

ANTISOCIAL BEHAVIOUR ETC. (SCOTLAND) ACT 2004

EXPLANATORY NOTES

THE ACT

3. This Act introduces a number of measures and changes to tackle antisocial behaviour. It contains a range of provisions in the areas of justice, the environment, housing and child welfare, all of which are linked to tackling antisocial behaviour.
4. The Act is in 13 Parts.
5. These are:

Part 1 – Antisocial behaviour strategies

Part 1 makes provision for antisocial behaviour strategies, which must be prepared jointly by local authorities and chief constables. The purpose of the strategy is to prevent and deal with antisocial behaviour in the local authority area. Part 1 sets out requirements on content, consultation, publication, monitoring, review and reporting and gives Scottish Ministers powers to secure the participation of registered social landlords where that is considered appropriate.

Part 2 – Antisocial behaviour orders

Part 2 replaces existing provisions on antisocial behaviour orders in the Crime and Disorder Act 1998. Antisocial behaviour orders are preventative orders to protect people affected by antisocial behaviour from further acts or conduct that would cause them alarm or distress. Breach of an order is a criminal offence. Part 2 extends the orders to 12-15 year olds. It also gives the court new powers to refer such children to the children's hearing system and where appropriate make a parenting order. It introduces other changes such as the introduction of a statutory power of arrest for breach of an order and a requirement on local authorities to keep records of orders.

Part 3 – Dispersal of groups

Part 3 makes provision for the dispersal by constables of groups of two or more persons whose presence or behaviour is causing or is likely to cause alarm or distress to any members of the public in any public place. Failure to comply with a direction to disperse will be a criminal offence. These powers can only be exercised within a particular locality authorised by a senior police officer. The senior police officer will only make such an authorisation in a locality within which antisocial behaviour is a significant, persistent and serious problem.

Part 4 – Closure of premises

Part 4 makes provision for the closure of premises associated with significant and persistent disorder or significant, persistent and serious nuisance to members of the public. A closure notice will only be served on a premises once authorised by a senior

police officer. That senior officer will then apply to the sheriff for a closure order, which will prohibit all access to the premises for a specified period (up to a maximum of 6 months, including extension). Failure to comply with a closure order will be a criminal offence.

Part 5 – Noise nuisance

The noise control provisions in Part 5 are additional and complementary to the existing statutory nuisance regime under Part III of the Environmental Protection Act 1990 (“the 1990 Act”). Local authorities are given the power to implement a noise nuisance service in their area up to 24 hours a day and 7 days a week. In addition, provision is made for fixed penalty notices for noise nuisance and additional powers are introduced for local authority officers to seize noise making equipment.

Part 6 –The environment

Part 6 makes provision on a range of antisocial environmental offences. It introduces fixed penalty notices for fly-tipping; gives the police powers to issue fixed penalty notices for littering; introduces new powers for the Scottish Ministers to issue directions in relation to clearance of litter; and increases penalties for a range of antisocial environmental offences. In addition, Part 6 gives local authorities a power to serve graffiti removal notices on those responsible for street furniture such as bus shelters, telephone kiosks and utility boxes as well as for property owned or managed by educational institutions and certain statutory transport undertakers, requiring them to remove graffiti from their property. Local authorities will be empowered to remove the graffiti themselves and charge the owner of the property for doing so, if the owner does not comply with the notice within 28 days

Part 7 – Antisocial behaviour notices

Part 7 provides powers for a local authority to serve an antisocial behaviour notice on a private landlord where an occupant of or visitor to a house let by the landlord engages in antisocial behaviour at or in the locality of the house. The notice specifies actions the landlord must take to address the antisocial behaviour. A landlord who does not carry out the actions in the notice is guilty of an offence and the local authority may also apply to the sheriff court for an order that no rent is payable or for an order transferring management control to the local authority. The local authority may also take steps to deal with the behaviour described in the notice at the landlord’s expense.

Part 8 – Registration of certain landlords

Part 8 requires each local authority to establish a register under this Part showing registered persons and the houses they let, and make it available for public inspection. Any person can apply to be registered. The local authority must be satisfied prior to registration that the person is fit and proper to act as a landlord, and that any agent declared by a landlord is also fit and proper. The local authority may remove a person who is no longer fit and proper from the register. A private landlord who lets a house without being registered is committing an offence unless he or she has applied for registration and the application has not been determined by the local authority. The local authority may serve a notice that no rent is payable on such a landlord, and on the tenant and any agent. The notice does not affect other terms of the lease.

Part 9 – Parenting orders

Parenting orders are new civil orders to deal with parents who refuse to engage in voluntary support to prevent crime or antisocial behaviour involving a relevant child or to protect the child’s welfare. Breach of an order is a criminal offence. An order will make requirements of that parent and will generally include a duty to attend counselling, guidance or other support.

Part 10 – Further criminal measures

Part 10 contains a number of miscellaneous criminal measures:

- Antisocial behaviour orders on conviction in the criminal court
- Community reparation orders: new sentence for offenders aged 12 and over who are convicted of an offence involving antisocial behaviour.
- Restriction of liberty orders: extension of orders to under 16s as a sentencing option in the criminal court. This will only be available as an alternative to secure accommodation.
- Ban on the sale of spray paint to under 16s
- Seizure of vehicles: power for police to seize vehicles used in a manner causing alarm, distress or annoyance

Part 11 – Fixed penalties

Part 11 gives police powers to issue fixed penalty notices for a range of low-level, antisocial offences, including being drunk and incapable in a public place, vandalism and breach of the peace.

Part 12 – Children’s hearings

Part 12 allows children’s hearings to impose electronic monitoring as a direct alternative to secure accommodation. In addition, provision is made to ensure a local authority can be held to account where it has not implemented a supervision requirement in relation to a child and where it has not provided appropriate education for children excluded from school.

Part 13 – Miscellaneous and general

Part 13 includes provisions relating to:

- Privacy of certain proceedings in interests of children
 - Disclosure and sharing of information
 - Equal opportunities
 - Interpretation of “antisocial behaviour” and other terms used throughout the Act
6. A definition of “antisocial behaviour” for the purposes of the Act (apart from Parts 7 and 8) is provided at section 143.