

**CLACKMANNANSHIRE COUNCIL**

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**Report to Council of 6th November 2008**

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**Subject: Resolution under Antisocial Behaviour etc. (Scotland) Act 2004**

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**Prepared by: Ian Doctor Health and Consumer Services Manager**

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**1.0 SUMMARY**

- 1.1. A resolution requires to be passed by the Council to enable the application of Part 5 of the Antisocial Behaviour etc. (Scotland) Act 2004 – Noise nuisance.
- 1.2. The noise control periods set in the current noise resolution are limiting the application of the powers and it is therefore proposed to change the periods to cover the whole week.

**2.0 RECOMMENDATIONS**

- 2.1. The Council approves the terms of the proposed resolution detailed in Annex 2 and agrees to revoke the current resolution with effect from 1st February 2009.

**3.0 BACKGROUND**

- 3.1. Part 5 of the Antisocial Behaviour etc.(Scotland) Act 2004 contains powers, including the ability to issue fixed penalty notices, to help Local Authorities deal with antisocial noise emanating from accommodation. Those powers can only be utilised where the Local Authority has passed a resolution.
- 3.2. This Council already has a resolution as approved by the Council at its meeting of 13th April 2006 a copy of which is contained in Annex 1.
- 3.3. The service has been able to, on most occasions, use the powers in the legislation successfully but in some cases they have either been hindered or unable to do so due to the limited periods set within the noise resolution.
- 3.4. The periods were restricted in the past because of conditions placed by the Scottish Government through the ring fenced grant provided for enforcing the provisions of part 5 of the legislation. The ring fencing has now been removed allowing more flexibility in how the current and other staff resources can potentially be used to provide a service at other times and days of the week.

#### 4.0 RESOLUTION

- 4.1. To utilise Part 5 provisions a resolution must be passed by the authority. This resolution must specify a commencement date for the noise control provisions, the noise control periods (days and times of the week) and which areas of Clackmannanshire it relates to.
- 4.2. It is proposed that the new resolution covers the whole week, so that the provisions of the legislation can be used any day and any time of the week. This would give flexibility to deal with the varying pattern of noise complaints and in turn help provide a better service to the public.
- 4.3. The legislation requires a two month period to elapse between passing of the resolution and its commencement, essentially to allow for publicity and notification to the Scottish Government and neighbouring Councils. The proposed date for commencement of the new resolution is therefore 1st February 2009.

#### 5.0 CONCLUSIONS

- 5.1. Noise complaints can occur at any time during a week and by passing the proposed new resolution the Part 5 legislation can be used to better effect and help protect victims of Antisocial noise.

#### 6.0 SUSTAINABILITY IMPLICATIONS

- 6.1. See completed checklist.

#### 7.0 FINANCIAL IMPLICATIONS

- 7.1. There are no financial implications. Current staffing resources will be used more flexibility to address calls in the new noise control periods.

#### 8.0 Declarations

- (1) The recommendations contained within this report support or implement Corporate Priorities, Council Policies and/or the Community Plan:

- **Corporate Priorities (Key Themes)** (Please tick )

Achieving Potential	<input type="checkbox"/>
Maximising Quality of Life	<input checked="" type="checkbox"/>
Securing Prosperity	<input type="checkbox"/>
Enhancing the Environment	<input type="checkbox"/>
Maintaining an Effective Organisation	<input type="checkbox"/>

- **Council Policies** (Please detail)

• **Community Plan (Themes)** (Please tick )

- Community Safety
- Economic Development
- Environment and Sustainability
- Health Improvement

- (2) In adopting the recommendations contained in this report, the Council is acting within its legal powers. (Please tick )
- (3) The full financial implications of the recommendations contained in this report are set out in the report. This includes a reference to full life cycle costs where appropriate. (Please tick )

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Head of Service

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Director



## Report to Council

To accompany all Reports to Council

To: Head of Administration And Legal Services

Author: Ian Doctor	Date: 30 September 2008
Service: Development & Environmental Services	
Date of Meeting: 6th November 2008	
Title of Report: Resolution under Antisocial Behaviour etc. (Scotland) Act 2004	

Recommendation that the attached report be:

1. Given unrestricted circulation

(tick appropriate box)

2. Taken in private

By virtue of paragraph \_\_\_\_ of schedule 7A, Local Government (Scotland) Act 1973.

Appendices attached to this report (if none, state "none")

1. Current resolution
2. Proposed resolution
- 3.
- 4.

List of Background Papers (if none, state "none")

1. Report to Council of 13th April 2006
- 2.
- 3.

Note: All documents specified must be kept available by the author for public inspection for four years from the date of the meeting at which the report is considered.

Annex 1 - Current resolution

**CLACKMANNANSHIRE COUNCIL ADOPTED THE UNDERNOTED  
RESOLUTION ON THE 13th April 2006**

**ANTISOCIAL BEHAVIOUR ETC (SCOTLAND) ACT 2004**

**PART 5 NOISE NUISANCE**

**SECTION 41 RESOLUTION**

It is resolved in terms of Section 41 of the Antisocial Behaviour Etc (Scotland) Act 2004 and regulations made thereunder that the provisions of Sections 43 to 47 of the Act will apply to the whole area of Clackmannanshire Council.

The noise control period is part of the week on Thursday, Friday and Saturday between the hours of 19.00 and 07.00 at all times during the year, excepting the period between 09.00 on the last working day before Christmas and 1900 on the first working day after New Year's Day.

The commencement date of this resolution is 13 July 2006.

**Under these new provisions if an officer of the local authority considers that the noise being emitted from a dwelling exceeds, or may exceed, the relevant permitted noise level, the officer may issue a Warning Notice under Section 44. Where that Warning Notice is not complied with, the person responsible for the noise will have committed an offence. The officer may then issue a fixed penalty notice.**



Annex 2 - Proposed resolution

**ANTISOCIAL BEHAVIOUR ETC (SCOTLAND) ACT 2004**

**PART 5 NOISE NUISANCE**

**SECTION 41 RESOLUTION**

It is resolved in terms of Section 41 of the Antisocial Behaviour Etc (Scotland) Act 2004 and regulations made thereunder that the provisions of Sections 43 to 47 of the Act will apply to the whole area of Clackmannanshire Council.

The noise control period is 0000 hours Monday to 2400 hours Sunday for every week in the year.

The commencement date of this resolution is 1st February 2009.

**Under these new provisions if an officer of the local authority considers that the noise being emitted from a dwelling exceeds, or may exceed, the relevant permitted noise level, the officer may issue a Warning Notice under Section 44. Where that Warning Notice is not complied with, the person responsible for the noise will have committed an offence. The officer may then issue a fixed penalty notice.**

