



Violent Crime Reduction Act 2006

2006 CHAPTER 38

PART 1

ALCOHOL-RELATED VIOLENCE AND DISORDER

CHAPTER 1

DRINKING BANNING ORDERS

Supplemental provisions about drinking banning orders

9 Interim orders

- (1) This section applies in each of the following cases—
 - (a) where an application is made for a drinking banning order;
 - (b) where the court is required under section 6 to consider whether the conditions for making a drinking banning order are satisfied.
- (2) Before—
 - (a) determining the application, or
 - (b) considering whether the conditions are satisfied,the court may make an order under this section (“an interim order”) if it considers that it is just to do so.
- (3) Where this section applies by virtue of subsection (1)(a), an application for an interim order against an individual—
 - (a) may be made without notice being given to that individual; and
 - (b) may be heard in the absence of that individual.
- (4) The following permission is required for the making or hearing of an application in accordance with subsection (3)—
 - (a) in the case of proceedings in the county court, the permission of the court; and

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- (b) in the case of an application to a magistrates' court, the permission of the proper officer.
- (5) Permission may only be given under subsection (4) if the court or proper officer is satisfied—
- (a) that it is necessary for the application to be made without notice being given to the individual in question; and
 - (b) that it is not necessary for the application to be heard in the presence of the individual.
- (6) An interim order—
- (a) may contain any provision that may be contained in a drinking banning order; but
 - (b) has effect, unless renewed, only for such fixed period of not more than four weeks as may be specified in the order.
- (7) An interim order—
- (a) may be renewed (on one or more occasions) for a period of not more than four weeks from the end of the period when it would otherwise cease to have effect;
 - (b) must cease to have effect (if it has not previously done so) on the determination of the application mentioned in subsection (1)(a) or on the court's making its decision whether to make a drinking banning order under section 6.
- (8) Section 5 applies in relation to an interim order made in a case falling within subsection (1)(a) as it applies in relation to a drinking banning order made under section 3 or 4, but with the omission of section 5(5) and (6).
- (9) Section 8 applies in relation to an interim order made in a case falling within subsection (1)(b) as it applies in relation to a drinking banning order made under section 6, but with the omission of section 8(5) and (6).

10 Appeals

- (1) An appeal lies to the Crown Court against the making by a magistrates' court of a drinking banning order under section 3 or 6.
- (2) On such an appeal the Crown Court—
- (a) may make such orders as may be necessary to give effect to its determination of the appeal;
 - (b) may also make such incidental or consequential orders as appear to it to be just.
- (3) An order of the Crown Court made on an appeal under this section (other than one directing that an application be re-heard by a magistrates' court) shall be treated for the purposes of sections 5 and 8 as an order of the magistrates' court from which the appeal was brought.

11 Breach of drinking banning orders

- (1) If the subject of a drinking banning order or of an interim order does, without reasonable excuse, anything that he is prohibited from doing by the order, he is guilty of an offence.

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- (2) A person guilty of an offence under subsection (1) shall be liable, on summary conviction, to a fine not exceeding level 4 on the standard scale.
- (3) If a person is convicted of an offence under subsection (1), it is not open to the court by or before which he is convicted to make an order under subsection (1)(b) (conditional discharge) of section 12 of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6).
- (4) A local authority may bring proceedings for an offence under subsection (1).
- (5) The Secretary of State may by order provide that a person of a description specified in the order may bring proceedings for an offence under subsection (1) in such cases and such circumstances as may be prescribed by the order.
- (6) In proceedings for an offence under subsection (1), a copy of the original drinking banning order or interim order, certified as such by the proper officer of the court which made it, is admissible as evidence—
 - (a) of its having been made, and
 - (b) of its contents,to the same extent that oral evidence of those things is admissible in those proceedings.
- (7) If proceedings for an offence under subsection (1) are brought in a youth court, section 47(2) of the Children and Young Persons Act 1933 (c. 12) has effect as if the persons entitled to be present for the purposes of those proceedings included one person authorised to be present by a relevant authority.
- (8) In relation to proceedings brought against a young person for an offence under subsection (1)—
 - (a) section 49 of the Children and Young Persons Act 1933 (restrictions on reports of proceedings in which children and young persons are concerned) does not apply in respect of the young person against whom the proceedings are brought; and
 - (b) section 45 of the Youth Justice and Criminal Evidence Act 1999 (c. 23) (power to restrict reporting on criminal proceedings involving persons under 18) does so apply.
- (9) If, in relation to any such proceedings, the court does exercise its power to give a direction under section 45 of the Youth Justice and Criminal Evidence Act 1999, it must give its reasons for doing so.
- (10) Subject to paragraph 2(2) of Schedule 2 to the Youth Justice and Criminal Evidence Act 1999, until section 45 of that Act comes into force, the references to it in this section are to be read as references to section 39 of the Children and Young Persons Act 1933 (power to prohibit publication of certain matters).

12 Approved courses

- (1) If an application is made to the Secretary of State for the approval of a course for the purposes of section 2, he must decide whether to grant or refuse the application.
- (2) In reaching that decision the Secretary of State—
 - (a) must have regard to the nature of the course and to whether the person providing it is an appropriate person both to provide it and efficiently and effectively to administer its provision; and

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- (b) may take into account any recommendations made by persons appointed by the Secretary of State to consider the application.
- (3) A course may be approved subject to conditions specified by the Secretary of State.
- (4) The approval of a course—
 - (a) is for the period specified by the Secretary of State (which must not exceed 7 years); and
 - (b) may be withdrawn by him at any time.
- (5) Regulations made by the Secretary of State may make provision in relation to the approval of courses and may, in particular, include—
 - (a) provision about the making of applications for approval;
 - (b) provision for the payment of fees, of such amounts as are prescribed by the regulations, in respect of applications for approval, the giving of approvals, or both;
 - (c) provision specifying the maximum fees that a person may be required to pay for a course and about when fees for courses have to be paid;
 - (d) provision for the monitoring of courses and of persons providing courses;
 - (e) provision about the withdrawal of approvals; and
 - (f) provision authorising the Secretary of State (whether on payment of a fee or otherwise) to make available information about courses and about persons providing courses.
- (6) The Secretary of State—
 - (a) may issue guidance about the conduct of approved courses; and
 - (b) in exercising the powers and duties conferred or imposed on him by or under subsections (1) to (5) must have regard to the guidance under this subsection that is for the time being in force.
- (7) Also, a court must have regard to that guidance in determining what for the purposes of section 13 constitutes reasonable instructions or reasonable requirements by a person providing an approved course.

13 Certificates of completion of approved courses

- (1) For the purposes of section 2—
 - (a) the subject of a drinking banning order is to be regarded as having completed an approved course satisfactorily if, and only if, the person providing the course has given a certificate that the subject has done so; and
 - (b) the time at which the subject is to be regarded as having satisfactorily completed the course is the time when that certificate is received by the proper officer of the court that made the order.
- (2) For the purposes of this section a certificate that a person has satisfactorily completed a course—
 - (a) has to be in such form, and
 - (b) has to contain such particulars,
 as may be specified in, or determined under, regulations made by the Secretary of State.

- (3) The person providing an approved course must give the subject of a drinking banning order in which that course is specified a certificate for the purposes of this section unless that subject—
 - (a) has failed to make due payment of fees for the course;
 - (b) has failed to attend the course in accordance with the reasonable instructions of the person providing the course; or
 - (c) has failed to comply with any other reasonable requirement of that person.
- (4) Where a person providing an approved course decides not to give the subject of a drinking banning order a certificate under subsection (1), he must give the subject written notice of the decision, setting out the grounds of the decision.
- (5) The obligation of the person providing an approved course to give, in the case of the subject of a drinking banning order in which that course is specified, either—
 - (a) a certificate for the purposes of this section, or
 - (b) a notice under subsection (4),must be discharged before the end of 14 days beginning with the day on which any request to do so is made by that subject.
- (6) The subject of a drinking banning order who is given a notice under subsection (4) or who claims that a request for the purposes of subsection (5) has not been complied with may, within such period as may be prescribed by rules of court, apply to—
 - (a) the court which made the order, or
 - (b) if that court is not the Crown Court or a relevant local court, to either the court which made the order or a relevant local court,for a declaration that there has been a contravention of subsection (3).
- (7) If the court grants the application, the applicant is to be treated for the purposes of section 2 as having satisfactorily completed the course at the time of the making of the declaration.
- (8) The Secretary of State may by regulations make provision as to—
 - (a) the form of a notice under subsection (4); and
 - (b) the manner in which such a notice is given and the time to be taken as the time of the giving of such a notice.

14 Interpretation of Chapter 1

- (1) In this Chapter—

“appropriate persons”, in relation to an application for a drinking banning order or an application referred to in section 4(6)(b) or (c), means such of the following as is not a party to the application—

 - (a) the chief officer of police of the police force for the police area where the conduct to which the application relates occurred;
 - (b) the chief officer of police of the police force for the police area in which the individual to whose conduct the application relates normally resides;
 - (c) every local authority in whose area the place where that individual normally resides is situated; and
 - (d) the Chief Constable of the British Transport Police Force;

“approved course” means a course approved by the Secretary of State for the purposes of section 2;

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“drinking banning order” means an order under section 3, 4 or 6;

“interim order” means an order under section 9;

“local authority” means—

- (a) a county council in England;
- (b) a district council in England;
- (c) a London borough council;
- (d) the Common Council of the City of London;
- (e) the Council of the Isles of Scilly;
- (f) a county council or a county borough council in Wales;

“proper officer”—

- (a) in relation to a magistrates' court, means the justices' clerk; and
- (b) in relation to any other court, means the clerk of the court;

“relevant authority” means—

- (a) the chief officer of police of a police force for a police area;
- (b) the Chief Constable of the British Transport Police Force;
- (c) a local authority;

“relevant local court”, in relation to a drinking banning order, means a magistrates' court acting for the local justice area in which the subject normally resides;

“specified period”, in relation to a drinking banning order, means the period specified in the order for the purposes of section 2(1) as the period for which the order is to have effect;

“subject”, in relation to an order, means the individual against whom it is made;

“young person” has the same meaning as in the Children and Young Persons Act 1933 (c. 12) (see section 107(1) of that Act).

- (2) References in this Chapter to protecting persons from criminal or disorderly conduct include references to protecting their property from unlawful loss or damage.
- (3) The Secretary of State may by order provide that a person of a description specified in the order is to be regarded as a relevant authority for such purposes of the provisions of this Chapter as are specified in the order.
- (4) A power of the Secretary of State to make an order or regulations under this Chapter shall be exercisable by statutory instrument.
- (5) Every such power includes power—
 - (a) to make different provision for different cases;
 - (b) to make provision subject to such exemptions and exceptions as the Secretary of State thinks fit; and
 - (c) to make such incidental, supplemental, consequential and transitional provision as he thinks fit.
- (6) No regulations shall be made under section 2 unless a draft of the regulations has been laid before Parliament and approved by a resolution of each House.
- (7) A statutory instrument containing—
 - (a) regulations under section 12 or 13, or
 - (b) an order under section 11 or this section,

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shall be subject to annulment in pursuance of a resolution of either House of Parliament.

- (8) The power under subsection (5) to make incidental, supplemental and consequential provision includes power to modify so much of this section as defines “appropriate persons”.