

## SCHEDULE 1

(introduced by section 47(9))

### POWERS IN RELATION TO EQUIPMENT SEIZED UNDER SECTION 47

#### *Interpretation*

- 1 In this schedule—
- (a) “noise offence” means, in relation to equipment seized under section 47(2), an offence under section 45;
  - (b) “seized equipment” means equipment seized in the exercise of the power of seizure and removal conferred by section 47(2);
  - (c) “related equipment”, in relation to any conviction of, or proceedings for a noise offence, means seized equipment used or alleged to have been used in the commission of the offence;
  - (d) “responsible local authority”, in relation to seized equipment, means the local authority by or on whose behalf the equipment was seized.

#### *Retention*

- 2 (1) Any seized equipment may be retained—
- (a) during the period of 28 days beginning with the seizure; or
  - (b) if it is related equipment in proceedings for a noise offence instituted within that period against any person, until—
    - (i) that person is sentenced or otherwise dealt with for, or acquitted of, the offence; or
    - (ii) the proceedings are discontinued.
- (2) Sub-paragraph (1) does not authorise the retention of seized equipment if—
- (a) a person has been given a fixed penalty notice under section 46 in respect of any noise;
  - (b) the equipment was seized because of its use in the emission of the noise in respect of which the fixed penalty notice was given; and
  - (c) that person has paid the fixed penalty before the end of the period allowed for its payment.

#### *Forfeiture*

- 3 (1) Where a person is convicted of a noise offence the court may make an order (a “forfeiture order”) for forfeiture of any related equipment.
- (2) The court may make a forfeiture order whether or not it deals also with the offender in respect of the offence in any other way and without regard to any restrictions on forfeiture in any enactment.
- (3) In considering whether to make a forfeiture order in respect of any equipment, a court shall have regard—
- (a) to the value of the equipment; and
  - (b) to the likely financial and other effects on the offender of the making of the order (taken with any other order that the court contemplates making).

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- (4) A forfeiture order operates to deprive the offender of any rights in the equipment to which it relates.

*Consequences of forfeiture*

- 4 (1) Where any equipment has been forfeited under paragraph 3, the sheriff may, on the application of a person (other than the person in whose case the forfeiture order was made) who claims the equipment, make an order for delivery of the equipment to the applicant.
- (2) An order such as is mentioned in sub-paragraph (1) may only be made if the sheriff is satisfied that the applicant is the owner of the equipment.
- (3) No application may be made under sub-paragraph (1) after the expiry of the period of 6 months beginning with the date on which a forfeiture order was made in respect of the equipment.
- (4) Where the responsible local authority is of the opinion that the person in whose case the forfeiture order was made is not the owner of the equipment, it must take reasonable steps to bring to the attention of persons who may be entitled to do so their right to make an application under sub-paragraph (1).
- (5) An order under sub-paragraph (1) does not affect the right of any person to take, within the period of 6 months beginning with the date of the order, proceedings for the recovery of the equipment from the person in possession of it in pursuance of the order (but the right ceases on the expiry of that period).
- (6) If, on the expiry of the period of 6 months beginning with the date on which a forfeiture order was made in respect of the equipment, no order has been made under sub-paragraph (1), the responsible local authority may dispose of the equipment.

*Return etc. of seized equipment*

- 5 If in proceedings for a noise offence no order for forfeiture of related equipment is made, the court may (whether or not a person is convicted of the offence) give such directions as it thinks fit as to the return, retention or disposal of the equipment by the responsible local authority.
- 6 (1) Where in the case of any seized equipment no proceedings in which it is related equipment are begun within the period mentioned in paragraph 2(1)(a)—
- (a) the responsible local authority shall return the equipment to any person who—
- (i) appears to it to be the owner of the equipment; and
- (ii) makes a claim for the return of the equipment within the period mentioned in sub-paragraph (2); and
- (b) if no such person makes such a claim within that period, the responsible local authority may dispose of the equipment.
- (2) The period referred to in sub-paragraph (1)(a)(ii) is the period of 6 months beginning with the expiry of the period mentioned in paragraph 2(1)(a).
- (3) The responsible local authority shall take reasonable steps to bring to the attention of persons who may be entitled to do so their right to make such a claim.

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- (4) Subject to sub-paragraph (6), the responsible local authority is not required to return any seized equipment under sub-paragraph (1)(a) until the person making the claim has paid any such reasonable charges for the seizure, removal and retention of the equipment as the authority may demand.
- (5) If—
- (a) equipment is sold in pursuance of—
    - (i) paragraph 4(6);
    - (ii) directions under paragraph 5; or
    - (iii) this paragraph; and
  - (b) before the expiration of the period of one year beginning with the date on which the equipment is sold any person satisfies the responsible local authority that at the time of its sale the person was the owner of the equipment,
- the authority shall pay that person any sum by which any proceeds of sale exceed any such reasonable charges for the seizure, removal or retention of the equipment as the authority may demand.
- (6) The responsible local authority cannot demand charges from any person under sub-paragraph (4) or (5) who it is satisfied did not know, and had no reason to suspect, that the equipment was likely to be used in the emission of noise exceeding the level determined under section 48.

## SCHEDULE 2

*(introduced by section 66)*

### PENALTIES FOR CERTAIN ENVIRONMENTAL OFFENCES

#### PART 1

#### ACTS

##### *The Sewerage (Scotland) Act 1968 (c. 47)*

- 1 (1) The Sewerage (Scotland) Act 1968 shall be amended as follows.
- (2) In section 12(8) (connection with public sewers), for “£20,000” substitute “£40,000”.
  - (3) In section 24(2) (discharge into public sewers), for “£20,000” substitute “£40,000”.
  - (4) In section 46(2) (injurious matter in sewers), for “£20,000” substitute “£40,000”.

##### *The Control of Pollution Act 1974 (c. 40)*

- 2 (1) The Control of Pollution Act 1974 shall be amended as follows.
- (2) In section 30F(6) (pollution offences), in paragraph (a), for “£20,000” substitute “£40,000”.
  - (3) In section 46D(2) (non-compliance with a works notice), in paragraph (a), for “£20,000” substitute “£40,000”.

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- (4) In section 49A(3) (non-compliance with an enforcement notice), in paragraph (a), for “£20,000” substitute “£40,000”.

*The Water (Scotland) Act 1980 (c. 45)*

- 3 Section 75 of the Water (Scotland) Act 1980 (penalty for polluting water) shall be amended as follows—
- (a) in subsection (3), in paragraph (a), for “the prescribed sum” substitute “£40,000”; and
  - (b) subsection (4) is repealed.

*The Environmental Protection Act 1990 (c. 43)*

- 4 (1) The 1990 Act shall be amended as follows.
- (2) In section 23(2) (offences under Part 1), in paragraph (a), for “£20,000” substitute “£40,000”.
  - (3) In section 33 (prohibition on disposal of waste), in—
    - (a) subsection (8), in paragraph (a); and
    - (b) subsection (9), in paragraph (a),
 for “£20,000” substitute “£40,000”.
  - (4) In section 80(6) (contravention of an abatement notice), for “£20,000” substitute “£40,000”.

*The Pollution Prevention and Control Act 1999 (c. 24)*

- 5 In paragraph 25(2)(a)(ii) of Schedule 1 to the Pollution Prevention and Control Act 1999 (offences), for “£20,000” substitute “£40,000”.

*The Water Environment and Water Services (Scotland) Act 2003 (asp 3)*

- 6 In paragraph 20(2)(a)(ii) of schedule 2 to the Water Environment and Water Services (Scotland) Act 2003 (offences), for “£20,000” substitute “£40,000”.

## PART 2

### SUBORDINATE LEGISLATION

*The Pollution Prevention and Control (Scotland) Regulations 2000 (S.S.I. 2000/323)*

- 7 In paragraph (2)(a) of regulation 30 of the Pollution Prevention and Control (Scotland) Regulations 2000 (offences), for “£20,000” substitute “£40,000”.

*The Landfill (Scotland) Regulations 2003 (S.S.I. 2003/235)*

- 8 In paragraph (2)(a) of regulation 19 of the Landfill (Scotland) Regulations 2003 (offences), for “£20,000” substitute “£40,000”.

## SCHEDULE 3

(introduced by section 74(5))

### MANAGEMENT CONTROL ORDERS

#### *Application and interpretation*

- 1 (1) Paragraphs 2 to 6 apply while an order is in force in respect of a house.
- (2) In this schedule—
- “management period”, in relation to an order, means the period specified in the order; and
  - “order” means a management control order.

#### *Effect of order*

- 2 The order shall not affect the rights or liabilities of any person who, at the time when the order is made, is occupying the relevant house under the tenancy or, as the case may be, occupancy arrangement.

#### *Accounts*

- 3 (1) The local authority shall pay to such relevant person as it considers appropriate—
- (a) any surplus of its income over its expenditure in respect of the house to which the order relates; and
  - (b) the interest on any such surplus at such reasonable rate as the authority may determine.
- (2) The local authority shall—
- (a) keep accounts for the management period of its income and expenditure in respect of the house to which the order relates; and
  - (b) afford to the relevant person all reasonable facilities for inspecting, taking copies of and verifying those accounts.
- (3) The Scottish Ministers may by regulations make provision about—
- (a) expenditure which local authorities may incur in respect of houses to which orders relate; and
  - (b) the means of recovering such expenditure.
- (4) For the purposes of this paragraph “relevant person” means the person who, immediately before the order was made, was the landlord of the house to which the order relates.

#### *Recovery of rent arrears etc.*

- 4 If during the management period—
- (a) rent payable; or
  - (b) consideration payable or exigible,
- under the tenancy or occupancy arrangement is not paid or made, the authority shall take all reasonable steps to recover the rent or consideration.

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*Delegation of management functions*

- 5           The local authority may authorise any person to do in relation to the relevant house anything that the authority is, by virtue of the order, entitled to do.

*New tenancies and occupancy arrangements*

- 6           (1) Where—
- (a) the house to which an order relates is occupied by virtue of—
    - (i) two or more tenancies;
    - (ii) two or more occupancy arrangements; or
    - (iii) one or more tenancies and one or more occupancy arrangements;
 and
  - (b) during the management period, one of those tenancies or occupancy arrangements (the “old occupancy right”) ends,
- the person who, immediately before the order was made, was the landlord of the house may, if the local authority agrees, grant a tenancy or make an occupancy arrangement in respect of the part of the house that was subject to the old occupancy right.
- (2) Any rights and obligations of the landlord under a tenancy granted, or an occupancy arrangement made, by virtue of sub-paragraph (1) shall be deemed to have been transferred, by virtue of the order relating to the house, to the local authority specified in the order.

SCHEDULE 4

*(introduced by section 144(1))*

MINOR AND CONSEQUENTIAL AMENDMENTS

*The Social Work (Scotland) Act 1968 (c. 49)*

- 1           In section 27 of the Social Work (Scotland) Act 1968 (functions of local authorities in relation to persons appearing before courts, under supervision of court orders etc.)—
- (a) in subsection (1)—
    - (i) after paragraph (ac) insert—
      - “(ad) making available, for the purposes of parenting orders under section 13 or 102 of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8), such services as are required to enable requirements imposed by or under such orders to be carried out in respect of persons in their area;”;
    - (ii) in paragraph (b), after sub-paragraph (v) insert—
      - “(va) without prejudice to sub-paragraph (i) above, persons in their area who are subject to community reparation orders under section 245K of the said Act of 1995;
      - (vb) without prejudice to sub-paragraph (i) above, persons in their area who are under 16 years of

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- age and subject to restriction of liberty orders under section 245A of the said Act of 1995;”;
- (b) in each of subsections (2) to (5), for the words “probation, community service and supervised attendance”, wherever they occur, substitute “community justice”; and
  - (c) after subsection (5) insert—
    - “(5A) Before including in a community justice scheme which is made, revised or modified under this section provision for the purposes of subsection (1)(b)(va), a local authority shall consult such persons or class or classes of person as the Scottish Ministers may by regulations prescribe.
    - (5B) The Scottish Ministers may give local authorities directions in writing as to the content of community justice schemes; and authorities shall comply with any such directions.
    - (5C) The power conferred by subsection (5B) above to give a direction shall include power to vary or revoke the direction.”.

*The Housing (Scotland) Act 1987 (c. 26)*

- 2 In subsection (2C)(c) of section 31 of the Housing (Scotland) Act 1987 (duties to persons found to be homeless), for “anti-social behaviour order under section 19 of the Crime and Disorder Act 1998 (c. 37)” there shall be substituted “antisocial behaviour order—
- (i) under section 234AA of the Criminal Procedure (Scotland) Act 1995 (c. 46); or
  - (ii) under section 4 of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8)”.

*The Environmental Protection Act 1990 (c. 43)*

- 3 After section 81(3) of the Environmental Protection Act 1990 (power to abate statutory nuisance) there shall be inserted—
- “(3A) The power under subsection (3) above shall, where the matter to be abated is a statutory nuisance by virtue of section 79(1)(g) above, include power to seize and remove any equipment which it appears to the authority is being or has been used in the emission of the noise in question.
  - (3B) A person who wilfully obstructs any person exercising, by virtue of subsection (3A) above, the power conferred by subsection (3) above shall be liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.
  - (3C) Schedule 1 to the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8) shall have effect in relation to equipment seized by virtue of subsection (3A) above as it does in relation to equipment seized under section 47(2) of that Act, subject to the following modifications—
    - (a) in paragraph 1(a), “noise offence” means an offence under section 80(4) above in respect of a statutory nuisance falling within section 79(1)(g) above; and

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- (b) in paragraph 1(b), “seized equipment” means equipment seized by virtue of subsection (3A) above.”.

*The Children (Scotland) Act 1995 (c. 36)*

- 4 (1) The Children (Scotland) Act 1995 shall be amended as follows.
- (2) In section 51(5) (powers of sheriff on allowing appeal against decision of children’s hearing), in paragraph (b) for the words from “condition” to “70(9)” substitute “movement restriction condition imposed under subsection (3)(b) of section 70 of this Act or a condition imposed under subsection (9) of that section”.
- (3) In subsection (6) of section 66 (warrant to keep child where hearing unable to dispose of case), for the words from “that”, where it first occurs, to “satisfied” substitute—
- “(a) that one of the conditions mentioned in section 70(10) of this Act is met; and
- (b) that it is necessary to do so,”.
- (4) In subsection (11) of section 68 (application to sheriff to establish grounds of referral), for the words from “that”, where it first occurs, to “fulfilled” substitute—
- “(a) that one of the conditions mentioned in section 70(10) of this Act is met; and
- (b) that it is necessary for the order to do so,”.
- (5) In subsection (11) of section 69 (continuation or disposal of referral by children’s hearing) for the words from “that”, where it first occurs, to “fulfilled” substitute—
- “(a) that one of the conditions mentioned in section 70(10) of this Act is met; and
- (b) that it is necessary to do so,”.
- (6) In section 93 (interpretation of Part 2)—
- (a) in subsection (1), in the definition of “relevant local authority”—
- (i) after “area” insert “there is established”; and
- (ii) for “formed” substitute “constituted”; and
- (b) in subsection (2), in paragraph (b), after “3” insert “(except section 75A)”.

*The Criminal Procedure (Scotland) Act 1995 (c. 46)*

- 5 (1) The Criminal Procedure (Scotland) Act 1995 shall be amended as follows.
- (2) In subsection (2)(b)(ii) of section 79 (preliminary pleas and preliminary issues), after “Act” there shall be inserted “section 9(6) of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8) or that section of that Act as applied by section 234AA(11) of this Act”.
- (3) In subsection (4) of section 193A (suspension of certain sentences pending determination of appeal), after paragraph (d) there shall be inserted—
- “(e) a community reparation order.”.
- (4) In section 219 (imprisonment for non-payment of fines)—
- (a) in subsection (1), after “Act” there shall be inserted “and subsection (1A) below”; and
- (b) after subsection (1) there shall be inserted—



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- “(1A) Subsection (1) shall not apply to a fine imposed for an offence under section 107 of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8).”.
- (5) In section 235 (supervised attendance orders)—
- (a) in subsection (1), after “(4)” there shall be inserted “or (4A)”;
- (b) after subsection (2), there shall be inserted—
- “(2A) In making a supervised attendance order where subsection (4A) below applies, a court shall take into consideration the best interests of any person under the age of 16 in respect of whom the offender has parental responsibilities within the meaning of Part I of the Children (Scotland) Act 1995 (c. 36).”;
- (c) after subsection (4), there shall be inserted—
- “(4A) This subsection applies where, having been convicted of an offence under section 107 of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8), the offender has had imposed on him a fine which (or any part or instalment of which) he has failed to pay.”; and
- (d) in subsection (6)—
- (i) the word “or”, where it first appears, is omitted; and
- (ii) after “(4)(c)” there shall be inserted “or (4A)”.
- (6) In subsection (3) of section 239 (requirements of community service orders), after “works” there shall be inserted “(or carries out voluntary work)”.
- (7) In section 245D (combination of restriction of liberty order with probation order or drug treatment and testing order)—
- (a) in subsection (1)(b)—
- (i) after “to”, where it first occurs, there shall be inserted—
- “(i) in the case of an offender who is under 16 years of age,”;
- (ii) for “or to”, where those words first occur, there shall be substituted—
- “(ii) in the case of an offender who is 16 years of age or more, a probation order made under section 228(1) of this Act,”; and
- (iii) the word “to”, where it thirdly occurs, is repealed; and
- (b) in subsection (3), after “and”, where it secondly occurs, there shall be inserted—
- “(a) in the case of an offender who is under 16 years of age, a probation order;
- (b) in the case of an offender who is 16 years of age or more,”.
- (8) In subsection (1)(b) of section 245E (variation of restriction of liberty orders), after “court,” where it first occurs, there shall be inserted “apply”.
- (9) In subsection (2) of section 245G (disposal on revocation of restriction of liberty order), after “disposing” there shall be inserted “of”.
- (10) In subsection (1)(b) of section 245H (documentary evidence in proceedings under section 245F), for “person subject to the order” there shall be substituted “offender”.

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- (11) In paragraph 3 of Schedule 7 (supervised attendance orders)—
- (a) in sub-paragraph (1), after “works” there shall be inserted “(or carries out voluntary work)”; and
  - (b) in sub-paragraph (3), after “works” there shall be inserted “(or carries out voluntary work)”.
- (12) In Schedule 9 (certificates as to proof of certain routine matters), at the end there shall be inserted the following entry—

The Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8), section 45(1).	An officer of a local authority within the meaning of that Act authorised to do so by the authority.	That a level of noise specified in the certificate was measured at a time and in a place specified in the certificate using an approved device within the meaning of that Act.
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*The Housing (Scotland) Act 2001 (asp 10)*

- 6 (1) The Housing (Scotland) Act 2001 shall be amended as follows.
- (2) In section 35(2) (conversion to short Scottish secure tenancy), for “anti-social behaviour order under section 19 of the Crime and Disorder Act 1998 (c. 37)” there shall be substituted “antisocial behaviour order—
- (a) under section 234AA of the Criminal Procedure (Scotland) Act 1995 (c. 46); or
  - (b) under section 4 of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8)”.
- (3) In paragraph 2 of schedule 6 (grounds for granting short Scottish secure tenancy), for “anti-social behaviour order under section 19 of the Crime and Disorder Act 1998 (c. 37)” there shall be substituted “antisocial behaviour order—
- (a) under section 234AA of the Criminal Procedure (Scotland) Act 1995 (c. 46); or
  - (b) under section 4 of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8)”.

SCHEDULE 5

(introduced by section 144(2))

REPEALS

<i>Enactment</i>	<i>Extent of repeal</i>
The Social Work (Scotland) Act 1968 (c. 49)	In section 27(2), the words from “, after” to “area,”.
The Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40)	In Schedule 6, paragraph 8(b).

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<i>Enactment</i>	<i>Extent of repeal</i>
The Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c. 40)	In Schedule 4, paragraph 30.
The Criminal Procedure (Scotland) Act 1995 (c. 46)	In section 245A(1), the words from “and”, where it first occurs, to the end.
The Crime and Disorder Act 1998 (c. 37)	Section 19. Sections 21, 22 and 22A.
The Criminal Justice (Scotland) Act 2003 (asp 7)	Sections 44 and 45. Section 83.

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