



Crime and Disorder Act 1998

1998 CHAPTER 37

PART I

PREVENTION OF CRIME AND DISORDER

CHAPTER II

SCOTLAND

19 Anti-social behaviour orders.

- (1) A local authority may make an application for an order under this section if it appears to the authority that the following conditions are fulfilled with respect to any person of or over the age of 16, namely—
 - (a) that the person has—
 - (i) acted in an anti-social manner, that is to say, in a manner that caused or was likely to cause alarm or distress; or
 - (ii) pursued a course of anti-social conduct, that is to say, pursued a course of conduct that caused or was likely to cause alarm or distress, to one or more persons not of the same household as himself in the authority's area (and in this section "anti-social acts" and "anti-social conduct" shall be construed accordingly); and
 - (b) that such an order is necessary to protect persons in the authority's area from further anti-social acts or conduct by him.
- (2) An application under subsection (1) above shall be made by summary application to the sheriff within whose sheriffdom the alarm or distress was alleged to have been caused or to have been likely to be caused.
- (3) On an application under subsection (1) above, the sheriff may, if he is satisfied that the conditions mentioned in that subsection are fulfilled, make an order under this section (an "anti-social behaviour order") which, for the purpose of protecting persons in the

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area of the local authority from further anti-social acts or conduct by the person against whom the order is sought, prohibits him from doing anything described in the order.

- (4) For the purpose of determining whether the condition mentioned in subsection (1)(a) is fulfilled, the sheriff shall disregard any act of the person in respect of whom the application is made which that person shows was reasonable in the circumstances.
- (5) This section does not apply in relation to anything done before the commencement of this section.
- (6) Nothing in this section shall prevent a local authority from instituting any legal proceedings otherwise than under this section against any person in relation to any anti-social act or conduct.
- (7) In this section “conduct” includes speech and a course of conduct must involve conduct on at least two occasions.
- (8) In this section and section 21 below “local authority” means a council constituted under section 2 of the ^{M1}Local Government etc. (Scotland) Act 1994 and any reference to the area of such an authority is a reference to the local government area within the meaning of that Act for which it is so constituted.

Commencement Information

II S. 19 wholly in force at 1.4.1999; S. 19 not in force at Royal assent, see s. 121; S. 19 in force in Scotland at 1.4.1999 by S.I. 1998/3263, art. 5

Marginal Citations

M1 1994 c.39.

20 Sex offender orders.

- (1) An application for an order under this section may be made by a chief constable if it appears to him that the conditions mentioned in subsection (2) below are fulfilled with respect to any person in the area of his police force.
- (2) The conditions are—
 - (a) that the person in respect of whom the application for the order is made is—
 - (i) of or over the age of 16 years; and
 - (ii) a sex offender; and
 - (b) that the person has acted, since the relevant date, in such a way as to give reasonable cause to believe that an order under this section is necessary to protect the public from serious harm from him.
- (3) An application under subsection (1) above shall be made by summary application to the sheriff within whose sheriffdom the person is alleged to have acted as mentioned in subsection (2)(b) above.
- (4) On an application under subsection (1) above the sheriff may—
 - (a) pending the determination of the application, make any such interim order as he considers appropriate; and
 - (b) if he is satisfied that the conditions mentioned in subsection (2) above are fulfilled, make an order under this section (“a sex offender order”) which

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prohibits the person in respect of whom it is made from doing anything described in the order.

- (5) The prohibitions that may be imposed by an order made under subsection (4) above are those necessary for the purpose of protecting the public from serious harm from the person in respect of whom the order is made.
- (6) While a sex offender order has effect, Part I of the ^{M2}Sex Offenders Act 1997 shall have effect as if—
 - (a) the person in respect of whom the order has been obtained were subject to the notification requirements of that Part; and
 - (b) in relation to that person, the relevant date (within the meaning of that Part) were the date on which the copy of the order was given or delivered to that person in accordance with subsections (8) and (9) of section 21 below.
- (7) Section 3 above applies for the purposes of this section as it applies for the purposes of section 2 above with the following modifications—
 - (a) any reference in that section to the defendant shall be construed as a reference to the person in respect of whom the order is sought; and
 - (b) in subsection (2) of that section, the reference to subsection (1) of the said section 2 shall be construed as a reference to subsection (2)(b) of this section.
- (8) A constable may arrest without warrant a person whom he reasonably suspects of doing, or having done, anything prohibited by an order under subsection (4)(a) above or a sex offender order.

Marginal Citations

M2 1997 c.51.

21 Procedural provisions with respect to orders.

- (1) Before making an application under—
 - (a) section 19(1) above;
 - (b) subsection (7)(b)(i) below,the local authority shall consult the relevant chief constable.
- (2) Before making an application under section 20(1) above or subsection (7)(b)(i) below, the chief constable shall consult the local authority within whose area the person in respect of whom the order is sought is for the time being.
- (3) In subsection (1) above “relevant chief constable” means the chief constable of the police force maintained under the ^{M3}Police (Scotland) Act 1967 the area of which includes the area of the local authority making the application.
- (4) A failure to comply with subsection (1) or (2) above shall not affect the validity of an order made on any application to which either of those subsections applies.
- (5) A record of evidence shall be kept on any summary application under section 19 or 20 above or subsection (7)(b) below.
- (6) Subsections (7) to (9) below apply to anti-social behaviour orders and sex offender orders and subsections (8) and (9) below apply to an order made under section 20(4)(a) above.

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- (7) An order to which this subsection applies—
- (a) shall have effect for a period specified in the order or indefinitely; and
 - (b) may at any time be varied or revoked on a summary application by—
 - (i) the local authority or, as the case may be, chief constable who obtained the order; or
 - (ii) the person subject to the order.
- (8) The clerk of the court by which an order to which this subsection applies is made or varied shall cause a copy of the order as so made or varied to be—
- (a) given to the person named in the order; or
 - (b) sent to the person so named by registered post or by the recorded delivery service.
- (9) An acknowledgement or certificate of delivery of a letter sent under subsection (8)(b) above issued by the Post Office shall be sufficient evidence of the delivery of the letter on the day specified in such acknowledgement or certificate.
- (10) Where an appeal is lodged against the determination of an application under section 19 or 20 above or subsection (7)(b) above, any order made on the application shall, without prejudice to the determination of an application under subsection (7)(b) above made after the lodging of the appeal, continue to have effect pending the disposal of the appeal.

Commencement Information

I2 S. 21 wholly in force at 1.4.1999; s. 21 not in force at Royal Assent see s. 121; s. 21 in force at 1.12.1998 for the purposes of sex offender orders made under s. 20 and orders made under s. 20(4)(a) by S.I. 1998/2327, art. 4(1); S. 21 in force to the extent that it is not already in force at 1.4.1999 by S.I. 1998/3263, art. 5

Marginal Citations

M3 1967 c.77.

VALID FROM 01/10/2002

[^{F1}21A Sex offender orders made in England and Wales or Northern Ireland

- (1) If without reasonable excuse a person does anything in Scotland which he is prohibited from doing there by—
- (a) an order under section 2(3) or 2A above; or
 - (b) an order under Article 6 or 6A of the Criminal Justice (Northern Ireland) Order 1998 (S.I. 1998/ 2839 (N.I. 20)),
- he is guilty of an offence.
- (2) A person who is guilty of an offence under subsection (1) above shall be liable—
- (a) on summary conviction, to imprisonment for a term not exceeding six 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 five years or to a fine, or to both.]

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Textual Amendments

F1 S. 21A inserted (1.10.2002) by [Police Reform Act 2002 \(c. 30\)](#), s. 71; S.I. 2002/420, art. 2

22 Offences in connection with breach of orders.

- (1) Subject to subsection (3) below, if without reasonable excuse a person breaches an anti-social behaviour order by doing anything which he is prohibited from doing by the order, he shall be guilty of an offence and shall be liable—
 - (a) on summary conviction, to a term of imprisonment not exceeding six 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 five years or to a fine or to both.
- (2) Subsection (3) applies where—
 - (a) the breach of the anti-social behaviour order referred to in subsection (1) above consists in the accused having acted in a manner prohibited by the order which constitutes a separate offence (in this section referred to as the “separate offence”); and
 - (b) the accused has been charged with that separate offence.
- (3) Where this subsection applies, the accused shall not be liable to be proceeded against for an offence under subsection (1) above but, subject to subsection (4) below, the court which sentences him for that separate offence shall, in determining the appropriate sentence or disposal for that offence, have regard to—
 - (a) the fact that the offence was committed by him while subject to an anti-social behaviour order;
 - (b) the number of such orders to which he was subject at the time of the commission of the offence;
 - (c) any previous conviction of the accused of an offence under subsection (1) above; and
 - (d) the extent to which the sentence or disposal in respect of any such previous conviction of the accused differed, by virtue of this subsection, from that which the court would have imposed but for this subsection.
- (4) The court shall not, under subsection (3) above, have regard to the fact that the separate offence was committed while the accused was subject to an anti-social behaviour order unless that fact is libelled in the indictment or, as the case may be, specified in the complaint.
- (5) The fact that the separate offence was committed while the accused was subject to an anti-social behaviour order shall, unless challenged—
 - (a) in the case of proceedings on indictment, by giving notice of a preliminary objection under paragraph (b) of section 72 of the ^{M4}Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”) or under that paragraph as applied by section 71(2) of that Act; or
 - (b) in summary proceedings, by preliminary objection before his plea is recorded, be held as admitted.

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- (6) Subject to subsection (7) below, subsections (1) to (5) above apply in relation to an order under section 20(4)(a) above and to a sex offender order as they apply in relation to an anti-social behaviour order.
- (7) Subsection (2) above as applied for the purposes of subsection (6) above shall have effect with the substitution of the words “ at the time at which he committed ” for the words “which constitutes”.

Commencement Information

- I3** S. 22 wholly in force at 1.4.1999; S. 22 not in force at Royal Assent, see s. 121; S. 22(6)(7) and for the purposes of their application to an order under s. 20(4)(a) and to a sex offender order made under s. 20, s. 22(1)-(5) in force at 1.12.1998 by S.I. 1998/2327, art. 4(1); S. 22 in force to the extent that it is not already in force at 1.4.1999 by S.I. 1998/3263, art. 5

Marginal Citations

- M4** 1995 c.46.

[^{F2}22A Anti-social behaviour strategies

- (1) Each local authority shall prepare jointly with the relevant chief constable a strategy for dealing with anti-social behaviour in the authority’s area; and the authority shall publish the strategy.
- (2) The strategy shall, in particular, include provision as to—
- (a) how the authority and the police are to co-ordinate the exercise of their functions in so far as they are exercisable in relation to anti-social behaviour in the authority’s area; and
 - (b) the exchange of information between the authority and the police relating to such behaviour.
- (3) The local authority and the relevant chief constable—
- (a) shall keep the strategy under review; and
 - (b) may from time to time revise the strategy,
- and the authority shall publish the strategy as so revised.
- (4) In this section—
- “anti-social behaviour” means any act or conduct (including speech) which causes or is likely to cause alarm, distress, nuisance or annoyance to any person;
- “local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39) and any reference to the area of such an authority is a reference to the local government area within the meaning of that Act for which it is so constituted;
- “relevant chief constable” means the chief constable of the police force maintained under the Police (Scotland) Act 1967 (c. 77) the area of which includes the area of the local authority.]

Textual Amendments

- F2** S. 22A inserted (prosp.) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 83, 89

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23 Anti-social behaviour as ground of eviction.

(1) Schedule 3 to the ^{M5}Housing (Scotland) Act 1987 (grounds of eviction in relation to secure tenancies) shall be amended in accordance with subsections (2) and (3) below.

(2) For paragraph 2 there shall be substituted the following paragraph—

- “2
- (1) The tenant, a person residing or lodging in the house with the tenant or a person visiting the house has been convicted of—
- (a) using or allowing the house to be used for immoral or illegal purposes; or
 - (b) an offence punishable by imprisonment committed in, or in the locality of, the house.
- (2) In sub-paragraph (1) above “tenant” includes any one of joint tenants and any sub-tenant.”

(3) For paragraph 7 there shall be substituted the following paragraph—

- “7
- (1) The tenant, a person residing or lodging in the house with the tenant or a person visiting the house has—
- (a) acted in an anti-social manner in relation to a person residing, visiting or otherwise engaging in lawful activity in the locality; or
 - (b) pursued a course of anti-social conduct in relation to such a person as is mentioned in head (a) above,
- and it is not reasonable in all the circumstances that the landlord should be required to make other accommodation available to him.
- (2) In sub-paragraph (1) above—
- “anti-social”, in relation to an action or course of conduct, means causing or likely to cause alarm, distress, nuisance or annoyance;
 - “conduct” includes speech and a course of conduct must involve conduct on at least two occasions; and
 - “tenant” includes any one of joint tenants and any sub-tenant.”

(4) For Ground 15 in Schedule 5 to the ^{M6}Housing (Scotland) Act 1988 (eviction on ground of use of premises for immoral or illegal purposes etc.) there shall be substituted the following—

Ground 15

The tenant, a person residing or lodging in the house with the tenant or a person visiting the house has—

- (a) been convicted of—
 - (i) using or allowing the house to be used for immoral or illegal purposes; or
 - (ii) an offence punishable by imprisonment committed in, or in the locality of, the house; or
- (b) acted in an anti-social manner in relation to a person residing, visiting or otherwise engaging in lawful activity in the locality; or
- (c) pursued a course of anti-social conduct in relation to such a person as is mentioned in head (b) above.

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In this Ground “anti-social”, in relation to an action or course of conduct, means causing or likely to cause alarm, distress, nuisance or annoyance, “conduct” includes speech and a course of conduct must involve conduct on at least two occasions and “tenant” includes any one of joint tenants.”

- (5) No person shall be liable to eviction under paragraph 2 or 7 of Schedule 3 to the ^{M7}Housing (Scotland) Act 1987 or Ground 15 in Schedule 5 to the ^{M8}Housing (Scotland) Act 1988 as substituted respectively by subsection (2), (3) and (4) above in respect of any act or conduct before the commencement of this section unless he would have been liable to be evicted under those paragraphs or, as the case may be, that Ground as they had effect before that substitution.

Marginal Citations

- M5** 1987 c.26.
M6 1988 c.43.
M7 1987 c.26.
M8 1988 c.43.

24 Noise-making equipment: police power of seizure.

- (1) The ^{M9}Civic Government (Scotland) Act 1982 shall be amended in accordance with this section.
- (2) In section 54 (offence of playing instruments, etc.), after subsection (2) there shall be inserted the following subsections—
- “(2A) Where a constable reasonably suspects that an offence under subsection (1) above has been committed in relation to a musical instrument or in relation to such a device as is mentioned in paragraph (c) of that subsection, he may enter any premises on which he reasonably suspects that instrument or device to be and seize any such instrument or device he finds there.
- (2B) A constable may use reasonable force in the exercise of the power conferred by subsection (2A) above.
- (2C) Schedule 2A to this Act (which makes provision in relation to the retention and disposal of property seized under subsection (2A) above) shall have effect.”
- (3) In section 60 (powers of search and seizure)—
- (a) in subsection (5)—
- (i) after the words “Nothing in” there shall be inserted the words “section 54(2A) of this Act or ”; and
- (ii) for the words from “which” to the end there shall be substituted the words “ which is otherwise exercisable by a constable ”; and
- (b) in subsection (6)—
- (i) in paragraph (a), for the words from “in pursuance” to the word “vessel” there shall be substituted the words—
- “to enter and search—
- (i) any premises in pursuance of section 54(2A) of this Act or of subsection (1) above; or

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- (ii) any vehicle or vessel in pursuance of the said subsection (1),”; and
 - (ii) in paragraph (c), after “under” there shall be inserted the words “section 54(2A) of this Act or ”.
- (4) After Schedule 2 there shall be inserted the Schedule set out in Schedule 1 to this Act.

Marginal Citations

M9 1982 c.45.

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