

Criminal Justice Committee  
Wednesday 18 March 2026  
11th 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 revised 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:** 25 February 2026

**Procedure:** Affirmative

**Lead committee to report by:** 21 April 2026

**Commencement:** 26 March 2026

3. The Committee considered and approved the original draft instrument on [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 ASB Fixed Penalty Notice 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and Community Safety wrote to the Committee on 26 February 2026 to advise that the draft instrument would therefore be withdrawn and a revised SSI laid.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**.

## Procedure

6. 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.
7. 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.
8. 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.
9. 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.
10. 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

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

## Purpose of the instrument

12. The Order makes amendments which apply in relation to fixed penalty notices under section 129 of the Antisocial Behaviour etc. (Scotland) Act 2004. 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.
13. 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.

14. 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
15. 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.
16. The revised Policy Note accompanying the instrument is included in **Annexe C**. 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](#)

## **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  
March 2026**

## 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:

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

*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,

**SIQBHIAN BROWN**

**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:

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

*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,

**SIQBHIAN BROWN**

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

Charge Code	Charge Description	Financial Year			
		2021/22	2022/23	2023/24	Total
OBOP000000000000	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) Rioutous 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
<b>TOTAL</b>		<b>1242</b>	<b>817</b>	<b>844</b>	<b>2903</b>

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](#).

## Annexe C: revised 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 sections 128(2)(b), 130(1) and 141(2)(b) of the Antisocial Behaviour etc. (Scotland) Act 2004. The instrument is subject to the 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.
- **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, other changes to the offence list 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](#)

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 and adjustment, 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

February 2026