

VIRGIN ISLANDS

Noise Control and Abatement Act, 1996

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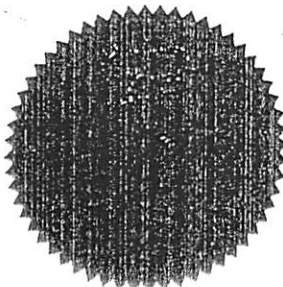
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No. 1 of 1996

Noise Control and Abatement
Act, 1996

Virgin Islands



I Assent

David Christie
Governor
17 Feb, 1996

VIRGIN ISLANDS

No. 1 of 1996

An Act to provide for the control and abatement of noise.

[Gazetted

ENACTED by the Legislature of the Virgin Islands as follows:

PART I

Preliminary

Short title
and commencement.

1. This Act may be cited as the Noise Control and Abatement Act, 1996 and shall come into force on such date as the Governor may appoint by proclamation published in the Gazette.

Interpretation.

2. (1) Except where the context otherwise requires, in this Act,

"loudspeaker" includes a megaphone and any device for amplifying sound;

"Minister" means the Minister responsible for administering this Act;

"musical instrument" includes a radio receiver, television receiver, keyboard, wind instrument, string instrument, percussion instrument, steel pans, or any article or thing adapted for use in making musical sound;

"noise" includes vibration;

"noise abatement zone" means a zone established under section 9;

"political meeting" means a meeting held for the purpose of furthering or discussing the aims, objects, actions, policies or programmes of any individual or political party for the purpose of furthering the candidacy or intended candidacy of the individual or the political party or any member thereof for the election to an elective office;

"public meeting" includes any meeting in a public place and any meeting which the public or any section of the public are permitted to attend, whether on payment or otherwise; and

"public place" includes any street, road, public way, market place, park, car park, square, bridge, alley, footpath, parade, plaza, passage, beach, waterfront, waterway, seaway, building, place or conveyance to which the public is entitled to have access whether upon payment or otherwise, and any road which is lawfully used by the public whether as a public thoroughfare or otherwise.

(2) Where more than one person is responsible for noise, the Act shall apply to each of those persons whether or not the act or omission for which any one of them is responsible would by itself result in a level of noise justifying action under this Act.

PART II

Operation of a Loudspeaker in a Public Place

Restriction on operating loudspeaker in a public place.

3. (1) Subject to the provisions of this Act, no person shall operate, or cause the operation of a loudspeaker or whilst being the owner or having custody of a loudspeaker permit the operation of such loudspeaker

(a) between the hours of 11 p.m. and 7 a.m.;

(b) at any other time, except with the prior written consent of the Commissioner of Police obtained in accordance with section 4, for the purpose of advertising any entertainment, trade or business.

(2) Any person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding \$1,000.00, and on a second or subsequent conviction is liable to

(a) a fine not exceeding \$2,500.00; or

(b) imprisonment for a term not exceeding six months; or

(c) both such fine and imprisonment.

Application for consent to operate a loudspeaker in a public place.

*4. (1) A person who wishes to operate or cause the operation of a loudspeaker in a public place for the purposes and during the hours permitted by section 3 (1) (b) shall make a written application to the Commissioner of Police not later than ten clear days before the date on which it is proposed to operate or cause the operation of the loudspeaker.

(2) If the Commissioner of Police considers that the application contains sufficient information for the purpose and that no nuisance would be occasioned by the operation of the loudspeaker he may give written consent to the application and may attach such conditions and restrictions thereto as may to him appear reasonable in all the circumstances.

(3) Where an application is made under subsection (1) the Commissioner of Police shall, within seventy two hours of the receipt of the application, inform the applicant of the outcome of the application stating whether or not he approves the application.

(4) Where the Commissioner of Police refuses to approve an application under subsection (1) he shall communicate the reasons for his refusal in writing to the applicant.

(5) An applicant who is aggrieved by the decision of the Commissioner of Police refusing consent or imposing any condition or restriction may appeal, within seven days, to a Judge in Chambers.

Operation of a
loudspeaker
permitted in
certain cases
without consent.

5. (1) Section 3 does not apply to the operation of a loudspeaker

- (a) for police, fire and rescue or ambulance purposes;
- (b) by a statutory authority in the exercise of any of its functions;
- (c) for communicating with persons on a vessel for the purpose of directing the movement of that or any other vessel;
- (d) for advertising or holding a public or political meeting;
- (e) if the loudspeaker forms part of a public telephone system;

(f) if the loudspeaker

(i) is in or affixed to a vehicle, and operated solely for the entertainment of or for communicating with the driver or passenger of the vehicle, or where the loudspeaker is or forms part of the horn or similar warning instrument of the vehicle, solely for giving warning to other traffic, and

(ii) is so operated as not to give reasonable cause for annoyance to persons in the area in which the loudspeaker is being operated;

(g) by persons employed in connection with a transport undertaking used by the public in a case where the loudspeaker is operated solely for making announcements to passengers;

Ex-empt

- (h) in Tortola during the annual Festival celebrations, that is to say, the period of seven days preceding Festival Monday, and on Festival Monday, Festival Tuesday, Festival Wednesday and the next four days immediately following Festival Wednesday;
- (i) in Virgin Gorda during the
 - (i) annual Festival celebrations in The Valley on the three days preceding Easter Monday, and on Easter Monday; and
 - (ii) annual Festival celebrations in North Sound on the two days preceding Whit Monday, and on Whit Monday;
- (j) in Jost Van Dyke during the annual Festival celebrations on the three days preceding the first Monday in September, and on the first Monday in September;
- (k) in case of emergency.

(2) The operation of a loudspeaker for the holding of,

- (a) a political meeting shall terminate no later than 11:00 p.m. except during the period between nomination day and polling day in a general or by-election when its operation shall terminate no later than midnight; and
- (b) a public meeting shall terminate no later than midnight.

Operation of loudspeaker permitted at certain times without consent.

6. Section 3 does not apply to the operation of a loudspeaker between the hours of 10:00 a.m. and 7:00 p.m. if the loudspeaker

- (a) is fixed to a vehicle which is being used for the conveyance of a perishable commodity for human consumption;
- (b) is operated solely for informing members of the public, otherwise than by means of words, that the perishable commodity is on sale from the vehicle; and

(c) is so operated as not to give reasonable cause for annoyance to persons in the area in which the loudspeaker is being operated.

PART III

Noise Abatement Zones

Establishment
of noise
abatement
zones.

7. (1) Subject to the provisions of this Part, the Minister may, by Order published in the Gazette, declare all or any part of the Territory to be a noise abatement zone.

(2) An Order made under subsection (1) shall specify

- (a) the area to which the Order applies;
- (b) the duration of the Order if other than indefinite;
- (c) the days of the week to which the Order applies, if other than every day;
- (d) the hours of the day to which the Order applies; and
- (e) where appropriate, the classes of premises to which the Order applies.

Steps to be
taken prior to
making of order.

8. (1) Before making an Order under section 7 the Minister shall publish in the Gazette and in at least two issues of any newspaper published and circulated in the Territory a notice in accordance with subsection (2).

(2) The notice referred to in subsection (1) shall

- (a) state that the Minister proposes to make the Order, and indicate its general effect;
- (b) specify a place where a copy of the proposed Order and of any map or plan referred to in it may be inspected by any person free of charge during official working hours for a period of not less than seven days from the date of the last publication of the notice; and
- (c) state that within the period of seven days, any person who is likely to be affected by the Order may by notice in writing to the Minister object to the making of the Order.

(3) Where an objection is duly made to the Minister, and is not withdrawn, the Minister shall not make the Order without first considering the objection.

(4) Where the Order varies or revokes a previous Order, the Minister may disregard any objection to the Order which in his opinion amounts, in substance, to an objection which was made to a previous Order.

Restriction
on operation
of loudspeaker
etc. in a
noise abatement
zone.

9. (1) Subject to sections 10 and 11, no person shall, in a noise abatement zone, operate or permit the operation of a loudspeaker, musical instrument, equipment, plant, machinery or marine engine in any public place or on any private premises, in such zone, in circumstances where the noise emanating therefrom or caused thereby is reasonably capable of causing annoyance to persons

- (a) occupying or residing in private premises;
- (b) within the compound of a school during school hours or while evening classes are being conducted;
- (c) within the compound of a hospital, health centre or clinic;
- (d) within the compound of a day care centre;
- (e) participating in a Church meeting or Church service or any other function being conducted in a Church, or any function of a religious nature, whether or not the premises being used on the occasion in question are normally or usually used as a church or for religious functions.

(2) Any person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding \$1,000.00, and on a second or subsequent conviction is liable to

- (a) a fine not exceeding \$2,500.00; or
- (b) imprisonment for a term not exceeding six months; or
- (c) both such fine and imprisonment.

Application for
permission to
operate loudspeaker
etc. in a noise
abatement zone.

10. (1) The Commissioner of Police may upon written application grant permission to an applicant to operate a loudspeaker, musical instrument, equipment, plant, machinery or marine engine in a public place or on any private premises within a noise abatement zone if he considers that

- (a) the application contains sufficient information for the purpose; and
- (b) any annoyance which is reasonably likely to be caused thereby will not unduly inconvenience the categories of persons mentioned in section 9 (1) (a) to (e) for an unnecessarily prolonged period,

and he may attach such conditions and restrictions thereto as may to him appear reasonable in all the circumstances.

(2) Where an application is made under subsection (1) the Commissioner of Police shall, within seventy-two hours of the receipt of the application, inform the applicant of the outcome of the application stating whether or not he approves the application.

(3) Where the Commissioner of Police refuses to approve an application under subsection (1) he shall communicate the reasons for his refusal in writing to the applicant.

(4) An applicant who is aggrieved by the decision of the Commissioner of Police refusing permission or imposing any condition or restriction, may appeal within seven days to a Judge in Chambers.

Operation of loudspeaker etc. permitted in noise abatement zone in certain cases without permission.

11. (1) Section 9 does not apply to the operation of a loudspeaker, musical instrument, equipment, plant, machinery or marine engine

- (a) for police, fire and rescue or ambulance purposes;
- (b) by a statutory authority in the exercise of any of its functions;
- (c) for communicating with persons on a vessel for the purpose of directing the movement of that or any other vessel;
- (d) in case of emergency.

(2) Section 9 does not apply to the operation of a loudspeaker or musical instrument

- (a) between the hours of 7:00 a.m. and 11:00 p.m. for the purpose of advertising or holding a public or political meeting;
- (b) which forms a part of a public telephone system;
- (c) which
 - (i) is in or affixed to a vehicle, and is operated solely for the entertainment of or for communicating with the driver or a passenger of the vehicle, or where the loudspeaker is or forms part of the horn or similar warning instrument of the vehicle solely for giving warning to other traffic, and
 - (ii) is so operated as not to give reasonable cause for annoyance to persons in

the area in which the loudspeaker or musical instrument is being used; and

- (d) by persons employed in connection with a transport undertaking used by the public in a case where it is a loudspeaker operated solely for making announcements to passengers.

(3) Section 9 does not apply to the operation of a loudspeaker or musical instrument between the hours of 10:00 a.m. and 7:00 p.m. if the loudspeaker or musical instrument

- (a) is fixed to a vehicle which is being used for the conveyance of a perishable commodity for human consumption;
- (b) is operated solely for informing members of the public, otherwise than by means of words, that the perishable commodity is on sale from the vehicle; or
- (c) is so operated as not to give reasonable cause for annoyance to persons in the area in which the loudspeaker or musical instrument is being operated.

PART IV

National Parks

Noise control
in Park.
Cap. 243

12. (1) Subject to any by-laws made by the National Parks Trust under the provisions of the National Parks Act, no person shall operate a loudspeaker, musical instrument, equipment, plant or machinery in a Park, as defined in the National Parks Act, without the written permission of an official having responsibility in that behalf.

(2) Any person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding \$1,000.00, and on a second or subsequent conviction is liable to

- (a) a fine not exceeding \$2,500.00; or
- (b) imprisonment for a term not exceeding six months; or
- (c) both such fine and imprisonment.

PART V

General Provisions

- Sound proofing. 13. A person who is the proprietor of a disco or night club which plays music beyond midnight, shall ensure that the building or the area comprising the disco or night club is sufficiently sound proofed to prevent sound or noise emanating from the disco or night club from disturbing other persons.
- Person disturbed may complain. 14. Any person who is disturbed by noise emitted from a loudspeaker, musical instrument, equipment, plant or machinery or in any property may make a written or oral complaint to the police.
- Duties of police upon receipt of complaint. 15. The police upon
(a) receipt of the complaint, or
(b) becoming aware of noise which is likely to disturb a person,
shall investigate and notify the person who is directly responsible for the noise, or, if that person cannot be found, the person who occupies the property from which the noise is or has been emitted, that a complaint has been made or that the noise is likely to disturb a person and, if the circumstances so warrant, shall direct that person to reduce the noise to such level as seems reasonable to the police officer, having regard to all the circumstances.
- Offence and penalty. 16. Any person who
(a) operates a disco or night club contrary to the requirements of section 13,
(b) fails to comply with a directive from the police to reduce noise, or
(c) at any time within the period of seven days following a directive from the police to reduce noise causes or permits the operation of a loudspeaker, musical instrument, equipment, plant or machinery in a manner which would disturb any reasonable person in the area in which the loudspeaker, musical instrument, equipment plant or machinery is being used,

commits an offence and is liable on summary conviction to a fine not exceeding \$1,000.00, and on a second or subsequent conviction is liable to

- (a) a fine not exceeding \$2,500.00; or
- (b) imprisonment for a term not exceeding six months; or
- (c) both such fine and imprisonment.

Consent a
defence.

17. In proceedings for an offence under sections 3, 9, 12 or 16, it shall be a defence to prove that

- (a) the consent of the Commissioner of Police or permission of a National Parks' official, as the case may be, had been given in the manner prescribed by this Act in respect of the activity which gave rise to the proceedings; or
- (b) the activity which gave rise to the proceedings was caused by an emergency or by unforeseen circumstances and that the defendant did his best to stop the activity from taking place or continuing.

Efforts to
prevent or
counteract
noise caused
in the course
of a trade etc.
constitutes a
defence.

18. (1) In proceedings for an offence under sections 3, 9 or 16 in respect of noise caused in the course of a trade or business, it shall be a defence to prove that the best practicable means had been used for preventing or counteracting the effect of the noise.

(2) In the construction of the expression "best practicable means" in subsection (1),

- (a) "practicable" means reasonably practicable having regard, among other things, to the conditions and circumstances in the Territory, to the current state of technical knowledge and to the financial implication;
- (b) regard shall be had to any relevant provision of a code of practice governing the trade or business;
- (c) the test of best practicable means is to apply only so far as compatible with safety and safe working conditions and the exigencies of any emergency or unforeseeable circumstances.

Procedure on
appeal.

19. (1) Where any provision of this Act provides for an appeal to a judge in Chambers, the procedure shall be by way of originating summons and the Rules of the Supreme Court shall apply to the proceedings.

(2) The judge may at any stage of the proceedings and either on his own motion or on application by any party to an appeal, adjourn the hearing of the appeal or any part thereof into open court if he thinks it fit to do so and no appeal shall lie from the judge's decision to adjourn or not to adjourn the proceedings into open court.

Test of
reasonableness.

20. (1) A court in deciding the question of reasonableness under this Act shall use the objective test of ordinary standards and ordinary sensitivities and shall attach to purely personal sensitivities and idiosyncrasies only such weight as to the court might seem to prevent injustice.


(2) A court in deciding any matter which falls to be decided whether originally or on appeal shall balance the personal rights and interests of the individual against the rights and interests of the community as a whole and shall take into account, among other things, the following factors:

- (a) the desirability for cultural and social development;
- (b) the desirability of the pursuit of just economic rewards for labour;
- (c) the traditions and norms of particular localities and of the society as a whole;
- (d) the sanctity of religious worship, teaching, practice and observance;
- (e) the rights of privacy of family life;
- (f) the rights of the disabled, the aged, the young and the sick; and
- (g) the necessity for orderly progress involving changing values and life-styles, but preserving the fundamental principle of respect for the rights of others.

Regulations.

21. The Governor in Council may make Regulations in respect of any matter for the purpose of giving effect to the provisions of this Act.

Passed by the Legislative Council this 9th day of February, 1996.


Reelal George
Deputy Speaker


Hugh A. Hodge
Clerk of the Legislative Council

VIRGIN ISLANDS

NOISE CONTROL AND ABATEMENT ACT, 1996

LEGAL REPORT

The purpose of this Bill is to provide for the control of disturbing noise in the Territory and in so doing it seeks to balance the rights of the individual against the rights and interests of the Community.

The Bill prohibits the use of a loudspeaker in a street between 11:00p.m. and 7:00a.m. except in certain specified circumstances or with the consent of the Commissioner of Police.

Part III of the Bill allows the Minister to establish noise abatement zones within which the operation of a loudspeaker, musical instrument, equipment, plant, machinery or marine engine cannot be operated in a manner which is capable of causing annoyance to persons in private premises, schools, hospitals, day care centres and churches except in certain specified circumstances or with the consent of the Commissioner of Police.

Part IV of the Bill deals specifically with National Parks and prohibits the use of loudspeakers, musical instruments, equipment, plant or machinery without the written permission of an official of the National Parks Trust.

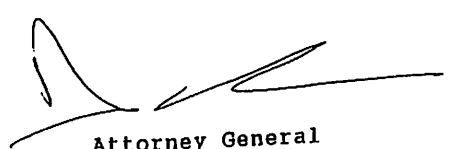
The Bill also contains provisions

- (a) which empower the police to require persons to reduce the noise emanating from their premises and provides a penalty for non-compliance and also a penalty for those who again offend shortly after complying;
- (b) for special defences to the offences created by the Bill; and
- (c) which outline the procedure on appeal and states the factors which a court shall take into consideration in determining what is reasonable.

The Bill provides more severe penalties for repeat offenders in each case.

The Bill was introduced in the Legislative Council on the 19th December, 1995 and passed through its remaining stages on 9th February, 1996.

In my opinion His Excellency the Governor may properly assent to this Bill in the name and on behalf of Her Majesty.


Attorney General

27th FEBRUARY 1996