

MILT/267/62 (F)

MEMORANDUM BY THE MINISTER OF TRADE,
INDUSTRY AND AGRICULTURE

Section 117 of the Code of Police Laws

Representations regarding the hardships ensuing through the application of Section 117 of the Code of Police Laws have become so common that a policy ruling on this question has become imperative.

2. Section 117 regulates the issue of licences to workshops and other places of business which may be of danger or annoyance to the neighbours. Moreover, it stipulates that no licence may be issued if the Director of Public Works, the Commissioner of Police and the Chief Government Medical Officer are not satisfied that, on account of distance, danger or annoyance is likely to be occasioned to the neighbours (Appendix A).

3. The problem is, of course, inherent in the size of the country itself. Most certainly, however, the present rate of industrial growth and the boom in the building industry were not anticipated at the time the Section was enacted. Many workshops and small factories which had been built in open areas are now hemmed in by other buildings. As a result there have been cases where either the yearly licence for an old-established workshop or small factory has not been renewed or a licence for a new factory or for an expansion of an existing establishment has been refused because the area is earmarked for eventual urban development.

4. The Crown Advocate General who has been approached on this issue has advised that the amendment of Section 117 would serve little or no useful purpose and considers that the solution of the problem requires ad hoc legislation which would distinguish, and provide for, different types of activities on the basis as to whether such activities cause nuisance, injury or danger to neighbours.

5. However, before pursuing the matter further, the Crown Advocate General wishes for approval, in principle, "as to whether the requirement of a licence should be abolished in all cases referred to in section 117 of the Code of Police Laws and as to whether any workshop, trade or business, which is engaged in an

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activity dangerous to the life and limb of neighbours or to their health, should be allowed to carry on with such activity on the sole basis that the operator of such workshop, trade or business has adopted the best practicable means for preventing and for counteracting the effect of any injury to life or limb or to health, even though the danger - notwithstanding the best practicable means adopted - may continue to exist. And, of course, Government will have also to decide whether an activity constituting a nuisance to the neighbours is to be allowed to carry on, if the best means for preventing such nuisance have been adopted".

6. The complete text of the Crown Advocate General's advice, which has been copied to the Administrative Secretary, Commissioner of Police and the Chief Government Medical Officer is at Appendix B.

7. Hon. Ministers are invited to advise as to whether legislation should be drawn up on the lines proposed by the Crown Advocate General.

27th March, 1969.

Section 117 of the Code of Police Laws

117. (1) It shall not be lawful, without a licence from the Commissioner of Police, to set up or keep in any place any workshop, or carry on any trade or business, which may cause annoyance to neighbours, or may occasion any fire or great explosion, or any exhalations injurious to health; or keep anything causing vapours, dust, or noxious or offensive odours; or burn, boil, distil, or otherwise decompose any root, drug, or other thing, causing any such odour or vapour.

(2) Such licence shall not be granted unless, on account of the distance or for other reasons, the Director of Public works, the Commissioner of Police and the Chief Government Medical Officer, or the officers acting in their behalf, are satisfied that no such injury or annoyance is likely to be occasioned thereby.

CROWN ADVOCATE-GENERAL'S CHAMBERS,

Our Ref. CAG/919/67
Your Ref. MIDT/267/62

Malta October 8, 1968.

Secretary,
Ministry of Trade, Industry and Agriculture
-----Amendment of section 117 of the Code of
Police LawsReference your letter minute dated 24th October,
1967.

2. Section 117 of our Code of Police Laws should not be seen only in the light of the U.K. Noise Abatement Act, 1960, but also of the U.K. Public Health Act, 1936, the provisions whereof the former Act made applicable, subject to certain modifications, to "noise or vibration", by declaring them to be statutory nuisances for the purposes of Part III of the latter Act.

3. It is relevant to observe that the Public Health Act, 1936 (section 107) lays down that certain offensive trades cannot be established on any premises within a borough or urban district or rural district without the consent of the local authority. This corresponds more or less to the licence required under section 117 of our Code of Police Laws.

4. In regard to smoke nuisances the Public Health Act, 1936 does not provide - as in the case of our said section 117 - that it is necessary to have any particular licence in order to exercise a trade or business involving the emission of smoke, but it makes it an offence to have a smoke nuisance on any premises. This is, however, subject to the provisions of sections 103(2) and 103(3) which lay down that, where proceedings are brought in respect of a "smoke" nuisance "it shall be a defence for the defendant to prove that the installation complained of embodies the best practicable means for preventing the emission of smoke to the atmosphere, and that the installation has been carefully attended by the person having the charge thereof and "where proceedings are brought by virtue of this section in respect of the emission from chimney of smoke, other than black smoke, in such quantity as to be a nuisance, it shall be a defence for the defendant to prove that the best practicable means have been taken for preventing the nuisance."

5. I am here also to observe that, when our Clean Air Act, 1967 was enacted, a provision similar to the said sections 103(2) and 103(3) was not included in our said Act - (I am told by the Deputy Crown Advocate General who drafted it) - intentionally.

6. The U.K. Noise Abatement Act, 1960, which concerns only "statutory nuisances consisting in "noise or vibration",

embodies....

embodies in section 1(3) a provision more or less similar to the said sections 103(2) and 103(3).

7. You will of course, have noted that, while the said sections 1(3), 103(2) and 103(3) are in respect only of nuisances deriving from smoke (other than black smoke) noise or vibration, section 117 of our Code of Police Laws does not concern only activities which may cause annoyance to neighbours, but also activities which may be dangerous to neighbours (which "may occasion any fire or great explosion") or which may cause "exhalations injurious to health".

8. Now, before proceeding along your proposal, I would like to have a decision of the Government, because the pressure of work in these Chambers does not allow me to draft legislation which could ultimately not be approved in principle, as to whether the requirement of a licence should be abolished in all cases referred to in section 117 of the Code of Police Laws and as to whether any workshop, trade or business, which is engaged in an activity dangerous to the life and limb of neighbours or to their health, should be allowed to carry on with such activity on the sole basis that the operator of such workshop, trade or business has adopted the best practicable means for preventing and for counter-acting the effect of any injury to life and limb or to health, even though the danger, notwithstanding the best practicable means adopted - may continue to exist. And, of course, Government will have also to decide whether an activity constituting a nuisance to the neighbours is to be allowed to carry on, if the best means for preventing such nuisance have been adopted.

9. The solution of the whole problem may lie in distinguishing between, and providing for, different types of activities on the basis of whether they may cause nuisance, injury or danger to neighbours. But this cannot be done just by amending section 117 of the Code of Police Laws and will require "ad hoc" separate legislation, after that Government will have decided on all the aspects of the problem mentioned above.

(M. Tufigno)
Crown Advocate General

Copied to: Administrative Secretary (Ref. Your letter
minute OPM/30/66 dated 6th September,
1968)
Commissioner of Police
Chief Government Medical Officer.