

*Status: Point in time view as at 01/12/2004.*

*Changes to legislation: Antisocial Behaviour etc. (Scotland) Act 2004, SCHEDULE 4 is up to date with all changes known to be in force on or before 07 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

## SCHEDULE 4

(introduced by section 144(1))

### MINOR AND CONSEQUENTIAL AMENDMENTS

- 1 In section 27 of the Social Work (Scotland) Act 1968 (functions of local authorities in relation to persons appearing before courts, under supervision of court orders etc.)—
- (a) in subsection (1)—
- (i) after paragraph (ac) insert—
- “(ad) making available, for the purposes of parenting orders under section 13 or 102 of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8), such services as are required to enable requirements imposed by or under such orders to be carried out in respect of persons in their area;”;
- (ii) in paragraph (b), after sub-paragraph (v) insert—
- “(va) without prejudice to sub-paragraph (i) above, persons in their area who are subject to community reparation orders under section 245K of the said Act of 1995;
- (vb) without prejudice to sub-paragraph (i) above, persons in their area who are under 16 years of age and subject to restriction of liberty orders under section 245A of the said Act of 1995;”;
- (b) in each of subsections (2) to (5), for the words “probation, community service and supervised attendance”, wherever they occur, substitute “community justice”; and
- (c) after subsection (5) insert—
- “(5A) Before including in a community justice scheme which is made, revised or modified under this section provision for the purposes of subsection (1)(b)(va), a local authority shall consult such persons or class or classes of person as the Scottish Ministers may by regulations prescribe.
- (5B) The Scottish Ministers may give local authorities directions in writing as to the content of community justice schemes; and authorities shall comply with any such directions.
- (5C) The power conferred by subsection (5B) above to give a direction shall include power to vary or revoke the direction.”.

#### Commencement Information

- II Sch. 4 para. 1 wholly in force at 4.4.2005; Sch. 4 not in force at Royal Assent see s. 145(2); para. 1(a)(ii) in force for specified purposes at 28.10.2004 and at 4.4.2005 otherwise, para. 1(b)(c) in force at 28.10.2004, and para. 1(a)(i) in force at 4.4.2005 by S.S.I. 2004/420, art. 3, Schs. 1, 5

- 2 In subsection (2C)(c) of section 31 of the Housing (Scotland) Act 1987 (duties to persons found to be homeless), for “anti-social behaviour order under section 19 of the Crime and Disorder Act 1998 (c. 37)” there shall be substituted “antisocial behaviour order—

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- (i) under section 234AA of the Criminal Procedure (Scotland) Act 1995 (c. 46); or
- (ii) under section 4 of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8)”.
- 3 After section 81(3) of the Environmental Protection Act 1990 (power to abate statutory nuisance) there shall be inserted—
- “(3A) The power under subsection (3) above shall, where the matter to be abated is a statutory nuisance by virtue of section 79(1)(g) above, include power to seize and remove any equipment which it appears to the authority is being or has been used in the emission of the noise in question.
- (3B) A person who wilfully obstructs any person exercising, by virtue of subsection (3A) above, the power conferred by subsection (3) above shall be liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.
- (3C) Schedule 1 to the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8) shall have effect in relation to equipment seized by virtue of subsection (3A) above as it does in relation to equipment seized under section 47(2) of that Act, subject to the following modifications—
- (a) in paragraph 1(a), “noise offence” means an offence under section 80(4) above in respect of a statutory nuisance falling within section 79(1)(g) above; and
- (b) in paragraph 1(b), “seized equipment” means equipment seized by virtue of subsection (3A) above.”.
- 4 (1) The Children (Scotland) Act 1995 shall be amended as follows.
- (2) In section 51(5) (powers of sheriff on allowing appeal against decision of children’s hearing), in paragraph (b) for the words from “condition” to “70(9)” substitute “movement restriction condition imposed under subsection (3)(b) of section 70 of this Act or a condition imposed under subsection (9) of that section ”.
- (3) In subsection (6) of section 66 (warrant to keep child where hearing unable to dispose of case), for the words from “that”, where it first occurs, to “satisfied” substitute—
- “(a) that one of the conditions mentioned in section 70(10) of this Act is met; and
- (b) that it is necessary to do so.”.
- (4) In subsection (11) of section 68 (application to sheriff to establish grounds of referral), for the words from “that”, where it first occurs, to “fulfilled” substitute—
- “(a) that one of the conditions mentioned in section 70(10) of this Act is met; and
- (b) that it is necessary for the order to do so.”.
- (5) In subsection (11) of section 69 (continuation or disposal of referral by children’s hearing) for the words from “that”, where it first occurs, to “fulfilled” substitute—
- “(a) that one of the conditions mentioned in section 70(10) of this Act is met; and
- (b) that it is necessary to do so.”.
- (6) In section 93 (interpretation of Part 2)—
- (a) in subsection (1), in the definition of “relevant local authority”—

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- (i) after “area” insert “ there is established ”; and
- (ii) for “formed” substitute “ constituted ”; and
- (b) in subsection (2), in paragraph (b), after “3” insert “ (except section 75A) ”.

#### Commencement Information

- I2** Sch. 4 para. 4 wholly in force at 31.1.2005; Sch. 4 not in force at Royal Assent see s. 145(2); para 4(1) (6) in force at 28.10.2004 and para 4(2)-(5) in force at 31.1.2005 by S.S.I. 2004/420, art. 3, Schs. 1, 4

- 5 (1) The Criminal Procedure (Scotland) Act 1995 shall be amended as follows.
- (2) In subsection (2)(b)(ii) of section 79 (preliminary pleas and preliminary issues), after “Act” there shall be inserted “ section 9(6) of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8) or that section of that Act as applied by section 234AA(11) of this Act ”.
- (3) In subsection (4) of section 193A (suspension of certain sentences pending determination of appeal), after paragraph (d) there shall be inserted—  
“(e) a community reparation order.”.
- (4) In section 219 (imprisonment for non-payment of fines)—  
(a) in subsection (1), after “Act” there shall be inserted “ and subsection (1A) below ”; and  
(b) after subsection (1) there shall be inserted—  
“(1A) Subsection (1) shall not apply to a fine imposed for an offence under section 107 of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8).”.
- (5) In section 235 (supervised attendance orders)—  
(a) in subsection (1), after “(4)” there shall be inserted “ or (4A) ”;  
(b) after subsection (2), there shall be inserted—  
“(2A) In making a supervised attendance order where subsection (4A) below applies, a court shall take into consideration the best interests of any person under the age of 16 in respect of whom the offender has parental responsibilities within the meaning of Part I of the Children (Scotland) Act 1995 (c. 36).”;  
(c) after subsection (4), there shall be inserted—  
“(4A) This subsection applies where, having been convicted of an offence under section 107 of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8), the offender has had imposed on him a fine which (or any part or instalment of which) he has failed to pay.”; and  
(d) in subsection (6)—  
(i) the word “or”, where it first appears, is omitted; and  
(ii) after “(4)(c)” there shall be inserted “ or (4A) ”.
- (6) In subsection (3) of section 239 (requirements of community service orders), after “works” there shall be inserted “ (or carries out voluntary work) ”.

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- (7) In section 245D (combination of restriction of liberty order with probation order or drug treatment and testing order)—
- (a) in subsection (1)(b)—
- (i) after “to”, where it first occurs, there shall be inserted—
- “(i) in the case of an offender who is under 16 years of age,”;
- (ii) for “or to”, where those words first occur, there shall be substituted—
- “(ii) in the case of an offender who is 16 years of age or more, a probation order made under section 228(1) of this Act,”; and
- (iii) the word “to”, where it thirdly occurs, is repealed; and
- (b) in subsection (3), after “and”, where it secondly occurs, there shall be inserted—
- “(a) in the case of an offender who is under 16 years of age, a probation order;
- (b) in the case of an offender who is 16 years of age or more,”.
- (8) In subsection (1)(b) of section 245E (variation of restriction of liberty orders), after “court,” where it first occurs, there shall be inserted “ apply ”.
- (9) In subsection (2) of section 245G (disposal on revocation of restriction of liberty order), after “disposing” there shall be inserted “ of ”.
- (10) In subsection (1)(b) of section 245H (documentary evidence in proceedings under section 245F), for “person subject to the order” there shall be substituted “ offender ”.
- (11) In paragraph 3 of Schedule 7 (supervised attendance orders)—
- (a) in sub-paragraph (1), after “works” there shall be inserted “ (or carries out voluntary work) ”; and
- (b) in sub-paragraph (3), after “works” there shall be inserted “ (or carries out voluntary work) ”.
- (12) In Schedule 9 (certificates as to proof of certain routine matters), at the end there shall be inserted the following entry—

“The Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8), section 45(1).	An officer of a local authority within the meaning of that Act authorised to do so by the authority.	That a level of noise specified in the certificate was measured at a time and in a place specified in the certificate using an approved device within the meaning of that Act.”
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#### Commencement Information

- I3** Sch. 4 para. 5 wholly in force at 4.4.2005; Sch. 4 not in force at Royal Assent see s. 145(2); para 5(1)-(3)(6)(11) in force at 28.10.2004, para 5(12) in force at 1.1.2004, and para. 5(4)(5)(7)-(10) in force at 4.4.2005 by [S.S.I. 2004/420](#), [art. 3](#), [Schs. 1, 3, 5](#)

- 6 (1) The Housing (Scotland) Act 2001 shall be amended as follows.

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- (2) In section 35(2) (conversion to short Scottish secure tenancy), for “anti-social behaviour order under section 19 of the Crime and Disorder Act 1998 (c. 37)” there shall be substituted “antisocial behaviour order—
- (a) under section 234AA of the Criminal Procedure (Scotland) Act 1995 (c. 46); or
  - (b) under section 4 of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8)”.
- (3) In paragraph 2 of schedule 6 (grounds for granting short Scottish secure tenancy), for “anti-social behaviour order under section 19 of the Crime and Disorder Act 1998 (c. 37)” there shall be substituted “antisocial behaviour order—
- (a) under section 234AA of the Criminal Procedure (Scotland) Act 1995 (c. 46); or
  - (b) under section 4 of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8)”.

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