegant or dainty modes and habits of living, but according to plain and sober and simple notions”

(Walter v Selfe (1851) 4 De G & Sm 315, 322 per Knight Bruce V-C)

# Defences: Hypersensitivity

- **So, are astronomers hypersensitive?**
- 19<sup>th</sup> Century view of life
- Now in the 21<sup>st</sup> century, social change must lead to shifts in what is regarded as reasonable today
- Who is an amateur astronomer?
- What is a hobby?
- Are we permitted hobbies today?
- RAS 1820 BAA 1890
- Cf noise again, no aircraft, cars, electricity or artificial light in the 1850's

# Enforcement?

- **Potential disagreement at the first hurdle**
- CIEH “unnecessary” provision:
- It “is not synonymous with “annoyance” and it is narrower than “nuisance” at common law; it is not about aesthetics either, rather the statutory nuisances are essentially about public health and while lights briefly turning on and off... may be irritating to light-sleeping people with thin curtains, they will rarely, if ever, be harmful”

# Enforcement

- DEFRA disagrees, the CIEH could undermine the new law and also undermine noise as a statutory nuisance
- So LOs may not want to investigate, and may feel that an amateur astronomer is hypersensitive
- Non-investigation may be taken to the Ombudsman (care over non-action)

# Enforcement

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- So, if light cannot be a statutory nuisance then nor can noise
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# What May Be Covered?

- 500watt exterior lights into windows ✓
- Commercial floodlights ✓
- Public transport/goods vehicle depot X (other)
- Streetlights ?? (but common law nuisance)
- Skybeams ?? (but public nuisance)
- Lights shining into the sky ??













# Future?

- Usually no planning requirement for modifications
- \*May\* be scrutinised at initial planning stage
- **PPS23 planned annex is pro-active**

# Sustainability/ Environmental Effects

- Don't forget carbon emissions:
- **The carbon dioxide produced by domestic floodlights alone is statistically similar to that produced by the car usage of a large town of 114,000 persons**

