



# Antisocial Behaviour etc. (Scotland) Act 2004

2004 asp 8

## PART 10

### FURTHER CRIMINAL MEASURES

#### *Sale of spray paint to children*

#### **122 Offence of selling spray paint to child**

- (1) A person who sells to a person under the age of 16 a spray paint device shall be guilty of an offence.
- (2) In subsection (1), “spray paint device” means a device which—
  - (a) contains paint stored under pressure; and
  - (b) is designed to permit the release of the paint as a spray.
- (3) 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.
- (4) It shall be a defence for a person charged with an offence under subsection (1) to show that the person took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

#### **123 Requirement to display warning statement**

- (1) A notice displaying the statement— “ It is illegal to sell a spray paint device to anyone under the age of 16 ”  
shall be exhibited at an appropriate place at every premises at which spray paint devices are sold by retail.
- (2) In subsection (1), “appropriate place” means a prominent position where the statement is readily visible to persons at the point of sale of spray paint devices.

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- (3) The dimensions of the notice to be exhibited in accordance with subsection (1), and the size of the statement to be displayed on it, shall be such as may be prescribed by regulations made by the Scottish Ministers.
- (4) Where—
  - (a) a person carries on a business involving the retail of spray paint devices at any premises; and
  - (b) no notice is exhibited in accordance with subsection (1) at those premises, that person shall be guilty of an offence.
- (5) A person guilty of an offence under subsection (4) shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale.
- (6) It shall be a defence for a person charged with an offence under subsection (4) to show that the person took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.
- (7) Where an offence under subsection (4) is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to, any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, that person as well as the body corporate shall be guilty of that offence.
- (8) In subsection (7), “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.
- (9) Where an offence under subsection (4) is committed by a Scottish partnership and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, that partner as well as the partnership shall be guilty of that offence.
- (10) In this section—
 

“premises” includes—

  - (a) any place; and
  - (b) any vehicle, vessel, aircraft, hovercraft, stall or moveable structure; and

“spray paint device” has (except where it appears in the statement set out in subsection (1)) the same meaning as in section 122(1).

#### **124 Offences under sections 122 and 123: enforcement**

- (1) A local authority shall, within its area, enforce sections 122 and 123.
- (2) Subsection (1) does not authorise a local authority to institute proceedings for an offence under section 122(1) or 123(4).

#### **125 Offences under sections 122 and 123: powers of entry, inspection and seizure**

- (1) Subject to subsection (3), an authorised officer of a local authority may at any reasonable hour exercise any of the powers conferred by subsections (4) to (7).
- (2) In subsection (1), “authorised officer”, in relation to a local authority, means an officer of the authority authorised in writing by it for the purposes of this section.

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- (3) An officer seeking to exercise a power mentioned in subsection (1) shall, if requested, produce evidence of identity and authorisation.
- (4) The officer may, for the purpose of ascertaining whether a relevant offence has been committed—
  - (a) inspect any goods; and
  - (b) enter any premises (other than premises used only as a dwelling).
- (5) If the officer has reasonable cause to suspect that a relevant offence has been committed, the officer may, for the purpose of ascertaining whether it has been committed—
  - (a) require any person carrying on, or employed in connection with, a business, to produce any records relating to the business; and
  - (b) take copies of, or of any entry in, any records produced by virtue of paragraph (a).
- (6) If the officer has reasonable cause to believe that a relevant offence has been committed, the officer may, for the purpose of ascertaining, by testing or otherwise, whether it has been committed, seize and detain any goods.
- (7) The officer may seize and detain any goods or records which the officer has reason to believe may be required as evidence in proceedings for a relevant offence.
- (8) In this section, “relevant offence” means an offence under section 122(1) or 123(4).

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 85B inserted by [2014 asp 14 s. 21\(1\)](#)