



# Antisocial Behaviour etc. (Scotland) Act 2004

## 2004 asp 8

### PART 13

#### MISCELLANEOUS AND GENERAL

##### *Miscellaneous*

#### **138 Privacy of certain proceedings**

- (1) Subject to subsection (2)—
- (a) proceedings mentioned in subsection (4) shall be conducted and determined in private; and
  - (b) no person other than a person whose presence is necessary for their proper consideration shall be present.
- (2) The court before which particular proceedings are taking place may direct that the proceedings—
- (a) shall take place in public; or
  - (b) shall take place in the presence of such additional persons as the court may direct.
- (3) A direction under subsection (2) may be given in respect of the whole, or any part, of proceedings.
- (4) The proceedings referred to in subsection (1) are—
- (a) proceedings before a sheriff on an application for—
    - (i) an order under section 4(1) in respect of a child;
    - (ii) the variation, or revocation, under section 5(1) of such an order;
    - (iii) an order under section 102(1); or
    - (iv) the variation, or revocation, under section 105(1) of an order made under section 13(1) or 102(1);
  - (b) proceedings before a sheriff for the purpose of considering whether—
    - (i) to make an order under section 7(2) in respect of a child;

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- (ii) to recall such an order;
- (iii) to make a requirement under section 12(1);
- (iv) to make an order under section 13(1); or
- (v) to make an order under section 105(5); and
- (c) an appeal arising from proceedings mentioned in paragraph (a) or (b).

### **139 Disclosure and sharing of information**

- (1) Where subsection (2) applies, any person who, apart from this subsection—
- (a) would not have power to disclose information to a relevant authority; or
  - (b) would be by virtue of any enactment (including subsection (3)) or rule of law susceptible to a sanction or other remedy if the person disclosed the information,
- shall have that power or shall not be susceptible to that sanction or remedy.
- (2) This subsection applies if the disclosure is necessary or expedient for the purposes of any provision of—
- (a) this Act; or
  - (b) any other enactment the purpose of which is to make provision for or in connection with antisocial behaviour or its effects.
- (3) Subject to subsection (4), where—
- (a) by virtue of subsection (1) a person discloses to a relevant authority information in respect of which the person is subject to a duty of confidentiality; and
  - (b) on disclosing the information, the person informs the authority of the breach of the duty,
- the authority shall not disclose the information.
- (4) Subsection (3) shall not prevent disclosure in any case where disclosure is permitted or required by virtue of any enactment or rule of law.
- (5) In subsections (1) and (3), “relevant authority” means—
- (a) a local authority;
  - [<sup>F1</sup>(b) the chief constable of the Police Service of Scotland;]
  - (c) the Principal Reporter;
  - (d) a registered social landlord;
  - (e) an authority administering housing benefit;
  - (f) a person providing services relating to housing benefit to, or authorised to discharge any function relating to housing benefit of—
    - (i) a local authority; or
    - (ii) an authority administering housing benefit.
- (6) Any person who, by virtue of this Act, must or may provide information or who provides or receives information for the purposes of any provision of this Act shall have regard to any relevant guidance given by the Scottish Ministers.
- (7) The Scottish Ministers may, by order, modify the meaning of “relevant authority” in subsection (5).

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#### Textual Amendments

- F1** S. 139(5)(b) substituted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), [sch. 7 para. 24\(9\)](#); S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)

### 140 Equal opportunities

- (1) Any person discharging a function by virtue of this Act shall discharge that function in a manner that encourages equal opportunities and in particular the observance of the equal opportunity requirements.
- (2) In subsection (1), “equal opportunities” and “equal opportunity requirements” have the same meanings as in Section L2 of Part II of Schedule 5 to the Scotland Act 1998 (c. 46).

#### General

### 141 Orders and regulations

- (1) Any power conferred by this Act on the Scottish Ministers to make orders or regulations shall be exercisable by statutory instrument.
- (2) Any power conferred by this Act on the Scottish Ministers to make orders or regulations—
  - (a) may be exercised so as to make different provision for different cases or descriptions of case or for different purposes; and
  - (b) includes power to make such incidental, supplementary, consequential, transitory, transitional or saving provision as the Scottish Ministers consider appropriate.
- (3) A statutory instrument containing an order or regulations made under this Act (other than an order under section 145(2)) shall, subject to subsection (4), be subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (4) A statutory instrument containing—
  - (a) an order under section 53(1), 59(1), 68(6), 83(7), [<sup>F2</sup>85(9),] 103(3), 128(2) or 139(7); or
  - (b) regulations under section 26(2),shall not be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.

#### Textual Amendments

- F2** Word in s. 141(4)(a) inserted (1.7.2012) by [Private Rented Housing \(Scotland\) Act 2011 \(asp 14\)](#), ss. [1\(2\)](#), [41\(3\)](#); S.S.I. 2012/150, art. 2(1)

### 142 Directions

- (1) Any power conferred by virtue of this Act on the Scottish Ministers to give a direction shall include power to vary or revoke the direction.

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(2) Any direction given by virtue of this Act by the Scottish Ministers shall be in writing.

### 143 Interpretation: “antisocial behaviour” and other expressions

(1) For the purposes of this Act (other than Parts 7 and 8), a person (“A”) engages in antisocial behaviour if A—

- (a) acts in a manner that causes or is likely to cause alarm or distress; or
- (b) pursues a course of conduct that causes or is likely to cause alarm or distress, to at least one person who is not of the same household as A; and “antisocial behaviour” shall be construed accordingly.

(2) In this Act, unless the context otherwise requires—

“conduct” includes speech; and a course of conduct must involve conduct on at least two occasions;

“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39); and “area”, in relation to a local authority, means the local government area (within the meaning of that Act) for which the council is constituted;

“registered social landlord” means a body registered in the register maintained under [F3 section 20(1) of the Housing (Scotland) Act 2010 (asp 17)] ; and

“senior police officer” has the meaning given by section 19(1).

#### Textual Amendments

- F3** Words in s. 143(2) substituted (1.4.2012) by [Housing \(Scotland\) Act 2010 \(asp 17\)](#), s. 166(2), [sch. 2 para. 11](#); [S.S.I. 2012/39](#), art. 2, [sch. 1](#) (with [sch. 2](#)) (as amended (1.4.2012) by [S.S.I. 2012/91](#), art. 4)

### 144 Minor and consequential amendments and repeals

(1) Schedule 4 (which contains minor amendments and amendments consequential on the provisions of this Act) shall have effect.

(2) The enactments mentioned in the first column in schedule 5 (which include enactments that are spent) are repealed to the extent set out in the second column.

#### Commencement Information

- II** S. 144 wholly in force at 4.4.2005; s. 144 not in force at Royal Assent see s. 145(2); s. 144 in force for specified purposes at 28.10.2004, 1.12.2004 and 31.1.2005 and for all other purposes at 4.4.2005 by [S.S.I. 2004/420](#), art. 3, [Schs. 1, 3, 4, 5](#)

### 145 Short title and commencement

(1) This Act may be cited as the Antisocial Behaviour etc. (Scotland) Act 2004.

(2) This Act (other than this section and section 141) shall come into force on such day as the Scottish Ministers may by order appoint.

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**Subordinate Legislation Made**

- P1** S. 145(2) power fully exercised: different dates appointed for specified provisions by [S.S.I. 2004/420](#), [arts. 2, 3](#), [Schs. 1-6](#) (with [art. 4](#)) (as amended by [S.S.I. 2005/553](#) and [S.S.I. 2006/104](#))

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