



Adult Support and Protection (Scotland) Act 2007

2007 asp 10

PART 1

PROTECTION OF ADULTS AT RISK OF HARM

Banning orders

19 Banning orders

- (1) A banning order is an order granted by the sheriff which bans the subject of the order (“the subject”) from being in a specified place.
- (2) A banning order may also—
 - (a) ban the subject from being in a specified area in the vicinity of the specified place,
 - (b) authorise the summary ejection of the subject from the specified place and the specified area,
 - (c) prohibit the subject from moving any specified thing from the specified place,
 - (d) direct any specified person to take specified measures to preserve any moveable property owned or controlled by the subject which remains in the specified place while the order has effect,
 - (e) be made subject to any specified conditions,
 - (f) require or authorise any person to do, or to refrain from doing, anything else which the sheriff thinks necessary for the proper enforcement of the order.
- (3) A condition specified in a banning order may, in particular, authorise the subject to be in the place or area from which the subject is banned in specified circumstances (for example, while being supervised by another person or during specified times).
- (4) The sheriff must, before including a condition of the type mentioned in subsection (3), have regard to any relevant representations made by—
 - (a) the applicant for the order,
 - (b) the adult at risk,

- (c) any other person who has an interest in the adult at risk's well-being or property, and
 - (d) the subject.
- (5) A banning order expires on the earliest of the following dates—
- (a) any specified expiry date,
 - (b) if the banning order is recalled, the date on which it is recalled,
 - (c) the date which falls 6 months after the date on which it is granted.

20 Criteria for granting banning order

The sheriff may grant a banning order only if satisfied—

- (a) that an adult at risk is being, or is likely to be, seriously harmed by another person,
- (b) that the adult at risk's well-being or property would be better safeguarded by banning that other person from a place occupied by the adult than it would be by moving the adult from that place, and
- (c) that either—
 - (i) the adult at risk is entitled, or permitted by a third party, or
 - (ii) neither the adult at risk nor the subject is entitled, or permitted by a third party,
 to occupy the place from which the subject is to be banned.

21 Temporary banning orders

- (1) The sheriff may grant a temporary banning order pending determination of an application for a banning order.
- (2) A temporary banning order may include any provision which may be included in a banning order.
- (3) Where a temporary banning order is granted, the sheriff must determine the related application for a banning order within such period as may be specified in rules made under section 32 of the Sheriff Courts (Scotland) Act 1971 (c. 58).
- (4) A temporary banning order expires on the earliest of the following dates—
 - (a) the date on which the sheriff determines the related application for a banning order,
 - (b) the date by which subsection (3) requires the sheriff to determine the related application for a banning order,
 - (c) if the temporary banning order is recalled, the date on which it is recalled,
 - (d) any specified expiry date.

22 Right to apply for banning order

- (1) An application for a banning order may be made only by or on behalf of—
 - (a) an adult whose well-being or property would be safeguarded by the order,
 - (b) any other person who is entitled to occupy the place concerned, or
 - (c) where subsection (2) applies, the council.
- (2) The council must apply for a banning order if it is satisfied—

- (a) as to the matters set out in section 20,
 - (b) that nobody else is likely to apply for a banning order in respect of the circumstances which caused the council to be satisfied as to those matters, and
 - (c) that no other proceedings (under this Part or otherwise) to eject or ban the person concerned from the place concerned are depending before a court.
- (3) An applicant for a banning order may also apply for a temporary banning order in respect of the same case.

23 Banning orders: occupancy rights of adult at risk

The granting of a banning order or a temporary banning order does not affect any right the adult at risk has by virtue of being a non-entitled spouse to occupy a home within the place from which the subject is banned under section 1(1) of the Matrimonial Homes (Family Protection) (Scotland) Act 1981 (c. 59).

24 Variation or recall of banning order

- (1) The sheriff may vary or recall—
- (a) a banning order, or
 - (b) a temporary banning order,
- if satisfied that the variation or recall is justified by a change in the facts or circumstances in respect of which the order was granted or, as the case may be, last varied.
- (2) A variation may not vary the date on which the order expires—
- (a) in the case of a banning order, beyond the date which is 6 months after the date on which the order was granted,
 - (b) in the case of a temporary banning order, beyond the date by which section 21(3) requires the sheriff to determine the related application for a banning order.
- (3) An order may be so varied or recalled only on an application by or on behalf of—
- (a) the subject of the order,
 - (b) the applicant for the order,
 - (c) the adult at risk to whom the order relates,
 - (d) any other person who has an interest in the adult at risk's well-being or property.

25 Powers of arrest

- (1) The sheriff may attach a power of arrest to any—
- (a) banning order, or
 - (b) temporary banning order.
- (2) Any such power of arrest—
- (a) becomes effective when it is served (together with such documents as may be prescribed) on the subject of the order, and
 - (b) expires together with the order to which it is attached.

26 Notification to adult at risk etc.

- (1) This section applies where the sheriff—
 - (a) grants a banning order or temporary banning order, or
 - (b) varies or recalls such an order,on the application of a person other than the adult whose well-being or property is safeguarded by the order.
- (2) Where this section applies, the applicant (or such other person as may be prescribed) must deliver the document mentioned in subsection (3) to—
 - (a) the adult whose well-being or property is safeguarded by the order, and
 - (b) any other person with an interest in that adult's well-being or property as the sheriff may specify.
- (3) The document which is to be delivered under subsection (2) is a copy of—
 - (a) the order (and any power of arrest attached),
 - (b) the varied order, or, as the case may be,
 - (c) the order of recall.
- (4) Failure to comply with subsection (2) does not invalidate the order, variation or recall concerned.

27 Notification to police

- (1) The applicant for a banning order or temporary banning order (or such other person as may be prescribed) must, as soon as possible after any power of arrest attached to the order becomes effective, deliver to the chief constable—
 - (a) a copy of the order (with the power of arrest attached), and
 - (b) such other documents as may be prescribed.
- (2) Where a banning order or temporary banning order is varied or recalled, the applicant for the variation or recall (or such other person as may be prescribed) must, as soon as possible after the variation or recall, deliver to the chief constable—
 - (a) a copy of the varied order or, as the case may be, a note of the recall, and
 - (b) such other documents as may be prescribed.
- (3) In this section, “chief constable” means the chief constable of the police force maintained for the area in which the place specified in the order concerned is situated.

28 Arrest for breach of banning order

- (1) A constable may arrest without warrant the subject of any banning order, or temporary banning order, to which a power of arrest is attached if the constable—
 - (a) reasonably suspects the subject to be breaching, or to have breached, the order, and
 - (b) considers that there would, if the subject were not arrested, be a risk of the subject breaching the order again.
- (2) The constable must—
 - (a) immediately inform the arrested person of the reason for the arrest, and
 - (b) take the arrested person as quickly as is reasonably practicable to a police station.

29 Police duties after arrest

- (1) The officer in charge of a police station to which any person arrested under section 28 is taken (“the officer in charge”) must detain the arrested person in custody until the person is—
 - (a) accused on petition or charged on complaint with an offence in respect of the facts and circumstances which gave rise to the arrest, or
 - (b) brought before the sheriff under section 32.
- (2) The officer in charge must ensure that the facts and circumstances which gave rise to the arrest are reported to the fiscal as soon as is practicable.

30 Notification of detention

- (1) Where a person is detained under section 29, the officer in charge must ensure that the detained person is informed immediately of—
 - (a) the right to have, on request, intimation of the detention and of the place of detention given, without delay, to—
 - (i) a solicitor, and
 - (ii) one other person reasonably named by the person,
 - (b) the right to have, on request, intimation given to a solicitor that the solicitor’s professional assistance is required,
 - (c) the right to have, on request, the solicitor informed, as soon as the information is available, of the court to which the person is to be taken and the date when that is to happen, and
 - (d) the right to have, on request, a private interview with the solicitor before any appearance before the sheriff under section 32.
- (2) Where the officer in charge knows or believes that a person detained under section 29 is a child, the officer must, where practicable, give intimation, without delay, of the detention and of the place of detention to any person known to have parental responsibilities and rights in relation to the detained person.
- (3) Any person to whom intimation is given under subsection (2) must be permitted reasonable access to the detained person.

31 Duty to keep record of detention

The officer in charge must ensure that the following matters are recorded in connection with the detention of a person under section 29—

- (a) the time at which the person was arrested,
- (b) the police station to which the person was taken,
- (c) the time when the person arrived at that police station,
- (d) the address of any other place to which the person is, during the detention, taken,
- (e) the time when the person was informed of the rights set out in section 30(1),
- (f) the time and nature of any request made by the person to exercise any of those rights, and
- (g) the time and nature of any action taken by a police officer under section 30.

32 Duty to bring detained person before sheriff

- (1) Where—
- (a) a person is detained under section 29, and
 - (b) the fiscal has not decided to take criminal proceedings in respect of the facts and circumstances which gave rise to the arrest,
- the detained person must be brought, on the next court day on which it is practicable to do so, before the sheriff sitting as a court of summary jurisdiction for the district in which the person was arrested.
- (2) Nothing in this section prevents the detained person from being brought before the sheriff on a day other than a court day if—
- (a) the sheriff is sitting on such a day for the disposal of criminal business, and
 - (b) the fiscal has not decided to take criminal proceedings in respect of the facts and circumstances which gave rise to the arrest.

33 Information to be presented to sheriff

Where a person is brought before the sheriff under section 32, the fiscal must present to the sheriff a petition—

- (a) giving the detained person's particulars,
- (b) stating the facts and circumstances which gave rise to the arrest,
- (c) giving any information known to the fiscal—
 - (i) about the circumstances which gave rise to the banning order or temporary banning order concerned, and
 - (ii) which is relevant to an assessment of whether the detained person is likely to breach that order again, and
- (d) requesting the sheriff to consider whether a longer period of detention is justified.

34 Criteria for authorising longer detention

- (1) The sheriff may, if satisfied—
- (a) that the information which the fiscal presents under section 33 ostensibly discloses a breach of a banning order or temporary banning order, and
 - (b) that there is a substantial risk that the detained person will breach the order again,
- by order authorise the continuation of the detention for a period of not more than 2 days (not counting days which are not court days).
- (2) Where the sheriff refuses to authorise such a continuation, the detained person must be released from custody (unless that person is in custody in respect of any other matter).
- (3) Before deciding whether to grant an order under this section, the sheriff must give the detained person the opportunity to make representations.