

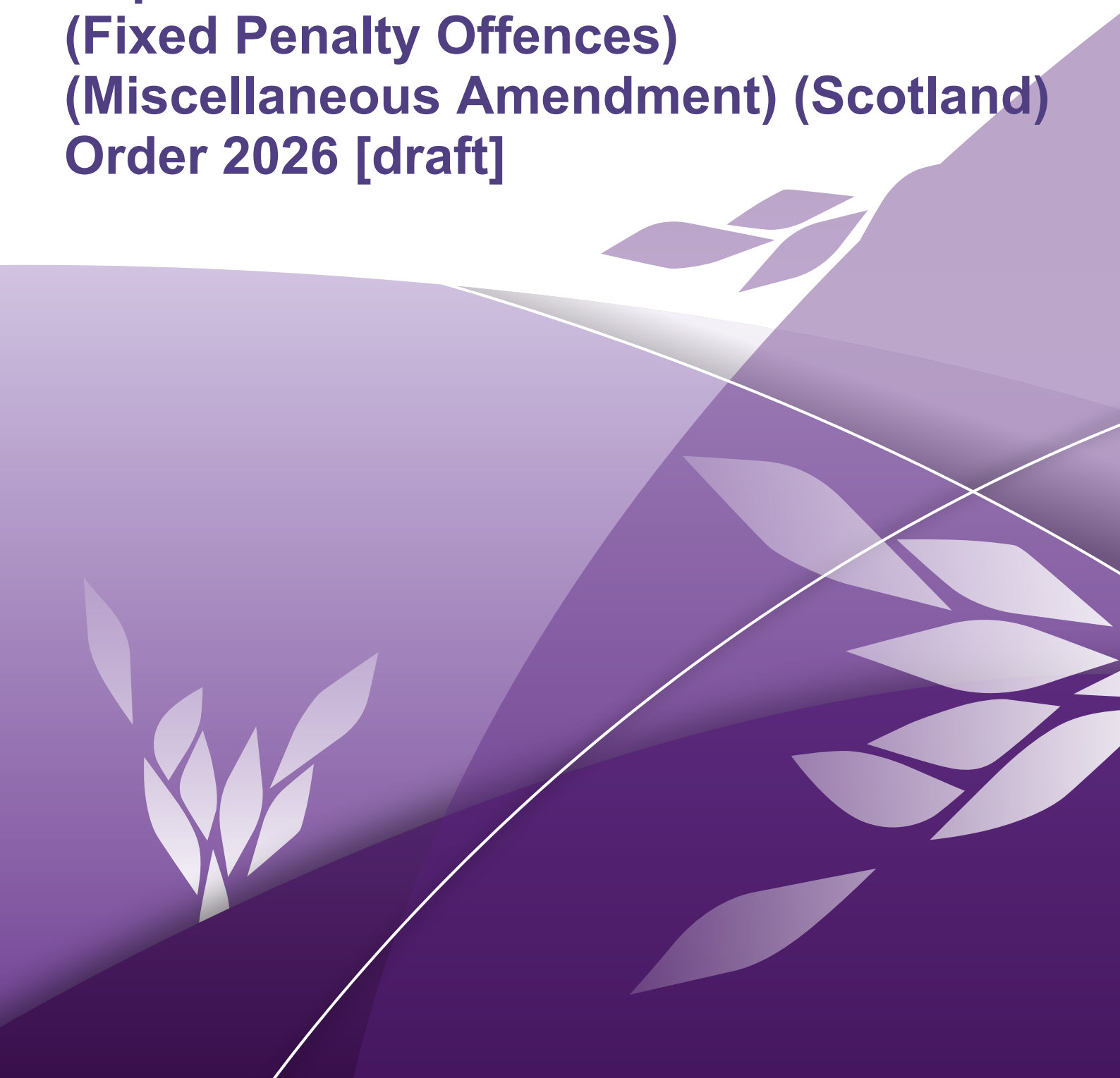


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Criminal Justice Committee

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.

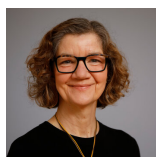


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Introduction

1. At its meeting on 18 March 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. A revised Antisocial Behaviour (Fixed Penalty Offences) (Miscellaneous Amendment) (Scotland) Order 2026 [draft] was laid before the Scottish Parliament on 25 February 2026 and referred to the Criminal Justice Committee.
3. The Committee considered and approved the original draft instrument at its [meeting of 18 February 2026](#). However, following the session, the Scottish Government identified an error in its understanding of the recent usage data relating to one of the offences proposed for removal from the Antisocial Behaviour Fixed Penalty Notice (ASB FPN) regime.
4. The Minister for Victims and Community Safety wrote to the Committee on 26 February 2026 to advise that the draft instrument would therefore be withdrawn and a revised SSI laid. A copy of the Minister's letter can be found in Annexe A.
5. The Minister also wrote to the Committee on 11 March 2026 with information on the numbers of ASB FPNs which have gone unpaid by offence. A copy of the letter is included in Annexe B.
6. 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").
7. The instrument amends the penalty level for antisocial behaviour fixed penalty notices and amends the list of offences for which these can be issued.
8. Article 2 adds the offence of threatening or abusive behaviour to the list of offences in 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.
9. 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
10. 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

11. The DPLR Committee considered the re-laid draft instrument on [10 March 2026](#) and reported on it in its [27th report, 2026](#). The DPLR Committee made no recommendations in relation to the instrument.

Consideration by the Criminal Justice Committee

12. 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 March 2026.
13. During the evidence session, the Minister explained to the Committee why the original draft Order was withdrawn and apologised for the error made in relation to the Scottish Government's understanding of usage data for one of the offences initially proposed for removal from the ASB FPN regime. The Minister also set out the resulting changes that have been made to the re-laid Order.
14. In response to questions on how the error occurred, the Minister told the Committee that FPNs issued relating to the offence of disorderly conduct while drunk in licensed premises had been recorded under the category of "refusing to leave licensed premises" rather than the equivalent offence of "riotous behaviour in licensed premises." She also indicated that safeguards have now been put in place, including the strengthening of verification and cross-checking processes, to ensure such a mistake does not occur again. The Minister agreed to write to the Committee with further information on the steps being taken.
15. In addition, Robert Wyllie, Policy Lead, Safer Communities, Scottish Government told the Committee that work is being undertaken to ensure the broader work that will take place on changing the ASB FPN regime has analytical input from the beginning. He also indicated there are no further plans to remove any offences from the regime going forward.
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.

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].**

Annexe A: correspondence from the Minister for Victims and Community Safety

26 February 2026

Dear Audrey,

I am writing to provide an update after the evidence session on 18 February regarding the draft Antisocial Behaviour (Fixed Penalty Offences) (Miscellaneous Amendment) (Scotland) Order 2026. During follow-up work after the session, we identified an error in our understanding of the recent usage data relating to one of the offences proposed for removal from the ASB Fixed Penalty Notice regime. In Committee, we indicated that no ASB FPNs were issued for the offence of disorderly conduct while drunk in licensed premises under section 105 of the Licensing (Scotland) Act 2005 in the most recent reporting year or the preceding year.

I am sorry to inform you that this information was inaccurate and I apologise to committee for this. On further review, we established that 43 ASB FPNs were issued in the last reporting year for this offence. These were recorded within the published statistics under the category of “refusing to leave licensed premises” - and this categorisation issue also affected earlier years. The correct figures for number of ASB FPNs issued in the past ten years for the two offences originally proposed for removal are as follows:

Offence	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23	2023-24
Drunk in charge of a child	10	3	4	1	1	.	1	1	.	.
Riotous behaviour, etc. in licensed premises	279	208	149	133	104	69	14	39	43	43
Total	289	211	153	134	105	69	15	40	43	43

Note: Riotous behaviour, etc. in licensed premises refers to charges under Licensing (Scotland) Act 1976 Section 78(1) or Licensing (Scotland) Act 2005 Section 115(1). Drunk in charge of a child means Civic Government (Scotland) Act 1982 Section 50(2)

I recognise that the Committee considered and agreed the instrument on the basis of the information provided at the time. I therefore want to apologise for the error, correct the record promptly and set out clearly how I intend to proceed taking into account the questions and concerns raised by Committee members about removing offences from the ASB FPN regime at this time.

I have therefore decided to pause the proposed removal of these offences from the ASB FPN regime so the position can be reviewed more fully as part of the wider work on antisocial behaviour. This means I will withdraw the instrument approved last week and re-lay a revised SSI on an expedited timetable to meet the same coming into force date, subject to the Parliament’s agreement. The revised instrument will therefore be restricted to:

- Increasing the FPN level to £70; and
- Bringing section 38 into the ASB FPN regime.

This approach allows us to make progress on the elements of the reform which the Committee did not raise significant concerns about, while giving appropriate space for a fuller, balanced consideration of offence removal as part of the wider review. My decision also seeks to reflect the constructive concerns raised by members.

I regret that this issue was not identified sooner and can confirm that we are reviewing our processes to ensure this does not happen again.

In the annex I have provided responses to the Committee’s outstanding questions so that these can be considered together with the updated position.

I am grateful to the Committee for its scrutiny and constructive engagement throughout.

Yours sincerely,

SIOBHIAN BROWN

Annex

RESPONSE TO QUESTIONS IN EVIDENCE SESSION

Breakdown of unpaid Antisocial Behaviour Fixed Penalty Notices (ASB FPNs)

It is the responsibility of the Scottish Courts and Tribunals Service (SCTS) to collect money due under ASB Fixed Penalty Notices. When an ASB FPN is unpaid and uncontested, SCTS has the same powers to enforce the penalty as it does for fines imposed directly by a court. SCTS is in the process of ascertaining the specific numbers relating to unpaid FPNs, together with a breakdown of the categories of offences to which these unpaid notices relate.

Further information on the number of people prosecuted in courts for the two offences proposed to be removed

The number of people prosecuted in Scottish courts for a main charge involving these offences are as follows:

Offence	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23	2023-24
Drunk in charge of a child	15	15	13	16	6	9	3	2	2	8
Riotous behaviour, etc. in licensed premises	30	22	4	5	2	5	.	1	.	1
Total	45	37	17	21	8	14	3	3	2	9

Note: Riotous behaviour, etc. in licensed premises refers to charges under Licensing (Scotland) Act 1976 Section 78(1) or Licensing (Scotland) Act 2005 Section 115(1). Drunk in charge of a child means Civic Government (Scotland) Act 1982 Section 50(2)

Progress to date on a potential future review of the ASB FPN system in Scotland

As was mentioned during the evidence session, some review work has already taken place. This will draw on relevant findings, including those of the Sentencing and Penal Policy Commission, which recommended consideration of higher tiers of ASB FPNs and an assessment of whether additional statutory offences may be suitable for police direct measures. The Rail Enforcement Powers Working Group has also undertaken related work, including recommending the expansion of FPNs to a wider range of offences. Together, these strands provide a strong foundation for further policy development.

My officials intend to convene specific discussions on taking this work forward at an early point, once work on this SSI has concluded. This will involve Police Scotland, COPFS, British Transport Police, the Scottish Courts and Tribunals Service, and analytical support from the Scottish Government. As I outlined, any broader reforms may also benefit from wider consultation. This builds on the review of antisocial behaviour legislation and guidance that I committed to in my 16 December letter to the Committee, setting out the Government's response to the Independent Working Group on Antisocial Behaviour.

Threatening and abusive behaviour in licensed premises

As the Committee noted, the SSI would remove the offence of “disorderly conduct while drunk in licensed premises and other relevant premises” from the list of offences for which the police can issue ASB FPNs. This would not, however, prevent the police from issuing an ASB FPN for an offence under section 38(1) (threatening or abusive behaviour) which takes place in licensed premises, providing the behaviour meets the threshold for such an offence.

Annexe B: correspondence from the Minister for Victims and Community Safety

11 March 2026

Dear Audrey,

I am writing to provide an update regarding the draft Antisocial Behaviour (Fixed Penalty Offences) (Miscellaneous Amendment) (Scotland) Order 2026.

During my last evidence session at the Committee on this topic, questions were asked about the number of unpaid Antisocial Behaviour Fixed Penalty Notices. Collection of moneys due from ASB FPNs is for the Scottish Courts and Tribunals Service, which is operationally independent. In the **Annex**, I have included a table from SCTS which sets out the numbers of ASB FPNs which have gone unpaid by offence.

I am grateful to the Committee for the constructive engagement throughout this process and look forward to my upcoming appearance at the Committee.

Yours sincerely,

SIOBHIAN BROWN

Charge Code	Charge Description	Financial Year			Total
		2021/ 22	2022/ 23	2023/ 24	
0BOP000000000000	Breach of the Peace	362	383	398	1143
HEPR202008010000	HEPR 2020 R8(1) Fail comply Coronavirus Regs	501	0	0	501
LGOV197302010099	Local Gov (S) 1973 S201,202&203 Consume alcohol public local	268	285	305	858
CGOV198200470000	Civic Gov 1982 S47 Urinate / defecate	63	86	75	224
CLAW199500520100	Crim Law Consolid 1995 S52(1)&(3) Vandalism	9	17	14	40
CGOV198200500100	Civic Gov 1982 S50(1) Drunk & incapable	12	13	17	42
LICE200501160100	Licensing (S) Act 2005 S116(1) Refusal to leave premises	2	9	15	26
CGOV198200540101	Civic Gov 1982 S54(1)(C) Operate radio to annoyance	4	10	8	22
LICE197600781A00	Licensing (S) 1976 S78(1)(A) Behave riotous disord manner	1	6	12	19
LICE197600791B00	Licensing (S) 1976 S79(1)(B) Refuse leave after hours	6	4	0	10
CGOV198200540102	Civic Gov 1982 S54(1)(B) Sing or perform	2	1	0	3
LICE197600790100	Licensing (S) 1976 S79(1) Rlioutous disord beh ref to leave	2	2	0	4
HEPR202000050200	HEPR 2020 R5(2) Provide false misleading passenger info	2	0	0	2
CGOV198200540103	Civic Gov 1982 S54(1)(A) Sound musical instrument	1	1	0	2
HEPR202000090300	HEPR 2020 R9(3) Provide false or misleading information	2	0	0	2
HEPR202008030000	HEPR 2020 R8(3) Contravene direct instruct	1	0	0	1
HEPR202000050100	HEPR 2020 R5(1) Fail to provide passenger info	1	0	0	1
HEPR202000090200	HEPR 2020 R9(2) Contravene a requirement	1	0	0	1
0ZZZ000000000000	Non Scottish charge – for use by SCS and SPS only	1	0	0	1
LICE197600791A00	Licensing (S) 1976 S79(1)(A) Refuse leave quarrelsome	1	0	0	1
	TOTAL	1242	817	844	2903

Table: Unpaid Police Antisocial Behaviour Penalties Issued Between 1st April 2022 to 31st March 2024 Split by Charge and Financial Year

Notes (as provided by SCTS)

The Scottish Courts and Tribunals Service uses a live operational case management system for the processing of court business. The information held on the system is structured for these operational needs, rather than for statistical reporting or research purposes. The information provided is based on the best information available from the case management system as at 23/02/2026.

The information provided by the SCTS is for internal use only (by the Scottish Government and Criminal Justice Committee), and is not to be shared or published without contacting the Management Information and Analysis Team in SCTS.

The data is only available for FPNs due to the one-to-one relationship between FPNs and charges, i.e. it is not possible to do similar reporting with Court Fines.

The ‘20% unpaid’ figures were taken from a report as at April 2025. This data set is as at February 2026 so will not include those fines paid between April 2025 and February 2026.

They would also point out that the data provided includes fixed penalties (charge codes starting HEPR) issued as a consequence of [Coronavirus Regulations](#). They have included these on the data as they account for some of the 20% and they did not want to cause

confusion. These fines use the same functionality as the ASB FPNs and, as such, are included in the fixed penalty reporting for these fine types. Further background on these fines can be found [here](#).

