

DOG FOULING (SCOTLAND) ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 5: Issue of fixed penalty notices

23. **Section 5** allows persons suspected of having committed an offence under the Act to be issued with a fixed penalty notice as an alternative to criminal prosecution.
24. Subsection (1) allows an authorised officer of the local authority or a police constable to issue fixed penalty notices to a person where the authorised officer or police constable has reasonable grounds for suspecting of that the person has committed an offence under the Act.
25. Subsection (2) sets out that an authorised officer may require the person suspected of committing the offence to provide his or her name and address. Subsection (3) requires that when asking for these details, the authorised officer must tell the person that he or she has reasonable grounds for suspecting an offence has been committed and that a failure to provide the required information may be an offence.
26. Subsection (4) provides that any person who fails to provide their name and address without a reasonable excuse is guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale (currently £500).
27. Subsection (5) requires the fixed penalty notice to be issued as soon as is reasonably practical. If the fixed penalty notice is not issued at the time of the offence then there is a maximum time limit of seven days after the commission of the offence in which the notice can be issued.
28. Subsection (7) provides that a fixed penalty notice can be issued to a person by handing it or delivering it to that person. This is the primary method of issuing fixed penalty notices however subsection (8) provides that if the authorised officer or constable has been unsuccessful in issuing the fixed penalty notice under subsection (7) they may then issue it by leaving it at the person's last known address or by sending it to them by post at that address.
29. Subsection (9) places a requirement on an authorised officer or constable who has issued a fixed penalty notice in accordance with subsection (7) to then send a copy of the notice by post to the person at the persons last known address. This must be done as soon as reasonably practicable and no later than seven days after the notice has been issued. This is to provide additional protection to innocent parties whose details may have been falsely given when the notice is issued personally.
30. Subsection (10) provides that when a notice is sent by post it is deemed to take effect at the time of posting.