

ANTISOCIAL BEHAVIOUR ETC. (SCOTLAND) ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2 – Antisocial Behaviour Orders

Section 4 – Antisocial behaviour orders

19. **Section 4** enables a sheriff to make an antisocial behaviour order, on the application of a relevant authority as defined in section 18, if the sheriff is satisfied:
 - that the person specified in the application is at least 12 years of age;
 - that the person specified in the application has engaged in antisocial behaviour towards a person who is a relevant person as defined in subsection (13); and
 - that the order is necessary for the purposes of protecting relevant persons from further antisocial behaviour by the specified person.
20. Subsection (4) provides that where the specified person is aged 12-15 years of age, the sheriff shall have regard to advice from a children’s hearing as to whether the condition that the order is necessary to protect relevant persons (as mentioned in subsection 2 (c)) is met. Before determining the application for an order under section 4 the sheriff will have required the Principal Reporter to arrange a children’s hearing for the purpose of obtaining their advice.
21. Subsection (7) extends the classes of persons who can be protected by an antisocial behaviour orders applied for by local authorities by allowing the order to include such additional prohibitions as are necessary for the purpose of protecting persons other than relevant persons (referred to as “affected persons”) from further antisocial behaviour by the person subject to the order. This enables an order to be made that will protect persons outwith the applicant local authority area. Where an application is made by a registered social landlord, the scope of the conditions are limited to what is necessary to protect relevant persons as defined at section 4(13) (b).
22. Subsection (8) requires the sheriff to explain in ordinary language matters specified in that subsection before making an antisocial behaviour order, where the specified person is in court. However, subsection (9) provides that a failure to comply with this requirement shall not affect the validity of the order.
23. Subsection (11) makes provision as to what consultation or notification is required before an application for an antisocial behaviour order is made. A local authority must consult the police force for its area and, where the application relates to someone under 16, the Principal Reporter. Further, where the application is intended to protect an “affected person” (i.e. one who does not live within that local authority area) then the local authority must also consult the local authority and police for that area. A registered social landlord must consult the police force for the area in which the person who is

*These notes relate to the Antisocial Behaviour etc. (Scotland)
Act 2004 (asp 8) which received Royal Assent on 26 July 2004*

proposed to be subject to the order resides and, where the application relates to someone under 16, the Principal Reporter and the local authority for the area in which the child resides. Where a registered social landlord is making an application in relation to an adult it is required to notify the local authority for the area in which the adult resides. The registered social landlord must let the local authority know that it is making an application, providing information on who the application relates to. The registered social landlord does not need to seek the views of the local authority on whether an application is appropriate, though it may wish to do so.

24. [Schedule 4](#) includes consequential amendments to the Housing (Scotland) 1987 and the Housing (Scotland) Act 2001 to reflect the fact that section 4 of this Act has replaced provisions on antisocial behaviour orders under section 19 of the Crime and Disorder Act 1998. The amendments also include antisocial behaviour orders made on conviction under section 234AA of the Criminal Procedure (Scotland) Act 1995 – introduced by section 118 of this Act.