

Animal Disturbance or Nuisance

How to deal with the problem

You have recently contacted North Lanarkshire Council due to noise from a neighbour's animal which is giving you cause for concern.

USING SOME OF THE METHODS BELOW MAY RESOLVE THE PROBLEM:

- ✚ Talking to your neighbour calmly to advise them that the noise from their *Animal* is concerning you. Many people who contact North Lanarkshire Council regarding *Animal disturbance* are uncomfortable with doing this, as they don't want to fall out with their neighbours or for their neighbours to know that they are complaining. However, by speaking to the *Animal* owner, the matter can be brought to their attention and addressed without them feeling that they have been reported to the authorities.
- ✚ For a number of reasons it may not be possible for you to speak to your neighbour. If this is the case you may wish to put your complaint in writing to them, in a polite manner, pointing out that *their animal* is causing annoyance and asking them to take appropriate action. It is useful to keep copies of correspondence for future reference.
- ✚ If you would like some advice on how to do this, we have a 24 hours/7 days a week **Anti-Social Response and Mediation Service that you can contact for advice on 0300 123 1382**. If the Animal Noise *is causing a disturbance* during the day, within normal office opening hours (and either you or the owner is a council tenant), staff will arrange for

Anti-Social Response Officers to attend your home to witness the animal nuisance. *Noise disturbance* If deemed excessive, a written warning may be served by our officers which you can subsequently use in your formal action outlined below.

- ✚ **Formal action under the Civic Government (Scotland) Act 1982. Section 49** allows complainers to apply to a Justice of the Peace/Sheriff Court seeking an order requiring the owner of any creature causing annoyance to take steps to prevent this occurring. This application is by way of Petition to the Court and a hearing taking place. During this hearing you will be required to present your case in Court before a Justice of the Peace/Sheriff. If, after the hearing, the Court is satisfied that animal is giving you reasonable cause for annoyance, the Court can make an order requiring the person keeping the animal to take steps to prevent the annoyance from continuing.
To take such action you will require to prepare a Petition and serve it on the owner/keeper of the dog. Contained within this pack are details of how to prepare a Petition, including a sample for guidance, a blank application form and helpful tips about evidence you may provide in Court to support your case. If you decide to take this action the council may be able to assist you in gathering evidence of the noise levels by attending your home to witness the *Animal Disturbance* if you or your neighbour are council tenants, or advising what alternative assistance is available. **Please note that legislation is clear that the Council (or 3rd party) cannot take this action on your behalf.**

Form of Petition

FORM 32.2

Form of application under section 49 of the Civic Government (Scotland) Act, 1982

IN THE JUSTICE OF THE PEACE COURT OF SOUTH STRATHCLYDE/DUMFRIES AND GALLOWAY

Application under section 49 of the Civic Government (Scotland) Act, 1982

By

(here insert the name of the complainer's name and address)

*Mr John Smith
10 High Street
Cumbernauld*

From

(here insert the respondent or dog owners name and address)

*Mr Joe Bloggs
14 High Street
Cumbernauld*

HUMBLY SHEWETH

1. That the complainer is resident at (complainer's address)

*10 High Street
Cumbernauld*

2. That the respondent occupies at premises at

*14 High Street
Cumbernauld*

3. That at those premises (respondent's name)

Mr Joseph Bloggs

4. Keeps (identify the creature and the circumstances in which it is kept)

A Doberman Pincher, names Kyle, in a kennel, with a run, in his back garden.

5. Describe in detail one or more paragraphs the circumstance in which it is alleged the creature is causing annoyance.

The Animal Noise is continuous throughout the day while Mr Bloggs is at work and there is no one at home. Because it is in the garden and can see passersby it barks every time someone passes the garden. We are on a busy road and there are lots of people passing our homes which leads to lots of barking. This problem is also causing some of my other neighbours cause for concern.

6. MAY IT THEREFORE please the court to order service of a copy of this application on the said (respondent's name)

Mr Joseph Bloggs

7. To fix a date for the hearing of this application no earlier than 14 days after such service; and thereafter to make an order on (respondent's name)

Mr Joseph Bloggs

To take within such period as may be specified in the order such steps (short of destruction of the creature) as may be so specified to prevent the continuation of the annoyance.

IN RESPECT WHERE OF
(Signature of applicant)

John Smith

Guidance Notes

This guidance is designed to help you complete a Petition to the Justice of the Peace/Sheriff Court in respect of Section 49 of the Civic Government (Scotland) Act 1982. The form of the Petition uses some necessary legal language. To help you understand all aspects of the form the following words are explained below. **The Complainer** is yourself.

The subject is the person about whom you are complaining i.e. the owner or the keeper of the *Animal* in this Petition refers to the home address of the Animal owner.

Your aim in preparing the Petition and presenting it to the Justice of the Peace/Sheriff Court is to convince the court that the dog in question is causing you annoyance. Section 4 of the Petition form enables you to give the details of the circumstances which are causing annoyance. You are not required to use the proforma provided in this pack but your Petition must follow this layout. For legal reasons all information in section 4 must come before section 5. If you have a lot of information that will not fit into the allocated space in section 4 you may note that this section is continued on a separate sheet and attach this to the form providing these details.

You should **make a copy of your Petition** and send the original to the Clerk of the Court, Justice of the Peace/Sheriff Court. The addresses for the relevant Courts are given below:

For Cumbernauld, Kilsyth, Coatbridge and Airdrie areas
Airdrie Sheriff Court, Graham St, Airdrie, North Lanarkshire ML6 6AB. Telephone 01236 751121.

For Bellshill, Harthill, Shotts, Motherwell and Wishaw areas
Hamilton Sheriff Court, 4 Beckford Street, Hamilton, ML3 0BT. Telephone 0300 790 0035.

To give you a chance to see what a completed Petition form will look like, a sample form has been included in the pack where a fictitious Petition is being made by a Mr John Smith against a Mr Joseph Bloggs.

What happens when I have submitted my form to the justice of the peace/Sheriff court?

The court will notify you when a date and time has been set for your hearing. It will advise that **you will require to attend the hearing** to present your case. If you intend to provide witnesses to support your petition then **they must be present in court on that date and time. It may be that the hearing will not proceed on that day due to legal processes and you may be asked to return at a date when all the legal requirements have been completed.**



The Court will provide you with

- A. An Order of Court fixing a hearing. You should make a copy of this order for your own records.
- B. A Citation for the respondent requiring them to attend court.

You must

1. **Complete the citation by filling in the name of the respondent, the date and signing it.**
2. **Send the completed citation; together with the Order; and a copy of your petition.**

These must be sent to the respondent at least 14 days before the hearing date by first class recorded delivery post in the court envelope provided. This ensures that the Post Office will return the documentation directly to the Court if undelivered.

When you have done this, you will require to return your original petition to the court with the recorded delivery slip, which proves that you have posted the order, petition and citation to the respondent. This recorded delivery slip should be firmly attached to the citation. These documents should be returned to the court either by first class recorded delivery post or in person, by you.

N.B. before doing this it is a good idea to keep a copy of all these documents for your own records.

You should note that:

Any party involved in this procedure may consult or be represented by a Solicitor. This will usually involve expenses to that party as LEGAL AID WILL NOT BE GRANTED. The courts cannot award expenses to either party and there is no right of appeal against the decision of the Court in respect of the petition.

Should the Court find in your favour and grant an order against the respondent and they fail to comply with the order, the respondent can be prosecuted and if convicted, may be fined up to £1,000.

What Evidence Can be Presented in Court

- ✚ Witnesses e.g. neighbours, visitors to your home who can give details of the level, times and duration of dog barking.
- ✚ Video evidence
- ✚ Audio recordings
- ✚ Reports prepared by Authorised Officers of the Council (if you or your neighbour are council tenants)
- ✚ A diary of the Animal Nuisance. *The disturbance* This should include the date, time and duration of the barking and how it affects you. You may wish to use the dog barking diary included in this pack to record these details.

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By

(here insert the name of the complainer's name and address)

From

(here insert the respondent *animal* owners name and address)

HUMBLY SHEWETH

1. That the complainer is resident at (complainer's address)

2. That the respondent occupies at premises at

3. That at those premises (respondent's name)

4. Keeps (identify the creature and the circumstances in which it is kept)

5. Describe in detail one or more paragraphs the circumstance in which it is alleged the creature is causing annoyance.

6. MAY IT THEREFORE please the court to order service of a copy of this application on the said (respondent's name)

7. To fix a date for the hearing of this application no earlier than 14 days after such service; and thereafter to make an order on (respondent's name)

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IN RESPECT WHERE OF
(Signature of applicant)