

ARTICLE 12 IN SCOTLAND



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YOU'VE BEEN ASBO'D!

A Guide to the Antisocial Behaviour etc. (Scotland) Act 2004

N.B. The Act is currently under review. Review is expected to be laid before Parliament early 2009.

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What is an ASBO?

Antisocial behaviour orders (ASBOs) are orders to prevent antisocial behaviour and to protect victims and the wider community from that behaviour – meaning: A course of conduct (behaviour) that causes or is likely to cause alarm or distress. It is a criminal offence to breach an order.

Conduct or behaviour includes verbal communication and a “course of conduct” means conduct that takes place on at least two occasions.

‘Likely to cause’ means that someone other than a victim of the antisocial behaviour can give evidence about whether behaviour is antisocial or not.

Professional witnesses (community wardens, housing officers, social workers, environmental protection officers, community workers etc) can be used if people who are targeted by the behaviour feel unable to come forward, for example, for fear of intimidation.

It is the effect or likely effect of the behaviour on other people that determines whether the behaviour is antisocial. The people applying for the order do not have to prove that the defendant intended to cause alarm or distress.

ASBOs were introduced by the Crime and Disorder Act 1998 but were limited to people aged 16 or over in Scotland. The measures in the Antisocial Behaviour etc (Scotland) Act 2004 replace those in the 1998 Act, as they relate to Scotland, and introduce a number of changes.

So – what are the changes?

ASBOs for under 16’s

A Sheriff can authorise an ASBO or a temporary ASBO against a person aged 12 or over who is regularly involved in antisocial behaviour. Temporary ASBOs can be made before full evidence is heard if there is an urgent need to protect people. The sheriff must consider the views of the Principal Reporter to the Children’s Panel before authorising a temporary order.

A Children’s Hearing must take place before a sheriff can authorise a full ASBO to someone under 16.

Breaching the terms of an ASBO is a criminal offence, although you cannot be imprisoned for breaching the terms if you are under 16.

When authorising an ASBO against someone under 16 a sheriff also has the power to authorise a parenting order if she/he decides that this will help prevent further antisocial behaviour.

PARENTING ORDERS

PARENTING ORDERS introduce a compulsory measure to support people to improve their parenting. Parenting orders are about the behaviour of the parent, not the child. The principal reporter to the children's panel can apply to the sheriff court for a **PARENTING ORDER** if there are concerns about a child's welfare or their offending behaviour. The council can apply for a **PARENTING ORDER** where there are concerns about the child's offending behaviour. The terms of a **PARENTING ORDER** usually include the parent receiving counselling or support for up to three months.

A **PARENTING ORDER** can only be applied for if a parent has refused support offered to them to improve their parenting skills. The court has to consider the views of the child before authorising a **PARENTING ORDER**.

A **PARENTING ORDER** normally lasts for 12 months, but can be extended. Breaching a **PARENTING ORDER** is a criminal offence and can be punished by a fine of up to £1000. If the fine is not paid a court must enforce a **SUPERVISED ATTENDANCE ORDER (SAO)**. If the parent breaches the **SAO** the court has the power to use all sentencing powers available to them, including a prison sentence. The sheriff must take account of the best interests of the child before sentencing.

OTHER CHANGES TO ASBOs

Courts now have the power to authorise an **ASBO** immediately after a person has been found guilty of any criminal offence involving antisocial behaviour.

When a full or temporary **ASBO** has been authorised copies of the order must be given to both the offender and the local council. Councils must keep a record of these orders and make this information available to other relevant people such as the police and other local councils.

ASBOs are no longer limited to one local council area and can now cover other local council areas.

The police now have the power to arrest people who have broken the terms of their **ASBO**.

DISPERSAL OF GROUPS

Senior police officers, in consultation with the relevant council, now have the power to "name" an area where there has been regular and serious antisocial behaviour. Before an area is "named" an authorisation notice, stating when the "naming" will begin and end and what days and/or times it will be enforced, must be drawn up and published in a local newspaper and in public notices which can be clearly seen in the "named" area.

In "named" areas police have the power to disperse groups of **TWO OR MORE** people or **INDIVIDUALS** within groups if their behaviour is considered to be causing, or is likely to cause, alarm or distress to any member of the public. The police can order any person who **DOES NOT** live in the area to leave and can also stop them from returning to the area for the next 24 hours.

Being told to leave an area by the police IS NOT a “recordable” offence but if you REFUSE to follow police instructions YOU WILL be committing an offence that the police have the power to arrest you for, without a warrant.

CLOSURE OF PREMISES

The police now have the power to serve a CLOSURE NOTICE on premises (this includes places where people are living) and stop all access to them for up to three months. Before serving a CLOSURE NOTICE the police must consult with the local council about the planned closure and do their best to find out who lives in or has responsibility for the premises. Unless you are living there or have responsibility for the premises you are committing an offence if you enter premises that have been served with a CLOSURE NOTICE.

When a CLOSURE NOTICE has been served a sheriff has two court days to consider an application from the police for a CLOSURE ORDER to be made on the premises. If a CLOSURE ORDER is authorised the premises can be closed for up to three months with a possible extension of up to six months. ANYONE (including people who have been living there or have responsibility for the premises) remaining inside or entering the premises once the order has been served would be guilty of an offence which could result in a fine or a prison sentence, or both.

HOUSING – ANTISOCIAL BEHAVIOUR NOTICES

Councils have the power to serve an ANTISOCIAL BEHAVIOUR NOTICE on a landlord who does not take suitable action when there is antisocial behaviour at a house that she or he lets. It is a criminal offence for the landlord to ignore the instructions of an ANTISOCIAL BEHAVIOUR NOTICE and if convicted she/he could be fined up to £5,000.

The council can charge the landlord the cost of action it has to take against the antisocial behaviour if this is because the landlord has not followed their instructions. It can also apply to the sheriff court for an order that no rent should be paid to the landlord or an order that control of the property is transferred to the council so that it can deal with the problem itself.

REGISTRATION OF PRIVATE LANDLORDS

Private landlords (except landlords who only have one or two lodgers in their own home) and any properties they rent have to be listed on a public register. This does not include councils or housing associations. Once registered the landlord must make sure that the information she or he has provided is kept up to date. It is a criminal offence to let a property that is not registered which can result in a fine of up to £5,000.

NOISE NUISANCE

Local councils can enforce noise controls to certain areas and for certain times, this can be for 24 hours a day seven days a week.

Both council staff and the police have the power to investigate noise complaints. If a member of council staff thinks that the noise coming from your house is more than the noise level allowed they can issue you with a WARNING NOTICE.

If the noise continues after the WARNING NOTICE has been served they can issue a FIXED PENALTY NOTICE OF £100. If this fine is paid no further action will be taken. If the fine is not paid within 28 DAYS the council will report the non-payment to the Procurator Fiscal.

Councils now have the power to apply for a warrant to seize any equipment which is causing the noise.

THE ENVIRONMENT

LITTER

Council staff and the police have the power to issue FIXED PENALTY NOTICES for littering. You no longer have to be witnessed dropping litter as a FIXED PENALTY NOTICE can be issued if there is reason to believe the offence has been committed. The maximum FIXED PENALTY FOR LITTERING IS £200.

FLY-TIPPING

FIXED PENALTY NOTICES can now be issued for fly-tipping. As with littering you no longer have to be witnessed committing the offence. Council staff, the police and staff of the Scottish Environmental Protection Agency (SEPA) have the power to issue FIXED PENALTY NOTICES for fly-tipping. The maximum FIXED PENALTY FOR FLY-TIPPING IS £200.

GRAFFITI

Councils now have the power to issue notices to remove graffiti to those responsible for things like phone boxes, park benches, buses, trains, schools, colleges etc. If the graffiti is not removed within a certain time the council can carry out this work and claim back the cost from the owner.

SERIOUS ENVIRONMENTAL OFFENCES

Serious environmental offences such as, serious fly-tipping, polluting the water supply, mis-use of large industrial areas or landfill sites, releasing harmful chemicals into sewers etc can result in fines of up to £40,000.

ADDITIONAL CRIMINAL MEASURES

COMMUNITY REPARATION ORDERS

COMMUNITY REPARATION ORDERS can be authorised for people aged 12 and over who are convicted in a sheriff or district court of an offence involving antisocial behaviour. The person would have to work between 10 and 100 hours in the community that the antisocial behaviour took place.

TAGGING

(ISMS) these are instructed via the Children's Hearing System. They are a package of intensive support, including a restriction of movement condition, to help a young person who may be involved in offending. A restriction of movement condition is monitored by an electronic tag. Local councils must carry out the decisions of the Children's Hearing, if they fail to do so the Children's Hearing can ask the principal reporter to apply for an order from the sheriff court enforcing the council to carry out their decisions.

RESTRICTION OF LIBERTY ORDERS (RLOs)

RESTRICTIONS OF LIBERTY ORDERS are an order of the court which can be imposed by a court on a person under the age of 16 who has been convicted of an offence.

A person given an RLO can be restricted to a specific place (such as a house or a hostel) for up to 12 hours each day or not allowed to go to a specific place (such as someone else's house or a pub or a bookies) for up to 24 hours each day (or both) for up to 12 months. The person will be electronically tagged. If the conditions of the RLO are breached the monitoring company will report this to the court.

Before imposing the RLO the court must get a report from the local council that sets out the support to be provided during the period of the RLO.

An RLO cannot be combined with a drug treatment and testing order for young people under 16. For young people under 16 only a probation order can be combined with an RLO.

BAN ON SELLING SPRAY PAINT TO UNDER 16's

It is an offence to sell spray paint to people under 16 years of age. The maximum penalty for a person found guilty of this is a fine of £1,000. It is also an offence if people selling this product do not show a warning notice saying this.

Certain council staff have powers to enter and inspect places selling spray paint and to seize goods to make sure this is enforced.

VEHICLES USED IN A WAY THAT CAUSES ALARM, DISTRESS OR ANNOYANCE

The police have the power to stop and seize motor vehicles. They can do this if vehicles are being or have been driven off-road or driven on the public road or other public place without due care and attention or reasonable consideration for other road users.

In both of these cases the police must also have a good reason for believing that a motor vehicle is being, or has been used, in a way which is likely to cause alarm, distress or annoyance to members of the public. They will also, usually, have issued a warning notice before proceeding to seize a vehicle. It is an offence for a person to fail to stop a vehicle when asked to do so by a police officer. The punishment is a fine.

FIXED PENALTY NOTICES (FPNs)

A fixed penalty notice is an on-the-spot £50 fine for low-level antisocial offences. FPNs can only be issued by police officers to people aged 16 and over.

The list of statutory offences which FPNs can be issued for include:

- **Riotous behaviour while drunk in licensed premises**
- **Refusing to leave licensed premises when asked to do so**
- **Going to the toilet in a place that causes, or is likely to cause, annoyance to any other person**
- **Being drunk and incapable in a public place**
- **Being drunk in a public place in charge of a child**
- **Continuing to play musical instruments, sing, play sound systems and so on after being asked to stop**
- **Vandalism**
- **Drinking alcohol where it breaks a bye-law**

Common-law offences of breach of the peace and malicious mischief are also included.

If you are issued with a FPN you have 28 days to challenge it or pay in full. The amount of the FPN goes up by 50% if it is not paid or challenged within 28 days. The initial fine amount is £50.

You can challenge an FPN. If you do this the police will present a report to the procurator fiscal for them to consider prosecution.

The increased penalty will be recovered in the same way as an unpaid fine set in the district court by way of sentence in a criminal case.

RESPONSIBILITIES

Every local council, along with the relevant chief of police, is **RESPONSIBLE** for preparing, publishing and reviewing a plan for dealing with antisocial behaviour in their council area.

The plan must set out:

- Antisocial behaviour problems in the council area
- The services already available for preventing and tackling them (including for people under 16, victims and witnesses of antisocial behaviour and people who need mediation to help solve disagreements between neighbours)
- The new services that the council and other agencies will need to put in place to fill any gaps in services
- How the council and the police will co-ordinate their work and exchange information

In preparing their plans local councils must consult the principal reporter to the children's panel (the Children's Hearing System), registered social landlords and groups representing people affected by antisocial behaviour. Plans must identify those areas where antisocial behaviour problems are particularly bad and how the council will work with local people on an ongoing basis to tackle the problems.

To monitor the plans local councils must publish progress reports from time to time. The police, registered social landlords and the children's reporter must provide all the information the council needs for these reports.

WANT TO KNOW MORE?

YOU'VE BEEN ASBO'D is adapted from the Scottish Parliament "Antisocial Behaviour etc. (Scotland) Act 2004". For a full copy of the Act visit:
<http://www.opsi.gov.uk/legislation/scotland/acts2004/20040008.htm>

For further information on young people and the law:
<http://www.lawscot.org.uk/childlaw/index.htm>

Whatever your age, if you are looking for advice you can contact your local Citizens Advice Bureau – find your local bureau details at:
<http://www.cas.org.uk>

If you are under 18 and looking for legal advice you can call the Scottish Child Law Centre freephone on: 0800 328 8970

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