

# **ANTISOCIAL BEHAVIOUR ETC. (SCOTLAND) ACT 2004**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 10 – Further Criminal Measures**

##### ***Section 121 – Restriction of liberty orders***

266. Section 245A of the Criminal Procedure (Scotland) Act 1995 makes provision for the court to impose a Restriction of Liberty Order (RLO). An order may require an offender to be restricted to a specified place for up to 12 hours per day or restricted from a specified place for up to 24 hours per day, or both, for a maximum period of 12 months. Compliance with a restriction of liberty order is monitored electronically. Section 50(3) of the Criminal Justice (Scotland) Act 2003 amended the 1995 Act so as to enable a restriction of liberty order to be imposed as a direct alternative to custody.
267. Section 245A(1) presently provides that an RLO may not be imposed on an under 16. Subsection (2) removes that age limit. But subsection (3) inserts a new subsection (11A) which requires the court to obtain a report from the local authority, detailing the support to be provided to the offender, if under the age of 16, during the period of the RLO. The court will need to be satisfied that the local authority will provide services for the individual offender's support and rehabilitation before it can impose an RLO. This will ensure that, where such support is not available, the court may not impose an RLO. However it will also give the court the flexibility to deal with each case on an individual basis.
268. Paragraph (1)(a)(ii) of schedule 4 amends section 27 of the Social Work (Scotland) Act 1968 (functions of local authorities in relation to persons appearing before courts, under supervision of court orders etc.) to ensure that the local authority has the power to provide a service for the supervision of, and the provision of advice, guidance and assistance to young people under 16 years old who are subject to an RLO.
269. Paragraph 5(7) of schedule 4 makes consequential amendments to section 245D of the 1995 Act. It is necessary to amend section 245D(1)(b) and (3) because a drug treatment and testing order may only be imposed on an over 16. So it is only in the case of an RLO being imposed on someone of that age or over that the question of imposing the two orders together is relevant and needs to be catered for.
270. Paragraph 5(8) of schedule 4 amends section 245E(1)(b) of the 1995 Act to insert the word "apply" after the word "court" where it first occurs. This word was omitted by a previous amendment to this section effected by section 43(3) of the Criminal Justice (Scotland) Act 2003.
271. Paragraph 5(9) of schedule 4 amends section 245G(2) of the 1995 Act to insert the word "of" after the word "disposing". This word was omitted by a previous amendment to this section effected by paragraph 4 (2) of Schedule 6 to the Crime and Disorder Act 1998.

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

272. Paragraph 5(10) of schedule 4 amends section 245H(1)(b) to substitute the word “offender” for the words “person subject to the order” to ensure consistency with other references to “offender” in sections 245A to 245I.