



Antisocial Behaviour etc. (Scotland) Act 2004

2004 asp 8

PART 2

ANTISOCIAL BEHAVIOUR ORDERS

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;

Status: This is the original version (as it was originally enacted).

- (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”.
- (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.