

ANTISOCIAL BEHAVIOUR ETC. (SCOTLAND) ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 6 – the Environment

Section 58 – Power of local authority to serve notice about graffiti

164. **Section 58** provides local authorities with a power to serve a notice requiring the person upon whom it is served to remove, clear or otherwise remedy the graffiti described in the notice (called a “graffiti removal notice”). Subsection (1) provides that a local authority can exercise this power where it appears to it that the graffiti is either offensive or detrimental to the amenity of the locality. Examples of graffiti which is offensive include graffiti which is racially or sexually offensive, homophobic or defamatory. Graffiti which is not offensive may nonetheless be detrimental to the amenity of the locality in which it occurs and a local authority should take into consideration the extent to which the amenity of an area would be improved if the particular graffiti to which the notice relates were removed. The persons on whom a graffiti removal notice can be served are those responsible for relevant surfaces. Subsection (3) provides a definition of a “relevant surface” and subsection (9) provides a definition of “graffiti” and “responsible persons”.
165. Subsection (2) provides that a graffiti removal notice must give at least 28 days in which to remove the graffiti. .
166. Subsection (3) defines a ‘relevant surface’ as either the surface of a public road or any building, structure, apparatus, plant or other object on such a road or, where subsection (4) or (5) applies, the surfaces of property or land owned, occupied or controlled by a relevant body. Definitions of ‘road’ and ‘relevant body’ are contained at subsection (9). Subsection (7) empowers a local authority to withdraw a graffiti removal notice it has issued. Subsection (8) provides that a local authority’s use of its power at subsection (7) shall not affect its power to issue a further graffiti removal notice in respect of the defacement described in the notice which has been withdrawn.
167. Subsection (9) defines a ‘relevant body’ as being an educational institution or a statutory undertaker.
168. An ‘educational institution’ is defined by section 98(3) of the 1990 Act as meaning:
- (a) any university within the meaning of the Education Reform Act 1988 funded by the Universities Funding Council under section 131 of that Act;
 - (b) the Open University; (c) any educational establishment (not being a school) within the meaning of section 135(1) of the Education (Scotland) Act 1980 for the provision of any form of further education for the management of which establishment an education authority is responsible;

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

- (cc) any college of further education within the meaning of Section 36(1) of the Further and Higher Education (Scotland) Act 1992 managed by a board of management established under Part 1 of that Act;
 - (d) a designated institution within the meaning of Part II of the Further and Higher Education (Scotland) Act 1992;
 - (da) any institution within the further education sector within the meaning of section 91(3) of the Further and Higher Education Act 1992;
 - (e) a technology academy within the meaning of section 68(1) of the Self-Governing Schools (Scotland) Act 1989;
 - (f) a public school as defined in Section 135(1) of the Education (Scotland) Act 1980 (“the 1980 Act”);
 - (g) a grant-aided school as defined in section 135(1) of the 1980 Act; (h) a self-governing school within the meaning of section 1(3) of the 1989 Act”.
169. A ‘statutory undertaker’ is defined as having the meaning given by section 98(6) of the 1990 Act – “(a) Any person authorised by any enactment to carry on any railway, light railway, tramway or road transport undertaking; (b) any person authorised by any enactment to carry on any inland navigation, dock, harbour or pier undertaking; or (c) any relevant airport operator (within the meaning of the Part V of the Airports Act 1986).”
170. ‘Road’ is defined by reference to section 151(1) of the Roads (Scotland) Act 1984. Section 151 provides that a road is “any way (other than a waterway) over which there is a public right of passage (by whatever means and whether subject to a toll or not) and includes the road’s verge and any bridge (whether permanent or temporary) over, or tunnel through which, the road passes; and any reference to a road includes a part thereof”.