

ANTISOCIAL BEHAVIOUR ETC. (SCOTLAND) ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2 – Antisocial Behaviour Orders

Section 9 – Breach of orders

36. Subsection (1) provides that breach of an antisocial behaviour order or an interim order without reasonable excuse is a criminal offence
37. Subsection (2) explains that the maximum penalty for breach of an antisocial behaviour order or an interim order is six months imprisonment and a fine on summary conviction and 5 years imprisonment and a fine on conviction on indictment.
38. Subsection (3) provides that where a person in breaching the antisocial behaviour order has also committed a separate offence and that person is charged with that separate offence they will not be liable to be proceeded against for the breach of the order. However, subsection (4) provides that if the person is convicted for the separate offence, the sheriff must have regard to that fact that the person was subject to an ASBO at the time, the number of orders the person was subject to, any previous conviction for breach of an ASBO or interim ASBO and the extent to which the sentence or disposal for any previous breach would have differed but for this subsection.
39. Subsection (5) provides that the fact that the person being prosecuted for a separate offence was subject to an antisocial behaviour order or interim order must be specified on the indictment or, as the case may be, on the summary complaint, to be considered by the court as an aggravating factor. Subsection (6) provides that, unless challenged under criminal procedures as specified, the fact that the separate offence was committed while an ASBO or interim order was in place will be held as admitted.