



# Antisocial Behaviour etc. (Scotland) Act 2004

2004 asp 8

## PART 6

### THE ENVIRONMENT

#### *Controlled waste and litter*

VALID FROM 05/11/2004

#### **55 Contraventions of section 33(1)(a) and (c) of 1990 Act: fixed penalty notices**

After section 33 of the Environmental Protection Act 1990 (c. 43) (“the 1990 Act”) there shall be inserted—

#### **“33A Fixed penalty notices for contraventions of section 33(1)(a) and (c): Scotland**

- (1) Where—
  - (a) an authorised officer of a local authority has reason to believe that a person has committed a relevant offence in the area of that authority; or
  - (b) a constable, or an authorised officer of a waste regulation authority, has reason to believe that a person has committed a relevant offence, he may give that person a notice under this section in respect of the offence.
- (2) In subsection (1) above, “relevant offence” means an offence under section 33 above in respect of a contravention of subsection (1)(a) or (c) of that section.
- (3) A notice under this section is a notice offering the opportunity, by paying a fixed penalty, of discharging any liability to conviction for the offence to which it relates.

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- (4) Where—
- (a) a constable; or
  - (b) an authorised officer of a waste regulation authority,
- gives a notice under this section to a person, he shall, no later than 24 hours after the giving of the notice, send a copy of it to the local authority in whose area the offence was committed.
- (5) Where a person is given a notice under this section in respect of an offence—
- (a) no proceedings shall be instituted for that offence before the expiration of fourteen days following the date of the notice; and
  - (b) he shall not be convicted of that offence if he pays the fixed penalty before the expiration of that period.
- (6) A notice under this section shall give such particulars of the circumstances alleged to constitute the offence as are necessary for giving reasonable information about the offence and shall state—
- (a) the period during which, by virtue of subsection (5)(a) above, proceedings will not be taken for the offence;
  - (b) the amount of the fixed penalty; and
  - (c) the person to whom and the address at which the fixed penalty may be paid;
- and without prejudice to payment by any other method, payment of the fixed penalty may be made by pre-paying and posting to that person at that address a letter containing the amount of the penalty (in cash or otherwise).
- (7) Where a letter is sent in accordance with subsection (6) above payment shall be regarded as having been made at the time at which that letter would be delivered in the ordinary course of post.
- (8) The form of notices under this section shall be such as the Scottish Ministers may by order prescribe.
- (9) The fixed penalty payable in pursuance of a notice under this section shall, subject to subsection (10) below, be £50.
- (10) The Scottish Ministers may by order substitute a different amount (not exceeding level 2 on the standard scale) for the amount for the time being specified as the amount of the fixed penalty in subsection (9) above.
- (11) In any proceedings a certificate which—
- (a) purports to be signed by or on behalf of the proper officer for the local authority in whose area the offence was committed; and
  - (b) states that the payment of a fixed penalty was or was not received by a date specified in the certificate,
- shall be evidence of the facts stated.
- (12) A fixed penalty payable in pursuance of a notice under this section shall be payable to the local authority in whose area the offence was committed; and as respects the sums received by a local authority, those sums shall be treated as if the penalty were a fine imposed by a district court.
- (13) In this section—

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“authorised officer” means an officer of the authority in question who is authorised in writing by the authority for the purpose of issuing notices under this section;

“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39); and “area”, in relation to a local authority, means the local government area (within the meaning of that Act) for which the council is constituted;

“proper officer” means the officer who has, as respects the authority, the responsibility mentioned in section 95 of the Local Government (Scotland) Act 1973 (c. 65) (financial administration).”.

## 56 Litter: power of constables to issue fixed penalty notices

- (1) Section 88 of the 1990 Act (fixed penalty notices for litter) shall be amended as follows.
- (2) In subsection (1)—
  - (a) the words “on any occasion” and “finds a person who he” shall be repealed;
  - (b) for “has on that occasion” there shall be substituted “ that a person has ”;
  - (c) the words from “an”, where it first occurs, to “authority”, where it secondly occurs, shall become paragraph (a) of that subsection; and
  - (d) after “authority”, where it secondly occurs, there shall be inserted “; or
    - (b) a constable has reason to believe that a person has committed an offence under that section.”.
- (3) After subsection (1) there shall be inserted—

“(1A) Where a constable gives a notice under this section to a person, he shall, no later than 24 hours after the giving of the notice, send a copy of it to the litter authority in whose area the offence was committed.”.
- (4) After subsection (5) there shall be inserted—

“(5A) A fixed penalty payable in pursuance of a notice under this section shall be payable to the litter authority in whose area the offence was committed.”.
- (5) In subsection (6)—
  - (a) the words “to a litter authority” are repealed; and
  - (b) for “the”, where it thirdly occurs, there shall be substituted “ a litter ”.
- (6) In subsection (7), after “amount”, where it first occurs, there shall be inserted “ (not exceeding level 2 on the standard scale) ”.
- (7) In subsection (8)(a)(ii), after “officer” there shall be inserted “ for the litter authority in whose area the offence was committed ”.

## 57 Directions in respect of duty under section 89 of 1990 Act

- (1) Sections 89, 91 and 92 of the 1990 Act shall be amended as follows.
- (2) In section 89 (duties to keep land etc. free of litter), after subsection (6) there shall be inserted—

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- “(6A) The Scottish Ministers may give to any person subject to a duty imposed by subsection (1) or (2) above such directions as they consider necessary or expedient for securing compliance by such person with such duty.
- (6B) A person to whom a direction is given under subsection (6A) shall comply with the direction.
- (6C) A direction under subsection (6A) may—
- (a) be given generally or to a specific person;
  - (b) make different provision for different persons and different cases or circumstances;
  - (c) include provision specifying, in relation to any factor by reference to which a person’s discharging of any such duty can be measured, standards to be met by the person.
- (6D) The Scottish Ministers shall—
- (a) cause—
    - (i) any direction under subsection (6A) above; and
    - (ii) any variation or revocation of such a direction, to be published; and
  - (b) cause copies of each such direction, variation or revocation to be made available to the public.”.

(3) In section 91 (litter abatement orders: applications by aggrieved persons), in subsection (11)—

    - (a) after “A”, where it first occurs, there shall be inserted—
      - “(a) direction under section 89(6A); or”;
    - (b) the words “code of practice under section 89(7)” shall become paragraph (b); and
    - (c) after “a”, where it secondly occurs, there shall be inserted “ direction or ”.

(4) In section 92 (litter abatement notices: litter authorities), in subsection (8)—

    - (a) after “A”, where it first occurs, there shall be inserted—
      - “(a) direction under section 89(6A); or”;
    - (b) the words “code of practice under section 89(7)” shall become paragraph (b); and
    - (c) after “a”, where it secondly occurs, there shall be inserted “ direction or ”.

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