



# Antisocial Behaviour etc. (Scotland) Act 2004

2004 asp 8

## PART 10

### FURTHER CRIMINAL MEASURES

#### *Antisocial behaviour orders*

#### 118 Antisocial behaviour orders

After section 234A of the Criminal Procedure (Scotland) Act 1995 (c. 46) there shall be inserted—

#### *“Antisocial behaviour orders*

#### **234AA Antisocial behaviour orders**

- (1) Where subsection (2) below applies, the court may, instead of or in addition to imposing any sentence which it could impose, make an antisocial behaviour order in respect of a person (the “offender”).
- (2) This subsection applies where—
  - (a) the offender is convicted of an offence;
  - (b) at the time when he committed the offence, the offender was at least 12 years of age;
  - (c) in committing the offence, he engaged in antisocial behaviour; and
  - (d) the court is satisfied, on a balance of probabilities, that the making of an antisocial behaviour order is necessary for the purpose of protecting other persons from further antisocial behaviour by the offender.
- (3) For the purposes of subsection (2)(c) above, a person engages in antisocial behaviour if he—
  - (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 him.
- (4) Subject to subsection (5) below, an antisocial behaviour order is an order which prohibits, indefinitely or for such period as may be specified in the order, the offender from doing anything described in the order.
- (5) The prohibitions that may be imposed by an antisocial behaviour order are those necessary for the purpose of protecting other persons from further antisocial behaviour by the offender.
- (6) Before making an antisocial behaviour order, the court shall explain to the offender 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 court has under subsection (8) below; and
  - (d) the entitlement of the offender to appeal against the making of the order.
- (7) Failure to comply with subsection (6) shall not affect the validity of the order.
- (8) On the application of the offender in respect of whom an antisocial behaviour order is made under this section, the court which made the order may, if satisfied on a balance of probabilities that it is appropriate to do so—
  - (a) revoke the order; or
  - (b) subject to subsection (9) below, vary it in such manner as it thinks fit.
- (9) Where an antisocial behaviour order specifies a period, the court may not, under subsection (8)(b) above, vary the order by extending the period.
- (10) An antisocial behaviour order made under this section, and any revocation or variation of such an order under subsection (8) above, shall be taken to be a sentence for the purposes of an appeal.
- (11) Sections 9 and 11 of the Antisocial Behaviour etc. (Scotland) Act 2004 ([asp 8](#)) (which provide that breach of an antisocial behaviour order made under that Act is an offence for which a person is liable to be arrested without warrant) shall apply in relation to antisocial behaviour orders made under this section as those sections apply in relation to antisocial behaviour orders made under section 4 of that Act.
- (12) In this section, “conduct” includes speech; and a course of conduct must involve conduct on at least two occasions.

### **234AB Antisocial behaviour orders: notification**

- (1) Upon making an antisocial behaviour order under section 234AA of this Act, the court shall—
  - (a) serve a copy of the order on the offender; and
  - (b) give a copy of the order to the local authority it considers most appropriate.

- (2) Upon revoking an antisocial behaviour order under subsection (8)(a) of that section, the court shall notify the local authority to whom a copy of the order was given under subsection (1)(b) above.
- (3) Upon varying an antisocial behaviour order under subsection (8)(b) of that section, the court shall—
  - (a) serve a copy of the order as varied on the offender; and
  - (b) give a copy of the order as varied to the local authority to whom a copy of the order was given under subsection (1)(b) above.
- (4) For the purposes of this section, a copy is served on an offender if—
  - (a) given to him; or
  - (b) sent to him by registered post or the recorded delivery service.
- (5) A certificate of posting of a letter sent under subsection (4)(b) issued by the postal operator shall be sufficient evidence of the sending of the letter on the day specified in such certificate.
- (6) In this section, “offender” means the person in respect of whom the antisocial behaviour order was made.”.

## **119      Records of antisocial behaviour orders made in criminal courts**

- (1) A local authority shall keep records of each antisocial behaviour order of which the authority has been given a copy by virtue of subsection (1)(b) of section 234AB of the Criminal Procedure (Scotland) Act 1995 (c. 46) (the “1995 Act”).
- (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;
  - (c) whether a prohibition is indefinite or for a definite period and where it is for a period, that period;
  - (d) where the authority is, by virtue of subsection (2) of that section of the 1995 Act, notified of the revocation of the order, the date on which it was revoked;
  - (e) where the authority is, by virtue of subsection (3)(b) of that section of the 1995 Act, given a copy of the order as varied, the variation and its date; and
  - (f) 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.
- (5) A local authority shall, in discharging functions by virtue of this section, have regard to such guidance issued by the Scottish Ministers as to—

- (a) the discharge of those functions; and
  - (b) such matters arising in connection with the discharge of those functions,
- as the Scottish Ministers think fit.

*Community reparation orders*

**120 Community reparation orders**

After section 245J of the Criminal Procedure (Scotland) Act 1995 (c. 46) there shall be inserted—

*“Community reparation orders*

**245K Community reparation orders**

- (1) Where subsection (2) below applies, the court may, instead of imposing any sentence which, but for this subsection, it could impose, make a community reparation order in respect of a person (“the offender”).
- (2) This subsection applies where—
  - (a) the offender is convicted in summary proceedings of an offence;
  - (b) at the time when he committed the offence, he was at least 12 years old;
  - (c) he committed the offence by engaging to any extent in antisocial behaviour; and
  - (d) in relation to the local authority that would be specified in the order, the Scottish Ministers have notified the court that the authority has made arrangements that would enable an order to be complied with.
- (3) For the purposes of subsection (2)(c) above, a person engages in antisocial behaviour if he—
  - (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 him.
- (4) A community reparation order is an order—
  - (a) requiring the specified local authority to appoint a supervising officer for the purposes of—
    - (i) determining which prescribed activities the offender should undertake for the specified number of hours (being at least 10 and not exceeding 100) during the period of 12 months beginning with the day on which the order is made;
    - (ii) determining at what times and in which localities he should undertake those activities; and
    - (iii) giving the offender directions during that period to undertake activities in accordance with determinations under subparagraphs (i) and (ii) above; and
  - (b) requiring the offender, during that period, to comply with those directions.

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

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- (5) In subsection (4) above—  
“prescribed activities” means activities designed—  
    (a) to enable reparation to be made (whether to a particular person or to a group of persons and whether such a person, or any person in the group, has been affected by the antisocial behaviour or otherwise) by persons who have engaged in antisocial behaviour; or  
    (b) to reduce the likelihood of persons engaging in such behaviour, which are of such description as the Scottish Ministers may by regulations prescribe; and  
“specified” means specified in the order.
- (6) The Scottish Ministers may by regulations make provision about determinations made, and directions given, by virtue of paragraph (a) of subsection (4) above.
- (7) In giving directions by virtue of subsection (4)(a)(iii) above, a supervising officer shall, as far as practicable, avoid—  
    (a) any conflict with the offender’s religious beliefs;  
    (b) any interference with the times at which the offender normally works (or carries out voluntary work) or attends an educational establishment.
- (8) Before making a community reparation order in respect of an offender, the court shall explain to him in ordinary language—  
    (a) the purpose and effect of the order;  
    (b) the consequences of failure to comply with the order; and  
    (c) the powers the court has under section 245P of this Act.
- (9) For the purposes of any appeal or review, a community reparation order is a sentence.
- (10) Regulations under subsections (5) and (6) above shall be made by statutory instrument; and any such instrument shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.

#### **245L Community reparation order: notification**

Where the court makes a community reparation order it shall intimate the making of the order to—

- (a) the offender;
- (b) the chief social work officer of the local authority specified in the order; and
- (c) where it is not the appropriate court, the clerk of the appropriate court.

#### **245M Failure to comply with community reparation order: extension of 12 month period**

Subject to sections 245N(4) and 245P(2)(c) and (d) of this Act, if—

- (a) a community reparation order is made in respect of an offender; and
- (b) the offender fails to comply with a direction given by the supervising officer appointed by virtue of the order,

then the order shall, notwithstanding section 245K(4)(a)(i), remain in force until the offender has complied with the direction.

#### **245N Failure to comply with community reparation order: powers of court**

- (1) Subsection (2) below applies where—
  - (a) a community reparation order is made in respect of an offender; and
  - (b) on information from the offender’s supervising officer, it appears to the appropriate court that the offender has failed to comply with the order or any direction given under it.
- (2) The court may issue—
  - (a) a warrant for the arrest of the offender; or
  - (b) a citation requiring the offender to appear before the court at such time as may be specified in the citation.
- (3) The unified citation provisions shall apply in relation to a citation under this section as they apply in relation to a citation under section 216(3)(a) of this Act.
- (4) If it is proved to the satisfaction of the court before which the offender is brought or appears in pursuance of subsection (2) above that the offender has failed without reasonable excuse to comply with the order or any direction given under it, the court may revoke the order and deal with the offender in any manner in which he could have been dealt with for the original offence if the order had not been made.
- (5) The evidence of one witness shall, for the purposes of subsection (4) above, be sufficient evidence.

#### **245P Extension, variation and revocation of order**

- (1) Subsection (2) below applies where a community reparation order is made in respect of an offender.
- (2) On the application of the offender or the offender’s supervising officer, the appropriate court may, if it appears to it that it would be in the interests of justice to do so having regard to circumstances which have arisen since the order was made—
  - (a) extend, in relation to the order, the period of 12 months specified in section 245K(4)(a)(i) of this Act;
  - (b) vary the numbers of hours specified in the order;
  - (c) revoke the order; or
  - (d) revoke the order and deal with the offender in any manner in which he could have been dealt with for the original offence if the order had not been made.
- (3) If the court proposes to exercise its powers under subsection (2)(a), (b) or (d) above otherwise than on the application of the offender, it shall issue a citation requiring the offender to appear before the court at such time as may be specified in the citation and, if he fails to appear, may issue a warrant for his arrest.

- (4) The unified citation provisions shall apply in relation to a citation under this section as they apply in relation to a citation under section 216(3)(a) of this Act.

#### **245Q Sections 245L, 245N and 245P: meaning of “appropriate court”**

In sections 245L, 245N and 245P of this Act, “appropriate court”, in relation to a community reparation order, means the court having jurisdiction in the area of the local authority specified in the order, being a sheriff or district court according to whether the order is made by a sheriff or district court (except that, in the case where an order is made by a district court and there is no district court in that area, it means the sheriff).”.

### *Restriction of liberty orders*

#### **121 Restriction of liberty orders**

- (1) Section 245A of the Criminal Procedure (Scotland) Act 1995 (c. 46) (restriction of liberty orders) shall be amended in accordance with subsections (2) and (3).
- (2) In subsection (1), the words “of 16 years of age or more” are repealed.
- (3) After subsection (11), there shall be inserted—
 

“(11A) A court shall not make a restriction of liberty order in respect of an offender who is under 16 years of age unless, having obtained a report on the offender from the local authority in whose area he resides, it is satisfied as to the services which the authority will provide for his support and rehabilitation during the period when he is subject to the order.”.

### *Sale of spray paint to children*

#### **122 Offence of selling spray paint to child**

- (1) A person who sells to a person under the age of 16 a spray paint device shall be guilty of an offence.
- (2) In subsection (1), “spray paint device” means a device which—
  - (a) contains paint stored under pressure; and
  - (b) is designed to permit the release of the paint as a spray.
- (3) A person guilty of an offence under subsection (1) shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (4) It shall be a defence for a person charged with an offence under subsection (1) to show that the person took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

#### **123 Requirement to display warning statement**

- (1) A notice displaying the statement—
 

“It is illegal to sell a spray paint device to anyone under the age of 16”

shall be exhibited at an appropriate place at every premises at which spray paint devices are sold by retail.

- (2) In subsection (1), “appropriate place” means a prominent position where the statement is readily visible to persons at the point of sale of spray paint devices.
- (3) The dimensions of the notice to be exhibited in accordance with subsection (1), and the size of the statement to be displayed on it, shall be such as may be prescribed by regulations made by the Scottish Ministers.
- (4) Where—
  - (a) a person carries on a business involving the retail of spray paint devices at any premises; and
  - (b) no notice is exhibited in accordance with subsection (1) at those premises,
 that person shall be guilty of an offence.
- (5) A person guilty of an offence under subsection (4) shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale.
- (6) It shall be a defence for a person charged with an offence under subsection (4) to show that the person took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.
- (7) Where an offence under subsection (4) is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to, any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, that person as well as the body corporate shall be guilty of that offence.
- (8) In subsection (7), “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.
- (9) Where an offence under subsection (4) is committed by a Scottish partnership and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, that partner as well as the partnership shall be guilty of that offence.
- (10) In this section—
 

“premises” includes—

  - (a) any place; and
  - (b) any vehicle, vessel, aircraft, hovercraft, stall or moveable structure; and

“spray paint device” has (except where it appears in the statement set out in subsection (1)) the same meaning as in section 122(1).

## **124 Offences under sections 122 and 123: enforcement**

- (1) A local authority shall, within its area, enforce sections 122 and 123.
- (2) Subsection (1) does not authorise a local authority to institute proceedings for an offence under section 122(1) or 123(4).



**125 Offences under sections 122 and 123: powers of entry, inspection and seizure**

- (1) Subject to subsection (3), an authorised officer of a local authority may at any reasonable hour exercise any of the powers conferred by subsections (4) to (7).
- (2) In subsection (1), “authorised officer”, in relation to a local authority, means an officer of the authority authorised in writing by it for the purposes of this section.
- (3) An officer seeking to exercise a power mentioned in subsection (1) shall, if requested, produce evidence of identity and authorisation.
- (4) The officer may, for the purpose of ascertaining whether a relevant offence has been committed—
  - (a) inspect any goods; and
  - (b) enter any premises (other than premises used only as a dwelling).
- (5) If the officer has reasonable cause to suspect that a relevant offence has been committed, the officer may, for the purpose of ascertaining whether it has been committed—
  - (a) require any person carrying on, or employed in connection with, a business, to produce any records relating to the business; and
  - (b) take copies of, or of any entry in, any records produced by virtue of paragraph (a).
- (6) If the officer has reasonable cause to believe that a relevant offence has been committed, the officer may, for the purpose of ascertaining, by testing or otherwise, whether it has been committed, seize and detain any goods.
- (7) The officer may seize and detain any goods or records which the officer has reason to believe may be required as evidence in proceedings for a relevant offence.
- (8) In this section, “relevant offence” means an offence under section 122(1) or 123(4).

*Seizure of vehicles***126 Vehicles used in manner causing alarm, distress or annoyance**

- (1) Where—
  - (a) regulations under section 127 are in force; and
  - (b) subsection (2) applies,
 a constable in uniform may exercise the powers mentioned in subsection (3).
- (2) This subsection applies where the constable has reasonable grounds for believing that a motor vehicle—
  - (a) is being used on any occasion in a manner which—
    - (i) contravenes section 3 or 34 of the Road Traffic Act 1988 (c. 52) (careless and inconsiderate driving and prohibition of off-road driving); and
    - (ii) is causing, or is likely to cause, alarm, distress or annoyance to members of the public; or
  - (b) has been used on any occasion in a manner which—
    - (i) contravened either of those sections of that Act; and
    - (ii) caused, or was likely to cause, such alarm, distress or annoyance.

- (3) The powers are—
- (a) if the motor vehicle is moving, power to order the person driving it to stop the vehicle;
  - (b) subject to subsection (4), power to seize and remove the motor vehicle;
  - (c) for the purposes of exercising a power falling within paragraph (a) or (b), power to enter any premises (other than a private dwelling house) on which the constable has reasonable grounds for believing the motor vehicle to be;
  - (d) power to use reasonable force, if necessary, in the exercise of a power conferred by any of paragraphs (a) to (c).
- (4) Subject to subsection (5), the constable shall not seize the motor vehicle unless—
- (a) where the case falls within subsection (2)(a)—
    - (i) the constable has warned the person who is using the motor vehicle in the manner mentioned in that subsection that if the use continues the constable will seize the vehicle; and
    - (ii) it appears to the constable that, after the warning, the use has continued; or
  - (b) where the case falls within subsection (2)(b)—
    - (i) the constable has warned the person who used the motor vehicle in the manner mentioned in that subsection that if the use is repeated, the constable will seize the vehicle; and
    - (ii) it appears to the constable that, after the warning, the use has been repeated.
- (5) Subsection (4) does not require a warning to be given by a constable on any occasion on which the constable would otherwise have the power to seize a motor vehicle under this section if—
- (a) the circumstances make it impracticable for the constable to give the warning;
  - (b) the constable has already on that occasion given a warning under that subsection in respect of any use of that motor vehicle or of another motor vehicle by that person or any other person; or
  - (c) the constable has reasonable grounds for believing—
    - (i) that such a warning has been given on that occasion otherwise than by that constable; or
    - (ii) that the person whose use of that motor vehicle on that occasion would justify the seizure is a person to whom a warning under that subsection has been given (whether or not by that constable or in respect of the same vehicle or the same or a similar use) on a previous occasion in the previous 12 months.
- (6) A person who fails to comply with an order under subsection (3)(a) shall be guilty of an offence.
- (7) A person guilty of an offence under subsection (6) shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (8) In this section—
- “driving” has the same meaning as in the Road Traffic Act 1988 (c. 52);
  - “motor vehicle” means any mechanically propelled vehicle, whether or not it is intended or adapted for use on roads; and
  - “private dwelling house” does not include—

- (a) any garage or other structure occupied with the dwelling house; or
- (b) any land appurtenant to the dwelling house.

## **127 Retention etc. of vehicles seized under section 126**

- (1) The Scottish Ministers may by regulations make provision as to—
  - (a) the removal and retention of motor vehicles seized under section 126; and
  - (b) the release or disposal of such vehicles.
- (2) Regulations under subsection (1) may in particular make provision for or in connection with—
  - (a) the giving of notice of the seizure of a motor vehicle under section 126 to a person who—
    - (i) is the owner of that vehicle; or
    - (ii) in accordance with the regulations, appears to be its owner;
  - (b) the procedure by which a person who claims to be the owner of a motor vehicle seized under section 126 may seek to have it released;
  - (c) requiring the payment of fees, charges or other costs in relation to—
    - (i) the removal and retention of such a motor vehicle; and
    - (ii) any application for its release;
  - (d) the circumstances in which a motor vehicle seized under section 126 may be disposed of;
  - (e) the delivery to a local authority, in circumstances prescribed by or determined in accordance with the regulations, of any motor vehicle seized under section 126.
- (3) Regulations under subsection (1) shall provide that a person who would otherwise be liable to pay any fee or charge under the regulations shall not be liable to pay it if—
  - (a) the use by reference to which the motor vehicle concerned was seized was not a use by that person; and
  - (b) the person—
    - (i) did not know of the use of the vehicle in the manner that led to its seizure;
    - (ii) had not consented to its use in that manner; and
    - (iii) could not, by the taking of reasonable steps, have prevented its use in that manner.
- (4) In this section, “motor vehicle” has the same meaning as in section 126.