



Antisocial Behaviour etc. (Scotland) Act 2004

2004 asp 8

PART 10

FURTHER CRIMINAL MEASURES

Seizure of vehicles

126 Vehicles used in manner causing alarm, distress or annoyance

- (1) Where—
- (a) regulations under section 127 are in force; and
 - (b) subsection (2) applies,
- a constable in uniform may exercise the powers mentioned in subsection (3).
- (2) This subsection applies where the constable has reasonable grounds for believing that a motor vehicle—
- (a) is being used on any occasion in a manner which—
 - (i) contravenes section 3 or 34 of the Road Traffic Act 1988 (c. 52) (careless and inconsiderate driving and prohibition of off-road driving); and
 - (ii) is causing, or is likely to cause, alarm, distress or annoyance to members of the public; or
 - (b) has been used on any occasion in a manner which—
 - (i) contravened either of those sections of that Act; and
 - (ii) caused, or was likely to cause, such alarm, distress or annoyance.
- (3) The powers are—
- (a) if the motor vehicle is moving, power to order the person driving it to stop the vehicle;
 - (b) subject to subsection (4), power to seize and remove the motor vehicle;

Status: This is the original version (as it was originally enacted).

- (c) for the purposes of exercising a power falling within paragraph (a) or (b), power to enter any premises (other than a private dwelling house) on which the constable has reasonable grounds for believing the motor vehicle to be;
 - (d) power to use reasonable force, if necessary, in the exercise of a power conferred by any of paragraphs (a) to (c).
- (4) Subject to subsection (5), the constable shall not seize the motor vehicle unless—
- (a) where the case falls within subsection (2)(a)—
 - (i) the constable has warned the person who is using the motor vehicle in the manner mentioned in that subsection that if the use continues the constable will seize the vehicle; and
 - (ii) it appears to the constable that, after the warning, the use has continued; or
 - (b) where the case falls within subsection (2)(b)—
 - (i) the constable has warned the person who used the motor vehicle in the manner mentioned in that subsection that if the use is repeated, the constable will seize the vehicle; and
 - (ii) it appears to the constable that, after the warning, the use has been repeated.
- (5) Subsection (4) does not require a warning to be given by a constable on any occasion on which the constable would otherwise have the power to seize a motor vehicle under this section if—
- (a) the circumstances make it impracticable for the constable to give the warning;
 - (b) the constable has already on that occasion given a warning under that subsection in respect of any use of that motor vehicle or of another motor vehicle by that person or any other person; or
 - (c) the constable has reasonable grounds for believing—
 - (i) that such a warning has been given on that occasion otherwise than by that constable; or
 - (ii) that the person whose use of that motor vehicle on that occasion would justify the seizure is a person to whom a warning under that subsection has been given (whether or not by that constable or in respect of the same vehicle or the same or a similar use) on a previous occasion in the previous 12 months.
- (6) A person who fails to comply with an order under subsection (3)(a) shall be guilty of an offence.
- (7) A person guilty of an offence under subsection (6) shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (8) In this section—
- “driving” has the same meaning as in the Road Traffic Act 1988 (c. 52);
 - “motor vehicle” means any mechanically propelled vehicle, whether or not it is intended or adapted for use on roads; and
 - “private dwelling house” does not include—
 - (a) any garage or other structure occupied with the dwelling house; or
 - (b) any land appurtenant to the dwelling house.

127 Retention etc. of vehicles seized under section 126

- (1) The Scottish Ministers may by regulations make provision as to—
 - (a) the removal and retention of motor vehicles seized under section 126; and
 - (b) the release or disposal of such vehicles.
- (2) Regulations under subsection (1) may in particular make provision for or in connection with—
 - (a) the giving of notice of the seizure of a motor vehicle under section 126 to a person who—
 - (i) is the owner of that vehicle; or
 - (ii) in accordance with the regulations, appears to be its owner;
 - (b) the procedure by which a person who claims to be the owner of a motor vehicle seized under section 126 may seek to have it released;
 - (c) requiring the payment of fees, charges or other costs in relation to—
 - (i) the removal and retention of such a motor vehicle; and
 - (ii) any application for its release;
 - (d) the circumstances in which a motor vehicle seized under section 126 may be disposed of;
 - (e) the delivery to a local authority, in circumstances prescribed by or determined in accordance with the regulations, of any motor vehicle seized under section 126.
- (3) Regulations under subsection (1) shall provide that a person who would otherwise be liable to pay any fee or charge under the regulations shall not be liable to pay it if—
 - (a) the use by reference to which the motor vehicle concerned was seized was not a use by that person; and
 - (b) the person—
 - (i) did not know of the use of the vehicle in the manner that led to its seizure;
 - (ii) had not consented to its use in that manner; and
 - (iii) could not, by the taking of reasonable steps, have prevented its use in that manner.
- (4) In this section, “motor vehicle” has the same meaning as in section 126.