

ANTISOCIAL BEHAVIOUR ETC. (SCOTLAND) ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 6 – the Environment

Section 57 – Directions in respect of duty under section 89 of 1990 Act

161. Under section 89(1) and (2) of the 1990 Act a number of bodies have duties in respect of litter clearance. Bodies or individuals responsible for “relevant land” must clear it of litter, so far as is practicable. “Relevant land” includes public open spaces, roads, railways, the grounds of educational institutions, areas of Crown land, and other areas which local authorities designate as part of litter control areas. In this explanatory note such bodies are referred to as “duty bodies”. In discharging their duties, duty bodies must have regard to a code of practice prepared by Ministers under section 89(7).
162. Subsection (2) of section 57 of the Act, which inserts new subsections (6A) to (6D) into section 89 of the 1990 Act, gives the Scottish Ministers the power to supplement the existing code of practice with specific directions (see the new subsection (6A)) to duty bodies for the purpose of securing compliance with those duties. The new subsection (6B) requires those bodies to comply with any such directions. The new subsection (6C) permits the directions to address particular litter problems, or particular areas, in detail, thus enabling them to give more focussed guidance in the performance of the litter clearance duty than the code of practice is able to. The new subsection (6D) provides for publication of any directions the Scottish Ministers may make, and for making them available to the public.
163. Under section 91 of the 1990 Act, any person aggrieved by the defacement by litter or refuse of relevant land may, having given notice to the relevant duty body, apply to the sheriff court for a litter abatement order instructing that body to carry out its duty by clearing the litter or refuse away. Moreover, under section 92 of that Act, a local authority (as the litter authority) may issue a litter abatement notice to any other duty body, where the local authority feels that duty is not being adequately performed, requiring it to do so. Non-compliance with a section 91 litter abatement order or a section 92 litter abatement notice is an offence. Subsections (3) and (4) of section 57 of the Act, through amendment of sections 91(11) and 92(8) of the 1990 Act, enable any directions issued under section 89(6A) to be admissible in evidence in these proceedings.