



Antisocial Behaviour etc. (Scotland) Act 2004

2004 asp 8

PART 2

ANTISOCIAL BEHAVIOUR ORDERS

Antisocial behaviour orders

4 Antisocial behaviour orders

- (1) On the application of a relevant authority, the sheriff may, if satisfied that the conditions mentioned in subsection (2) are met as respects the person to whom the application relates (the “specified person”), make an antisocial behaviour order.
- (2) Those conditions are—
 - (a) that the specified person is at least 12 years of age;
 - (b) that the specified person has engaged in antisocial behaviour towards a relevant person; and
 - (c) that an antisocial behaviour order is necessary for the purpose of protecting relevant persons from further antisocial behaviour by the specified person.
- (3) For the purpose of determining whether the condition mentioned in subsection (2)(b) is met, the sheriff shall disregard any act or conduct of the specified person which that person shows was reasonable in the circumstances.
- (4) Where the specified person is a child, the sheriff shall, before determining the application, require the Principal Reporter to arrange a children’s hearing for the purpose of obtaining their advice as to whether the condition mentioned in subsection (2)(c) is met; and the sheriff shall, in determining whether that condition is met, have regard to that advice.
- (5) Subject to subsections (6) and (7), an antisocial behaviour order is an order which prohibits, indefinitely or for such period as may be specified in the order, the specified person from doing anything described in the order.

Status: This is the original version (as it was originally enacted).

- (6) The prohibitions that may be imposed by an antisocial behaviour order are those necessary for the purpose of protecting relevant persons from further antisocial behaviour by the specified person.
- (7) If an antisocial behaviour order is made on the application of a local authority the order may, in addition to imposing prohibitions that are necessary for the purpose mentioned in subsection (6), impose such prohibitions as are necessary for the purpose of protecting other persons (“affected persons”) from further antisocial behaviour by the specified person.
- (8) Before making an antisocial behaviour order, the sheriff shall, where the specified person is present in court, explain 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 sheriff has under sections 5 and 6; and
 - (d) the entitlement of the specified person to appeal against the making of the order.
- (9) Failure to comply with subsection (8) shall not affect the validity of the order.
- (10) An application for an antisocial behaviour order shall be made by summary application to the sheriff within whose sheriffdom the specified person is alleged to have engaged in antisocial behaviour.
- (11) Before making an application under this section—
- (a) a relevant authority shall consult the relevant consultees; and
 - (b) a registered social landlord shall—
 - (i) in the case where the specified person is a child, consult the local authority within whose area the specified person resides or appears to reside about the proposed application;
 - (ii) in the case where the specified person is not a child, notify that local authority of the proposed application.
- (12) Nothing in this section shall prevent a relevant authority from instituting any legal proceedings otherwise than under this section against any person in relation to any antisocial behaviour.
- (13) In this section, “relevant person” means—
- (a) in relation to an application by a local authority, a person within the area of the authority; and
 - (b) in relation to an application by a registered social landlord—
 - (i) a person residing in, or otherwise in or likely to be in, property provided or managed by that landlord; or
 - (ii) a person in, or likely to be in, the vicinity of such property.

5 Antisocial behaviour orders: variation and revocation

- (1) On the application of—
- (a) the relevant authority that obtained an antisocial behaviour order; or
 - (b) the person subject to such an order,
- the sheriff may vary or revoke the order.

- (2) Where the person subject to the order is a child, the sheriff shall, in determining whether to vary or revoke it, have regard to any views expressed by the Principal Reporter.
- (3) Before making an application under this section—
 - (a) a relevant authority shall consult the relevant consultees; and
 - (b) a registered social landlord shall—
 - (i) in the case where the person subject to the order is a child, consult the local authority within whose area the person resides or appears to reside about the proposed application;
 - (ii) in the case where the person subject to the order is not a child, notify that local authority of the proposed application.

6 Appeals: effect on competence of application under section 5

Where a person appeals against—

- (a) the making of an antisocial behaviour order; or
- (b) the variation, under section 5, of such an order,

it shall not be competent for that person to make an application under that section before the appeal is disposed of or abandoned.