

ANTISOCIAL BEHAVIOUR ETC. (SCOTLAND) ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 13 – Miscellaneous and General

Section 138 – Privacy of certain proceedings

306. **Section 138(1)** provides that certain court proceedings in terms of various provisions of the Act shall be held in private and that no persons other than those necessary for the proper consideration of those proceedings shall be present during them. Those proceedings are:

- applications for an antisocial behaviour order in respect of someone under 16 in terms of section 4(1);
- for variation or revocation of such orders under section 5(1);
- for a parenting order under section 102(1); and, for variation or revocation of a parenting order under section 105(1);
- to determine whether to make an interim antisocial behaviour order under section 7(2) in respect of someone under 16; or to recall such an interim antisocial behaviour order;
- to require the Principal Reporter to refer a child's case to a children's hearing under section 12(1) where he or she has made an antisocial behaviour order or interim antisocial behaviour order in respect of that child;
- to make a parenting order under section 13(1) where he or she has made an antisocial behaviour or interim antisocial behaviour order in respect of a child; and
- to make an order under section 105(5) to specifying the sheriff of another sheriffdom as the court that may entertain application for review of a parenting order under section 105(1).

307. An appeal arising from any of these proceedings is subject to the same privacy restriction.

Section 139 – Disclosure and sharing of information

308. **Section 139** makes provision on the disclosure to and sharing of information with a relevant authority. It provides a legal protection for those who disclose information to a relevant authority where the disclosure of information is necessary or expedient for the purposes of any provision of the Act, or any other enactment the purpose of which is in connection with, antisocial behaviour or its effects. However, a person disclosing information and relying on this protection will have to consider other potentially relevant rules of law.

309. Subsection (3) provides that where a person discloses information to a relevant authority under section 139 which is confidential, and where they inform the authority of the breach of that confidentiality on disclosing the information, the authority must respect that confidentiality. Subsection (4) provides an exception to this is in cases where the disclosure by the recipient is permitted or required by law.
310. Subsection (5) provides the interpretation of “relevant authority” in sections 139. For the purposes of this section a relevant authority is a local authority, a chief constable, the Principal Reporter, a registered social landlord, any authority administering housing benefit and other specified persons providing services relating to housing benefit. The Scottish Ministers have the power under subsection (7) to modify the meaning of “relevant authority” by order. This order making power is subject to affirmative resolution procedure.
311. Subsection (6) provides that any person providing or receiving information by virtue of this Act shall have regard to any relevant guidance from the Scottish Ministers.

Section 140 – Equal opportunities

312. **Section 140** provides that any person or body discharging a function in terms of the Act is required to do so in a manner that promotes equal opportunities and the equal opportunity requirements. Section L2 of Part II of Schedule 5 to the Scotland Act 1998 provides that equal opportunities means the prevention or elimination of discrimination between persons on grounds of sex or marital status, on racial grounds, or on grounds of disability, age, sexual orientation, language or social origin, or of other personal attributes, including beliefs or opinions, such as religious beliefs or political opinions.

Section 141 – Orders and regulations

313. **Section 141** provides that powers to make orders or regulations in the Act shall be exercisable by statutory instrument.
314. Subsection (3) provides that except where otherwise provided the statutory instruments containing such orders or regulations shall be subject to negative resolution procedure in the Scottish Parliament. Subsections (3) and (4) provide that the following orders or regulations shall be the subject of affirmative resolution procedure:
- regulations under section 26(2) to specify premises in respect of which the closure of premises provisions (Part 4) do not apply;
 - an order made under section 53(1) to further prescribe the meaning of ‘relevant place’ and ‘relevant property’ for the purposes of the Part 5 (noise nuisance);
 - an order under section 59(1) to modify the meaning of ‘relevant surface’ for the purposes of the graffiti provisions in Part 6;
 - an order under section 68(6) for the purpose of applying Part 7 (housing: antisocial behaviour notices) in relation to houses used for holiday purposes;
 - an order under section 83(7) to modify subsection 83(6) which describes those types of housing to which Part 8 (housing: registration of certain landlords) does not apply
 - an order under section 103(3) varying the maximum length of a parenting order and/or the maximum period in a parenting order during which the requirement to attend counselling or guidance can subsist;
 - an order under section 128(2) amending, adding, or removing an entry in the table under that section which specifies those offences which are fixed penalty offences; and

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

- an order under section 139(7) which modifies the meaning of ‘relevant authority’ set out in subsection (5) of that section, which relates to the disclosure and sharing of information.

Section 142 – Directions

315. Section 142 makes provision for the giving of directions by the Scottish Ministers under the Act. It provides that any power to give directions includes a power to vary or revoke the direction and that any direction shall be in writing.

Section 143 – Interpretation: “antisocial behaviour” and other expressions

316. Section 143 provides for the meaning to be given to antisocial behaviour for the purposes of the Act (other than Parts 7 and 8). It also supplies definitions for certain other expressions used in the Act.

Section 144 – Minor and consequential amendments and repeals

317. Section 144 subsection (1) provides that schedule 4 of the Act shall have effect. The main provisions of schedule 4 have been explained at the relevant place in these notes.
318. Subsection (2) provides that the enactments set out in schedule 5 are repealed.

Section 145 – Short title and commencement

319. This section provides a short title to the Act: it may be cited as the Antisocial Behaviour etc. (Scotland) Act 2004
320. Only section 141 (which provides powers in relation to orders and regulations) and this section come into force on Royal Assent. The remaining provisions of the Act will come into force on a date (or dates) appointed by the Scottish Ministers by means of a commencement order or orders.