

ANTISOCIAL BEHAVIOUR ETC. (SCOTLAND) ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3 – Dispersal of Groups

Section 19 – Authorisations

54. **Section 19** allows a senior police officer (that is an officer of or above the rank of superintendent) to issue an authorisation of the exercise of the powers under section 21 in respect of a particular locality within their police area. This can only be done where that senior officer has reasonable grounds for believing that alarm or distress has been caused to members of the public by the presence or behaviour of groups of two or more persons in public places in that locality. That locality is defined as “a relevant locality” for the purposes of Part 3 at subsection (1). Before giving an authorisation the senior officer must also have reasonable grounds for believing that antisocial behaviour is a significant, persistent and serious problem in the relevant locality.
55. Subsection (2) sets out that such an authorisation may last for a specific period and that the authorisation may also choose to refer to times or days within the period: for example to Friday and Saturday nights. Subsection (3) sets out the form in which the authorisation must appear and what it must include (for example when the powers are exercisable). Subsection (4) provides that the senior officer must consult the local authority or authorities whose area includes the whole or part of the relevant locality before giving an authorisation; and subsection (5) that the authorisation shall not exceed 3 months.

Section 20 – Authorisations: supplementary

56. Before the powers under section 21 become exercisable, the senior officer who gave the authorisation is required to ensure that an authorisation notice is published in a newspaper circulating in the relevant locality and that it is displayed in some conspicuous place or places within the relevant locality.
57. Subsection (2) sets out what must be included in an authorisation notice: a statement that the authorisation has been given and specification of the area affected and the period it will last (and any specified times within that period).
58. Subsection (3) makes provision for withdrawal of the authorisation (for example, if the police are satisfied that it is no longer necessary to prevent the occurrence of disorder or serious nuisance). Subsection (4) requires the police officer to consult the relevant local authority or authorities about the proposed withdrawal. Subsections (5) and (6) set out that the withdrawal of an authorisation shall not affect the exercise of any power which occurred before the withdrawal and that the giving or withdrawal of an authorisation shall not prevent the giving of a further authorisation in respect of a locality to which the earlier authorisation relates.

Section 21 – Powers exercisable in pursuance of authorisations

59. Subsection (1) sets out that where a constable has reasonable grounds for believing that the presence or behaviour of a group of two or more persons in any public place in the relevant locality is causing or is likely to cause alarm or distress to any members of the public, the constable may give a direction requiring the persons in the group to disperse. In doing so the constable must have regard to whether the exercise of the power to disperse would be likely to result in the persons in the group causing less harm or distress to members of the public there than if the power were not exercised, subsection (2).
60. In terms of subsection (3), the constable may also give a direction requiring any of those persons who do not live in the locality to leave it or any part of it; or a direction prohibiting any of those persons who do not live in the area from returning to it or any part of it for a specified period of up to 24 hours. Subsection (4) requires that the constable may require the first two of these directions to be complied with either immediately or at such a time and in such a way as is specified in that direction.
61. Subsection (5) sets out that none of the above directions may be given by a constable in respect of a group of persons who are engaged in conduct which is lawful under section 220 of the Trade Union and Labour Relations (Consolidation) Act 1992. Such conduct is defined as attendance by a person, in contemplation or furtherance of a trade dispute, at or near his own place of work, for the purpose only of peacefully obtaining or communicating information, or peacefully persuading any person to work or abstain from working. If the person is an official of a trade union, then such attendance can take place at or near the place of work of a member of the union whom he is accompanying and whom he represents. Subsection (5) also sets out that none of the above directions may be given by a constable in respect of a group of persons who are taking part in a procession which has been notified in accordance with section 62 of the Civic Government (Scotland) Act 1982 (or which, by virtue of subsection (6) or (7) of that section, does not require to be notified). This Act deals with all processions which take place in a public place, notice of which must be given to the regional or islands council in whose area the procession is to be held.

Section 22 – Powers under section 21: supplementary

62. Subsection (1) sets out that a direction may be given orally; to an individual or to a group; and that it may be withdrawn or varied by the constable who gave it.
63. Subsection (2) sets out that knowingly contravening any direction, without reasonable excuse, will be an offence and could result in a fine, or imprisonment or both. Subsection (3) sets out that where such an offence is being committed the constable may arrest the person without warrant. Subsection (4) provides that subsection (3) is without prejudice to any power of arrest conferred by law apart from that subsection.

Section 23 – Guidance in relation to dispersal of groups

64. Subsection (1) provides that any person exercising any power by virtue of Part 3 of the Act shall, in the exercise of the power, have regard to any guidance given by the Scottish Ministers about the exercise of the power and to any other matter relating to the power. Subsection (2) requires the Scottish Ministers to lay a copy of any such guidance before the Scottish Parliament.

Section 24 – Operation of Part: arrangement of study

65. Subsection (1) sets out that the Scottish Ministers shall arrange for the carrying out of a study into the operation of the dispersal powers and lay a report on the results of the study before the Scottish Parliament within three years of the date on which the whole of Part 3 is first in force.

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

66. Subsection (2) provides that the Scottish Ministers must make all necessary preparations for the carrying out of the above study so as to allow it to commence as soon as the whole of the part is in force. This subsection also sets out some of the things that may be included in these preparations (for example the instruction of a research team).

Section 25 – Interpretation of Part 3

67. Section 25 provides definitions of some of the expressions used in Part 3.