

# **ANTISOCIAL BEHAVIOUR ETC. (SCOTLAND) ACT 2004**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 5 –Noise Nuisance**

##### ***Sections 46 - Fixed penalty notices***

116. **Section 46** make provision for the issue of fixed penalty notices (“FPNs”).
117. Subsection (1) provides that where a relevant officer has reason to believe that a person is committing or has just committed an offence under section 45, the relevant officer may serve on that person a FPN, thereby offering that person the opportunity of discharging any liability to conviction for that offence by paying a fixed penalty. Subsection (2) defines “relevant officer” as an authorised officer of a local authority or a constable.
118. Subsection (3) provides that only one FPN may be issued to a person in respect of noise emitted from a property during the period specified in the warning notice.
119. Subsections (4) and (5) allow a FPN to be given to a person by delivering the FPN to that person. If it is not reasonably practicable to deliver the FPN to the person, the FPN may be addressed to the person, and left at the offending property.
120. Subsection (6) requires a FPN to set out the circumstances alleged to constitute the offence as are necessary to give reasonable information about the offence.
121. Subsection (7) requires the FPN to state:
- the period during which proceedings will not be taken for the offence. In accordance with section 51(2)(a) this must be a period of at least 28 days beginning with the date on which the FPN is served;
  - the amount of the fixed penalty, and
  - the person to whom and the address at which the penalty must be paid.
122. Subsection (8) makes provision for the methods of paying the fixed penalty. These include by means of pre-paying in cash (or otherwise), and posting to the person and the address specified in the notice.
123. Subsection (9) provides that if payment is made by the method specified in subsection (8), payment is to be deemed to have been made at the time when the payment would be delivered in the ordinary course of post.
124. Subsection (10) sets the fixed penalty at £100.
125. Subsection (11) provides that the FPN be payable to the local authority whose officer issued the warning notice and resulting FPN.