



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

Briefing: Waste, Pollution & Noise Nuisance

Please note that this briefing is written in plain English and is not meant to be legal advice. We provide information on human rights but other laws, rules and more up-to-date information may apply. We recommend that you seek further advice.

Legal framework

The laws about pollution and nuisance are complex and so only a few of the relevant ones are set out here.

The Pollution Prevention and Control Regulations (NI) 2003 makes sure that pollution is controlled in accordance with European Union law. There are certain laws for different issues, such as water pollution and radiation. The Northern Ireland Environment Agency gives guidance on pollution prevention for particular industrial sectors.

Under the Clean Neighbourhood and Environment Act (NI) 2011 District councils must investigate complaints of nuisance. Nuisance can cover issues such as smoke, fumes or gases, light, noise or pests. The council can serve an 'abatement notice' on the person responsible or the owner of the property. This means the nuisance must either be stopped or the order will put some controls or checks on the nuisance. Failure to obey the notice is a criminal offence.

The Human Rights Act

The Human Rights Act 1998 (HRA) became law in October 2000. It covers most of the rights of the European Convention on Human Rights (ECHR) and means that you can rely on ECHR rights in the local Courts.

The rights to private and family life and peaceful enjoyment of possessions are relevant to nuisance. Article 8 is not an absolute right and in some situations it is legal for some limits to be put on these rights – but only if it is reasonable to do so.

Right to private and family life:

Article 8 of the ECHR provides that everyone has the right to respect for his/her private and family life. Article 8 reads:

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

If the government does not use its powers to prevent noise, fumes and pollution affecting your enjoyment of your home, this may be a breach of your article 8 rights. To argue that your rights have been breached, the pollution or nuisance must be severe. The intensity, duration and effects of the nuisance are important factors.

Right to peaceful enjoyment of possessions:

Article 1 of the First Protocol of the ECHR covers the protection of property and the peaceful enjoyment of possessions. Article 1 of Protocol 1 reads:

1. Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
2. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

Article 1 of Protocol 1 does not give the right to peaceful enjoyment of possessions in a pleasant environment.¹ The European Court of Human Rights (ECt.HR) has decided that it is acceptable to limit rights if it done to protect the environment "in accordance with the general interest".²

¹ Powell and Rayner v. the United Kingdom (1990) 12 EHRR 355

² (1991) 14 EHRR 319 at paragraphs 54 and 57

Case Law

The ECt.HR has found breaches of rights in a number of cases of pollution and nuisance. A common aspect in these cases is that the pollution was substantial and long term.

Waste

In the case of *Öneryildiz v. Turkey*³ the applicant lived near a rubbish tip. A gas explosion destroyed his house and killed nine members of his family. The ECt.HR decided that the government was responsible for telling residents about the risks and for taking action to protect their life and property. It had not done this and so the Court found a breach of article 1 of protocol 1 and article 2 (right to life).

In the case of *Lopez Ostra v. Spain*⁴ the applicant complained about gas fumes, offensive smells and contamination from a nearby waste treatment plant. Parts of the plant were closed but the fumes, noise and smell continued. The applicant was re-housed after 3 years. Expert evidence showed that gas emissions from the plant were above the permitted limit. The government authorities had not taken any action to protect the applicant's rights. The ECt.HR decided that the government had not properly balanced the interests of the town's economic well-being (by having the plant) and the applicant's article 8 rights.

Pollution

In a case about pollution, *Fadeyeva v. Russia*;⁵ the applicant lived in a council flat near a steel plant which constantly went over the maximum levels of pollution. She asked the authorities to be relocated and was on a waiting list for 4 years. She complained that the plant was a danger to her health and well-being.

The ECt.HR agreed that the pollution levels could be harmful to the health and well-being of those nearby. It decided that the government had not properly balanced the interests of the community and the applicant's enjoyment of her article 8 rights.

In *Tatar v. Romania*,⁶ the applicants complained that the use of the chemical sodium cyanide by a gold mine was a threat to the environment. After an accident on the site, the chemical was

³ *Öneryildiz v. Turkey* [2004] ECHR 657

⁴ *Lopez Ostra v. Spain* [1994] ECHR 46

⁵ *Fadeyeva v. Russia* [2005] ECHR 376

⁶ *Tatar v. Romania*, Application 657021/01, 27 January 2009

released into the water system. The ECt.HR decided that the government had not assessed the risks at the mine activity or taken any action to protect the article 8 rights of persons living nearby.

Noise

Noise nuisance has been considered by the ECt.HR in a number of cases; from industrial noise and traffic to nightclubs in residential areas.

In the case of *Dubetska and others v. Ukraine*,⁷ the applicants complained about a coal mine and factory which was operating close to their homes. They were suffering from health problems and damage to their property as a result of the mine and factory. The ECt.HR agreed that the operation of the mine had contributed to the applicants' health problems. The authorities had been aware of the harmful impact of the mine but had taken no action to rehouse the applicant or reduce pollution levels. The ECt.HR decided that there had been a violation of the applicants' article 8 rights.

In the case of *Deés v. Hungary*,⁸ the applicant complained about noise, vibration and pollution from heavy traffic in his street. A new motorway toll had resulted in a large volume of traffic coming through neighbouring villages to avoid the charges.

The ECt.HR decided that the authorities' attempts to deal with the heavy traffic were not sufficient and, because of the length of time the applicant had been exposed to the disturbance, the ECt.HR found that there had been a breach of article 8.

In *Moreno Gomez v. Spain*⁹ the applicant lived in a residential area where lot of bars and nightclubs had been built making it impossible for local residents to sleep. The noise levels exceeded permitted levels and the local police supported the residents agreeing that various venues in the area did not always close on time.

The ECt.HR decided that the applicant's rights had been breached because of the authorities failure to take action to deal with the night-time disturbances. The ECt.HR decided that because the noise was at night and was louder than permitted levels, there had been a breach of the applicant's article 8 rights.

⁷ *Dubetska and Others v. Ukraine* [2011] ECHR 256

⁸ *Deés v. Hungary* [2010] ECHR 1772

⁹ *Moreno Gomez v. Spain* [2004] ECHR 633

Complaining about pollution

To make a complaint about noise nuisance you should contact your local District Council. It can investigate and take legal action.

You can also make a complaint to a Magistrates Court if the Council does not take any action. To make a complaint to the Court, you should seek advice from your local Citizen's Advice Bureau.

For other types of industrial pollution, you should contact the Northern Ireland Environment Agency.

Summary

Pollution, including noise, may be a breach of your human rights where it affects your home and health. The impact on you must be severe. The intensity, duration the physical and mental effects are important factors.

The Courts must balance your rights with the legitimate aims listed in article 8(2) and article 1 of protocol 1.

The State has a wide margin of appreciation in these issues, meaning it can decide how best to protect rights under the ECHR.
