

## Justice Committee

### Abusive Behaviour and Sexual Harm (Scotland) Bill

#### Written submission from George Eckton

I write regarding your call for evidence on the Abusive Behaviour and Sexual Harm [ABSH] (Scotland) Bill. I welcome wholeheartedly the legislation and responded to the Scottish Government consultation in support. I welcome the further definition of domestic abuse in Scotland and further amendments to the law concerning violence against women.

I just wanted to write to see whether MSPs would consider debating extending the premise to include prevention actions in the forthcoming legislation namely: sexual education, indecent displays in public places and public sector gender violence prevention duties. In addition to suggesting an amendment to the homelessness target in the Homelessness etc (Scotland) Act 2003 given the updated definition of Domestic Abuse proposed.

I've attached a new Part 4 to the proposed Bill. My suggested amendments really seek to prioritise prevention in future and current cohorts of the population. I've submitted them to previous legislation but they have never been debated despite a significant chunk having the support of the GirlGuiding Scotland<sup>1</sup>. I've previously spoken with Aileen Campbell as part of my volunteering with the Child Eye Line campaign on the public display of images issue.

I now write again to see whether the Scottish Parliament Justice Committee would support some or all of these being tabled as evidence at Committee Stage and then hopefully some MSPs may be minded to support and ensure they are mentioned in the Stage 1 report. I hope current draft ABSH Bill might offer you the opportunity to consider whether legislation is necessary in this area for child protection and decency reasons and other long-term preventative actions. I've noted previously the view expressed by Police Scotland that nearly a quarter of police time is spent on reacting domestic violence related cases.

The European Commission has previously estimated the cost of violence against women within the European Union of gender-based violence to be €228 billion in 2011, 1.8% of EU Gross Domestic Product, of which €45 billion a year equates to costs to public and state services and €24 billion of loss economic product. Estimates in the UK suggest that we have costs of up to £40 billion a year through the impact on gender inequality and all forms of violence against women.

Whilst, I know the main focus and rightly so is "Revenge Porn", however, I wondered whether the bill could also debate the longer term behavioural antecedents of such transmission of indecent and private images.

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<sup>1</sup> <https://www.girlguidingscotland.org.uk/licensing-bill-listen-to-girls-voices-on-display-of-harmful-sexualised-content-girlguiding-scotland/>

In regard to your request for further comments, I would hope that in taking forward the Equally Safe Strategy you could give due consideration to amending the Civic Government Licensing regime in Scotland to reduce the display and normalisation of sexualised images in Scotland. I feel this would be relevant to your proposals on sharing private intimate images given the display of images in public could be linked to a mindset amongst some that it is normal to view and receive such images.

Also, could I suggest that as well as seeking to strengthen criminal law to deal with offenders, you also consider the introduction of a Gender-based Violence & Abuse Prevention amendments to prioritise further various methods of prevention across Scotland and place greater elements of the Equally Safe Strategy upon a statutory footing?

In 2010 the independent review called 'Let Children Be Children' looked at the sexualisation and commercialisation of children in society. It was conducted by Reg Bailey, Chief Executive of Mothers' Union, also known as 'The Bailey Review'. The review addressed the concerns that children are exposed to a tide of sexual imagery in public places. As a result of the report, recommendations were made, including:

- Clampdown on sexualised 'wallpaper' surrounding children.
- Sexual images on magazine and newspaper front pages should be covered up.
- Retailers should sign up to a family friendly code of practice.

Reg Bailey's recommendations are based on parents' concerns and are intended to support both parents, by making sure their views are taken more seriously by businesses and broadcasters, and children, by helping them understand the potential dangers they face.

Therefore, whilst we recognize that parents have a responsibility to protect children. The problem we have is that parents are unable to protect children as sexual imagery and pornography is in every arena. See the Children's Commissioner report entitled 'Basically porn is everywhere'  
[http://www.childrenscommissioner.gov.uk/content/press\\_release/content\\_505](http://www.childrenscommissioner.gov.uk/content/press_release/content_505).

Parents are asking for help from the government, retailers, the media, internet service providers and the porn industry. Protecting children from imagery in public (newsagents, supermarkets, post offices etc) and online is a mammoth task that many parents are struggling to navigate.

In the Scottish Parliament recasting of certain provisions of the Civic Government (Scotland) Act 1982 through the Draft Air Weapons and Licensing Bill I considered their to be an opportunity for consideration of the addition of further provisions regarding the display of Indecent material previously covered by the Indecent Displays (Control) Act 1981 and further amended by the 1982 Act is possible. Sadly, Scottish Ministers didn't see that as the right opportunity.

I believe these proposals are in line with some of the positions expressed by a cross-party selection of MSPs when the related issue of media portrayal of women in newspapers was debated by the Parliament in November 2013 and led by Jackie

Baillie MSP on the specific subject matter of Page 3 in the Sun newspaper. Annabel Goldie MSP highlighted the known and proven link between the portrayal of sexualised images of women in media and attitudes that reinforce sexism, sexual harassment, abuse and violence towards women. Sarah Boyack MSP highlighted the research of Zero Tolerance which highlighted the concerns about the impact of gender stereotyping and suggested that children especially girls are overly concerned with their body image and also highlighted the need to take a wider look at sexualisation in our society, whether in retailing or in other media. Alison Johnstone MSP highlighted that in previous years the images of scantily dressed women in gossip pages were not at eye level when she was a child but highlighted the continued blurring of lines and relentless objectification of women. Alison went on to highlight that the average supermarket shelf where we shop with our children could have a profound impact on our impressionable young sons and daughters.

Elaine Smith MSP highlighted research from the 1990s by the UK Home Office that highlighted that sexually violent pornography is the most dangerous but that newspaper nudity is still to a small degree harmful and because newspapers are more everyday than extreme pornography their aggregate effects might be greater. Patrick Harvie MSP highlighted the findings of Lord Leveson inquiry in terms of the evidence from the organisation Object which showed sexualisation or demeaning articles about women from The Sun, The Daily Star and the Daily Sport. Lord Leveson concluded that all 3 titles included articles which appeared to eroticise violence against women.

Shona Robison MSP concluded the debate for the Scottish Government highlighting their commitment to tackling gender discrimination and all forms of violence against women alongside a recognition of a wider commitment across the Scottish Parliament to address these issues. One of the key strands highlighted by the Cabinet Secretary of the Government's approach is to address negative portrayals of women in the media. Also Shona stated that society didn't want to have our young people exposed to a culture that repeatedly tells young women that they are sexual objects and that tells young men that it is completely acceptable to perceive young women in that way. Before concluding with a comment, on the then emerging work on the Equally Safe Strategy for preventing and eradicating violence against women and girls, highlighting the increased emphasis on prevention and early intervention and the knowledge that women experience a spectrum of violence of many forms over their lifetime and that the Scottish Government take the protection of children and young people extremely seriously.

I was heartened by the First Minister's words in the Programme for Government, which outlined the Scottish Government's proposals to show a determined and zero tolerance attitude to domestic abuse in Scotland. Therefore, in the context of this consultation and the publication of the Equally Safe Strategy, I would hope that the Justice Committee can help prioritise prevention of violence against women and girls by adopting a zero tolerance approach to prevention through this legislation.

George Eckton  
18 October 2015

## Abusive Behaviour and Sexual Harm (Scotland) Bill Amendments

[http://www.scottish.parliament.uk/S4\\_Bills/Abusive%20Behaviour%20and%20Sexual%20Harm%20\(Scotland\)%20Bill/SPBill81S042015.pdf](http://www.scottish.parliament.uk/S4_Bills/Abusive%20Behaviour%20and%20Sexual%20Harm%20(Scotland)%20Bill/SPBill81S042015.pdf)

After Section 38

*Insert*

### **Part 3 Prevention Duties**

#### **39 Sex and relationship education guidance**

(1) The Scottish Ministers will, within six months of this Act coming into force, establish a working group to review and update the Sex and Relationship Education Guidance for Schools.

(2) The working group established under subsection (1) will include young people, teachers, professionals and online experts.

(3) In performing its functions under subsection (1), the working group will have particular regard to the need for the guidance to make reference to—

- (a) the role of the internet, social media and mobile technology in sex and relationship education;
- (b) online bullying and harassment.”

#### **40 Prioritising Gender Violence Prevention through Community Planning**

(1) Organisations listed under Section 16 of the Local Government (Scotland) Act 2003 must make:

- (a) arrangements for the prevention of gender-based violence and abuse and sexual violence;
- (b) arrangements for the protection of victims of gender-based violence, domestic abuse and sexual violence;
- (c) support for people affected by gender-based violence, domestic abuse and sexual violence.

(2) See section 52 for the definitions of “gender-based violence”, “domestic abuse” and “sexual violence”.

#### **41 Duty to prepare, publish and review a national strategy**

(1) The Scottish Ministers must prepare and publish a strategy (a “national strategy”) which —

- (a) specifies objectives that the Scottish Ministers consider will, if achieved, contribute to the pursuit of the reduction of the risk of gender-based violence, domestic abuse and sexual violence within Scotland;
- (b) specifies the periods of time within which the Scottish Ministers expect to achieve the specified objectives;
- (c) identifies the actions the Scottish Ministers propose to take to achieve the specified objectives.

(2) The Scottish Ministers may specify objectives relating to Scotland or any part of Scotland.

(3) The first national strategy must be published no later than 6 months after the Royal Assent of the Act.

(4) No later than 3 years after the date of each subsequent publication of the last strategy, the Scottish Ministers must review the national strategy.

(5) The Scottish Ministers may review the national strategy at any other time.

(6) If the Scottish Ministers decide to revise the national strategy following a review, they must publish the revised strategy as soon as is reasonably practicable.

#### **42 Duty to implement the national strategy**

The Scottish Ministers must, in exercising their functions, take all reasonable steps to achieve the objectives specified in the most recently published national strategy.

#### **43 Duty to prepare local strategies**

(1) Any organisation specified under Section 16 of the Local Government (Scotland) Act 2003 any part of whose area lies within the area of the local authority must jointly prepare a strategy (“a local strategy”) for the local authority’s area.

(2) A local strategy must—

(a) specify objectives which the Community Planning Partners consider will, if achieved, contribute to the pursuit of the purpose of this Act;

(b) specify the periods of time within which the Community Planning Partners propose to achieve the specified objectives;

(c) identify the actions the Community Planning Partners propose to take to achieve the specified objectives.

(3) A Community Planning Partnership may specify objectives relating to the whole of the authority’s area or any part of it.

(4) A local strategy may also include provision relating to specific action which the Community Planning Partnership expect to be taken in relation to the local authority’s area by—

(a) any public authority (other than a Minister of the Crown) with functions which are capable of contributing to the pursuit of the purpose of this Act, or

(b) any voluntary organisation or other person whose activities are capable of contributing to the pursuit of that purpose.

(5) But the inclusion in a local strategy of any provision relating to action mentioned in subsection (4) requires the approval of the body or person concerned.

#### **44 Publication and review of local strategies**

(1) A Community Planning Partnerships first local strategy must be published no later than one year after the date on which the first national strategy is published which section 4(1) is commenced.

(2) No later than one year after the date of each subsequent national strategy, a Community Planning Partnership must review their local strategy.

(3) A Community Planning Partnership—

(a) may review their local strategy at any other time, and

(b) must review their local strategy if directed to do so in writing by the Scottish Ministers.

(4) A direction under subsection (3)(b) must state the reasons for giving the direction.

(5) If a Community Planning Partnership decide to revise their local strategy following a review, they must publish the revised strategy as soon as is reasonably practicable.

#### **45 Matters to which regard must be had in preparing or reviewing a local strategy**

(1) In preparing and reviewing a local strategy, a Community Planning Partnership must have regard to—

(a) the most recently published national strategy;

(b) the most recent assessment for the local authority’s area (assessment of needs for care and support, support for carers and preventative services);

(c) the most recent strategic assessment prepared in accordance with the Police and Fire Reform (Scotland) Act 2012 relating to reducing crime and disorder in the local authority area;

(d) the most recent strategic assessment prepared in accordance with regulations relating to combating substance misuse in the local authority area;

(e) the most recent strategic assessment prepared in accordance with regulations relating to the reduction of re-offending in the local authority area.

(2) The Scottish Ministers may by regulations make provision for and in connection with requiring—

(a) a Community Planning Partnership to have regard to anything specified in the regulations when preparing or reviewing a local strategy;

(b) a Community Planning Partnership to conduct further assessments for the purpose of this Act in relation to any matter specified in the regulations.

(3) The power to make regulations in subsection (2) is to be exercised by statutory instrument.

#### **46 Duty to implement local strategies**

(1) A local authority must, in exercising its functions, take all reasonable steps to achieve the

objectives specified in the most recently published local strategy for its area.

(2) The Local Health Board with which the authority prepared that strategy must, in exercising its functions, take all reasonable steps to achieve the objectives specified in the strategy.

(3) All organisations outlined in Section 16 of the Local Government (Scotland) Act 2003 must in exercising their functions, take all reasonable steps to achieve the objectives specified in the strategy.

#### **47 Annual progress reports by the Scottish Ministers**

(1) The Scottish Ministers must, in respect of each financial year, publish a report—

(a) of the progress they have made towards achieving the objectives in the national strategy;

#### **48 Annual progress reports by local authorities and Local Health Boards**

(1) A Community Planning Partnership must publish, in respect of each financial year, a report of the progress they have made in achieving the objectives specified in their local strategy.

(2) Where a Community Planning Partnership have revised their strategy during the period to which the report relates, the report must include an explanation of the reasons for the revision or revisions.

(3) A report under this section must be published as soon as reasonably practicable following the end of the financial year to which the report relates.

#### **49 Power to issue statutory guidance**

(1) The Scottish Ministers may issue guidance to a relevant authority on how the authority

should exercise its functions with a view to contributing to the pursuit of the purpose of this Act (“statutory guidance”).

The statutory guidance may, amongst other things, address—

- (a) steps an authority may take to increase awareness of gender-based violence, domestic abuse and sexual violence (for example, by undertaking or assisting with a programme of public education);
- (b) the circumstances in which it is appropriate for persons acting on behalf of a relevant authority to ask a person if he or she is suffering or at risk of gender based violence, domestic abuse and sexual violence;
- (c) the action that is appropriate where a person acting on behalf of a relevant authority has reason to suspect that a person is suffering or at risk of gender-based violence, domestic abuse and sexual violence;
- (d) training for the members and staff of a relevant authority;
- (e) the sharing of information between relevant authorities or by a relevant authority with another person;
- (f) co-operation between relevant authorities or between a relevant authority and other persons.

(3) The Scottish Ministers—

- (a) may issue statutory guidance to relevant authorities generally or to one or more particular authorities;
- (b) may issue different statutory guidance to different relevant authorities;
- (c) may revise or revoke statutory guidance by further guidance;
- (d) may revoke statutory guidance by issuing a notice to the relevant authority to which it is directed.

(4) The Scottish Ministers must ensure that statutory guidance, or a notice revoking such guidance, states—

- (a) that it is issued under this section, and
- (b) the date on which it is to take effect.

(5) The Scottish Ministers must arrange for statutory guidance, or a notice revoking such guidance, to be published.

## **50 Consultation and Scottish Parliament procedures**

(1) Before issuing or revising statutory guidance, the Scottish Ministers must consult such

persons as they consider appropriate on a draft of the guidance.

(2) If the Scottish Ministers wish to proceed with the draft (with or without modifications) they must lay a copy of the draft before the Scottish Parliament.

(3) If, before the end of the 40 day period, the Scottish Parliament resolves not to approve the

draft of the guidance, the Scottish Ministers must not issue it in the form of that draft.

(4) If no such resolution is made before the end of that period, the Scottish Ministers must

issue the guidance (or revised guidance) in the form of the draft.

(5) The 40 day period—

begins on the day on which the draft is laid before the Scottish Parliament, and

(b) does not include any time during which the Scottish Parliament is dissolved or is in recess for more than four days.

(6) Subsection (3) does not prevent a new draft of proposed guidance or proposed revised

guidance from being laid before the Scottish Parliament.

## **51 Duty to follow statutory guidance**

(1) A relevant authority must follow the course set out in guidance issued to it in accordance

with this Act when exercising a power or duty (including a power or duty that is contingent upon the opinion of the authority concerned); but this is subject to the following provisions of this section.

(2) A relevant authority is not subject to the duty under subsection (1) so far as—

- (a) the authority concerned thinks there is good reason for it not to follow the guidance in particular categories of case or at all,
- (b) it decides on an alternative policy for the exercise of its functions in respect of the subject matter of the guidance, and
- (c) a policy statement issued by the authority in accordance with section 15 is in effect.

(3) Where subsection (2) applies in the case of an authority to which this section applies, the authority—

- (a) must follow the course set out in the policy statement, and
- (b) is subject to the duty under subsection (1) only so far as the subject matter of the guidance is not displaced by the policy statement.

(4) The duties in subsections (1) and (3) do not apply to a relevant authority so far as it would be unreasonable for the authority to follow the statutory guidance or policy statement in a particular case or category of case.

## **52 Interpretation**

(1) In this Act—

“abuse” means physical, sexual, psychological, emotional or financial abuse;

“domestic abuse” means abuse where the victim of it is or has been associated with the abuser;

“financial year” means a period of 12 months ending on 31 March;

“gender-based violence” means—

- (a) violence, threats of violence or harassment arising directly or indirectly from values, beliefs or customs relating to gender or sexual orientation;
- (b) female genital mutilation;
- (c) forcing a person (whether by physical force or coercion by threats or other psychological means) to enter into a religious or civil ceremony of marriage (whether or not legally binding);

## **53 Regulation of indecent displays in public places**

(1) The 1982 Act is amended as follows.

(2) After section 51 insert—

### **“51A Indecent displays in public places**

- (1) A person who displays, or knowingly causes or permits to be displayed, an indecent image in a public place commits an offence.
- (2) For the purposes of this section, an image is “indecent” if—
  - (a) the image involves the display of sexual activity, nudity or partial nudity and—
    - (i) it is designed or intended to promote the sale, distribution or consumption of any thing, and
    - (ii) the display of sexual activity, nudity or partial nudity is unrelated to that thing, or

- (b) a reasonable person would consider that it degrades, dishonours, disgraces or lowers the dignity of any person or persons in general.
- (3) But an image is not “indecent” if—
  - (a) it relates to—
    - (i) the promotion of breastfeeding,
    - (ii) awareness of breast cancer, prostate cancer or testicular cancer, or such other health-related purposes as the Scottish Ministers may prescribe by regulations,
  - (b) it is displayed for the purpose of sex education in schools or by health or related bodies,
  - (c) it is an image of such type or displayed for such artistic or other purpose as the Scottish Ministers may prescribe by regulations.
- (4) For the purposes of this section—
  - (a) any image which is displayed in or so as to be visible from any public place is deemed to be displayed in a public place,
  - (b) “public place” means any place where an image is likely to be viewed by the public at large, or any section of the public or individually selected members of the public, whether that place is open to the public on payment of a fee or not.
- (5) A person accused of an offence under this section (“the accused”) who has the management or control of any premises is to be regarded as having knowingly caused or permitted a person to display an indecent image in a public place if the accused ought to have known that the person was making such a display.
- (6) It is a defence for the accused to prove that—
  - (a) the accused (or any employee or agent of the accused) took all reasonable precautions and exercised all due diligence not to commit the offence, or
  - (b) there were no lawful and reasonably practicable means by which the accused could prevent the other person from displaying the image.
- (7) It is a defence for the accused to prove that the accused did not know, and could not reasonably be expected to have known, that the place in which an indecent image was displayed was a public place.
- (8) A person guilty of an offence under this section is liable, on summary conviction, to a fine not exceeding level 4 on the standard scale.
- (9) Schedule 2B (which provides for fixed penalties for offences under this section) has effect.
- (10) For the purposes of this section, the Scottish Ministers may by regulations modify—
  - (a) the definition of “indecent” for the time being provided in subsections (2) and (3),

- (b) the definition of “public place” for the time being provided in subsection (4)(b).
- (11) Before making regulations under this section, the Scottish Ministers must consult such persons as they consider appropriate.
- (12) Regulations under this section which contain provisions that add to, replace or omit any part of the text of this section or any other Act are subject to the affirmative procedure.
- (13) All other regulations under this section are subject to the negative procedure.
- (14) The Scottish Ministers may publish guidance about the implementation and enforcement of this section.
- (15) The Scottish Ministers must lay a copy of any guidance published under subsection (14) before the Scottish Parliament.
- (16) A body for the time being listed in section 16(1) of the Local Government in Scotland Act 2003 or schedule 8 of the Public Services Reform (Scotland) Act 2010 must have regard to any guidance published under subsection (14).
- (3) After Schedule 2A insert—

“SCHEDULE 2B  
(introduced by section 51A(9))

*Power to give fixed penalty notice*

- 1 (1) An authorised officer of a local authority may, if having reason to believe that a person is committing or has committed an offence under section 51A within the area of the local authority, give that person a fixed penalty notice in relation to that offence.
- (2) A constable may, if having reason to believe that a person is committing or has committed an offence under section 51A, give that person a fixed penalty notice in relation to that offence.
- (3) In this schedule, “fixed penalty notice” means a notice offering a person the opportunity of discharging any liability to conviction for an offence under section 51A by payment of a fixed penalty.

*Timing of fixed penalty notice*

- 2 A fixed penalty notice for an offence under section 51A may not be given after such time relating to the offence as may be prescribed.

*Contents of fixed penalty notice*

- 3 (1) A fixed penalty notice must identify the offence to which it relates and give reasonable particulars of the circumstances alleged to constitute that offence.
- (2) A fixed penalty notice must also state—
- (a) the amount of the penalty and the period within which it may be paid,
- (b) the discounted amount and the period within which it may be paid,

- (c) the person to whom and the address at which payment may be made,
  - (d) the method or methods by which payment may be made,
  - (e) the person to whom and the address at which any representations relating to the notice may be made,
  - (f) the consequences of not making a payment within the period for payment.
- (3) The person specified under subparagraph (2)(c) must be the local authority in the area of which the offence was alleged to have been committed or a person acting on their behalf.

*The amount of the penalty and the period for payment*

- 4 (1) The fixed penalty for an offence under section 51A is (subject to paragraph 5) such amount as may be prescribed.
- (2) The period for payment of the fixed penalty is the period of 29 days beginning with the day on which the notice is given.
- (3) The local authority may extend the period for paying the fixed penalty in any particular case if they consider it appropriate to do so.

*The discounted amount*

- 5 (1) A discounted amount is payable instead of the amount prescribed under paragraph 4(1) if payment is made before the end of the period of 15 days beginning with the day on which the notice is given.
- (2) The discounted amount for a fixed penalty offence is such amount as may be prescribed.
- (3) If the last day of the period specified in sub-paragraph (1) does not fall on a working day, the period for payment of the discounted amount is extended until the end of the next working day.

*Effect of notice and payment of penalty*

- 6 (1) This paragraph applies where a person is served with a fixed penalty notice in respect of a fixed penalty offence.
- (2) No proceedings for the offence may be commenced before the end of the period for payment of the penalty.
- (3) No such proceedings may be commenced or continued if payment of the penalty is made before the end of that period or is accepted by the local authority after that time.
- (4) Payment of the discounted amount counts for the purposes of subparagraph (3) only if it is made before the end of the period for payment of the discounted amount.
- (5) In proceedings for the offence, 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 an amount specified in the certificate was or was not received by a date so specified,  
is sufficient evidence of the facts stated.

*Request for hearing*

- 7 (1) A person to whom a fixed penalty notice has been given may, before the expiry of the period for payment of the penalty, give notice requesting a hearing in respect of the offence to which the fixed penalty notice relates.
- (2) A notice requesting a hearing under sub-paragraph (1) must be in writing and must be sent by post or delivered to the person specified under paragraph 3(2)(c) in the fixed penalty notice at the address so specified.
- (3) For the purposes of this paragraph and unless the contrary is proved, the sending of a notice by post is deemed to have been effected at the time at which the notice would be delivered in the ordinary course of post.
- (4) Where a person has requested a hearing in accordance with this paragraph—
- (a) the local authority must hold the hearing,
  - (b) a person authorised for the purpose by the local authority of the area in which the offence was committed must notify the procurator fiscal of the request, and
  - (c) the period for payment of the fixed penalty must be calculated so that the period beginning with the giving of the notice under this paragraph and ending with the receipt by the person who gave that notice of the decision reached at the hearing is left out of account.

*Power to withdraw notices*

- 8 (1) If the local authority consider (whether after holding a hearing under paragraph 7 or not) that a fixed penalty notice which has been given ought not to have been given, they may give to the person to whom it was given a notice withdrawing the fixed penalty notice.
- (2) Where a notice under sub-paragraph (1) is given—
- (a) the local authority must repay any amount which has been paid by way of penalty in pursuance of the fixed penalty notice, and
  - (b) no proceedings are to be commenced or continued against that person for the offence in question.
- (3) The local authority must consider any representations made by or on behalf of the recipient of a fixed penalty notice and decide in all the circumstances whether to withdraw the notice.

*Effect of prosecution on notice*

- 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.

*Recovery of unpaid fixed penalties*

- 10 Subject to paragraphs 8 and 9, where a fixed penalty remains unpaid after the expiry of the period for payment of the penalty it is enforceable in like manner as an extract registered decree arbitral bearing a warrant for execution issued by the sheriff for any sheriffdom.

*Judicial determination of enforcement of fixed penalty*

- 11 (1) A person against whom a fixed penalty bears to be enforceable under paragraph 10 may apply to the sheriff by summary application for a declaration that the fixed penalty is not enforceable on the ground that—
- (a) the fixed penalty was paid before the expiry of the period for paying, or
  - (b) the person has made a request for a hearing in accordance with paragraph 7 and no hearing has been held within a reasonable time after the request.
- (2) On an application under sub-paragraph (1), the sheriff may declare—
- (a) that the person has or, as the case may be, has not paid the fixed penalty within the period for payment of the penalty,
  - (b) that the person has or, as the case may be, has not requested a hearing in accordance with paragraph 7,
  - (c) that, where such a request has been made, a hearing has or, as the case may be, has not been held within a reasonable time after the request, and
- accordingly, that the fixed penalty is or, as the case may be, is not enforceable.

*General and supplementary*

- 12 The Scottish Ministers may by regulations make provision about—
- (a) the application by councils of fixed penalties paid under this schedule,
  - (b) the keeping of accounts, and
  - (c) the preparation and publication of statements of account, relating to fixed penalties under this schedule.
- 13 (1) Fixed penalty notices may not be given in such circumstances as may be prescribed.
- (2) The method or methods by which fixed penalties may be paid may be prescribed.

- (3) The Scottish Ministers may by regulations modify paragraph 4(2) or 5(1) so as to substitute a different period for the period for the time being specified there.
- 14 (1) In this schedule, “prescribed” means prescribed by the Scottish Ministers by regulations.
- (2) Regulations under paragraph 4(1) or 5(2) are subject to the negative procedure.
  - (3) All other regulations under this schedule are subject to the negative procedure.”.>

#### **54 Homelessness: priority need for accommodation**

1 Amendment of section 25 of the 1987 Act Subsection 2(1)(b) outlined in Homelessness etc (Scotland) Act 2003.

Amend subsection (i) and include the new definition of Domestic Abuse outlined in the Section 1 of the Abusive Behaviour and Sexual Harm Act 2016.