

# Bird Scarers:

## Frequently Asked Questions

### Environmental Protection Act 1990

#### **Are there any rules about using a bird scarer?**

The use of bird scarers is not illegal. They are however, deemed essential in protecting certain crops. If a farmer or landowner is using such devices, they must ensure that they are not causing a Statutory Nuisance to others and that they are used in accordance with the Code of Practice produced by the National Farmers Union (NFU). The Code of Practice has been designed to provide advice and guidance to farmers and landowners on how to use bird scaring devices in an appropriate manner minimising the disturbance. As a general guide Bird Scarers should:

- **only be used where justified;**
- **not sound on more than 4 occasions per hour;**
- **not be used before sunrise or after sunset (this doesn't mean that scarers used after sunrise in the Summer are automatically acceptable;**
- **be positioned carefully to ensure that they are not pointing towards or too close to residential properties in the locality.**

#### **What is a Statutory Nuisance?**

There is no set definition but case law has defined a Statutory Nuisance as a “material interference with the comfort and enjoyment of another’s home.”

#### **What does this mean?**

In practice, to be a Statutory Nuisance, the noise would have to be excessive and unreasonable in the circumstances and significantly interfere with the use and enjoyment of someone’s home. Examples could be: disturbance of sleep, forcing you to close your windows, preventing you from using your garden etc due to the level, time, frequency and duration of the noise.

## **Is there a fixed noise level above which the Council can take action?**

NO, there is no fixed noise level, time of day, frequency or duration defined in law. These ARE, however, taken into consideration in any investigation. The council can only take formal action if it is satisfied that the noise is causing a statutory nuisance under the Environmental Protection Act 1990.

## **How does the council investigate complaints about noise?**

Complaints are investigated under the Environmental Protection Act 1990, to determine whether the noise is causing a Statutory Nuisance. In the investigation of complaints, Environmental Services would make reference to the National Farmers' Union (NFU) code of practice. Standard letters are sent to both parties, and the complainant is required to complete diary sheets to record when the noise occurs. Thereafter, visits may be made by officers to determine whether or not a Statutory Nuisance is occurring. We would try to offer advice and assistance to the person who is alleged to be causing the noise of measures that could be taken to minimise the noise. Please note dictaphones can be made available, as an alternative to completing monitoring forms, on request.

## **What action could the council take?**

If the council is satisfied that the noise is causing a Statutory Nuisance, a notice can be served which can stop the activity occurring.

## **What if I don't want to make a formal complaint?**

Many situations can be resolved on informal basis, perhaps by speaking with your neighbour to discuss your concerns and trying to reach an agreement. Environmental Services are unable to investigate anonymous complaints under the Environmental Protection Act 1990. However, there is the option for any individual to take a private action under the same Act without any involvement by the council. We have produced a leaflet with some guidance on how to tackle your neighbour entitled: "Direct Negotiation with a Neighbour".

## **How do I take a private Action?**

1. Under section 82 of the Environmental Protection Act 1990, any person may make a complaint directly to the Magistrates' Court on the grounds that they are aggrieved by a statutory nuisance.
2. You may take your own legal action for an injunction or damages in respect of private nuisance.

Environmental Services would advise contacting a Solicitor regarding private action. Please note that you would be responsible for any costs incurred by this course of action.