

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

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 9 – Parenting Orders**

##### **Section 102 – Applications**

224. [Section 102](#) provides that a parenting order may be made by a court on the application of the Principal Reporter or the local authority for the area in which the child of the parent normally resides. Subsection (1) provides that a court may not make a parenting order until it has been notified by the Scottish Ministers that the local authority has put in place the necessary arrangements for the operation of parenting orders in that area.
225. Subsection (2) provides that a local authority may apply for a parenting order on one of two grounds. The first ground is that the child has engaged in antisocial behaviour and that the order is desirable in the interests of preventing further such antisocial behaviour by the child. The second is that the child has engaged in criminal conduct and that the order is desirable in the interests of preventing further such criminal conduct by the child.
226. Subsection (3) provides that the Principal Reporter may apply for a parenting order on one of three grounds: the two grounds set out above on which a local authority may apply plus another ground that the order is desirable in the interests of improving the welfare of the child.
227. Subsection (8) provides that an application for a parenting order shall be made by summary application to the sheriff court for the area in which the parent normally resides.
228. Subsection (9) requires the Principal Reporter and the local authority to consult the other before making an application for a parenting order.

##### **Section 103 – Parenting orders**

229. [Section 103](#) provides for the effect of a parenting order. An order will direct a parent as to how he or she should behave in respect of their child. A parenting order may last for up to 12 months and the parent subject to the order must comply with the requirements of it for that whole period. Further, an order will include a requirement to attend counselling or guidance as directed by a local authority supervising officer for a maximum period of 3 months during the period of the order unless the parent has previously been the subject of a parenting order in respect of the same child. In that situation the guidance/counselling requirement is not mandatory. Schedule 4, paragraph 1(a)(i) makes a consequential amendment to the Social Work (Scotland) Act 1968 to ensure services are available for parenting orders.

230. Subsection (3) gives the Scottish Ministers the power to amend by order the number of months which the requirements of the order must not exceed. This order is subject to affirmative resolution procedure.

#### ***Section 104 – Notification of making of order***

231. Section 104 provides for the arrangements for notification of the making of an order to the parent. The order can either be given to the parent or sent to them by registered post or recorded delivery.
232. Subsection (2) provides that an acknowledgement or certificate of posting issued by the postal operator shall be sufficient proof of the proper delivery of the order.
233. Subsection (3) provides that ‘postal operator’ in this context means a person who provides the service of conveying postal packets from one place to another by post or any of the incidental services of receiving, collecting, sorting and delivering such packets.

#### ***Section 105 – Review of order***

234. Section 105 sets out the arrangements for review of a parenting order. Subsection (1) provides that on application for a review the court may revoke the order or vary it by deleting or adding any requirement it contains. This power to vary also includes the power to amend the time during which a parent must undertake counselling or guidance, subject to the maximum period of 3 months set out in section 103.
235. Subsection (2) provides that the parent, the child or the local authority for the area in which the parent ordinarily resides (which will be the authority supervising the order) may apply for a review.
236. Subsection (3) provides that before making an application to vary or revoke a parenting order, the local authority shall consult the Principal Reporter.
237. Subsection (5) provides for the situation where a parent moves to another part of Scotland outwith the jurisdiction of the sheriff court which made the parenting order. In that situation, and if it is appropriate to do so, the court may specify another sheriff court as the court which will deal with applications for review or revocation of the order.

#### ***Section 106 – Appeals***

238. Section 106 sets out the arrangements for appeals in relation to certain decisions made in relation to parenting orders. It provides that an interlocutor varying or refusing to vary a parenting order or making a parenting order in the course of proceedings for an antisocial behaviour order under section 13 is an appealable interlocutor. The effect of this is that where the sheriff makes decisions which vary or refuse to vary a parenting order or make an order under section 13 those decisions of the sheriff may be appealed to the sheriff principal. In general the terms of section 27 and 28 of the Sheriff Courts (Scotland) Act 1907 will apply to decisions made by the sheriff in relation to parenting orders including the making of an order under section 102. These provisions generally set out the circumstances in which an appeal against the decision of the sheriff can competently be appealed to the sheriff principal or the Court of Session.

#### ***Section 107 – Failure to comply with order***

239. Section 107 provides that failure without reasonable excuse to comply with a parenting order is an offence and that the penalty for that offence shall be a fine not exceeding level 3 on the standard scale (currently £1,000). This section should be read in conjunction with the amendments to the Criminal Procedure (Scotland) Act 1995 in schedule 4 which provide that if a fine imposed under this section is not paid a court shall impose a supervised attendance order. Only where that supervised attendance order is breached

will the court have its normal powers of sentence – including imprisonment – available to it.

240. Subsection (3) requires the court to take into account the welfare of any child of the parent subject to the order in determining what sentence to impose for failure to comply with a parenting order.

### ***Section 108 – Procedural requirements***

241. **Section 108** regulates the procedure the court must follow in determining an application for a parenting order or an application for variation or revocation of that order. It requires the court to give the parent and child – where that is appropriate given his or her age and maturity – an opportunity to express their views about the application. Where the parent is present it provides that the court must explain in ordinary language the effect of the order as well as the consequences of breaching the order and the opportunities in relation to review and appeal of the order. Subsection (4) provides that a failure to comply with the requirements to explain in ordinary language shall not affect the validity of the order made. The court must also obtain information about the family and the likely effect of the order on it.

### ***Section 109 – General considerations relating to making, varying and revoking order***

242. **Section 109** provides for the considerations the court must take into account when deciding whether to make a parenting order and what the content of the order should be. Subsection (1) provides a court's paramount consideration in determining whether to make, vary or revoke a parenting order should be the welfare of the child concerned. Subsection (2) provides that the court must have particular regard to any views expressed by the child and the information it gained about the circumstances of the family. The court must also consider the behaviour of the parent who is proposed to be subject to the order. This provision will allow the court to take into account whether a parent has been offered and engaged with relevant voluntary support in relation to their parenting skills and any other behaviour of the parent that appears to the court to be relevant.
243. In determining whether to vary or revoke a parenting order, subsection (3) provides that a court shall have regard to the views of the child, any information about the family circumstances of the parent and any behaviour of the parent that appears to be relevant.
244. Subsection (4) provides the interpretation of 'relevant voluntary steps' in subsection (2) (c). In determining whether to make a parenting order the court will take account of voluntary steps intended to prevent the child engaging in antisocial behaviour, criminal conduct and in the interests of improving the welfare of the child, depending on the type of application being considered.

### ***Section 110 – Account to be taken of religion, work and education***

245. **Section 110** provides that as far as practicable, a court shall ensure the requirements of a parenting order avoid conflict with the religious beliefs of the person specified in the order and any interference with their work or educational commitments. Subsection (2) places these requirements on the supervising officer appointed by a local authority in giving directions to implement the parenting order.

### ***Section 111 – Restriction on reporting proceedings relating to parenting orders***

246. **Section 111** makes it a criminal offence to publish, anywhere in the world, matters in respect of proceedings relating to parenting orders which are intended, or likely to, identify the parent, their address, the child concerned or any other child as specified at subsection 1(d), including information in respect of a relevant child's address or school.

247. Subsection (2) provides that a court may, in the interests of justice, order that the restriction on publicity provided for in subsection (1) shall not apply.
248. Subsection (5) provides that Section 46 of the Children and Young Persons (Scotland) Act 1937 applies to proceedings in relation to parenting orders only in respect of persons who are witnesses in such proceedings. Section 46 of the 1937 Act provides that a court may direct that no reports which identify parties under the age of 17 to any proceedings (including witnesses) may be made. The application of section 46 of the 1937 Act to witnesses in parenting order proceedings allows a court to protect child witnesses. Children involved in any other capacity are protected by the other provisions of section 111.
249. Subsection (6) provides that a child in whose interest a parenting order has been made shall be regarded as a person who falls within subsection (1)(a) of section 47 of the Criminal Procedure (Scotland) Act 1995 for the purposes of the application of that section to proceedings for breach of a Parenting Order under section 107(1). Section 47(1)(a) of the 1995 Act provides that where a person under the age of 16 is a person in respect of whom proceedings are taken then no newspaper report of the proceedings shall identify that child. The effect of subsection (6) is that reports of proceedings for breach of a parenting order may not identify, or contain information calculated to identify, the child in whose interest the parenting order was originally granted.

### ***Section 112 – Conduct of proceedings by reporters***

250. [Section 112](#) gives the Scottish Ministers the power to make regulations empowering a children's reporter, whether or not the reporter is an advocate or solicitor, to conduct proceedings before a sheriff in respect of applications for the making, variation or revocation of a parenting order. The reporter can also be empowered to conduct proceedings before a sheriff principal in respect of an appeal. These regulations are subject to negative resolution procedure.
251. Subsection (2) describes the type of requirements Ministers may prescribe in regulations for the reporter to be empowered under section 112.

### ***Section 113 – Initial investigations by Principal Reporter***

252. [Section 113](#) confers on the Principal Reporter power to make such investigations as he or she considers appropriate to determine whether to make an application for a parenting order under section 102. Subsection (2) places requirements on the local authority to provide a report on specified matters to assist those investigations where that has been requested by the Principal Reporter.

### ***Section 114 – Power of court to direct Principal Reporter to consider application for parenting order***

253. [Section 114](#) provides that in any proceedings, except applications for antisocial behaviour orders or for a parenting order itself, a court may require the Principal Reporter to consider whether to apply for a parenting order under this Part. The court would do so where it appears to the court from those proceedings that a parenting order might be appropriate.

### ***Section 115 – Guidance about parenting orders***

254. [Section 115](#) provides that any person or body, other than a court, discharging any functions in relation to parenting orders shall have regard to guidance given by the Scottish Ministers.

***Section 116 – Power of hearing to direct Principal Reporter to consider application for parenting order***

255. **Section 116** provides for a new section to be added to the Children (Scotland) Act 1995. The effect of that new section is to allow a children's hearing, when considering the case of a child referred to it or when considering a review of a supervision requirement, to require the Principal Reporter to consider whether to apply for a parenting order in relation to a parent or parents of the child concerned.
256. Subsection (3) of the new section provides that the children's hearing must, when making such a requirement of the Reporter, specify the parent or parents in respect of whom it might be appropriate for the order to be made and which of the three grounds for parenting orders an application should be based upon.

***Section 117 – Interpretation of Part 9***

257. **Section 117** provides for the meaning to be given to various expressions used in the rest of Part 9. It provides that a child in relation to Part 9 is a person under the age of 16. It also provides that a parent for the purposes of Part 9 – i.e. those in respect of whom a parenting order is competent – is a relevant person as defined in section 93(2)(b) of the Children (Scotland) Act 1995. This includes unmarried fathers and others persons where they have day to day care of the child (other than by reason of their employment).