

ANTISOCIAL BEHAVIOUR ETC. (SCOTLAND) ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 11 – Fixed Penalties

283. **Part 11** gives police powers to issue fixed penalty notices for a range of low-level, antisocial offences, including being drunk and incapable in a public place, vandalism and breach of the peace. If the fixed penalty is paid that is the end of the matter. However, the alleged offender may challenge the fixed penalty notice in which case the police will submit a report to the Procurator Fiscal for consideration of prosecution. The Lord Advocate will provide guidance to the police on the operation of the scheme, which will be piloted.

Section 128 – Fixed penalty offences

284. **Section 128** sets out those offences, both statutory and at common law, which are fixed penalty offences and may therefore be the subject of a fixed penalty notice. The Scottish Ministers are empowered to amend the table of offences by order. This order making power is subject to affirmative resolution procedure.

Section 129 – Fixed penalty notices

285. **Section 129** provides that a police constable may issue a fixed penalty notice to a person aged 16 or over whom he or she believes has committed a fixed penalty offence in a prescribed area. It further provides that a fixed penalty notice offers the opportunity to pay a fixed penalty – a set monetary amount – to discharge any liability to be convicted of the offence to which the notice relates. In addition, Ministers have a regulation making power to prescribe an area or areas where the powers apply. This ensures that fixed penalty notices can be piloted. These regulations are subject to negative resolution procedure.

Section 130 – Amount of fixed penalty and form of fixed penalty notice

286. **Section 130** sets out that the Scottish Ministers may set out the amount of the penalty payable for a fixed penalty offence by order. Subsection (2) provides that the amount must not exceed level 2 on the standard scale (currently £500).
287. Subsection (3) sets out what the fixed penalty notice must contain. This includes the details of the offence, the amount of the fixed penalty, where it should be paid, the fact that the person has a right to dispute his or her guilt by asking to be tried for the offence and the period during which the fixed penalty may be paid or the person should exercise their right to ask to be tried. The regulations under section 130 are subject to negative resolution procedure.

Section 131 – Effect of fixed penalty notice

288. **Section 131** sets out what happens if a fixed penalty notice is issued but not paid within 28 days beginning on the day on which the fixed penalty notice is given. Unless a person who has been issued with the fixed penalty notice asks to be tried for the alleged offence by giving a notice (in the manner specified in the fixed penalty notice) within the specified time, proceedings may not be brought against the person subject to the fixed penalty notice. If the person asks to be tried, it is a matter for the procurator fiscal to determine whether a prosecution is in the public interest.
289. Subsections (5) and (6) provide that if the penalty is not paid within the specified time and a request to be tried is not received, then the person issued the fixed penalty notice will be liable to pay a sum 50% more than the amount of the fixed penalty and that increased amount will be treated as if it is a fine imposed by the district court.

Section 132 – Payment of fixed penalty

290. **Section 132** makes provision in relation to payment of fixed penalties. Subsection (1) provides that the fixed penalty should be paid to the clerk of the court set out in the notice.
291. Subsection (2) provides that payment may be made by posting a letter containing cash – or other form of payment – for the required amount to the proper address. Subsection (7) provides that the proper address is the address described in the fixed penalty notice.
292. Subsection (3) and (4) provide that, where a person claims to have paid the penalty by post in terms of subsection (2) and he or she is able to show evidence that the letter was posted, then the payment will, unless the contrary is proved, be treated as having been made at the time at which the letter would be delivered in the ordinary course of post.
293. Subsection (5) provides that provision for payment by post in terms of subsection (2) does not preclude payment by other means.

Section 133 – Revocation of fixed penalty notices

294. **Section 133** makes provision for revocation of a fixed penalty notice in certain circumstances. Subsection (2) provides that these circumstances are that a police officer believes that either the offence to which the notice relates was not in fact committed or that the notice was issued to the wrong person.
295. Subsection (3) provides that where a fixed penalty notice is revoked then no money shall be payable in terms of that notice and any money that has already been paid shall be refunded.

Section 134 – Interpretation of Part 11

296. **Section 134** provides for the meaning to be given to “fixed penalty notice” and “fixed penalty offence” where they appear in Part 11.