

PUBLIC HEALTH ETC. (SCOTLAND) ACT 2008

EXPLANATORY NOTES

THE ACT – OVERVIEW

Part 9

Statutory Nuisances

Section 113 Enforcement of statutory nuisances: fixed penalty notice

215. This section makes provision for the issue of fixed penalty notices (“FPN’s”). Subsection (2) inserts new subsection (4A) into section 80 of the 1990 Act. New subsection (4A) provides that where a local authority believes that a person has committed an offence under section 80(4) (failure to comply with any requirement or prohibition imposed by an abatement notice served under section 80(1)), it may give that person a FPN, thereby offering that person the opportunity of discharging liability to conviction for that offence by payment of the fixed penalty.
216. Subsection (3) inserts new section 80ZA into the 1990 Act after section 80. Section 80ZA makes supplemental provision in relation to FPN’s. Subsection (2) of new section 80ZA requires the FPN to set out the circumstances alleged to constitute the offence so as to give reasonable information about the offence. Subsection (3) of new section 80ZA requires the FPN to state the amount of the fixed penalty, the period in which it may be paid, the person to whom and the address at which the payment may be made, the method of payment and the consequences of not paying within the period for payment specified in the FPN. Subsection (4) sets the fixed penalty, in the case of nuisances relating to industrial, trade and business premises at £400, and at £150 for all other cases. Subsection (5) sets the period for payment of the fixed penalty at 14 days after the day on which the FPN is given and subsection (6) enables that period to be extended by the local authority in circumstances in which it considers it appropriate to do so. Subsection (7) prevents proceedings from being taken under section 80(4) before the end of the period for payment of the fixed penalty and subsection (9) provides that where proceedings have commenced for an offence in which a FPN was given, the FPN is to be considered withdrawn. Subsection (10) provides that any sum which is received by a local authority as a result of a FPN offered under section 80(4A) accrues to that authority.
217. Subsection (11) of new section 80ZA enables the Scottish Ministers to provide in regulations (subject to affirmative procedure) for the circumstances in which FPN’s may not be given, the form of a FPN and the method for payment of fixed penalties. It also enables Scottish Ministers to make regulations to modify the amount of fixed penalty (subject to a maximum of £500), to provide for the amount of the fixed penalty to be different in different cases or descriptions of case, to alter the period in which the penalty may be paid, and to provide for the keeping of accounts etc. by local authorities in relation to fixed penalties. Subsection (12) of new section 80ZA provides that Scottish Ministers must consult before making regulations under section 80ZA(11), in so far as it is reasonably practicable to do so. They must consult such associations of local authorities and other persons as they consider appropriate.

*These notes relate to the Public Health etc. (Scotland) Act
2008 (asp 5) which received Royal Assent on 16 July 2008*

218. Subsection (4) amends subsection (3) of section 81 of the 1990 Act to provide that the powers available to a local authority to abate nuisance are available whether or not a FPN has been given.