



# Antisocial Behaviour etc. (Scotland) Act 2004

2004 asp 8

## PART 2

### ANTISOCIAL BEHAVIOUR ORDERS

#### *Antisocial behaviour orders*

#### **4 Antisocial behaviour orders**

- (1) On the application of a relevant authority, the sheriff may, if satisfied that the conditions mentioned in subsection (2) are met as respects the person to whom the application relates (the “specified person”), make an antisocial behaviour order.
- (2) Those conditions are—
  - (a) that the specified person is at least 12 years of age;
  - (b) that the specified person has engaged in antisocial behaviour towards a relevant person; and
  - (c) that an antisocial behaviour order is necessary for the purpose of protecting relevant persons from further antisocial behaviour by the specified person.
- (3) For the purpose of determining whether the condition mentioned in subsection (2)(b) is met, the sheriff shall disregard any act or conduct of the specified person which that person shows was reasonable in the circumstances.
- (4) Where the specified person is a child, the sheriff shall, before determining the application, require the Principal Reporter to arrange a children’s hearing for the purpose of obtaining their advice as to whether the condition mentioned in subsection (2)(c) is met; and the sheriff shall, in determining whether that condition is met, have regard to that advice.
- (5) Subject to subsections (6) and (7), an antisocial behaviour order is an order which prohibits, indefinitely or for such period as may be specified in the order, the specified person from doing anything described in the order.

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- (6) The prohibitions that may be imposed by an antisocial behaviour order are those necessary for the purpose of protecting relevant persons from further antisocial behaviour by the specified person.
- (7) If an antisocial behaviour order is made on the application of a local authority the order may, in addition to imposing prohibitions that are necessary for the purpose mentioned in subsection (6), impose such prohibitions as are necessary for the purpose of protecting other persons (“affected persons”) from further antisocial behaviour by the specified person.
- (8) Before making an antisocial behaviour order, the sheriff shall, where the specified person is present in court, explain in ordinary language—
- (a) the effect of the order and the prohibitions proposed to be included in it;
  - (b) the consequences of failing to comply with the order;
  - (c) the powers the sheriff has under sections 5 and 6; and
  - (d) the entitlement of the specified person to appeal against the making of the order.
- (9) Failure to comply with subsection (8) shall not affect the validity of the order.
- (10) An application for an antisocial behaviour order shall be made by summary application to the sheriff within whose sheriffdom the specified person is alleged to have engaged in antisocial behaviour.
- (11) Before making an application under this section—
- (a) a relevant authority shall consult the relevant consultees; and
  - (b) a registered social landlord shall—
    - (i) in the case where the specified person is a child, consult the local authority within whose area the specified person resides or appears to reside about the proposed application;
    - (ii) in the case where the specified person is not a child, notify that local authority of the proposed application.
- (12) Nothing in this section shall prevent a relevant authority from instituting any legal proceedings otherwise than under this section against any person in relation to any antisocial behaviour.
- (13) In this section, “relevant person” means—
- (a) in relation to an application by a local authority, a person within the area of the authority; and
  - (b) in relation to an application by a registered social landlord—
    - (i) a person residing in, or otherwise in or likely to be in, property provided or managed by that landlord; or
    - (ii) a person in, or likely to be in, the vicinity of such property.

## **5 Antisocial behaviour orders: variation and revocation**

- (1) On the application of—
- (a) the relevant authority that obtained an antisocial behaviour order; or
  - (b) the person subject to such an order,
- the sheriff may vary or revoke the order.

- (2) Where the person subject to the order is a child, the sheriff shall, in determining whether to vary or revoke it, have regard to any views expressed by the Principal Reporter.
- (3) Before making an application under this section—
  - (a) a relevant authority shall consult the relevant consultees; and
  - (b) a registered social landlord shall—
    - (i) in the case where the person subject to the order is a child, consult the local authority within whose area the person resides or appears to reside about the proposed application;
    - (ii) in the case where the person subject to the order is not a child, notify that local authority of the proposed application.

## **6 Appeals: effect on competence of application under section 5**

Where a person appeals against—

- (a) the making of an antisocial behaviour order; or
- (b) the variation, under section 5, of such an order,

it shall not be competent for that person to make an application under that section before the appeal is disposed of or abandoned.

### *Interim antisocial behaviour orders*

## **7 Interim antisocial behaviour orders**

- (1) Subsection (2) applies where—
  - (a) an application is made under section 4; and
  - (b) the application has been intimated to the specified person.
- (2) If the sheriff is satisfied—
  - (a) that the condition mentioned in paragraph (a) of section 4(2) is met;
  - (b) that *prima facie* the condition mentioned in paragraph (b) of that section is met; and
  - (c) that the making of an interim antisocial behaviour order (an “interim order”) is necessary for the purpose mentioned in paragraph (c) of that section,the sheriff may make an interim order.
- (3) Where the specified person is a child, the sheriff shall, in determining whether to make an interim order, have regard to any views expressed by the Principal Reporter.
- (4) An interim order is an order which prohibits, pending the determination of the application, the specified person from doing anything described in the order.
- (5) Sections 4(6) and (7) shall apply to an interim order as they apply to an antisocial behaviour order.
- (6) Before making an interim order, the sheriff shall, where the specified person is present in court, explain in ordinary language—
  - (a) the effect of the order and the prohibitions proposed to be included in it;
  - (b) the consequences of failing to comply with the order;

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- (c) the power the sheriff has to recall the order; and
- (d) the entitlement of the specified person to appeal against the making of the order.

(7) Failure to comply with subsection (6) shall not affect the validity of the order.

(8) An interlocutor granting or refusing an interim order is an appealable interlocutor.

### *Notification of orders*

## **8 Notification of making etc. of orders and interim orders**

- (1) Subsection (2) applies where—
  - (a) an antisocial behaviour order is made or varied; or
  - (b) an interim order is made.
- (2) The clerk of the court by which the order is made or varied shall cause a copy of the order as so made or varied to be—
  - (a) served on the person subject to the order; and
  - (b) given to the relevant authority on whose application the order was made.
- (3) Subsection (4) applies where—
  - (a) an antisocial behaviour order is revoked; or
  - (b) an interim order is recalled.
- (4) The clerk of the court by which the order is revoked or recalled shall notify—
  - (a) the person subject to the order; and
  - (b) the relevant authority on whose application the order was made,
 of the revocation or recall.
- (5) For the purposes of subsection (2)(a), a copy is served if—
  - (a) given to the person subject to the order; or
  - (b) sent to that person by registered post or the recorded delivery service.
- (6) For the purposes of subsection (4)(a), the person subject to the order is notified if notification is sent to the person by registered post or the recorded delivery service.
- (7) A certificate of posting of a letter sent under subsection (5)(b) or (6) issued by the postal operator concerned shall be sufficient evidence of the sending of the letter on the day specified in such certificate.
- (8) In subsection (7), “postal operator” has the meaning given by section 125(1) of the Postal Services Act 2000 (c. 26).

### *Breach of orders*

## **9 Breach of orders**

- (1) Subject to subsection (3), a person who—
  - (a) is subject to an antisocial behaviour order or an interim order; and
  - (b) without reasonable excuse, does anything that the order to which the person is subject prohibits the person from doing,

shall be guilty of an offence.

- (2) A person guilty of an offence under subsection (1) shall be liable—
  - (a) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum or to both; or
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine or to both.
- (3) If—
  - (a) otherwise than under subsection (1), the thing done by the person constitutes an offence (a “separate offence”); and
  - (b) the person is charged with the separate offence,the person shall not be liable to be proceeded against for an offence under subsection (1).
- (4) Subject to subsection (5), if a person is convicted of a separate offence, the court which sentences the person for that offence shall, in determining the appropriate sentence or disposal, have regard to—
  - (a) the fact that the separate offence was committed while the person was subject to the antisocial behaviour order or, as the case may be, interim order;
  - (b) the number of antisocial behaviour orders and interim orders to which the person was subject at the time of commission of the separate offence;
  - (c) any previous conviction of the person for an offence under subsection (1); and
  - (d) the extent to which the sentence or disposal in respect of any previous conviction of the person differed, by virtue of this subsection, from that which the court would have imposed but for this section.
- (5) The court shall not, under subsection (4)(a), have regard to the fact that the separate offence was committed while the person was subject to the antisocial behaviour order or, as the case may be, the interim order unless that fact is libelled in the indictment or, as the case may be, specified in the complaint.
- (6) The fact that the separate offence was committed while the person was subject to an antisocial behaviour order or, as the case may be, an interim order, shall, unless challenged—
  - (a) in the case of proceedings on indictment, by the giving of notice of a preliminary objection in accordance with section 71(2) or 72(6)(b)(i) of the Criminal Procedure (Scotland) Act 1995 (c. 46); or
  - (b) in summary proceedings, by preliminary objection before the person’s plea is recorded,be held as admitted.

## **10 Breach of orders: prohibition on detention of children**

- (1) The Criminal Procedure (Scotland) Act 1995 (c. 46) shall be amended as follows.
- (2) In subsection (2) of section 44 (detention of children), after “offence” there shall be inserted “(other than, if the child is under the age of 16 years, an offence under section 9(1) of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8) or that section as applied by section 234AA(11) of this Act)”.
- (3) In section 208 (detention of children convicted on indictment), after “Act” there shall be inserted “and subsection (3) below”.

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(4) At the end of section 208 there shall be added—

“(3) If the child is under the age of 16 years, the power conferred by subsection (1) above shall not be exercisable in respect of a conviction for an offence under section 9(1) of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8) or that section as applied by section 234AA(11) of this Act.”.

## **11 Breach of orders: arrest without warrant**

- (1) Where a constable reasonably believes that a person is committing or has committed an offence under section 9(1), the constable may arrest the person without warrant.
- (2) Subsection (1) is without prejudice to any power of arrest conferred by law apart from that subsection.

### *Orders in respect of children*

## **12 Sheriff’s power to refer case to children’s hearing**

- (1) Where the sheriff makes an antisocial behaviour order or an interim order in respect of a child, the sheriff may require the Principal Reporter to refer the child’s case to a children’s hearing.
- (2) The Children (Scotland) Act 1995 (c. 36) shall be amended in accordance with subsections (3) to (5).
- (3) After paragraph (1) of section 52(2) (children requiring compulsory measures of supervision) there shall be inserted—

“(m) is a child to whom subsection (2A) below applies.

(2A) This subsection applies to a child where—

- (a) a requirement is made of the Principal Reporter under section 12(1) of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8) (power of sheriff to require Principal Reporter to refer case to children’s hearing) in respect of the child’s case; and
- (b) the child is not subject to a supervision requirement.”.

(4) After section 65(1) (referral of case to children’s hearing), there shall be inserted—

“(1A) Where the Principal Reporter is satisfied that the ground specified in section 52(2)(m) of this Act is established in respect of any child, he shall be taken to be satisfied as to the matter mentioned in section 65(1)(a) in respect of the child.”.

(5) In section 73(8) (arrangements to review supervision requirement)—

(a) in paragraph (a)(v), after “months;” there shall be inserted—

“(aa) where—

- (i) a requirement is made of the Principal Reporter under section 12(1) of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8) (power of sheriff to require Principal Reporter to refer case to children’s hearing) in respect of the child’s case; and
- (ii) the child is subject to a supervision requirement,

arrange for a children’s hearing to review the supervision requirement;”;

- (b) in paragraph (b), for “that” there shall be substituted “any such”.

### **13 Sheriff’s power to make parenting order**

- (1) Where a sheriff makes an antisocial behaviour order in respect of a child, the sheriff may, where subsection (2) applies, make a parenting order in respect of a parent of the child.
- (2) This subsection applies where—
- (a) the sheriff is satisfied that the making of the order is desirable in the interests of preventing the child from engaging in further antisocial behaviour; and
  - (b) the Scottish Ministers have notified the court that the local authority for the area in which the parent ordinarily resides has made arrangements that would enable the order to be complied with.
- (3) In this section—
- “parent” has the meaning given by section 117; and
  - “parenting order” has the meaning given by section 103(1).

#### *Provision of information and records*

### **14 Provision of information to local authorities**

- (1) Where by virtue of subsection (2)(b) of section 8 a registered social landlord—
- (a) is given a copy of an antisocial behaviour order as made or varied; or
  - (b) is given a copy of an interim order,
- it shall give a copy to each relevant local authority.
- (2) Where by virtue of subsection (4)(b) of that section a registered social landlord—
- (a) is notified of the revocation of an antisocial behaviour order; or
  - (b) is notified of the recall of an interim order,
- it shall notify each relevant local authority of the date on which the order was revoked or recalled.
- (3) In this section “relevant local authority” means a local authority whose area includes the premises referred to in section 4(13)(b) in relation to any person for whose protection the order was made.

### **15 Records of orders**

- (1) A local authority shall keep records of—
- (a) each antisocial behaviour order; and
  - (b) each interim order,
- of which the authority is given a copy by virtue of section 8(2)(b) or 14(1).
- (2) A record kept under subsection (1) shall specify—
- (a) the person in respect of whom the order was made;
  - (b) the prohibitions imposed by the order;

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- (c) if the record relates to an antisocial behaviour order—
    - (i) whether a prohibition is indefinite or for a definite period and where it is for a period, that period;
    - (ii) where the authority is, by virtue of section 8(2)(b) or, as the case may be, 14(1), given a copy of the order as varied, the variation and its date; and
    - (iii) where the authority is, by virtue of section 8(4)(b) or, as the case may be, 14(2), notified of the revocation of the order, the date on which it was revoked;
  - (d) if the record relates to an interim order, where the authority is, by virtue of section 8(4)(b) or, as the case may be, 14(2), notified of the recall of the order, the date on which it was recalled; and
  - (e) such other matters relating to the order as the Scottish Ministers may prescribe in regulations.
- (3) A local authority shall, on a request to do so being made to it by a person mentioned in subsection (4), disclose to that person information contained in a record kept under subsection (1).
- (4) Those persons are—
- (a) the Scottish Ministers;
  - (b) the Principal Reporter;
  - (c) any other local authority;
  - (d) a chief constable; and
  - (e) a registered social landlord.

#### *Guidance and research*

### **16 Guidance in relation to antisocial behaviour orders**

A person (other than a court) shall, in discharging functions by virtue of this Part (other than section 13), have regard to any guidance given by the Scottish Ministers about—

- (a) the discharge of those functions; and
- (b) matters arising in connection with the discharge of those functions.

### **17 Arrangement of study into operation of Part**

- (1) The Scottish Ministers shall—
- (a) arrange for the carrying out of a study into the operation of this Part; and
  - (b) lay a report on the results of the study before the Scottish Parliament within 3 years of the date on which the whole of the Part was first in force.
- (2) The Scottish Ministers shall make such preparations for the carrying out of the study as are necessary to enable the study to commence as soon as the whole of the Part is in force; and such preparations may include, in particular, the instruction of a research team and the formation of a research advisory group to assist in the direction of the study.



## *Interpretation*

### **18 Interpretation of Part 2**

In this Part—

“affected person” has the meaning given by section 4(7);

“antisocial behaviour order” has the meaning given by section 4(5);

“child” means a person who is under the age of 16 years;

“interim order” has the meaning given by section 7(2)(c);

“relevant authority” means—

- (a) a local authority; or
- (b) a registered social landlord;

“relevant consultees” means—

- (a) in relation to an antisocial behaviour order sought or made on the application of a local authority—
  - (i) the chief constable of the police force for the area which includes the area of the authority;
  - (ii) the chief constable of each police force for an area where there is an affected person;
  - (iii) each local authority in whose area there is an affected person; and
  - (iv) if the person in respect of whom the order is sought or made is a child, the Principal Reporter;
- (b) in relation to an antisocial behaviour order sought or made on the application of a registered social landlord—
  - (i) the chief constable of the police force for the area in which the person in respect of whom the order is sought or made resides or appears to reside; and
  - (ii) if that person is a child, the Principal Reporter;

“specified person” has the meaning given by section 4(1).