



Antisocial Behaviour etc. (Scotland) Act 2004

2004 asp 8

PART 10

FURTHER CRIMINAL MEASURES

Antisocial behaviour orders

118 Antisocial behaviour orders

After section 234A of the Criminal Procedure (Scotland) Act 1995 (c. 46) there shall be inserted—

“Antisocial behaviour orders

234AA Antisocial behaviour orders

- (1) Where subsection (2) below applies, the court may, instead of or in addition to imposing any sentence which it could impose, make an antisocial behaviour order in respect of a person (the “offender”).
- (2) This subsection applies where—
 - (a) the offender is convicted of an offence;
 - (b) at the time when he committed the offence, the offender was at least 12 years of age;
 - (c) in committing the offence, he engaged in antisocial behaviour; and
 - (d) the court is satisfied, on a balance of probabilities, that the making of an antisocial behaviour order is necessary for the purpose of protecting other persons from further antisocial behaviour by the offender.
- (3) For the purposes of subsection (2)(c) above, a person engages in antisocial behaviour if he—
 - (a) acts in a manner that causes or is likely to cause alarm or distress; or

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- (b) pursues a course of conduct that causes or is likely to cause alarm or distress,
to at least one person who is not of the same household as him.
- (4) Subject to subsection (5) below, an antisocial behaviour order is an order which prohibits, indefinitely or for such period as may be specified in the order, the offender from doing anything described in the order.
- (5) The prohibitions that may be imposed by an antisocial behaviour order are those necessary for the purpose of protecting other persons from further antisocial behaviour by the offender.
- (6) Before making an antisocial behaviour order, the court shall explain to the offender 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 court has under subsection (8) below; and
 - (d) the entitlement of the offender to appeal against the making of the order.
- (7) Failure to comply with subsection (6) shall not affect the validity of the order.
- (8) On the application of the offender in respect of whom an antisocial behaviour order is made under this section, the court which made the order may, if satisfied on a balance of probabilities that it is appropriate to do so—
- (a) revoke the order; or
 - (b) subject to subsection (9) below, vary it in such manner as it thinks fit.
- (9) Where an antisocial behaviour order specifies a period, the court may not, under subsection (8)(b) above, vary the order by extending the period.
- (10) An antisocial behaviour order made under this section, and any revocation or variation of such an order under subsection (8) above, shall be taken to be a sentence for the purposes of an appeal.
- (11) Sections 9 and 11 of the Antisocial Behaviour etc. (Scotland) Act 2004 ([asp 8](#)) (which provide that breach of an antisocial behaviour order made under that Act is an offence for which a person is liable to be arrested without warrant) shall apply in relation to antisocial behaviour orders made under this section as those sections apply in relation to antisocial behaviour orders made under section 4 of that Act.
- (12) In this section, “conduct” includes speech; and a course of conduct must involve conduct on at least two occasions.

234AB Antisocial behaviour orders: notification

- (1) Upon making an antisocial behaviour order under section 234AA of this Act, the court shall—
- (a) serve a copy of the order on the offender; and
 - (b) give a copy of the order to the local authority it considers most appropriate.

- (2) Upon revoking an antisocial behaviour order under subsection (8)(a) of that section, the court shall notify the local authority to whom a copy of the order was given under subsection (1)(b) above.
- (3) Upon varying an antisocial behaviour order under subsection (8)(b) of that section, the court shall—
 - (a) serve a copy of the order as varied on the offender; and
 - (b) give a copy of the order as varied to the local authority to whom a copy of the order was given under subsection (1)(b) above.
- (4) For the purposes of this section, a copy is served on an offender if—
 - (a) given to him; or
 - (b) sent to him by registered post or the recorded delivery service.
- (5) A certificate of posting of a letter sent under subsection (4)(b) issued by the postal operator shall be sufficient evidence of the sending of the letter on the day specified in such certificate.
- (6) In this section, “offender” means the person in respect of whom the antisocial behaviour order was made.”.

119 Records of antisocial behaviour orders made in criminal courts

- (1) A local authority shall keep records of each antisocial behaviour order of which the authority has been given a copy by virtue of subsection (1)(b) of section 234AB of the Criminal Procedure (Scotland) Act 1995 (c. 46) (the “1995 Act”).
- (2) A record kept under subsection (1) shall specify—
 - (a) the person in respect of whom the order was made;
 - (b) the prohibitions imposed by the order;
 - (c) whether a prohibition is indefinite or for a definite period and where it is for a period, that period;
 - (d) where the authority is, by virtue of subsection (2) of that section of the 1995 Act, notified of the revocation of the order, the date on which it was revoked;
 - (e) where the authority is, by virtue of subsection (3)(b) of that section of the 1995 Act, given a copy of the order as varied, the variation and its date; and
 - (f) such other matters relating to the order as the Scottish Ministers may prescribe in regulations.
- (3) A local authority shall, on a request to do so being made to it by a person mentioned in subsection (4), disclose to that person information contained in a record kept under subsection (1).
- (4) Those persons are—
 - (a) the Scottish Ministers;
 - (b) the Principal Reporter;
 - (c) any other local authority;
 - (d) a chief constable; and
 - (e) a registered social landlord.
- (5) A local authority shall, in discharging functions by virtue of this section, have regard to such guidance issued by the Scottish Ministers as to—

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- (a) the discharge of those functions; and
 - (b) such matters arising in connection with the discharge of those functions,
- as the Scottish Ministers think fit.