

ANTISOCIAL BEHAVIOUR ETC. (SCOTLAND) ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 5 –Noise Nuisance

Section 44 - Warning Notices

105. [Section 44](#) makes provision for the issue of a warning notice.
106. Subsection (1) requires a notice issued under this section (a “warning notice”) to state that the local authority officer considers that:
- noise is being emitted from the offending property during a noise control period; and
 - the noise exceeds, or may exceed the permitted level, as measured from a relevant place.
107. The notice must also state that any person may be guilty of an offence if that person is responsible for noise emitted from the offending property in the period specified in the notice, and the noise exceeds the permitted level as measured from a relevant place.
108. Subsection (2), as read with subsection (3), provides that the period specified in the warning notice must begin not earlier than 10 minutes after the time when the notice is served, and must end at the relevant time. Subsection (3) defines relevant time as the earlier of the end of the noise control period during which the notice is served or end of the period in which the permitted level applicable during the period in which the notice is served, ceases to apply.
109. Subsection (4) requires a warning notice to be served by delivering it to any person present at, or near, the offending property and appearing to the local authority officer to be responsible for the noise.
110. Subsection (5) requires a warning notice to be served (by leaving it) at the offending property, where it is not reasonably practicable to identify any person present at or near the property as being a person responsible for the noise on whom the notice may reasonably be served. Subsection (6) requires a warning notice to state the time at which it is served.
111. Subsection (7) provides that for the purposes of the noise control provisions, a person is responsible for noise emitted from relevant property if the emission of the noise is wholly or partly attributable to the person’s act, failure or sufferance.