



Antisocial Behaviour etc. (Scotland) Act 2004

2004 asp 8

PART 9

PARENTING ORDERS

Applications

102 Applications

- (1) The court may make a parenting order in respect of a parent of a child where—
 - (a) subsection (2) or (3) applies; and
 - (b) the Scottish Ministers have notified the court that the local authority for the area in which the parent ordinarily resides has made arrangements that would enable the order to be complied with.
- (2) This subsection applies where—
 - (a) the application for the order is made by the appropriate local authority; and
 - (b) the court is satisfied that—
 - (i) the behaviour condition; or
 - (ii) the conduct condition,is met.
- (3) This subsection applies where—
 - (a) the application for the order is made by the Principal Reporter; and
 - (b) the court is satisfied that—
 - (i) the behaviour condition;
 - (ii) the conduct condition; or
 - (iii) the welfare condition,is met.
- (4) The behaviour condition is—
 - (a) that the child has engaged in antisocial behaviour; and

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- (b) that the making of the order is desirable in the interests of preventing the child from engaging in further such behaviour.
- (5) The conduct condition is—
 - (a) that the child has engaged in criminal conduct; and
 - (b) that the making of the order is desirable in the interests of preventing the child from engaging in further such conduct.
- (6) The welfare condition is that the making of the order is desirable in the interests of improving the welfare of the child.
- (7) For the purposes of subsection (5), a child engages in criminal conduct if the child engages in conduct that constitutes a criminal offence (or would do so if the child had attained the age of 8 years).
- (8) An application under this section shall be made by summary application to the sheriff of the sheriffdom where the parent ordinarily resides.
- (9) Before an application is made under this section—
 - (a) by a local authority, it shall consult the Principal Reporter;
 - (b) by the Principal Reporter, the Principal Reporter shall consult the appropriate local authority.
- (10) In this section, “appropriate local authority” means the local authority for the area where the child ordinarily resides.

Parenting orders

103 Parenting orders

- (1) A parenting order is an order requiring the specified person—
 - (a) to comply, during a specified period—
 - (i) beginning with the making of the order; and
 - (ii) not exceeding 12 months,
 with such requirements as are specified; and
 - (b) subject to subsection (2), to attend, during a specified period—
 - (i) falling within the specified period mentioned in paragraph (a); and
 - (ii) not exceeding 3 months,
 such counselling or guidance sessions as may be directed by a supervising officer appointed by the relevant local authority.
- (2) Where a parenting order has been made in respect of the person on a previous occasion in the interests of the child in whose interests the order is to be made, the order need not include a requirement under subsection (1)(b).
- (3) The Scottish Ministers may by order amend the number of months mentioned in—
 - (a) subsection (1)(a)(ii); and
 - (b) subsection (1)(b)(ii).
- (4) In subsection (1), “specified” means specified in the order.

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Matters following making of order

104 Notification of making of order

- (1) The clerk of the court by which a parenting order is made shall cause a copy of the order to be—
 - (a) given to the person specified in the order; or
 - (b) sent to the person so specified by registered post or the recorded delivery service.
- (2) A certificate of posting of a letter sent under subsection (1)(b) issued by the postal operator concerned shall be sufficient evidence of the sending of the letter on the day specified in such certificate.
- (3) In subsection (2), “postal operator” has the meaning given by section 125(1) of the Postal Services Act 2000 (c. 26).

105 Review of order

- (1) On the application of a relevant applicant the court that made a parenting order may, if it considers that it would be appropriate to do so—
 - (a) revoke the order; or
 - (b) vary the order by—
 - (i) deleting any of the requirements specified in the order;
 - (ii) adding a new requirement;
 - (iii) altering the period specified for the purpose of section 103(1)(b).
- (2) In subsection (1), “relevant applicant” means—
 - (a) the person specified in the order;
 - (b) the child in respect of whom the order was made;
 - (c) the local authority for the area in which the person specified in the order ordinarily resides.
- (3) Before an application is made under subsection (1) by a local authority, it shall consult the Principal Reporter.
- (4) Where an application under subsection (1) for the revocation or, as the case may be, variation, of a parenting order is refused, another such application by the same applicant under that subsection for revocation or, as the case may be, variation, may be made only with the consent of the court that made the order.
- (5) Where the court that made a parenting order is satisfied that—
 - (a) the person specified in the order proposes to change, or has changed, the person’s place of ordinary residence; and
 - (b) it is appropriate to make an order specifying the sheriff of another sheriffdom as the court that may entertain applications under subsection (1),it may make such an order; and in such a case, this section shall be read as if references to the court that made the order were references to that sheriff.

106 Appeals

An interlocutor—

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- (a) varying, or refusing to vary, a parenting order; or
 - (b) making a parenting order under section 13,
- is an appealable interlocutor.

107 Failure to comply with order

- (1) If the person specified in a parenting order fails without reasonable excuse to comply with—
 - (a) any requirement specified in the order; or
 - (b) any direction given under the order,
 the person shall be guilty of an offence.
- (2) A person guilty of an offence under subsection (1) shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (3) In determining the sentence to be imposed on a person guilty of an offence under subsection (1) a court shall take into consideration the welfare of any child in respect of whom the person is a parent.

General requirements

108 Procedural requirements

- (1) Before making, varying or revoking a parenting order, a court shall—
 - (a) having regard to the age and maturity of the child, so far as practicable—
 - (i) give the child an opportunity to indicate whether the child wishes to express views; and
 - (ii) if the child so wishes, give the child an opportunity to express those views;
 - (b) give the parent the opportunity to be heard;
 - (c) obtain information about the family circumstances of the parent and the likely effect of the order on those circumstances.
- (2) Before making a parenting order, the court shall explain in ordinary language—
 - (a) the effect of the order and of the requirements proposed to be included in it;
 - (b) the consequences of failing to comply with the order;
 - (c) the powers the court has under section 105; and
 - (d) the entitlement of the parent to appeal against the making of the order.
- (3) Before varying or revoking a parenting order, the court shall explain in ordinary language the effect of the variation or, as the case may be, revocation.
- (4) Subsections (2) and (3) apply only where the parent is present in court.
- (5) Failure to comply with subsection (2) or (3) shall not affect the validity of the order made.
- (6) Without prejudice to the generality of subsection (1)(a), a child who is at least 12 years of age shall be presumed to be of sufficient age and maturity to form a view.

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109 General considerations relating to making, varying and revoking order

- (1) Where a court is determining whether to make, vary or revoke a parenting order its paramount consideration shall be the welfare of the child.
- (2) Where a court is determining whether to make a parenting order it shall have regard to—
 - (a) such views as the child has expressed in relation to that matter by virtue of paragraph (a) of subsection (1) of section 108;
 - (b) the information obtained in relation to that matter by virtue of paragraph (c) of that subsection;
 - (c) whether (and if so the extent to which) the parent has, at any time that appears to the court to be relevant, taken relevant voluntary steps; and
 - (d) any other behaviour of the parent that appears to the court to be relevant.
- (3) Where a court is determining whether to vary or revoke a parenting order it shall have regard to—
 - (a) such views as the child has expressed in relation to that matter by virtue of paragraph (a) of subsection (1) of section 108;
 - (b) the information obtained in relation to that matter by virtue of paragraph (c) of that subsection; and
 - (c) any behaviour of the parent that appears to the court to be relevant.
- (4) In subsection (2)(c), “relevant voluntary steps” means—
 - (a) where the court is determining whether to—
 - (i) make a parenting order under section 13; or
 - (ii) make a parenting order under subsection (1) of section 102 in respect of the condition mentioned in subsection (4) of that section,
voluntary steps intended to be in the interests of preventing the child from engaging in antisocial behaviour;
 - (b) where the court is determining whether to make a parenting order under subsection (1) of section 102 in respect of the condition mentioned in subsection (5) of that section, voluntary steps intended to be in the interests of preventing the child from engaging in criminal conduct;
 - (c) where the court is determining whether to make a parenting order under subsection (1) of section 102 in respect of the condition mentioned in subsection (6) of that section, voluntary steps intended to be in the interests of improving the welfare of the child.

110 Account to be taken of religion, work and education

- (1) A court shall ensure that the requirements of a parenting order made by it avoid, so far as practicable—
 - (a) any conflict with the religious beliefs of the person specified in the order; and
 - (b) any interference with times at which that person normally works (or carries out voluntary work) or attends an educational establishment.
- (2) The supervising officer appointed by a local authority in respect of a parenting order shall ensure that the directions given by the officer avoid, so far as practicable, the matters mentioned in subsection (1)(a) and (b).

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Miscellaneous

111 Restriction on reporting proceedings relating to parenting orders

- (1) Subject to subsection (2), a person shall be guilty of an offence if the person publishes, anywhere in the world, any matter in respect of relevant proceedings which is intended, or likely to, identify—
 - (a) the parent concerned in the proceedings (the “person concerned”);
 - (b) any address as being that of the person concerned;
 - (c) the child concerned in the proceedings;
 - (d) any other child—
 - (i) who is a member of the same household as the person concerned; or
 - (ii) of whom the person concerned is a parent; or
 - (e) any—
 - (i) address; or
 - (ii) school,
 as being that of a child mentioned in paragraph (c) or (d).
- (2) In relevant proceedings, the court may, in the interests of justice, order that subsection (1) shall not apply to the proceedings to such extent as the court considers appropriate.
- (3) A person guilty of an offence under subsection (1) shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (4) It shall be a defence for a person charged with an offence under subsection (1) to show that the person—
 - (a) did not know; and
 - (b) had no reason to suspect,
 that the published matter was intended, or was likely, to identify the person concerned, child, address or school (as the case may be).
- (5) Section 46 of the Children and Young Persons (Scotland) Act 1937 (c. 37) shall apply in relation to relevant proceedings only in respect of a person concerned in the proceedings as a witness.
- (6) A child in whose interests 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 (c. 46) for the purposes of that section in its application to proceedings in respect of the commission of an offence under section 107(1) in respect of that order.
- (7) In this section—

“programme service” has the meaning given by section 201 of the Broadcasting Act 1990 (c. 42);

“publishes” includes—

 - (a) causing to be published; and
 - (b) publishing in a programme service,

and “published” shall be construed accordingly; and

“relevant proceedings” means—

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- (a) proceedings before a sheriff for the purpose of considering whether to make a parenting order under section 13(1);
- (b) proceedings before a sheriff on an application for the making of a parenting order under section 102(1);
- (c) proceedings before a sheriff on an application for the variation, or revocation, of a parenting order under section 105(1);
- (d) proceedings before a sheriff for the purpose of considering whether to make an order under section 105(5);
- (e) an appeal arising from proceedings such as are mentioned in paragraphs (a) to (d).

112 Conduct of proceedings by reporters

- (1) The Scottish Ministers may by regulations empower a reporter, whether or not the reporter is an advocate or solicitor, to conduct proceedings—
 - (a) before a sheriff—
 - (i) on an application by the Principal Reporter for the making of a parenting order;
 - (ii) on an application for the variation, or revocation, of a parenting order made on the application of the Principal Reporter, under section 105(1); or
 - (iii) for the purpose of considering whether to make an order under section 105(5) in respect of a parenting order made on the application of the Principal Reporter; or
 - (b) before a sheriff principal, on any appeal arising from proceedings such as are mentioned in paragraph (a).
- (2) Regulations under subsection (1) may prescribe such requirements as the Scottish Ministers think fit as to—
 - (a) qualifications;
 - (b) training; or
 - (c) experience,necessary for a reporter to be so empowered.
- (3) In this section, “reporter” means—
 - (a) the Principal Reporter; and
 - (b) any officer of the Scottish Children’s Reporter Administration to whom there is delegated, under section 131(1) of the Local Government etc. (Scotland) Act 1994 (c. 39), any of the functions which the Principal Reporter has under any enactment.

113 Initial investigations by Principal Reporter

- (1) For the purpose of determining whether to make an application for the making of a parenting order under section 102, the Principal Reporter may make such investigations as the Principal Reporter considers appropriate.
- (2) On a request made by the Principal Reporter for the purpose mentioned in subsection (1), a local authority shall supply to the Principal Reporter a report on—
 - (a) the child in relation to whom the Principal Reporter is determining whether to make the application;

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- (b) the parent in relation to whom the Principal Reporter is determining whether to make the application; and
- (c) such circumstances concerning—
 - (i) the child; and
 - (ii) the parent,
 as appear to the Principal Reporter to be relevant.

114 Power of court to direct Principal Reporter to consider application for parenting order

Where, in any proceedings (other than proceedings under section 4 or 102), it appears to a court that it might be appropriate for a parenting order to be made in respect of a parent of a child, the court may require the Principal Reporter to consider whether to apply under section 102 for such an order.

115 Guidance about parenting orders

A person (other than a court) shall, in discharging functions by virtue of section 13 or this Part, have regard to any guidance given by the Scottish Ministers about—

- (a) the discharge of those functions; and
- (b) matters arising in connection with the discharge of those functions.

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

After section 75 of the Children (Scotland) Act 1995 (c. 36) there shall be inserted—

“Parenting orders

75A Requirement on Principal Reporter to consider application for parenting order

- (1) Subsection (2) below applies where it appears to—
 - (a) the children’s hearing to whom a child’s case has been referred under section 65(1) of this Act; or
 - (b) a children’s hearing arranged, under section 73(8) of this Act, to review a supervision requirement in respect of a child,
 that it might be appropriate for a parenting order to be made in respect of a parent of the child under section 102 of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8) (the “2004 Act”).
- (2) The hearing may require the Principal Reporter to consider whether to apply, under subsection (3) of that section of the 2004 Act, for such an order.
- (3) A requirement under subsection (2) above shall specify—
 - (a) the parent in respect of whom it might be appropriate for the order to be made; and
 - (b) by reference to subsections (4) to (6) of that section of the 2004 Act, the condition in respect of which the application might be made.

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(4) In subsection (1) above, “parent” and “child” have the same meanings as in section 117 of the 2004 Act.”.

Interpretation

117 Interpretation of Part 9

In this Part—

“child” means a person who is under the age of 16 years;

“parent”, means any individual who is a relevant person as defined in section 93(2) (b) of the Children (Scotland) Act 1995 (c. 36) (the references to a “person” in that section being read as references to an individual);

“parenting order” has the meaning given by section 103(1).

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