



# Antisocial Behaviour etc. (Scotland) Act 2004

2004 asp 8

## PART 6

### THE ENVIRONMENT

#### *Controlled waste and litter*

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

After section 33 of the Environmental Protection Act 1990 (c. 43) (“the 1990 Act”) there shall be inserted—

#### **“33A Fixed penalty notices for contraventions of section 33(1)(a) and (c): Scotland**

- (1) Where—
  - (a) an authorised officer of a local authority has reason to believe that a person has committed a relevant offence in the area of that authority; or
  - (b) a constable, or an authorised officer of a waste regulation authority, has reason to believe that a person has committed a relevant offence,he may give that person a notice under this section in respect of the offence.
- (2) In subsection (1) above, “relevant offence” means an offence under section 33 above in respect of a contravention of subsection (1)(a) or (c) of that section.
- (3) A notice under this section is a notice offering the opportunity, by paying a fixed penalty, of discharging any liability to conviction for the offence to which it relates.
- (4) Where—
  - (a) a constable; or
  - (b) an authorised officer of a waste regulation authority,

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gives a notice under this section to a person, he shall, no later than 24 hours after the giving of the notice, send a copy of it to the local authority in whose area the offence was committed.

- (5) Where a person is given a notice under this section in respect of an offence—
- (a) no proceedings shall be instituted for that offence before the expiration of fourteen days following the date of the notice; and
  - (b) he shall not be convicted of that offence if he pays the fixed penalty before the expiration of that period.

- (6) A notice under this section shall give such particulars of the circumstances alleged to constitute the offence as are necessary for giving reasonable information about the offence and shall state—

- (a) the period during which, by virtue of subsection (5)(a) above, proceedings will not be taken for the offence;
- (b) the amount of the fixed penalty; and
- (c) the person to whom and the address at which the fixed penalty may be paid;

and without prejudice to payment by any other method, payment of the fixed penalty may be made by pre-paying and posting to that person at that address a letter containing the amount of the penalty (in cash or otherwise).

- (7) Where a letter is sent in accordance with subsection (6) above payment shall be regarded as having been made at the time at which that letter would be delivered in the ordinary course of post.

- (8) The form of notices under this section shall be such as the Scottish Ministers may by order prescribe.

- (9) The fixed penalty payable in pursuance of a notice under this section shall, subject to subsection (10) below, be £50.

- (10) The Scottish Ministers may by order substitute a different amount (not exceeding level 2 on the standard scale) for the amount for the time being specified as the amount of the fixed penalty in subsection (9) above.

- (11) In any proceedings a certificate which—

- (a) purports to be signed by or on behalf of the proper officer for the local authority in whose area the offence was committed; and
- (b) states that the payment of a fixed penalty was or was not received by a date specified in the certificate,

shall be evidence of the facts stated.

- (12) A fixed penalty payable in pursuance of a notice under this section shall be payable to the local authority in whose area the offence was committed; and as respects the sums received by a local authority, those sums shall be treated as if the penalty were a fine imposed by a district court.

- (13) In this section—

“authorised officer” means an officer of the authority in question who is authorised in writing by the authority for the purpose of issuing notices under this section;

“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39); and “area”, in relation to a

local authority, means the local government area (within the meaning of that Act) for which the council is constituted;  
“proper officer” means the officer who has, as respects the authority, the responsibility mentioned in section 95 of the Local Government (Scotland) Act 1973 (c. 65) (financial administration).”.

## **56 Litter: power of constables to issue fixed penalty notices**

- (1) Section 88 of the 1990 Act (fixed penalty notices for litter) shall be amended as follows.
- (2) In subsection (1)—
  - (a) the words “on any occasion” and “finds a person who he” shall be repealed;
  - (b) for “has on that occasion” there shall be substituted “that a person has”;
  - (c) the words from “an”, where it first occurs, to “authority”, where it secondly occurs, shall become paragraph (a) of that subsection; and
  - (d) after “authority”, where it secondly occurs, there shall be inserted “; or
    - (b) a constable has reason to believe that a person has committed an offence under that section.”.
- (3) After subsection (1) there shall be inserted—

“(1A) Where a constable gives a notice under this section to a person, he shall, no later than 24 hours after the giving of the notice, send a copy of it to the litter authority in whose area the offence was committed.”.
- (4) After subsection (5) there shall be inserted—

“(5A) A fixed penalty payable in pursuance of a notice under this section shall be payable to the litter authority in whose area the offence was committed.”.
- (5) In subsection (6)—
  - (a) the words “to a litter authority” are repealed; and
  - (b) for “the”, where it thirdly occurs, there shall be substituted “a litter”.
- (6) In subsection (7), after “amount”, where it first occurs, there shall be inserted “(not exceeding level 2 on the standard scale)”.
- (7) In subsection (8)(a)(ii), after “officer” there shall be inserted “for the litter authority in whose area the offence was committed”.

## **57 Directions in respect of duty under section 89 of 1990 Act**

- (1) Sections 89, 91 and 92 of the 1990 Act shall be amended as follows.
- (2) In section 89 (duties to keep land etc. free of litter), after subsection (6) there shall be inserted—

“(6A) The Scottish Ministers may give to any person subject to a duty imposed by subsection (1) or (2) above such directions as they consider necessary or expedient for securing compliance by such person with such duty.

(6B) A person to whom a direction is given under subsection (6A) shall comply with the direction.

- (6C) A direction under subsection (6A) may—
- (a) be given generally or to a specific person;
  - (b) make different provision for different persons and different cases or circumstances;
  - (c) include provision specifying, in relation to any factor by reference to which a person’s discharging of any such duty can be measured, standards to be met by the person.
- (6D) The Scottish Ministers shall—
- (a) cause—
    - (i) any direction under subsection (6A) above; and
    - (ii) any variation or revocation of such a direction, to be published; and
  - (b) cause copies of each such direction, variation or revocation to be made available to the public.”.
- (3) In section 91 (litter abatement orders: applications by aggrieved persons), in subsection (11)—
- (a) after “A”, where it first occurs, there shall be inserted—
    - “(a) direction under section 89(6A); or”;
  - (b) the words “code of practice under section 89(7)” shall become paragraph (b); and
  - (c) after “a”, where it secondly occurs, there shall be inserted “direction or”.
- (4) In section 92 (litter abatement notices: litter authorities), in subsection (8)—
- (a) after “A”, where it first occurs, there shall be inserted—
    - “(a) direction under section 89(6A); or”;
  - (b) the words “code of practice under section 89(7)” shall become paragraph (b); and
  - (c) after “a”, where it secondly occurs, there shall be inserted “direction or”.

### *Graffiti*

## **58 Power of local authority to serve notice about graffiti**

- (1) Where it appears to a local authority that—
- (a) a relevant surface in its area has been defaced by graffiti; and
  - (b) the defacement is—
    - (i) detrimental to the amenity of the locality; or
    - (ii) offensive,
- the authority may serve a graffiti removal notice on any responsible person.
- (2) A graffiti removal notice is a notice requiring the person on whom it is served to remove, clear or otherwise remedy the defacement described in the notice before the expiry of such period as may be specified in the notice (being a period of not less than 28 days beginning with the day on which the notice is served).
- (3) A relevant surface is—
- (a) any surface of—

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- (i) a public road; or
    - (ii) any building, structure, apparatus, plant or other object on such a road;  
or
  - (b) where subsection (4) or (5) applies, any surface of—
    - (i) land owned, occupied or controlled by a relevant body; or
    - (ii) any building, structure, apparatus, plant or other object on such land.
- (4) This subsection applies where the land is public land.
- (5) This subsection applies where—
- (a) the surface is visible from public land; or
  - (b) the surface is not visible from public land but is visible to members of the public from land owned, occupied or controlled by—
    - (i) the relevant body which owns, occupies or controls the land; or
    - (ii) any other relevant body,  
which they are on for the purpose of using that body’s services or facilities.
- (6) For the purposes of this section, a road or land is public if the public are entitled or permitted to have access to it (with or without payment).
- (7) A local authority may at any time withdraw a graffiti removal notice issued by it.
- (8) The withdrawal, under subsection (7), of a graffiti removal notice (the “withdrawn notice”) shall not affect the power of the local authority to issue a further graffiti removal notice in respect of the defacement described in the withdrawn notice.
- (9) In this section—
- “educational institution” has the meaning given by section 98(3) of the 1990 Act and includes the governing body of such an institution;
  - “graffiti” includes painting, writing, soiling, marking or otherwise defacing by whatever means;
  - “relevant body” means—
    - (a) an educational institution; or
    - (b) a statutory undertaker;
  - “responsible person” means, in relation to a surface, a person who owns, leases, occupies, controls, operates or maintains the thing of which it is a surface;
  - “road” has the meaning given by section 151(1) of the Roads (Scotland) Act 1984 (c. 54);
  - “statutory undertaker” has the meaning given by section 98(6) of the 1990 Act; and
  - “surface” includes a surface—
    - (a) on the inside of a thing; or
    - (b) not exposed to the weather.

## **59 Power to modify meaning of “relevant surface”**

- (1) The Scottish Ministers may by order modify—
- (a) paragraph (a) or (b) of subsection (3); or
  - (b) subsection (4), (5) or (6),  
of section 58.

- (2) An order under subsection (1) may make such modifications of subsection (9) of that section as the Scottish Ministers consider appropriate in consequence of any modification made by virtue of subsection (1).

## **60 Graffiti removal notice: content and service**

- (1) A graffiti removal notice shall explain the effects of sections 61, 63 and 64.
- (2) Subject to subsection (3), subsections (2) to (5) of section 160 of the 1990 Act shall apply in relation to the service of a graffiti removal notice as they apply to any notice required or authorised to be served under that Act.
- (3) Where, after reasonable enquiry, a local authority is unable to ascertain the name or proper address of any person upon whom a graffiti removal notice may be served, it may—
- (a) affix the notice to the surface to which it relates; and
  - (b) in so far as is reasonably necessary for that purpose, enter any land.
- (4) In subsection (3), “proper address” shall be read in accordance with section 160(4) and (5) of the 1990 Act.
- (5) Where a graffiti removal notice is affixed in accordance with subsection (3), it shall be treated as having been served on a person on whom it may be served.

## **61 Non-compliance with graffiti removal notice**

- (1) Subsection (2) applies where a person on whom a graffiti removal notice is served (the “responsible person”) does not comply with it.
- (2) The local authority that served the notice or a person authorised by it may—
- (a) remove, clear or otherwise remedy the defacement; and
  - (b) in so far as is reasonably necessary for that purpose, enter any land.
- (3) Where subsection (4) applies, a local authority may recover from the responsible person expenditure reasonably incurred by virtue of subsection (2).
- (4) This subsection applies where the local authority has served on the responsible person a notice setting out—
- (a) the amount of; and
  - (b) details of,
- the expenditure which it proposes to recover.
- (5) Subsections (2) to (5) of section 160 of the 1990 Act shall apply in relation to the service of a notice mentioned in subsection (4) as they apply to notices required or authorised to be served under that Act.

## **62 Guidance to local authorities about graffiti removal functions**

A local authority shall, in discharging its functions under sections 58, 60 and 61, have regard to any guidance about those sections given by the Scottish Ministers.

### **63 Appeal against graffiti removal notice**

- (1) On the application of a person on whom a graffiti removal notice is served, the sheriff may—
  - (a) if satisfied that—
    - (i) the surface to which the notice relates was not, at the time the notice was served, defaced as described in it;
    - (ii) the defacement described in the notice is neither detrimental to the amenity of the locality nor offensive; or
    - (iii) the applicant was not, at the time the notice was served, a responsible person as respects the surface to which the notice relates,make an order revoking the notice; or
  - (b) if satisfied that there is a material defect in, or in connection with, the notice, make an order revoking or (if appropriate) amending the notice.
- (2) In subsection (1)(a)(iii), “responsible person” has the same meaning as in section 58.
- (3) Where a sheriff—
  - (a) makes an order under paragraph (b) of subsection (1) amending a graffiti removal notice; or
  - (b) makes an order refusing an application such as is mentioned in that subsection, the sheriff may extend (for such period as may be specified in the order) the period specified in the notice.
- (4) An application such as is mentioned in subsection (1) shall be made before the expiry of the period of 21 days beginning with the day on which the graffiti removal notice to which it relates was served.
- (5) Where an application such as is mentioned in subsection (1) is made, the graffiti removal notice to which it relates shall be of no effect pending the—
  - (a) determination; or
  - (b) withdrawal,of the application.

### **64 Appeal against notice under section 61(4)**

- (1) On the application of a person on whom a notice under section 61(4) is served, the sheriff may, if satisfied that the expenditure which the authority is proposing to recover is excessive, make an order substituting for that amount a lower one.
- (2) An application such as is mentioned in subsection (1) shall be made within the period of 21 days beginning with the day on which the notice to which it relates was served.

### **65 Graffiti removal notice: exemptions from liability**

- (1) Subject to subsection (3), a relevant person shall have no liability whatsoever (whether at common law or otherwise) to any responsible person in respect of anything done or omitted to be done in the exercise or purported exercise of the power conferred by section 60(3) or 61(2).
- (2) In subsection (1), “relevant person” means—
  - (a) in the case of the power conferred by section 60(3)—

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- (i) the local authority; and
  - (ii) any employee of the authority;
- (b) in the case of the power conferred by section 61(2)—
  - (i) the local authority;
  - (ii) any employee of the authority;
  - (iii) any person authorised by the authority under that section; and
  - (iv) any employer or employee of a person so authorised.
- (3) Subsection (1) does not apply—
  - (a) if the act or omission is shown to have been in bad faith; or
  - (b) in respect of a liability arising out of a failure to exercise due care and attention.
- (4) In this section, “responsible person” has the same meaning as in section 58.
- (5) This section is without prejudice to any other exemption from liability (whether at common law or otherwise).

#### *Penalties for environmental offences*

### **66 Increase in penalties for certain environmental offences**

Schedule 2 (which contains amendments relating to penalties for certain environmental offences) shall have effect.

#### *Interpretation*

### **67 Interpretation of Part 6**

In this Part, “the 1990 Act” means the Environmental Protection Act 1990 (c. 43).