

ANTISOCIAL BEHAVIOUR ETC. (SCOTLAND) ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 6 – the Environment

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

153. Section 33 of the 1990 Act is the statutory provision criminalising fly-tipping, and sets out penalties for that offence.
154. The 1990 Act envisages only pursuit through the prosecution system as a penalty for fly-tipping. Section 55 of the Act, which inserts a new section 33A into the 1990 Act, makes provision for the payment of a fixed penalty fine as an alternative to prosecution for fly-tipping offences.
155. Under subsection (1) of the new section 33A of the 1990 Act, as read with subsection (13), an authorised officer of a local authority, a police constable or an officer of SEPA (as the waste regulation authority), on having reason to believe that a fly-tipping offence has been committed (the “relevant offence” in terms of subsection (2)), has the power to give the offender a notice inviting the offender to pay a fixed penalty. The “relevant offences”, as set out in section 33(1)(a) and (c) of the 1990 Act, concern respectively depositing waste, or knowingly causing or permitting the depositing of waste, without a licence to do so, and to treating, keeping or disposing of controlled waste in a manner likely to cause pollution of the environment or harm to human health. These offences are commonly referred to as “fly-tipping”.
156. Subsections (4) to (7) of section 33A set out the procedure for issuing a fixed penalty notice. In terms of subsection (4), where a fixed penalty notice is given by a police constable, or an officer of SEPA, a duplicate of the notice is given to the local authority in whose area the offence occurred and it is the latter which is responsible for the further administration of it, such as collection of the fixed penalty. If payment is made within 14 days then, in terms of subsection (5), no further proceedings will be instituted in relation to that offence. Subsection (6) makes provision for what the fixed penalty notice must contain and, as read with subsection (7), for the payment of the fixed penalty to which the notice relates. Subsection (8) permits the Scottish Ministers to prescribe by order the form of fixed penalty notices. The effect of subsection (12) is that the local authority keeps the proceeds of fixed penalties, as occurs at present in the case of fines imposed by the district courts. These regulations are subject to negative resolution procedure.
157. If the fixed penalty is not paid, the alleged offender will be reported to the procurator fiscal for consideration of prosecution. Subsection (11) establishes that a certificate purporting to be signed by the proper officer concerning the payment or non-payment of a fixed penalty shall satisfy the relevant evidential requirements in any proceedings,

*These notes relate to the Antisocial Behaviour etc. (Scotland)
Act 2004 (asp 8) which received Royal Assent on 26 July 2004*

which would include, for example, a prosecution for a fly-tipping offence where the opportunity to pay a fixed penalty fine had not been taken.

158. In terms of subsection (9) of section 33A, the level of fixed penalty will initially be £50. However, the Scottish Ministers have the power, under subsection (10), to vary this amount by order, up to level 2 on the standard scale (currently £500). These regulations are subject to negative resolution procedure.
159. The definition of “authorised officer” in subsection (13) of section 33A, as read with subsection (1), seeks to ensure that is the authorised officer of the local authority in the area where the offence is committed who has the power to issue the fixed penalty notice. The “proper officer” in terms of the Local Government (Scotland) Act 1973 is the individual who has financial oversight of the relevant local authority’s affairs.