



# Public Health etc. (Scotland) Act 2008

## 2008 asp 5

### PART 9 **S**

#### STATUTORY NUISANCES

#### 113 Enforcement of statutory nuisances: fixed penalty notice **S**

- (1) The 1990 Act is further amended as follows.
- (2) In section 80 (summary proceedings for statutory nuisances), after subsection (4), insert—

“(4A) Where a local authority have reason to believe that a person has committed an offence under subsection (4) above, the local authority may give that person a notice (a “fixed penalty notice”) in accordance with section 80ZA offering the person the opportunity of discharging any liability to conviction for that offence by payment of a fixed penalty.”.
- (3) After that section, insert—

#### “80ZA Fixed penalty notice: supplemental

- (1) This section applies to a fixed penalty notice given under section 80(4A).
- (2) A fixed penalty notice must give reasonable particulars of the circumstances alleged to constitute the offence.
- (3) A fixed penalty notice must also state—
  - (a) the amount of the fixed penalty;
  - (b) the period within which it may be paid;
  - (c) the—
    - (i) person to whom; and
    - (ii) address at which,payment may be made;
  - (d) the method or methods by which payment may be made;
  - (e) the consequences of not making a payment within the period for payment.

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*Changes to legislation: There are currently no known outstanding effects for the Public Health etc. (Scotland) Act 2008, Section 113. (See end of Document for details)*

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- (4) The amount of the fixed penalty under section 80(4A) is—
  - (a) in the case of a nuisance relating to industrial, trade or business premises, £400;
  - (b) in any other case, £150.
- (5) The period for payment of the fixed penalty is 14 days beginning with the day after the day on which the notice is given.
- (6) The local authority may extend the period for paying the fixed penalty in any particular case if they consider it appropriate to do so by sending notice to the person to whom the fixed penalty notice was given.
- (7) No proceedings for an offence under section 80(4) may be commenced before the end of the period for payment of the fixed penalty.
- (8) In proceedings for an offence under section 80(4), a certificate which—
  - (a) purports to be signed by or on behalf of a person having responsibility for the financial affairs of the local authority; and
  - (b) states that payment of the amount specified in the fixed penalty notice was or was not received by the expiry of the period within which that fixed penalty may be paid,is sufficient evidence of the facts stated.
- (9) Where proceedings for an offence in respect of which a fixed penalty notice has been given are commenced, the notice is to be treated as withdrawn.
- (10) Any sum received by a local authority under section 80(4A) accrues to that authority.
- (11) The Scottish Ministers may, by regulations—
  - (a) provide that fixed penalty notices may not be given in such circumstances as may be prescribed;
  - (b) provide for the form of a fixed penalty notice;
  - (c) provide for the method or methods by which fixed penalties may be paid;
  - (d) modify subsection (4)(a) or (b) above so as to substitute a different amount (not exceeding level 2 on the standard scale) for the amount for the time being specified there;
  - (e) provide for the amount of the fixed penalty to be different in different cases or descriptions of case;
  - (f) modify subsection (5) above so as to substitute a different period for the period for the time being specified there;
  - (g) provide for the keeping of accounts, and the preparation and publication of statements of account relating to fixed penalties under section 80(4A).
- (12) Before making regulations under subsection (11) above, the Scottish Ministers must consult, in so far as it is reasonably practicable to do so, the persons mentioned in subsection (13) below.
- (13) Those persons are—
  - (a) such associations of local authorities; and
  - (b) such other persons,

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**Changes to legislation:** There are currently no known outstanding effects for the Public Health etc. (Scotland) Act 2008, Section 113. (See end of Document for details)

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as the Scottish Ministers consider appropriate.”.

(4) In section 81 (supplementary provisions), for subsection (3), substitute—

“(3) Where an abatement notice has not been complied with, the local authority may, whether or not—

- (a) proceedings have been taken for an offence under section 80(4); or
- (b) a fixed penalty notice has been given under section 80(4A) in respect of that offence (regardless of whether the fixed penalty notice is accepted),

abate the nuisance and do whatever may be necessary in execution of the abatement notice.”.

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**Commencement Information**

**II** S. 113 in force at 26.1.2009 by S.S.I. 2009/9, art. 2(a), Sch. 1

**Changes to legislation:**

There are currently no known outstanding effects for the Public Health etc. (Scotland) Act 2008, Section 113.