

How to take advantage of light pollution's statutory nuisance status

The first UK law tackling light pollution will come into force on 6 April.

Exterior lighting will join noise and smells on the list of things that can be treated as a statutory nuisance under the Environmental Protection Act 1990.

The new law (Section 102 of the Clean Neighbourhoods and Environment Act 2005) makes 'exterior light emitted from premises so as to be prejudicial to health or a nuisance' a criminal offence as a statutory nuisance.

The new law doesn't tackle all forms of light pollution, only incidents of bad lighting that amounts to a statutory nuisance. How can you take action under the new law?

1 Record the problem

Keep a detailed note of the time and date the lighting is on and, if possible, take photographs showing the effect it has and why it is a nuisance.

2 Speak to the light owner

Try to discuss the nuisance with the person causing the light pollution. Don't start off by making a formal complaint to the courts. Court action is a heavy artillery remedy and should not be a first-line action.

Your Environmental Health Department will expect to try mediation or negotiation before court action. A court

case could lead to a feud with your neighbour, so see if mediation can help (see www.mediationuk.org.uk).

3 Confirm the lighting is covered under the Act

If negotiation fails, make sure your complaint will hold up to scrutiny under the new law.

The guidance notes from the Department for Environment, Food and Rural Affairs (paragraph 13.83) state that the most common complaints are expected to be about domestic and commercial floodlighting, sports facilities, domestic decorative lighting, floodlighting of buildings and landscapes, laser shows and 'light art'.

The light must come from 'premises' in order to invoke the criminal law. Street lighting is not likely to be deemed to come from 'premises', so street lights will almost certainly not be covered.

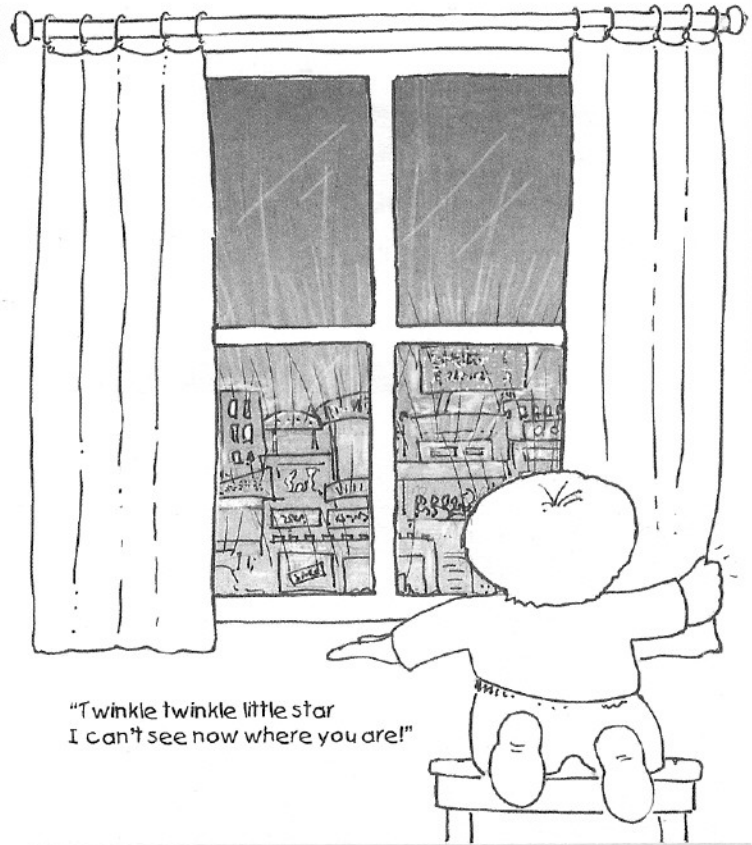
There is a list of exempted premises (section 79 (5B) Environmental Protection Act 1990). It includes lighthouses, goods vehicle operating facilities, public transport centres, harbours and airports. Many of these frequently give cause for complaint, but they are exempted because 'high levels of light are required for safety and security reasons'.

Statutory nuisance is a criminal offence, and it is the

local authority that takes the action. This is different from common law nuisance, where complainants take the action themselves, to the civil courts. For you to have a claim for statutory nuisance, the lighting must be 'prejudicial to health or a nuisance' and harm your enjoyment of your land. This will rule out quite a lot of problem lighting, because you cannot make a complaint about lighting affecting common land.

The Chartered Institute of Environmental Health thinks that there must be a negative effect on health to amount to a nuisance. They take this view because statutory nuisance was originally introduced in the mid-19th century as a means of tackling ill health. However, lighting can be compared to noise as a statutory nuisance, which was not regulated until 1960, and certainly could not cause illnesses as understood in the 19th century. So it can be argued that if the lighting causes a 'nuisance' this is a valid ground for complaint on its own, even if it does not have a negative health effect. But the lighting will have to be more than a mere irritant.

If the lighting comes from premises that are not exempt, and you think that the lights meet the criteria of statutory nuisance, you have two options.



"Twinkle twinkle little star
I can't see now where you are!"

Light pollution stops us from being able to view the night sky. New legislation coming into force in April should help you to reduce light pollution in your area

4 Speak to your local authority

Firstly, you could report the matter to the local environmental health officer at your local authority. Think carefully and give clear reasons as to why your health or enjoyment of your property is badly affected. For example, perhaps the light stops you sleeping, or shines across your observatory. After trying mediation, the officer will have to decide, based upon the new guidelines, whether the lighting could be a nuisance. If so, the officer will ask for the nuisance to be 'abated' (reduced or removed), for example by angling the light downwards. If the person responsible for the light fails to do this, the officer may take the matter to court and the person may be ordered to abate the nuisance and possibly fined. None of this will cost you anything.

5 Use the courts

If your local authority will not act, you may take a statutory nuisance case to court yourself under section 82 of the Environmental Protection Act 1990. But be warned: the magistrates will ask why your local authority has failed to act and may be swayed by its reasons for inaction. Moreover, costs may be awarded against you if you lose the case.

6 Take a private action

If the light does not meet the criteria for statutory nuisance, you may have an action under common law private nuisance. You will have to prove on the balance of probabilities that the light is a nuisance. You will certainly be met with the defence that you are 'hypersensitive'. However, in the case of a floodlight, the solution usually required is simply to angle the light downwards, so the remedy is hardly likely to affect safety and security: if anything, it should improve it. You can find out more about suing through the courts from the Courts Service website: www.courtservice.gov.uk.

You could even consider taking out an anti-social behaviour order, which may be granted by private action as well as by a local authority. However, a word of warning: this mode of action is completely untested.

Business needs vs neighbours' complaints

If the light belongs to a business, the business may use the defence of 'best practicable means'. This means that if all reasonable steps have been taken to minimise the nuisance, and the purpose of the light is given more weight than the remaining nuisance, there is no nuisance in law. The attitude of both local authorities and the courts in interpreting what may constitute a nuisance from lighting and what amounts to 'reasonable steps' will be fundamental to the success of the new law.

CPRE thanks Michael Morgan Taylor for writing this article for us. Michael, a senior lecturer at the Department of Law at De Montfort University, is also on the council of the British Astronomical Association and is legal counsel for the Campaign for Dark Skies (www.dark-skies.org).