

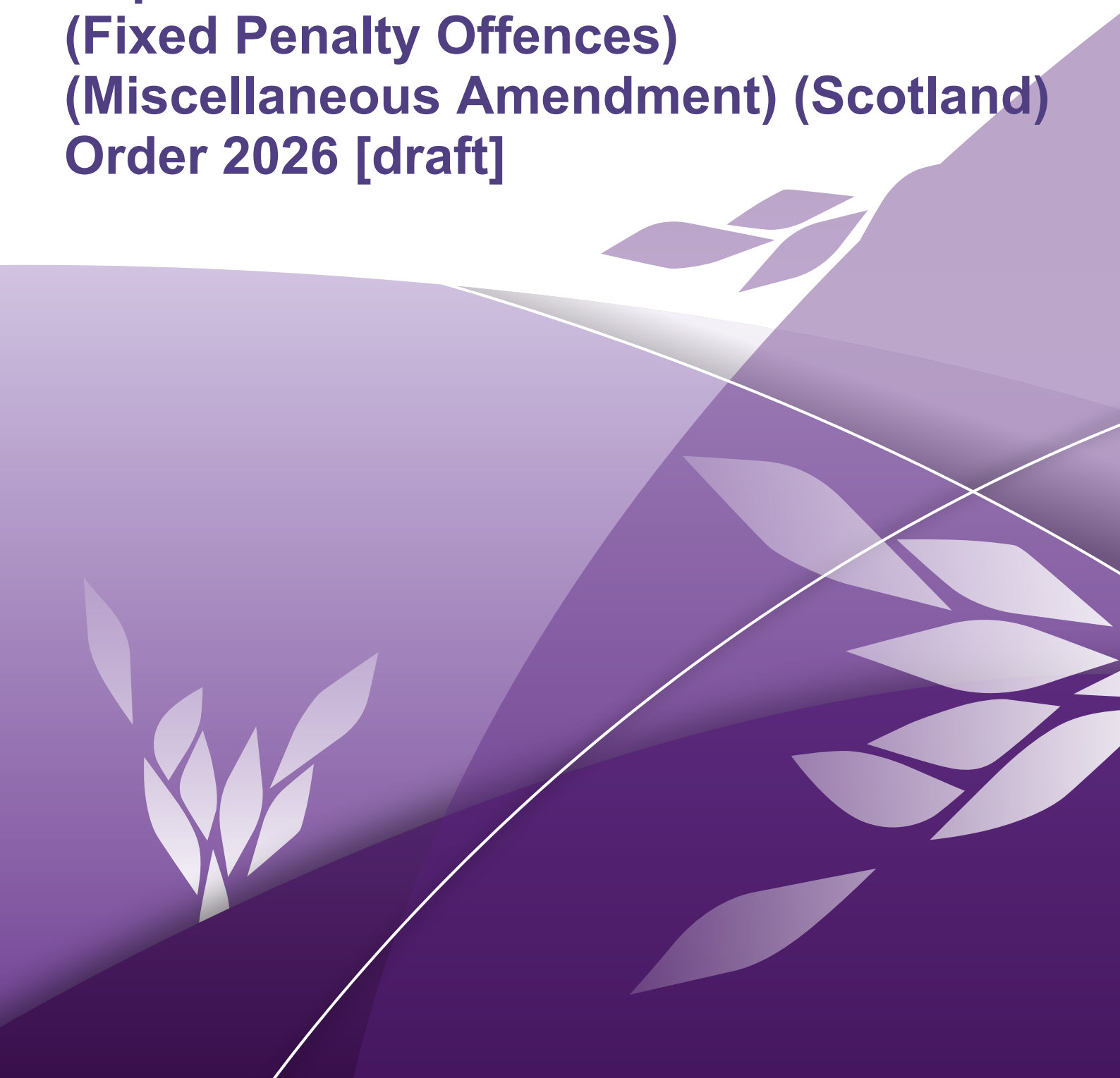


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Criminal Justice Committee

Report on the Antisocial Behaviour (Fixed Penalty Offences) (Miscellaneous Amendment) (Scotland) Order 2026 [draft]



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Criminal Justice Committee

To consider and report on matters relating to criminal justice falling within the responsibility of the Cabinet Secretary for Justice and Home Affairs, and functions of the Lord Advocate other than as head of the systems of criminal prosecution and investigation of deaths in Scotland.

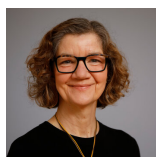


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Introduction

1. At its meeting on 18 February 2026, the Criminal Justice Committee considered the following affirmative instrument:
 - [The Antisocial Behaviour \(Fixed Penalty Offences\) \(Miscellaneous Amendment\) \(Scotland\) Order 2026 \[draft\]](#)

The Antisocial Behaviour (Fixed Penalty Offences) (Miscellaneous Amendment) (Scotland) Order 2026 [draft]

2. The Antisocial Behaviour (Fixed Penalty Offences) (Miscellaneous Amendment) (Scotland) Order 2026 [draft] were laid before the Scottish Parliament on 16 January 2026 and referred to the Criminal Justice Committee.
3. The Order makes amendments which apply in relation to fixed penalty notices under section 129 of the Antisocial Behaviour etc. (Scotland) Act 2004 (“the 2004 Act”).
4. The instrument amends the penalty level for antisocial behaviour fixed penalty notices and amends the list of offences for which these can be issued.
5. Article 2(2)(a) and (b) amends the list of offences in section 128(1) of the 2004 Act to remove the entries for two offences: disorderly conduct while drunk in licensed premises; and being drunk in a public place in charge of a child. This means that it will no longer be possible for a constable to issue a fixed penalty notice for such offences.
6. Article 2(2)(c) adds the offence of threatening or abusive behaviour to section 128(1) of the 2004 Act. This means that it will now be possible for a constable to issue a fixed penalty notice for such an offence.
7. Article 3 amends article 2 of the Antisocial Behaviour (Amount of Fixed Penalty) (Scotland) Order 2005 to increase the level of fine which can be imposed by a fixed penalty notice from £40 to £70.
8. Article 4 provides that the changes being made by articles 2 and 3 do not apply in respect of offences committed before 26 March 2026.

Consideration by the Delegated Powers and Law Reform Committee

9. The Delegated Powers and Law Reform (DPLR) Committee considered the instrument on 27 January 2026 and reported on it in its [12th report, 2026](#). The DPLR Committee made no recommendations in relation to the instrument.

Consideration by the Criminal Justice Committee

10. Motion S6M-20475 was lodged proposing that the Committee recommends approval of the instrument. The Committee took oral evidence from Siobhian Brown MSP, Minister for Victims and Community Safety ("the Minister") and Scottish Government officials at its meeting on 18 February 2026.
11. During the evidence session, the Minister outlined the purpose of the Order to the Committee.
12. Members questioned the Minister around the potential for overlap with the addition of a section 38 offence to the FPN regime, when the common law offence of breach of the peace is already part of the regime. In response, Nicola Guild, Legal Directorate, Scottish Government told the Committee that while an element of overlap already exists, the disposal does not change the fact that they are two separate offences and that it would be up to Police Scotland to determine, when issuing a FPN, whether the behaviour constituted a section 38 or breach of the peace offence.
13. Members also questioned the Minister on the increase in the level of fine which can be imposed by a FPN (from £40 to £70). In response, the Minister told the Committee that the legislation hasn't been updated in over 20 years and the amount is therefore being increased in line with inflation. She also advised that the collection of FPNs is a matter for the Scottish Courts and Tribunals Service and that enforcement action can be taken against those who do not pay the fine.
14. In response to questions regarding the two offences that are being removed from the FPN regime, Robert Wyllie, Policy Lead, Safer Communities, Scottish Government told the Committee that neither of these offences have been used for FPNs in the last two years. He also advised that the FPN regime can be kept under review and that offences could be added back into it in future, if requested by Police Scotland.
15. The Minister agreed to write to the Committee to provide additional information on the numbers of FPNs that are not repaid at present, and what type of offences these unpaid FPNs relate to. She also agreed to provide further information on the number of people who have been charged with the two offences that will no longer be part of the FPN regime and on the progress to date of wider discussions on a possible future review of the FPN system.
16. Following the evidence session, the Minister moved the motion:
 - S6M-20475 —That the Criminal Justice Committee recommends that the Antisocial Behaviour (Fixed Penalty Offences) (Miscellaneous Amendment) (Scotland) Order 2026 [draft] be approved.
17. The motion was agreed to after a short debate.

18. **The Criminal Justice Committee recommends to the Scottish Parliament that it approve the Antisocial Behaviour (Fixed Penalty Offences) (Miscellaneous Amendment) (Scotland) Order 2026 [draft].**

