

Criminal Justice Committee  
Wednesday 18 February 2026  
7th Meeting, 2026 (Session 6)

## **Note by the Clerk on the Antisocial Behaviour (Fixed Penalty Offences) (Miscellaneous Amendment) (Scotland) Order 2026 [draft]**

### **Overview**

1. At this meeting, the Committee will take evidence from the Minister for Victims and Community Safety and officials on the Antisocial Behaviour (Fixed Penalty Offences) (Miscellaneous Amendment) (Scotland) Order 2026 [draft] before debating a motion inviting the Committee to recommend approval of the instrument.
2. This is a draft Scottish Statutory Instrument (SSI), which requires approval by resolution of the Parliament before it can become law. More information about the instrument is summarised below:

**Title of instrument:** [The Antisocial Behaviour \(Fixed Penalty Offences\) \(Miscellaneous Amendment\) \(Scotland\) Order 2026](#)

**Laid under:** sections 128(2)(b) and (c), 130(1) and 141(2)(b) of the [Antisocial Behaviour etc. \(Scotland\) Act 2004](#)

**Laid on:** 16 January 2026

**Procedure:** Affirmative

**Lead committee to report by:** 24 February 2026

**Commencement:** 26 March 2026

### **Procedure**

3. Under the affirmative procedure, an instrument must be laid in draft and cannot be made (or come into force) unless it is approved by resolution of the Parliament.
4. Once laid, the instrument is referred to:
  - the Delegated Powers and Law Reform (DPLR) Committee, for scrutiny on various technical grounds, and
  - a lead committee, whose remit includes the subject-matter of the instrument, for scrutiny on policy grounds.

5. The lead committee, taking account of any recommendations made by the DPLR Committee (or any other committee), must report within 40 days of the instrument being laid.
6. The normal practice is to have two agenda items when an affirmative instrument is considered by the lead committee:
  - an evidence session with the Minister and officials, followed by
  - a formal debate on a motion, lodged by the Minister, inviting the lead committee to recommend approval of the instrument.
7. Only MSPs may participate in the debate, which may not last for more than 90 minutes. If there is a division on the motion, only committee members may vote. If the motion is agreed to, it is for the Chamber to decide, at a later date, whether to approve the instrument

## **Delegated Powers and Law Reform Committee consideration**

8. The DPLR Committee considered the instrument on 27 January 2026 and reported on it in its [12<sup>th</sup> report, 2026](#). The DPLR Committee made no recommendations in relation to the instrument.

## **Purpose of the instrument**

9. 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”).
10. **The instrument amends the penalty level for antisocial behaviour fixed penalty notices and amends the list of offences for which these can be issued.**
11. 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.
12. 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.
13. 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.
14. 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.

15. The Policy Note accompanying the instrument is included in **Annexe A**. It includes a summary of consultation undertaken on the instrument and the anticipated financial effects. The following impact assessments have been carried out:

- [Child Rights and Wellbeing Impact Assessment](#)
- [Equality Impact Assessment](#)
- [Fairer Scotland Duty Impact Assessment](#)

16. A short briefing note from the clerks on the instrument can be found in **Annexe B**.

## Report

17. Following today's proceedings, a draft report will be prepared by the clerks.

18. **The Committee is invited to delegate to the Convener and clerks responsibility for drafting a report and finalising it for publication.**

**Clerks to the Committee**  
**February 2026**

## Annexe A: Scottish Government Policy Note

### The Antisocial Behaviour (Fixed Penalty Offences) (Miscellaneous Amendment) (Scotland) Order 2026

#### SSI 2026/XXX

The above instrument was made in exercise of the powers conferred by section 62(1) of the Management of Offenders (Scotland) Act 2019 and section 7(1) of the Prisoners (Early Release) (Scotland) Act 2025. The instrument is subject to affirmative procedure.

#### Summary Box

This instrument amends the penalty level for antisocial behaviour fixed penalty notices (ASB FPNs) and amends the list of offences for which a ASB FPN can be issued.

#### Policy Objectives

This instrument seeks to update the ASB FPN regime in several respects to maintain its relevance and utility pending a wider review, discussed below.

The legislation on ASB FPNs operates in a context where provisions are in place to ensure ASB FPNs are only used where appropriate. This includes:.

- **Lord Advocate's Guidelines, most recently updated in 2024.** These set out clear principles on the use of ASB FPNs for adults. They emphasise that ASB FPNs are discretionary and may only be used where proportionate. In particular, they must not be used for some kinds of offences such as domestic abuse. The Guidelines also state that, for example, repeat offending due to an offender's identified needs may lead to the conclusion that an ASB FPN is not appropriate. In these circumstances, consideration should be given to reporting the case to the Procurator Fiscal so that diversion from prosecution may be considered to address the underlying causes of offending.
- **A distinct, protective framework for children and young people.** Behaviour by 16- and 17-year-olds can now be dealt with through Early and Effective Intervention where appropriate. Police Scotland also operates a dedicated Offending by Children SOP, recognising all under-18s as children and setting out clear procedures for investigation, referral and reporting in line with UNCRC principles.

It is also important to note that issuing an ASB FPN does not preclude other action to address antisocial behaviour. Where behaviour forms part of a wider pattern of concern, police and local authorities may still pursue additional measures, including legal interventions such as Antisocial Behaviour Orders. Section 1(3)(f) of the 2004 Act requires local antisocial behaviour strategies to set out information-sharing

arrangements, enabling Police Scotland to disclose the issue of an ASB FPN to partner agencies where necessary and proportionate.

In this context, the instrument makes the following amendments to the ASB FPN regime:

- **Updating the eligible offence list to include acting in a threatening or abusive manner under section 38 of the Criminal Justice and Licensing (Scotland) Act 2010.** Including section 38 within the ASB FPN scheme therefore better reflects current operational realities and ensures the framework remains fit for purpose. For example, while some behaviour captured by section 38 may overlap with the common law offence of breach of the peace, which is already part of the ASB FPN regime, it also applies to behaviour occurring in private or which does not meet the threshold of serious community disturbance.
- **At the same time, two unused offences - being drunk in charge of a child and riotous behaviour while drunk on licensed premises - are being removed.** This ensures that the scheme remains focused, up to date, and aligned with the pattern of cases encountered in practice.
- **In addition, Ministers have judged that it is appropriate that the ASB FPN penalty level should be uplifted.** It has remained unchanged since the scheme was introduced twenty years ago, and without revalorisation it no longer provides the proportionate deterrent originally envisaged by Parliament. The penalty level will increase from £40 to £70 in line with inflation since ASB FPNs were introduced, as measured by the GDP deflator. This adjustment reflects precedents in other areas such as dog-fouling which are substantially higher than the current level. Practice elsewhere in the UK, such as the system of Penalty Notices for Disorder used in England and Wales, has also been considered.

Any wider reforms - such as broader use of ASB FPNs or further changes to penalty level - will be considered separately as part of the ongoing review of antisocial behaviour legislation, being taken forward by the Scottish Government in response to the Independent Working Group's recommendations.

### **UN Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 Compatibility**

In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 (the Act), the Scottish Ministers certify that, in their view, the Antisocial Behaviour (Fixed Penalty Offences) (Miscellaneous Amendments) (Scotland) Order 2026 is compatible with the UNCRC requirements as defined by section 1(2) of the Act.

### **EU Alignment Consideration**

This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU.

## **Consultation**

Given the narrow and technical nature of these amendments, a full public consultation was not considered proportionate. The changes seek to update long-standing provisions to reflect current practice and remove unused elements.

Targeted engagement has taken place with Police Scotland (who specifically suggested inclusion of section 38 offences in the ASB FPN regime) and the Crown Office and Procurator Fiscal Service, as the key operational partners responsible for delivery and oversight of the scheme. Their input has helped ensure the amendments are practical and consistent with existing practice. As noted above, any wider reforms, including broader use of ASB FPNs or further changes to penalty levels, will be considered separately as part of the ongoing, consultative review of antisocial behaviour legislation in response to the Independent Working Group's recommendations.

## **Impact Assessments**

The following impact assessments have been completed on the draft SSI and policy:

- [Child Rights and Wellbeing Impact Assessment](#)
- [Equality Impact Assessment](#)
- [Fairer Scotland Duty Impact Assessment](#)

The Impact Assessments confirm that the ASB FPN amendments are expected to improve alignment with current practice without disadvantaging any group in the circumstances. Overall, the amendments support the effective and fair operation of the ASB FPN scheme, contributing to safer communities across Scotland. The impact assessments also highlight areas for ongoing monitoring, which will be addressed through the overarching legislative review.

## **Financial Effects**

At this stage of the policy development, no costs to businesses have been identified.

## **Scottish Government**

Safer Communities Directorate

January 2026

## **Annexe B: Clerk's briefing note on the Antisocial Behaviour (Fixed Penalty Offences) (Miscellaneous Amendment) (Scotland) Order 2026**

### **The draft Order**

The [Antisocial Behaviour \(Fixed Penalty Offences\) \(Miscellaneous Amendment\) \(Scotland\) Order 2026](#) is an affirmative instrument that will be considered by the Committee, on 11 February.

It amends the penalty level for antisocial behaviour fixed penalty notices (ASB FPNs) and amends the list of offences for which a ASB FPN can be issued.

### **What is changing?**

The Order will update the eligible offence list to include acting in a threatening or abusive manner under section 38 of the Criminal Justice and Licensing (Scotland) Act 2010.

At the same time, two unused offences - being drunk in a public place in charge of a child and disorderly conduct while drunk on licensed premises - are being removed.

In addition, Ministers have judged that it is appropriate that the ASB FPN penalty level should be uplifted. The penalty level will increase from £40 to £70 in line with inflation since ASB FPNs were introduced, as measured by the GDP deflator.

### **Antisocial behaviour fixed penalty notices**

ASB FPNs are one of a range of disposal options available to Police Scotland in relation to lower-level offending. This scheme is intended to have a positive impact on individuals by providing an intervention mechanism that is timely, justifiable and proportionate to the crime or incident under review. Guidelines on use were published by the Lord Advocate<sup>1</sup>.

The most recent data for the period April 2024 to March 2025 shows that 3,739 ASB FPNs were issued, a fall of 12.2% from the previous period<sup>2</sup>. In general, the number of ASB FPNs issued has significantly declined over the last decade as police transition to other measures like Recorded Police Warnings.

It should be noted that, currently, section 38 of the Criminal Justice Act (threatening and abusive behaviour) is not included in these offences and work is going with Scottish Government and COPFS to have an amendment to the Act passed to include this offence moving forward. The Section 38 offence continues to be the most frequently used offence for Recorded Police Warnings identifying the need for legislative amendment.

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<sup>1</sup> Lord Advocate's guidelines - <https://www.copfs.gov.uk/publications/lord-advocate-s-guidelines-on-the-use-of-the-police-direct-measures-for-adult-offenders/html/>

<sup>2</sup> Police Scotland - <https://www.spa.police.uk/spa-media/b3yd2lam/item-2-1-quarterly-policing-performance-report-q4-2024-25.pdf>

An unpaid ASB FPN may result in the person being penalised with responsibility for enforcement passing to the SCTS Fines Enforcement Officers, who will seek an enforcement order from the court<sup>3</sup>. As at April 2025, Scottish Courts and Tribunals Service figures state that 80% of all fines or penalties imposed between 2021/22 and 2023/24 were paid in full.<sup>4</sup>

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<sup>3</sup> <https://www.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2004/10/guide-antisocial-behaviour-etc-scotland-act-2004/documents/0025272-pdf/0025272-pdf/govscot%3Adocument/0025272.pdf>.

<sup>4</sup> SCTS, <https://www.scotcourts.gov.uk/about-us/scts-statistics/courts-data-scotland-fines-cdsf/>