

ANTISOCIAL BEHAVIOUR ETC. (SCOTLAND) ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 5 –Noise Nuisance

Section 45 - Offence where noise exceeds permitted level after service of notice

112. **Section 45(1)** provides that an offence is committed, if after service of a warning notice, noise is emitted from relevant property during the period specified in the warning notice and the noise exceeds the permitted level as measured from a relevant place.
113. Subsection (2) provides that a person guilty of an offence is liable on summary conviction to a fine not exceeding level 3 (£1,000) on the standard scale.
114. Subsection (3) provides a defence for a person charged with an offence to show that there was a reasonable excuse for the act, default or sufferance in question. Subsection (4) provides that an accused person will be taken to have shown the defence under subsection (3) where that person adduces sufficient evidence to raise an issue with respect to it, and the prosecution does not prove the contrary beyond reasonable doubt.
115. Subsection (5) provides that in proceedings for an offence under this section, evidence of the measurement of a level of noise is only admissible if the measuring device is approved and any conditions subject to which the approval was given are satisfied.