



# Antisocial Behaviour etc. (Scotland) Act 2004

2004 asp 8

## PART 11

### FIXED PENALTIES

#### *Offences to which this Part applies*

#### 128 Fixed penalty offences

- (1) For the purposes of this Part “fixed penalty offence” means—
- (a) an offence under an enactment mentioned in the first column in Part 1 of the following table and described, in general terms, in the second column in that Part;
  - (b) an offence created in subordinate legislation made under an enactment mentioned in the first column in Part 2 of the table which is of the general description mentioned in the second column in that Part; and
  - (c) a common law offence mentioned in Part 3 of the table.

#### Table

#### PART 1

<i>Enactment</i>	<i>Description of offence</i>
Section 78 of the Licensing (Scotland) Act 1976 (c. 66)	Riotous behaviour while drunk in licensed premises
Section 79 of the Licensing (Scotland) Act 1976 (c. 66)	Refusing to leave licensed premises on being requested to do so
Section 47 of the Civic Government (Scotland) Act 1982 (c. 45)	Urinating or defecating in circumstances causing annoyance to others
Section 50(1) of the Civic Government (Scotland) Act 1982 (c. 45)	Being drunk and incapable in a public place

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*Status: This is the original version (as it was originally enacted).*

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<i>Enactment</i>	<i>Description of offence</i>
Section 50(2) of the Civic Government (Scotland) Act 1982 (c. 45)	Being drunk in a public place in charge of a child
Section 54(1) of the Civic Government (Scotland) Act 1982 (c. 45)	Persisting, to annoyance of others, in playing musical instruments, singing, playing radios etc. on being required to stop
Section 52(1) of the Criminal Law (Consolidation) (Scotland) Act 1995 (c. 39)	Vandalism

PART 2

<i>Enactment</i>	<i>Description of offence</i>
Sections 201 and 203 of the Local Government (Scotland) Act 1973 (c. 65)	Consuming alcoholic liquor in a publicPlace

PART 3

*Common law offence*

Breach of the peace

Malicious mischief

- (2) The Scottish Ministers may by order—
- (a) amend an entry in the table;
  - (b) add an entry to the table;
  - (c) remove an entry from the table.
- (3) An order under subsection (2) may make such amendment of any provision of this Part as the Scottish Ministers consider appropriate in consequence of any amendment of, or addition to or removal from, the table made by the order.

*Fixed penalty notices and penalties*

**129 Fixed penalty notices**

- (1) A constable who has reason to believe that a person aged 16 or over has committed a fixed penalty offence in a prescribed area may give the person a fixed penalty notice in respect of the offence.
- (2) In subsection (1)—
- “fixed penalty notice” means a notice offering the opportunity, by paying a fixed penalty in accordance with this Part, to discharge any liability to be convicted of the offence to which the notice relates; and
- “prescribed area” means an area prescribed by the Scottish Ministers by regulations.

### **130 Amount of fixed penalty and form of fixed penalty notice**

- (1) Subject to subsection (2), the penalty payable in respect of a fixed penalty offence is such amount as the Scottish Ministers may specify by order.
- (2) The Scottish Ministers may not specify an amount exceeding level 2 on the standard scale.
- (3) A fixed penalty notice shall—
  - (a) state the alleged offence;
  - (b) give such particulars of the circumstances alleged to constitute the offence as are necessary to provide reasonable information about it;
  - (c) state the amount of the fixed penalty;
  - (d) state the clerk of the district court to whom, and the address at which, the fixed penalty may be paid;
  - (e) inform the person to whom it is given of the right to ask to be tried for the alleged offence and explain how that right may be exercised; and
  - (f) include such other information as the Scottish Ministers may by order prescribe.

### **131 Effect of fixed penalty notice**

- (1) This section applies if a fixed penalty notice is given to a person (“A”) under section 129.
- (2) Subject to subsection (3), proceedings may not be brought against A.
- (3) If A asks to be tried for the alleged offence, proceedings may be brought against A.
- (4) Such a request shall be made by a notice given by A—
  - (a) in the manner specified in the fixed penalty notice; and
  - (b) before the end of the period of 28 days beginning with the day on which the notice is given.
- (5) If, by the end of the period mentioned in paragraph (b) of subsection (4)—
  - (a) the fixed penalty has not been paid in accordance with this Part; and
  - (b) A has not made a request in accordance with that subsection,then A is liable to pay to the clerk of the district court specified in the fixed penalty notice a sum equal to one and a half times the amount of the fixed penalty.
- (6) A sum for which A is liable by virtue of subsection (5) shall be treated as if it were a fine imposed by the district court specified in the fixed penalty notice.

### **132 Payment of fixed penalty**

- (1) The fixed penalty stated in a fixed penalty notice is payable to the clerk of the district court specified in the notice.
- (2) Payment of the penalty may be made by properly addressing, pre-paying and posting a letter containing the amount of the penalty (in cash or otherwise).
- (3) Subsection (4) applies if a person—
  - (a) claims to have made payment in accordance with subsection (2); and
  - (b) shows that a letter was posted.

- (4) Unless the contrary is proved, payment is to be regarded as being made at the time at which the letter would be delivered in the ordinary course of post.
- (5) Subsection (2) is not to be read as preventing the payment of a penalty by other means.
- (6) Any sum received by the clerk of a district court by virtue of subsection (1) or section 131(5) shall be treated as if it were a fine imposed by that court.
- (7) A letter is properly addressed for the purposes of subsection (2) if it is addressed in accordance with the requirements specified in the fixed penalty notice.

*Revocation of fixed penalty notices*

**133      Revocation of fixed penalty notices**

- (1) If—
  - (a) a fixed penalty notice is given to a person under section 129; and
  - (b) a constable determines that either of the conditions mentioned in subsection (2) is satisfied,the constable may revoke the notice.
- (2) Those conditions are—
  - (a) that the offence to which the fixed penalty notice relates was not committed; and
  - (b) that the notice ought not to have been issued to the person named as the person to whom it was issued.
- (3) Where a fixed penalty notice is revoked—
  - (a) no amount shall be payable by way of fixed penalty in pursuance of that notice; and
  - (b) any amount paid by way of fixed penalty in pursuance of that notice shall be repaid to the person who paid it.

*Interpretation*

**134      Interpretation of Part 11**

In this Part—

- “fixed penalty notice” has the meaning given by section 129(2); and
- “fixed penalty offence” has the meaning given in section 128(1).