

Guidance on Antisocial Behaviour Orders

Antisocial Behaviour etc. (Scotland) Act 2004



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SCOTTISH EXECUTIVE

Guidance on Antisocial Behaviour Orders

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INTRODUCTION

1. Antisocial behaviour orders (ASBOs) are preventative orders intended to protect people in the community affected by antisocial behaviour from further acts or conduct that would cause them alarm or distress. An ASBO is a court order which prohibits, either indefinitely or for a specified period, a person from doing anything described in the order. Breach of an order is a criminal offence.
2. ASBOs have been in operation in Scotland for persons aged 16 or over since April 1999 under powers introduced by the Crime and Disorder Act 1998.
3. The Antisocial Behaviour (Scotland) Act 2004 ('the 2004 Act') extended ASBOs to 12-15 year olds and introduced some changes to improve the effectiveness of the orders. Part 2 of the 2004 Act, which relates to antisocial behaviour orders, replaces the relevant provisions of the Crime and Disorder Act 1998. The new provisions come into effect on **28 October 2004**. The 2004 Act can be found at: www.hmsso.gov.uk
4. The 2004 Act also introduced at section 118 the power for a court to make an ASBO on conviction in the criminal court as part of the sentence. Section 118 amends the Criminal Procedure (Scotland) Act 1995 to insert a new section 234AA. The court must be satisfied that in committing the offence which lead to the conviction the person engaged in antisocial behaviour and an ASBO is necessary to protect persons from further antisocial acts. While ASBOs made in the criminal court will operate in the same way as ASBOs made in the civil court, this guidance focuses on the civil orders.
5. It is important to note that ASBOs on conviction are not applied for by any authority, or the procurator fiscal. It is a matter for the court based on the evidence given at trial or the Crown narration in court. Hearsay evidence cannot be considered in criminal proceedings, but the court will take into account previous convictions tendered by the Crown. An example of when a court may choose to impose an ASBO, is where it considers that a pattern of behaviour has been established. This could be evidenced by the facts and circumstances of several charges on a complaint/indictment in respect of which the accused has been found or has pled guilty. In order for a court to find a course of conduct established, there must be more than one incident libelled on the complaint/indictment, sometimes of a similar nature, of which the accused is convicted. The court could also be satisfied that an order is necessary based on one charge. The criteria set out in statute stipulates that, amongst other things, the court must be satisfied that a person has acted in a manner that has caused or would be likely to cause alarm or distress.
6. One of the changes in the 2004 Act is the introduction of statutory guidance in relation to antisocial behaviour orders. Section 16 provides that a person (other than a court) shall, in discharging functions by virtue of Part 2, **have regard to** any guidance given by the Scottish Ministers about—
 - (a) the discharge of those functions; and
 - (b) matters arising in connection with the discharge of those functions.

7. Non statutory guidance (Police Circular No 3/1999 and Police Circular No 6/2003) has informed the use of ASBOs since they have been available. The 1999 guidance was updated in 2003 to take account of amendments to the statutory provisions on ASBOs in the Criminal Justice (Scotland) Act 2003. In particular, the introduction of interim orders and the extension of the power to apply for antisocial behaviour orders to registered social landlords. This statutory guidance will replace the earlier non-statutory guidance.

Contact

8. If you have any queries about this guidance please contact the Antisocial Behaviour Unit on 0845 774 1741 or e mail antisocialbehaviour@scotland.gsi.gov.uk

9. In addition, as part of the wider programme of support for the implementation of the Antisocial Behaviour etc (Scotland) Act 2004, the Executive is funding a telephone advice line for practitioners. The service will provide telephone advice and support on a wide variety of technical issues such as how to apply for an Antisocial Behaviour Order, the process of granting a closure notice etc. This service will be available from the end of November 2004 and the number will be widely published in advance. If you want to find out more information about the advice line, you can contact the Executive's Antisocial Behaviour Unit by email at adviceline@scotland.gsi.gov.uk

Taking a Strategic Approach

10. Part 1 of the Antisocial Behaviour etc. (Scotland) Act 2004 requires each local authority and the relevant chief constable to prepare a strategy for dealing with antisocial behaviour in the authority's area. The strategies should include an assessment of the extent and types of antisocial behaviour in the authority's area and the range and availability of services designed to prevent and deal with antisocial behaviour. The local authority must consult the Principal Reporter, registered social landlords who provide or manage property in the authority's area and community bodies and other persons it considers appropriate. Separate guidance is provided on antisocial behaviour strategies.

11. Use of ASBOs, whether an application is from a local authority or a registered social landlord, should be considered in the context of wider strategies to prevent antisocial behaviour and where it occurs to deal effectively with the causes and effects. Prevention is better than cure. Authorities will want to consider a range of options such as mediation, support services, voluntary agreements and diversion projects before deciding to pursue legal action.

12. ASBOs are an important tool and have been used effectively by many local authorities since they were introduced for over 16s in 1999 and more recently by registered social landlords since the power to apply was extended to them in 2003.

13. Joint working between agencies is vital and taking forward the use of ASBOs in the context of local antisocial behaviour strategies should be the basis for effective and appropriate use of orders. As outlined in the ASB strategies guidance, we envisage that in most local authority areas the appropriate structure for the wider

ASB strategy will be the Community Safety Partnership. There should also be effective linkages with agencies on Safe City Centre Initiatives and other bodies working to reduce crime and antisocial behaviour.

ASBOs: THE BASICS

14. ASBOs are civil orders that exist to protect the public from behaviour that causes or is likely to cause alarm or distress. An order contains conditions prohibiting the person named in it from doing anything specified in the order such as verbally abusing named persons or entering defined areas. The orders are not criminal penalties and are not intended to punish the offender. The minimum age at which a person may be subject to an ASBO in Scotland is 12.

15. ASBOs for adults are intended to tackle both behaviour which is likely to escalate to the criminal level, and patterns of behaviour which cumulatively cause considerable alarm or distress to the community. An ASBO is not intended to be a substitute for criminal proceedings where these are appropriate, and is intended to be complementary to other civil procedures such as interdict (where use of these is appropriate). Joint working and effective information sharing locally is important to ensure the most appropriate action is taken in the circumstances.

16. The children's hearing system should continue to be the primary forum for dealing with antisocial or offending behaviour by under 16s. A court-based order should only be pursued for a small number of persistently antisocial young people for whom alternative approaches have not been effective in protecting the community.

17. Local authorities and registered social landlords, in consultation with the police, can apply to the sheriff court for an order where there is evidence that a person (aged at least 12 years) has behaved in an antisocial manner and that an order is necessary for the protection of persons from further antisocial behaviour. Prior to making an application for either an interim or full ASBO in respect of an under 16, applicants must consult the Principal Reporter. The sheriff must have regard to any views expressed by the Principal Reporter before determining whether to make an order or an interim order. The sheriff must also have regard to advice provided by a children's hearing before determining an application for a full ASBO. Consultation requirements are explained in more detail below.

18. ASBOs can be used to deal with antisocial behaviour **wherever it occurs**, provided the person(s) affected by the behaviour and the person who has behaved antisocially are not of the same household. They are **not restricted to dealing with neighbour problems**. They may for example, be used to deal with antisocial conduct in and around retail premises or in parks or transport hubs.

19. An ASBO can be made against any person irrespective of their housing tenure: i.e. owner occupiers, private sector tenants, and tenants of public sector landlords, including local authorities. They are not only for use in the socially rented sector. ASBOs can also be used where a person is of no fixed abode, though authorities would also have to consider their duties in respect of homelessness.

20. ASBOs are **not** intended to address what would be considered civil disputes between neighbours over, for example, boundaries.

21. An ASBO made in the civil court is not a criminal conviction and does not form part of a criminal record. It is possible however, that a chief constable could include information about an ASBO as *relevant* information in an enhanced disclosure certificate, which is available when a person is applying for a position which involves regularly caring for, training, supervising or being in sole charge of a person or persons under 18 or vulnerable adults or may be required for certain registration and licensing purposes. In considering whether information is relevant the chief constable should bear in mind that a record in respect of offence grounds accepted/proved in the children's hearing system is normally weeded from the criminal record system at age 16 (if the child is no longer subject to a supervision requirement).

22. As breach of an ASBO is a criminal offence, an individual found guilty of breach of an ASBO would have a criminal conviction. Legislation on the rehabilitation of offenders impacts on whether or not a conviction can be considered 'spent' or not. The terms of the Rehabilitation of Offenders Act 1974 would only apply if a person is convicted of breach of an ASBO or if grounds are accepted/established where breach is referred to the children's hearing system in cases involving 12-15 year olds. Further information on the rehabilitation of offenders is available at: www.apexscotland.org.uk

23. When an ASBO is imposed as part of a disposal in a criminal case, the Scottish Criminal Record Office will hold a record of the order imposed corresponding to the relevant criminal conviction. For further information on disclosure issues please refer to www.disclosurescotland.co.uk

Interpretation of Antisocial Behaviour

24. Section 143 of the Antisocial Behaviour (Scotland) Act 2004 sets out the interpretation of antisocial behaviour for the purposes of the Act (except Parts 7 & 8), including the provisions on antisocial behaviour orders.

25. The legislation provides that a person engages in antisocial behaviour if they:
act in a manner that causes or is likely to cause alarm or distress; or
pursue a course of conduct that causes or is likely to cause alarm or distress
to at least one person not of the same household as them.

In this definition "conduct" would include speech; and a course of conduct must involve conduct on at least two occasions.

26. The expression "likely to cause" has the effect that someone other than a victim of the antisocial behaviour can give evidence about whether behaviour is antisocial or not. This is intended specifically to enable the use of professionals as witnesses where those targeted by the behaviour feel unable to come forward, for example, for fear of reprisals or intimidation.

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

28. While an authority does not have to prove intention, it would not be appropriate to use an ASBO where an individual cannot understand the consequences of their actions. For example, it is highly unlikely that an ASBO would be the most appropriate means to address the behaviour of an individual with autistic spectrum disorder or any disability or other developmental or medical condition which is considered to cause their behaviour. Where an individual has such a condition, or it is suspected they may have such a condition, advice should be sought from medical experts or other bodies with expertise in the area on support which is available. Authorities should also take account of local support strategies for people with particular needs – such as individuals with attention deficit hyperactive disorder (ADHD) or addiction problems - and other relevant guidance on supporting people. This does not preclude the possibility that an ASBO may be used, but the wider circumstances and support being made available should be fully considered. Decisions will need to be taken on a case-by-case basis.

29. It will be for the courts to decide whether particular behaviour in specific circumstances satisfies the criteria in the legislation.

Reasonableness

30. In determining whether a person has engaged in antisocial behaviour the sheriff will disregard any behaviour any behaviour shown to be reasonable in the circumstances (see section 4(3) of the Act). There is no requirement for the individual to personally give evidence to show their behaviour was reasonable. As with all legal proceedings, the individual concerned can use a legal representative to show their behaviour was reasonable.

Equal Opportunities

31. Section 140 provides that any person discharging a function by virtue of the 2004 Act shall do so in a manner that encourages equal opportunities and in particular the observance of equal opportunity requirements, as defined in the Scotland Act.

"Equal opportunities" means the prevention, elimination or regulation of discrimination between persons on grounds of sex or marital status, on racial grounds, or on grounds of disability, age, sexual orientation, language or social origin, or of other personal attributes, including beliefs or opinions, such as religious beliefs or political opinions.

"Equal opportunity requirements" means the requirements of the law for the time being relating to equal opportunities.

32. ASBOs are intended to provide protection to individuals and groups whose quality of life is undermined by antisocial behaviour by others. Individuals who

experience prejudice on the grounds of race, religion, gender, age, disability or sexual orientation may also be more likely to be victims of antisocial behaviour.

33. ASBOs are not intended to address behaviour that is merely different, or behaviour that is the result of a medical or developmental condition or a mental disorder and should not be used to promote the harassment of individuals or groups for behaviour that results from being of a different race or religion. Contact a Family have produced an information sheet on disorders and behaviour which is available at: <http://www.cafamily.org.uk/behaviour.html>

Standard of Proof

34. ASBOs are a civil order and although breach is a criminal offence, the common understanding is that orders are decided to the civil standard of proof – on the balance of probabilities. However, it is important to be aware that although the position is not binding in Scotland, the House of Lords set out the law on the standard of proof in respect of ASBOs in England and Wales in 2002.

35. The House of Lords confirmed in the case of McCann¹ that ASBOs were civil orders and set out the law on standard of proof as follows:

“they [magistrates] must in all cases under section 1 [ASBO provision for E&W] apply the criminal standard... it will be sufficient for the magistrates, when applying section 1(1)(a) to be sure that the defendant has acted in an anti-social manner, that is to say in a manner which caused or was likely to cause harassment, alarm, or distress to one or more persons not of the same household as himself.” (Lord Steyn, paragraph 37)

36. This means that the criminal standard of proof applies to the past acts of antisocial behaviour alleged against the defendant. However, Lord Steyn went on to explain,

“The inquiry under section 1(1)(b), namely that such an order is necessary to protect persons from further anti-social acts by him, does not involve a standard of proof: it is an exercise of judgement or evaluation.”

37. It remains to be seen whether or not courts in Scotland will follow the House of Lords judgement. Even if ASBOs are judged to quasi-criminal standard, rather than simply on the balance of probabilities, hearsay evidence is admissible and the authority applying for the order does not have to prove the intention to cause alarm or distress. It is the effect or likely effect of the behaviour on other people that determines whether the behaviour is antisocial.

¹ House of Lords, *Clingham (formerly C (a minor)) v Royal Borough of Kensington and Chelsea (on Appeal from a Divisional Court of the Queen’s bench Division); Regina v Crown Court at Manchester Ex p McCann (FC) and Others (FC)*, October 2002

Who can apply for ASBOs?

38. Under section 4 of the 2004 Act, a relevant authority may make an application for an ASBO if it appears to the authority that a person aged 12 or over has acted in an antisocial manner or pursued a course of antisocial conduct that caused or was likely to cause alarm or distress. However, authorities are not **required** to apply for ASBOs, either at all or in particular circumstances.

39. For the purposes of Part 2 of the 2004 Act, which relates to ASBOs, 'relevant authority', means local authorities and registered social landlords.

40. Section 143 provides the interpretation of "local authority" and "registered social landlord" for the purposes of the Act:

"local authority" means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994; and "area", in relation to a local authority, means the local government area (within the meaning of that Act) for which the council is constituted;

"registered social landlord" means a body registered in the register maintained under section 57 of the Housing (Scotland) Act 2001.

41. A local authority can apply for an ASBO to protect any person within the area of the authority. Neither the person to whom the application relates or those affected by the behaviour need be residents within the area, but the person or persons affected by the behaviour must be within the authority area.

42. A registered social landlord can apply for an ASBO to protect a person residing in, or otherwise in or likely to be in, premises provided or managed by that landlord; or a person in, or likely to be in, the vicinity of such premises.

43. The power for registered social landlord to apply for ASBOs is without prejudice to the power of the local authority to seek an ASBO in respect of RSL premises. Local authorities and registered social landlords should consider arrangements for determining who should lead on an application for an ASBO. These arrangements should take account of the more limited scope of the power to apply for an ASBO of RSLs (i.e only in respect of persons in and around RSL premises or in the vicinity of such premises).

ASBO POLICIES

44. Where they do not already have one, each authority and registered social landlord should develop a policy outlining when it would consider an application for an ASBO, the criteria it would use and so on. Specific provision should be made for the circumstances an ASBO application will be considered in respect of under 16s. That policy should be developed in consultation with the police, relevant departments of the local authority, the children's reporter and other relevant bodies. The policy should explain the circumstances in which an ASBO would be appropriate against the background of other possible remedies and the interface with criminal proceedings, voluntary interventions and the children's hearings system. Information on local policies on use of ASBOs should be included in the antisocial behaviour strategies which must be prepared by police and local authorities under section 1 of the Act.

45. The policy should put use of ASBOs in its wider context, in the light of other options such as:

- Mediation
- Warning letters
- Acceptable Behaviour Contracts
- Housing management options

46. The policy should include information on how requests for applications will be handled between local authorities and registered social landlords. It is expected that where the alleged perpetrator is an RSL tenant and the behaviour is in or around RSL premises, the RSL should consider the request. Where the alleged perpetrator is not an RSL tenant but the persons affected are primarily RSLs tenants, it would generally be more appropriate for the RSL to lead in handling the request. Joint working is important to ensure cases are handled effectively where the local authority and an RSL have a clear interest in the case.

47. Information on the use of ASBOs should be well publicised in the local authority's area. This should ensure both that the public is aware of the ASBO mechanism and that unrealistic expectations as to when it might be used are avoided. Anyone with a complaint about antisocial behaviour should consider and, where appropriate, try discussion, negotiation and mediation as a way of resolving it. In some circumstances, those affected may wish to consider legal action on their own account. The authority's policy should make it clear how individuals should proceed if they wish to make a complaint about antisocial behaviour.

48. Early intervention is encouraged in all cases to prevent the need for legal remedies. Alternative approaches are particular important in respect of young people.

Acceptable Behaviour Contracts

49. Acceptable Behaviour Contracts (ABCs) are one way of providing early intervention to make clear that certain behaviour is not acceptable. (Some areas prefer other terms such as Acceptable Behaviour Agreements for this type of voluntary arrangement – this guidance refers to ABCs but is relevant to these arrangements however they are badged.) ABCs are written agreements between an individual (child or adult) involved in antisocial behaviour and relevant agencies working to prevent antisocial behaviour, for example the police or local authority housing, education and social work services. They can be used with parents who do not take action to prevent their children acting antisocially. ABCs might also be appropriate as a means to tackle truancy and behaviour problems in relation to schools.

50. The contract sets out the behaviour that the person has agreed to stop, for example intimidating residents, truanting, making graffiti or causing noise disturbance. It may also set out the support the individuals can expect to receive in order to change their behaviour. In the case of a child the contract should always set out these supports. The contract should specify that legal action may follow as a consequence of a breach of its terms.

51. ABCs, although voluntary, can be a strong deterrent when the individual or family know that if they break the contract, legal action may follow. ABCs are not being introduced on a statutory basis, but to be an effective deterrent, breach of an ABC or a refusal to enter a contract without reasonable excuse can be considered relevant evidence for an application for an ASBO or a Parenting Order, depending on the circumstances.

52. In the case of 12 -15 year olds, use of an ABC should be considered on an interagency basis to ensure that the contract is reasonable and complements interventions currently in place or being considered by other agencies. ABCs can be used with or without referral to the Reporter and could in fact be a diversion from referral to the Reporter. A copy should only be sent to the Reporter where the child is being referred for consideration of compulsory measures of supervision. ABCs should be used alongside, rather than as a direct alternative to, other voluntary measures such as those recommended by a Reporter. It should be clear in an ABC for a 12-15 year old what the likely consequences of non-compliance may be.

53. The Executive will provide additional material on use of ABCs in due course.

ASBO FOR 12-15 YEAR OLDS

54. Use of ASBOs for 12-15 year olds, should complement the children's hearings system which should continue to be the primary forum for dealing with behaviour beyond parental control or offending behaviour by under 16s. A wide range of interventions are available to support young people and address troublesome behaviour before an application for an ASBO is considered. In most, if not all, cases when an ASBO is being considered we expect that a young person will already be well known to the hearings system. There must be flexibility to allow for use of an ASBO before the full range of options has been exhausted where there is a pressing need to protect the community – which will be a key concern of local agencies. The views of the Principal Reporter will be particularly important in such a case.

55. A variety of alternative approaches have been and will continue to be available to prevent and deal with antisocial behaviour by young people. These include early intervention projects, diversionary activities and restorative justice programmes, including reparation and mediation. Acceptable Behaviour Contracts (see above), which are agreed on a voluntary basis, can be an effective means of improving behaviour. When it is considered appropriate, a children's hearing may impose compulsory measures of supervision setting out what a young person should do or refrain from doing. This may include a requirement on the young person to take up and co-operate with programmes and other support measures aimed at addressing their needs and behaviours, for example cognitive skills and anger management. More intensive programmes are also available to help those who do not respond to lower level interventions.

56. In planning youth justice services local authorities and their partners should ensure that appropriate links and lines of communication are established with related activities and initiatives, for example Integrated Community Schools, integrated children's services planning and local ASB strategies.

Prevention

57. Local authorities and partners working with children and young people are uniquely placed to identify at an early stage those at risk of offending and to put in place measures to support them and their families. In particular, there is a general duty placed on local authorities in the Children (Scotland) Act 1995 (section 22) to promote the social welfare of children and young people in their area. Local authorities have a corporate responsibility to safeguard and promote the welfare of children "in need" by providing advice, guidance and assistance and a range and level of services appropriate to their needs.

58. Given this duty and the contact they have with children from an early age, schools and relevant local authority departments (eg social work, education, housing) are in a key position to identify early signs of antisocial or disruptive behaviour. Early identification of problems and referrals to relevant agencies can help to prevent an escalation of antisocial behaviour. In schools, patterns of attendance, exclusion, discipline referrals and review of individual's learning and academic development, all provide a picture of the child in which difficulties will be signalled. Schools, and multi-disciplinary forums such as School Liaison Groups,

can gather information from other partner agencies, and share information (see section on information sharing below) with a view to implementing strategies to address the child's needs in a consistent and holistic way, both in school and in the community.

59. The services available in the local authority area to prevent and deal with antisocial behaviour involving children and young people should be included within the local antisocial behaviour strategy. There is separate guidance on antisocial behaviour strategies and the obligations this places on local authorities. The ASB strategy should be produced in consultation with a wide range of agencies and is an opportunity to identify gaps in services.

Initial Intervention

60. New national guidelines on the use of police restorative warnings were issued in June 2004. Restorative warnings can be used by the police to deal quickly with relatively minor offences, often committed by first time offenders ensuring that the young person makes amends for his or her deeds. Such an approach can help reduce the likelihood of re-offending amongst young offenders and steer first-time petty offenders away from the formal Children's Hearings system. An ASBO application would not be appropriate in these circumstances.

61. When a restorative warning is issued, the local reporter will normally be involved in this process, either on a "non-referral, advice only" basis or by the police formally referring the child to the reporter for decision and/or recommendation on the appropriateness of a restorative approach.

62. Whether or not a young person has been subject to a police restorative warning, if concerns about their behaviour are such that more formal measures may be necessary they should, in the first instance, be referred to the local children's reporter to look at the young person's circumstances and consider whether/what action is required. A reporter will look at the young person's welfare needs as well as their behaviour before deciding how to proceed. They could decide that no formal action is required or put in place voluntary measures to address the young person's needs and behaviour such as an ABC or refer the child's case to a children's hearing for consideration of compulsory measures. Compulsory measures are imposed by way of a supervision requirement under section 70 of the Children (Scotland) Act 1995.

63. Schools are in a position to identify children becoming disaffected from school, and can act to prevent further difficulties (such as offending or antisocial behaviour) by implementing flexibility in the curriculum. It is important that young people remain engaged in education and involved in opportunities within schools or other education settings that enable them to achieve and develop personally and socially. Many schools and authorities have developed successful approaches to curriculum flexibility, sometimes in partnership with further education institutions or with partner agencies.

Dealing with persistent antisocial and offending behaviour

64. ASBOs are only intended to deal with a small number of persistently antisocial young people for whom alternatives available are not working. A court-based order sends a strong message that persistent antisocial behaviour will not be tolerated. ASBOs for 12-15 year olds will be targeted at young people who persistently engage in antisocial or offending behaviour.

65. Where an ASBO is being considered, there should be a clear need to protect the community from the behaviour of the young person and there should be a level of agreement with other interested parties, including those engaged with the young person on a voluntary or compulsory basis and the Principal Reporter, that an ASBO is the most appropriate intervention in the circumstances.

66. In part, ASBOs for under 16s intended as a deterrent. Authorities can use the possibility of an ASBO application being pursued as a means of improving the effectiveness of existing interventions. Making clear that further alternatives are available may be helpful.

Multi-agency consideration of cases involving under16s

67. Before deciding whether to apply for an ASBO a local authority or RSL should ensure they are familiar with the ASBO policy in their area. They should look at previous interventions with the young person and the impact these interventions have had. If they think an ASBO might be appropriate they should consider the views of other agencies that have been involved with the young person. A case conferencing approach would be one way of achieving this. This approach already exists within some local authorities and use could be made of these existing fora. This kind of multi-agency approach should be seen as good practice in dealing with antisocial or offending young people more generally.

68. SCRA and local reporters have a key role to play in this process. As part of the wider, leadership role within the hearings system that Ministers expect SCRA to have detailed records on all children and young people referred to the hearings system. This will cover all referrals whether on welfare or offending grounds. These records will be crucial to informing multi-agency consideration of whether an ASBO might be appropriate or whether alternative measures are more appropriate including a new or first referral to the Reporter. The role of reporters as gatekeepers for the Children's Hearings system and as professionals trained to investigate the circumstances in a child's life also makes them well placed to convene and chair these multi-agency considerations.

69. Multi-agency discussions should look at the best way forward for the young person and seek agreement. Central to the discussions would be sharing of information (see section below on information sharing), looking at the effect of past and existing interventions on the young person and considering what type of intervention might prove effective in future. It might, for example, be considered appropriate to refer back to a hearing to review a supervision requirement or to apply for an ASBO.

MANAGING THE APPLICATION PROCESS

Consultation on Applications

70. The Act includes legal requirements to consult on applications. This is to help ensure that the views of key agencies are taken into account and should help facilitate effective exchange of information so that the most appropriate action is taken to deal with antisocial behaviour. Authorities are not required to have regard to the views of consultees, but clearly an application is more likely to be successful if key agencies involved in the case support the action being taken. Information obtained through the consultation may also be useful in strengthening the application as it can help demonstrate the nature of the antisocial behaviour and approach tried before an application is made. Local authorities and RSLs should consider the need to consult other bodies depending on the circumstances of the case.

71. Generally speaking, the means of communicating views and the time given for consultation can be agreed between local agencies. There will clearly be a need for some flexibility in arrangements if there is a pressing need to protect persons from further antisocial behaviour. Early consultation is recommended to allow time for consultees to give their views. In cases involving under 16s, the views of the Principal Reporter will be required in writing and where practicable this should be lodged along with the application to the court for the order.

Local authority applications

72. Before making an application for an ASBO or interim order (including applications for variation or revocation), local authorities are required to:

- **consult** the chief constable of the police force area for the area which includes the area of the authority;
- **consult** the chief constable of each police force area for an area where there is an affected person;
- **consult** each local authority in whose area there is an affected person; and
- if the person in respect of whom the order is sought or made is aged 12-15, **consult** the Principal Reporter.

Where a person is aged 16 or 17, it is recommended that authorities consult the Principal Reporter as the young person may still be under a supervision requirement.

73. The requirement to consult each local authority in whose area there is an affected person would only be relevant where the authority is aware that there are persons affected by the behaviour of the specified person in other authority areas and that it may be appropriate to seek prohibitions which extend beyond the area of the authority applying for the order.

74. These are the legal consultation requirements. Authorities are also encouraged to consult other agencies and bodies involved in preventing and dealing with antisocial behaviour. This may include voluntary organisations working to prevent antisocial behaviour or businesses affected by antisocial behaviour.

Judgement will be required on what is appropriate depending on the circumstances of the case.

Registered social landlord applications

75. Before making an application for an ASBO or interim order (including applications for variation or revocation), where the person is **aged 16 or over** registered social landlords are required to:

- **consult** the chief constable of the police force for the area in which the person in respect of whom the order is sought or made resides or appears to reside;
- **notify** the local authority within whose area the specified person resides or appears to reside about the proposed application.

76. While the legal requirement is to notify the local authority, it is good practice to consult as there may be relevant information from the local authority about the case and their view on handling should be considered.

77. Before making an application for an ASBO or interim order (including applications for variation or revocation), where the person is aged 12-15 years registered social landlords are required to:

- **consult** the chief constable of the police force for the area in which the person in respect of whom the order is sought or made resides or appears to reside;
- **consult** the local authority within whose area the specified person resides or appears to reside about the proposed application;
- **consult** the Principal Reporter.

Where a person is aged 16 or 17, it is recommended that RSLs consult the Principal Reporter as the young person may still be under a supervision requirement.

78. While a registered social landlord can proceed to make an application for an ASBO without the support of consultees we would strongly recommend that full consideration be given to alternatives available and the reasons of the consultees for opposing the proposed application before proceeding. The views of consultees will be made available to the court to inform consideration of whether to grant an ASBO.

79. As noted with reference to local authority applications, these are the legal requirements in respect of consultation. Registered social landlords are also encouraged to seek the views of other bodies whose input may be valuable in considering the most appropriate means of dealing with the antisocial behaviour.

Interim ASBOs

80. Interim orders are available under section 7 of the 2004 Act. They are available to provide more immediate protection from antisocial behaviour. An interim order prohibits the person named in it from doing anything prescribed in it, pending determination of the application for a full ASBO.

81. Interim orders have been in effect in Scotland since 27 June 2003. Section 44 of the Criminal Justice (Scotland) Act 2003 amended the Crime and Disorder Act 1998 to introduce interim Anti-Social Behaviour Orders. The provisions in the Antisocial Behaviour (Scotland) Act 2004 replace those in the 1998 Act (as amended).

82. The interim order can be made at an initial court hearing held in advance of the full hearing, if the sheriff is satisfied that *prima facie* the specified person has engaged in antisocial behaviour towards a relevant person and that an interim order is necessary for the purpose of protecting the public from further antisocial behaviour. This temporary order can impose the same prohibitions and has the same penalties for breach as full ASBOs.

83. The sheriff may grant an interim order provided the individual named on the application has received intimation of the initial writ and the sheriff is satisfied that the antisocial conduct complained of would be established when a full hearing takes place. The sheriff must also be satisfied an interim order is necessary to protect relevant persons from further antisocial acts or conduct by him. Where the individual is aged 12-15 the sheriff will have regard to any views expressed by the Principal Reporter in determining whether to make the interim order. The views of the Principal Reporter will be obtained from the authority applying for the order and should, where practical, be submitted before an application for an order is made. Sheriff Court rules make clear that the views of the Reporter must be provided in writing before a decision is made to grant an interim order.

84. In order to prove that intimation has been received by the defender, it may be advisable for local authorities and RSLs to intimate the initial writ personally.

85. There is no explicit provision for any representations made by or on behalf of the respondent before an interim ASBO is granted, although the court, using its discretion, can consider any such representations as it sees fit. If the court allows both parties to be heard when considering a request to grant an interim ASBO, a solicitor can represent a respondent who wishes to oppose an interim order under the special urgency provisions of Regulation 18 of the Civil Legal Aid (Scotland) Regulations 2002, which enable representation to be provided prior to the determination of an application for civil legal aid. If civil legal aid has been granted prior to such hearing, then opposition to the seeking of an interim ASBO will be covered by the grant of legal aid.

86. The interim order will not normally specify how long the conditions should apply for but the interim order will only last until the application for the full order is completed. When an interim order is granted, the sheriff will already have set a date for the next hearing which is normally 6 weeks ahead. If a full evidential hearing is necessary the final decision on the ASBO application would normally be within 10 to 12 weeks after the date it is fixed but the court can be asked and will often be able to provide an earlier date if asked to do so because of the circumstances of the case.

87. While breach of an interim ASBO has the same criminal penalty as a full ASBO, the interim order does not impact on security of tenure. The provisions in the Housing (Scotland) Act 2001 are only related to the granting of full ASBOs.

Local Authority and RSL Response to Complaint or Concern about ASB

88. On receiving a complaint or having its own concerns about antisocial behaviour, the local authority or registered social landlord should:

- establish the facts, taking great care when investigating complaints to avoid the possibility of discrimination/victimisation on the grounds of age, race, sex, sexual orientation, disability or religion.
- determine whether the behaviour which has caused the complaint or concern would constitute antisocial behaviour.
- consider whether the behaviour was reasonable in the circumstances. Give consideration to the wider circumstances. For example, does the person have a disability, medical or developmental condition which affects their behaviour?
- local authorities should ensure that all relevant departments are involved in the consideration of the case and discussions on what action should be taken, so that the authority's response is a collaborative one and all the consequences of any particular course of action are taken into account. This would include the housing and social work departments, and the legal department where any court action might be contemplated. Further information on agencies to be involved in discussions in relation to under 16s can be found in the ASBO for 12-15 year olds section of this guidance.
- registered social landlords should seek to ensure that other relevant parties, including local authority departments, have the opportunity to input on the most appropriate response.
- establish what steps any complainer has taken to resolve matters, and consider whether further steps would be appropriate. These might include mediation in some circumstances, or - depending on the circumstances of the complainer and the behaviour - civil action or referral to the children's reporter. (See section on ASBO policies above)
- where such remedies are not appropriate or have failed, and the local authority or registered social landlord is satisfied that the person has acted in an antisocial manner and that an order is necessary to protect the community from further antisocial acts, the relevant authority should consider the possibility of an application for an ASBO against the authority's own policy criteria.

89. It should be noted that section 4(12) of the Act makes it clear that the existence of the ASBO mechanism is without prejudice to the use of existing legal remedies to tackle antisocial behaviour such as interdict or eviction.

90. As outlined above, ASBOs are one of a range of remedies available and it is important that careful consideration is given to the most appropriate remedy in the circumstances. The suitability of other preventative measures such as warnings,

mediation, acceptable behaviour contracts, referral to the children's reporter, enforcement of tenancy agreements etc should be considered and, where appropriate, tried before an early application for an ASBO and an interim ASBO is made. Where the assessment of a case suggests that there is a need to provide immediate protection from antisocial behaviour, or regularity of incidents and the likelihood that the conduct will continue if an ASBO is not granted quickly, an early application for an ASBO and interim ASBO may be appropriate. There should be a presumption against making an early application in cases involving under 16s as there are a wider range of alternatives to consider and it is important that use of ASBOs is consistent with the role of the Principal Reporter and the children's hearing system (see section on ASBOs for 12-15 year olds above).

Private Landlords

91. Where it is the tenants of landlords other than local authorities or RSLs- private or public - who are behaving antisocially, the landlord should follow his own policy and procedures for dealing with complaints. Individual policies and procedures should also be followed where there are concerns about the behaviour of a 12-15 year old who lives in accommodation rented from a private landlord. Landlords should not approach the local authority with a request for an ASBO until they have considered and where appropriate tried all the means at their disposal to resolve the problem.

92. Options which should be considered by private landlords include:

- Warning letters
- Mediation
- Acceptable Behaviour Contract

93. If after following their own policy and procedures through a landlord considers that an ASBO would be appropriate in a particular case, the landlord should consult the local authority or RSL (if the property is in the vicinity of premises owned or managed by an RSL) over the possibility of an application, providing all the evidence collected and an account of the steps already taken to try to resolve matters. It would then be for the relevant authority to determine whether an application was appropriate in the light of its own policy and priorities.

Owner Occupiers

94. Where the relevant authority receives a complaint either about or from an owner occupier involving antisocial behaviour, it will consider the matter in the context of its policy on antisocial behaviour and its priorities and will determine what, if any, action it will take in the light of these. In most instances, we would anticipate that cases involving owner occupiers will be handled by the local authority in its strategic capacity. However, it is within the locus of a registered social landlord to make an application against or on behalf of an owner occupier in, or likely to be in, the vicinity of premises owned or managed by an RSL. As with all cases of anti-social behaviour, the individual(s) affected should ensure that they have tried or considered the possibility of attempting to resolve the situation through discussion,

negotiation and mediation. When they approach the relevant authority, they should indicate the scale of the problem, and any steps taken to try to resolve it.

Joint Working with the Police

95. Joint working between the police and relevant authorities is vital to tackle antisocial behaviour effectively. This should include consideration of requests for ASBOs, including those for 12-15 year olds. The police are fully involved in the preparation of antisocial behaviour strategies which will provide a framework to support the development of joint working on ASBOs.

96. Most local authorities now have specialist antisocial behaviour units. These operate across the council area and will be expected to consider requests to make applications for ASBOs in any type of situation. Many local authorities have seconded police officers as part of the ASB team. This approach creates a positive environment for joint working on ASBO applications, although it is not mandatory.

97. The police will be consulted on all applications, whether the application is from a local authority or a registered social landlord. The police are also responsible for reporting breach of orders to the procurator fiscal.

98. It will be for the police, the procurator fiscal and local authorities or RSLs, where appropriate, to develop a system which facilitates an appropriate exchange of information about individuals and imminent or on-going criminal proceedings or civil ASBO applications. This will avoid unnecessary simultaneous civil and criminal proceedings being taken in relation to the same behaviour.

99. The police may also request that a local authority or registered social landlord apply for an antisocial behaviour order. Requests should be considered in a constructive and flexible manner taking account of advice from the police on why an antisocial behaviour order is the most appropriate option in the circumstances.

100. The police should be assisted by the introduction of ASBOs on conviction. Section 118 of the Act amended the Criminal Procedure (Scotland) Act 1995 to introduce ASBOs in the criminal court. As with ASBOs imposed in the civil courts, these are intended to help prevent further antisocial behaviour, but specifically in relation to incidents which the police have reported to the procurator fiscal and criminal proceedings are taken. The sheriff will have power to make an ASBO as part of the sentence when the offence committed involves antisocial behaviour and an order is necessary to protect the public from further antisocial acts.

Disclosure and Sharing of Information

101. Section 139 of the Antisocial Behaviour etc (Scotland) Act 2004 makes provision on the disclosure to and sharing of information with a relevant authority for whom the disclosure of information is necessary or expedient for the purposes of any provision of the 2004 Act, or any other enactment the purpose of which is in connection with antisocial behaviour or its effects. Separate guidance is being published on information exchange in line with commencement of section 139, however, the exchange of information is a particularly important issued in relation to ASBO cases and it is important that authorities and other persons who may be asked to disclose information are aware of the provisions.

102. The main point is that section 139 provides that any person has the power to disclose information to a relevant authority where that is necessary or expedient for the purposes of any provision in the 2004 Act. Clearly this includes information exchange in relation to ASBO investigations, applications, breaches and other relevant matters. In sections 106(1) and 106(1B), relevant authority means, a local authority, a chief constable, the Principal Reporter, a registered social landlord, and any authority administering housing benefit.

103. Section 139 also makes clear that where a person discloses information to a relevant authority under this section which is confidential, and where they inform the authority of the breach of that confidentiality on disclosing the information, the authority must respect that confidentiality.

Making an Application

104. Where a relevant authority considers that an application for an ASBO is appropriate it should:

- involve its own solicitors or legal department at the earliest possible stage.
- consult the relevant consultees (a statutory requirement under section 4(11) of the 2004 Act). The police may have information which would support the application for an order. In addition it may be appropriate to discuss the proposed ASBO application with the procurator fiscal.
- collect the evidence, bearing in mind the importance of obtaining statements from as many witnesses as possible at an early stage. If the order is defended, it would be helpful to have more than one source of evidence. The local authority or RSL applicant has to show that the behaviour caused or was **likely to cause** alarm or distress and so can arrange for the behaviour to be witnessed and evidence provided by, for example, its own staff or the police. The normal civil evidence rules will apply (e.g. hearsay evidence admissible).
- indicate in writing the possibility of an application to the person against whom the order would be sought, offer a meeting to discuss the matter and advise them to seek legal advice from a solicitor or citizens' advice bureau. The person may agree to modify the behaviour so that an order is no longer

necessary. For 12-15 year olds, the young person's parent or guardian and social worker (where they have one) should be fully involved in this part of the process and any meetings which are scheduled.

- decide what the terms of the order sought should be to prevent further antisocial behaviour. The terms must be only those necessary to protect persons in the area of the local authority from further antisocial acts or conduct. They can be prohibitory only, and cannot therefore require the person to take any particular action or to undergo supervision or training. They should be specific, and in terms that are easily understood so that it will be readily apparent to the person and to the local community what constitutes a breach. Unless the circumstances are exceptional, the terms should not be such as to prevent the person from practising his or her religion or attending work or school/further education.

- decide what duration of the order to seek, up to and including an indefinite period of time (section 4(5)). In considering the duration sought, it should be remembered that the prohibitions are those necessary for protecting relevant persons from further antisocial acts.

- consider whether further measures of support would be appropriate. If it was considered to be appropriate, this information should be put in the application so that the sheriff can consider this. If an ASBO is granted in a case involving an under 16 and the case referred to the reporter to convene a hearing to consider support measures, this information can be provided.

- instruct solicitors/ legal department to apply for an order through a summary application to the sheriff in the court district where the alarm or distress is alleged to have been caused. The application should include information on the action taken by the local authority, any other relevant landlord and any complainer to resolve the problem, and/or an explanation as to why other steps are inappropriate in the particular case.

- liaise closely with the sheriff clerk over the possibility of an application being made, and any need for it to be dealt with particularly quickly.

- throughout, keep the complainer, the police and anyone else affected by the antisocial behaviour informed.

Geographic scope of orders

105. While the person to which the application relates must have engaged in antisocial behaviour towards a person/persons in the authority area, the conditions of the order can extend beyond the authority's boundaries. Indeed, an order could make prohibitions covering the whole of Scotland. The sheriff should be satisfied that the terms of the order are necessary.

106. Under the Crime and Disorder Act 1998 ASBOs could only be used to protect persons in the area of the local authority from further antisocial acts or conduct. There could be difficulties if the antisocial conduct took place in the sheriffdom of one

local authority while the person whom the ASBO refers to lived in another local authority area or even another neighbouring sheriffdom. These boundary issues may undermine the effectiveness of ASBOs in some cases where the behaviour does not necessarily fall neatly within one local authority or one sheriffdom. There may therefore be cases where an ASBO ought to extend beyond a particular local authority area or sheriffdom. Potentially, the ASBO may have to cover the whole of Scotland. The Act extends the potential scope of ASBOs in such a way, while having due regard to the jurisdiction of the court in which the order is made.

107. While an ASBO applied for by an RSL need not be tied to a particular local authority area, the order must be necessary for protecting persons residing in, or otherwise on or likely to be on, premises provided or managed by that landlord; or a person in, or likely to be in, the vicinity of such premises.

Court Proceedings

108. The applicant authority must lodge the application in court for granting of a warrant for citation and thereafter must serve the application on the defender as the person whose behaviour is the subject of the application. In terms of the rules of court, the applicant thereby intimates the warrant and the date of any hearing. Averments must be included in the application, specifying the circumstances giving rise to the application. The relevant authority applying for the order should seek to ensure that the person is aware of the seriousness of the order and provide written information on the penalties for breach. The person should be informed in writing that he or she should attend the hearing or be legally represented, failing which the order may be made against him or her, and that he or she has the opportunity to state his or her case. An application for an interim ASBO shall be made by crave in the Initial Writ in which an ASBO is sought. An application for an interim ASBO once craved shall be moved by motion to that effect. The sheriff shall not consider an application for an interim ASBO until after service of the initial writ has been effected on the person in respect of whom application is made.

109. In applying for an antisocial behaviour order it is open to the relevant authority to apply for a shortened period of notice of no less than 48 hours (instead of the normal period of 21 days) when the application is presented. An application for an interim ASBO can be made after the action has been served on the defender. Application for an interim ASBO is made by the motion procedure under Chapter 15 of the Ordinary Cause Rules which allows the matter to be dealt with promptly. If the initial writ has been served the sheriff may dispense with intimation of the motion for the interim ASBO and grant it without hearing the defender. At the First Hearing for a full order, if the individual attends or lodges answers the court can regulate the procedure and assign an early diet where a full hearing is necessary in the circumstances where a defender is opposing the application. Where the individual fails to defend the application at the First Hearing for the full order, the court may grant the order on the motion of the applicant.

110. Where the individual is aged 12-15 the sheriff will have regard to advice provided by a children's hearing before determining an application for a full ASBO. A sheriff may grant an interim ASBO in respect of an under 16 based on the views of

the applicant and the consultees, but before an application for a full order can be determined, the Principal Reporter will be required to arrange a children's hearing for the purpose of obtaining their advice as to whether an ASBO is necessary for protecting relevant persons from further antisocial behaviour. If the Reporter judges that the information provided by the Court is insufficient to enable the hearing to provide that advice they can seek additional information as appropriate.

111. Authorities should be aware that civil legal aid may be available to the defender, who meets the eligibility tests, to oppose the order. The Sheriff may agree to the sisting of the proceedings to allow the defender to apply for civil legal aid. The nature and extent of the allegations and the likelihood of delay in protecting people from further alarm and distress would be considered.

112. If the application is defended, the sheriff will consider on the evidence whether the person has acted in an antisocial manner as defined by the Act and if so whether an order is necessary to protect the community from further antisocial acts. In terms of section 4(3), the sheriff is to disregard any acts shown by the person to have been reasonable in the circumstances. Authorities may also give evidence of other approaches tried to prevent further antisocial behaviour to support the application. If the sheriff is satisfied, they will consider what terms and duration would be appropriate and will then make the order.

113. Where a hearing is fixed to hear evidence, the normal summary application rules will apply. The evidence in support of the application will be submitted by the applicant and it will be that evidence upon which the court will decide balanced with any evidence submitted by the defender. The question of whether the hearing is to be in private is a matter for the court, although there is a presumption that cases involving under 16s will be in private. This is provided at section 138. An indicative flow chart showing the procedure under the summary application rules for cases involving persons aged 16 or over is attached at **Annex A**.

114. Once the order is made (or varied), the clerk of the court will serve a copy on person subject to the order, either in person if the individual is present in court or by registered post or recorded delivery. This is the minimum requirement for service. An authority may use a sheriff officer. The court will also give a copy of the order to the relevant authority on whose application the order was made. The relevant authority should copy the order to the police for dissemination to its officers within the relevant area. The relevant authority should forthwith intimate the making or recall of an ASBO or an interim ASBO to the relevant Chief Constable. Authorities should also fulfil requirements relating to provision of information and records of orders, which are explained further below.

Sheriff's referral of case to the Reporter

115. Where an ASBO is granted against a person aged 12 to 15 years, it is important that not only is their behaviour tackled by the introduction of a prohibitory order but that they are helped to take positive steps to address their behaviour. It is expected that most if not all under 16s subject to an ASBO will need a package of intensive support. The children's hearing is the most appropriate forum to consider the broader needs of the child and to decide what support measures are put in place.

116. Section 12 of the Act provides a mechanism for support measures to be considered by a hearing by introducing a power for the sheriff, when granting an ASBO or an interim ASBO on a 12-15 year old, to require the Principal Reporter to refer the case to a children's hearing. It will be at the discretion of the sheriff whether to exercise this power, but it is expected that the evidence submitted to the court with the ASBO application will contain a recommendation from the local authority and/or Principal Reporter that a Hearing be convened – unless a supervision requirement had already been made or reviewed in contemplation of the ASBO being made.

117. In most cases when an ASBO is granted it is anticipated that a young person will already be well known to the hearings system. The power in Section 12 therefore provides for a hearing to be convened whether or not a young person is already subject to a supervision requirement. The Hearing will therefore be able to review an existing requirement and consider whether additional measures are required to help meet the young person's needs. If a young person is not currently under supervision it will be for the hearing to consider whether to impose a supervision requirement and what that should contain.

118. As is currently the case, failure to comply with the conditions of a supervision requirement is not a criminal offence, but should bring about a review of the child's case by a children's hearing.

119. Introducing the Section 12 power in respect of interim ASBOs means that a young person could be referred to a hearing for consideration of their wider support needs as well as for the advice the sheriff must seek on whether an ASBO is necessary to protect people from antisocial behaviour. Where this occurs, to minimise disruption for the child and to simplify the processes involved, it is expected that where practical a single hearing will be called to look at both aspects under consideration. The reporter will however have discretion, having considered the circumstances of the individual case, to consider whether two separate hearings might be more appropriate. It should be noted that in practice it is likely that a Section 12 referral following an interim ASBO will only occur in the unlikely event that the young person is not already subject to a supervision requirement.

ACTION FOLLOWING THE MAKING OF AN ORDER

Informing Victims of Antisocial Behaviour

120. Once an order is made (whether an interim order or a full ASBO), the authority which applied for the order should inform the complainer and anyone else likely to be adversely affected by a breach of the order of the making of the order and its terms and duration. It should be made clear that breach of an order is a criminal offence which should be reported in the normal way to the police. An order is a public court document, and the fact that it has been made and its terms and duration are in no way confidential. The sheriff can decide that the order should remain confidential.

121. However, in sharing information with the persons who may be affected by breach of the order it should be borne in mind that this could give rise to an interference with the right of the person subject to the order to respect for private and family life under Article 8(1) of the European Convention of Human Rights. Such an interference would have to be justified under Article 8(2) as being necessary in the interests of the prevention of crime or for the protection of the rights and freedoms of others.

122. In determining whether an interference was justified, the public interest would have to be balanced against the interests of the offender in the circumstances of each case. One important factor would be the age of the person subject to the order. There is no specific provision in the 2004 Act about sharing information with those who may be affected by an order, as decisions on what is appropriate should be made on a case by case basis, having considered whether the approach is proportionate in terms of ECHR.

Appeals

123. Either the applicant or the defender can appeal the sheriff's decision. In terms of sections 27 and 28 of the Sheriff Court (Scotland) Act 1907, the person appealing can choose whether to appeal to the Sheriff Principal or Court of Session. It should be noted that under section 7(8) of the 2004 Act an interlocutor granting or refusing an interim ASBO is an appealable interlocutor.

124. Under section 6 of the 2004 Act, the order remains in force pending the outcome of the appeal. It is, however, possible to apply for an order to be varied or revoked while an appeal is pending.

Reviewing of orders

125. The relevant authority should review the situation on a regular basis, and certainly every 6 months, to assess the effect the order is having. This could, for example, involve discussing with any original complainer and others likely to be affected by a breach whether the situation had improved. At least once per annum, the relevant authority should consider whether the order could now be varied or revoked, and formally record the decision. This is particularly important where indefinite orders are concerned. For 12-15 year olds, as they are likely to be

involved with the children's hearing system, consultation should take place with the Reporter and the young person's supervising officer to check on the case.

126. Relevant authorities should also fulfil requirements relating to the record of orders which are outlined below.

Variations and Revocation of Orders

127. Orders may be varied or revoked on an application from the applicant authority or the person against whom the ASBO is made. Changing circumstances can thus be taken into account. Applications from the relevant authority for the variation and revocation of orders should follow the same procedures as outlined above, including consultation with the police. Where the individual applies for an order to be varied or revoked, the sheriff shall obtain the views of the original authority applicant and, in cases involving 12-15 year olds, the Principal Reporter, before coming to a decision.

128. The clerk of the court shall notify the person subject to the order and the relevant authority on whom the application was made if the order is revoked (or in the case of interim orders, recalled). The relevant authority should notify relevant chief constables whose force areas might have been affected by breach of the order.

Transfer of orders

129. The terms of orders relate to the protection of a particular community and cannot be "transferred" to another community if the individual moves house. (A fresh application for an ASBO would be required if the individual's behaviour in the new community warrants this.) If an individual moves away from the protected community, the relevant authority should consider whether the need for the original order remains, for example because it is feared that despite moving out of the area the individual may return to it to engage in antisocial behaviour. If there is no continuing need for the original order, the authority should consider applying to the sheriff to have it revoked.

Notification of revocation

130. Section 8(4)(a) introduces a requirement to notify the person subject to the order if the order is revoked, or in the case of interim orders, recalled. There was no requirement to notify of revocation in the Crime and Disorder Act 1998, but a person should be made aware if a court order no longer applies. For the purposes of subsection (4)(a), the person subject to the order is notified if notification is given to or sent to the person by registered post or the recorded delivery service.

Tenancy and Homelessness Issues

131. Section 35 of the Housing (Scotland) Act 2001 allows a public sector landlord – local authority or RSL – to serve a notice on a tenant converting their tenancy to a Short Scottish Secure Tenancy (SSST) where the tenant or a person residing with the tenant is subject to an ASBO (including ASBOs made on conviction). This is a power, not a duty and is intended as a means of preventing eviction. Public sector

landlords are required to provide support and the tenancy will automatically converted back to a full Scottish Secure Tenancy after 12 months if the behaviour has improved.

132. Where the behaviour that brought about the ASBO is completely unrelated to tenancy, landlords should not exercise their power to convert the tenancy to a SSST. For example, it would not usually be appropriate to convert a tenancy if the locus of the antisocial behaviour was in or around retail premises or in a public park. Action should be taken to address the behaviour, but housing management tools should be used for housing related problems.

133. Separate guidance on SSSTs can be found in SEDD Circular 6/2002, "Housing (Scotland) Act 2001: Scottish Secure and Short Scottish Secure Tenancy". This can be found on Scottish Executive website <http://www.scotland.gov.uk/library5/housing/ssss-00.asp>

134. Consequential amendments have also been made at Schedule 6 of the 2001 Act, which lists the grounds for granting a SSST. Ground 2 is that the prospective tenant (or joint tenant) or a person who will reside with the prospective tenant is subject to an ASBO. This provision applies even if the ASBO is in respect of a 12-15 year old.

135. In addition, the link to homelessness legislation has been retained, which relates to ASBOs made in respect of persons aged 12 and above. Section 5(2) of the Homelessness etc. (Scotland) Act 2003 makes reference to ASBOs made in the civil or criminal court under provisions in the Antisocial Behaviour etc (Scotland) Act 2004 in the new section (2C) to be inserted into the Housing (Scotland) Act 1987. The reference in the new section is to allow intentionally homeless persons to be given "bottom line" temporary accommodation with support if certain conditions are met. One of these conditions is if the homeless person, or someone who it is proposed will reside with that homeless person, is subject to a ASBO.

Breach

136. Under section 9, breach of an interim ASBO or a full ASBO is a criminal offence. For adults, the penalties are up to 6 months imprisonment or a fine not exceeding the statutory maximum or both on summary conviction and up to 5 years imprisonment and an unlimited fine or both on indictment. Section 10 makes clear that breach of an ASBO by a person under 16 will not lead to detention where no other offences are involved. All other disposals are open to the court.

137. Under section 9(3) and (4), where a person commits a separate criminal offence in addition to breach of an order, the breach will not be prosecuted as a separate offence but will be taken into account as an aggravating factor in determining the sentence for that offence. In determining the appropriate sentence or disposal, the sheriff will have regard to the fact that the separate offence was committed while the person was subject to an order; the number of ASBOs or interim orders the person was subject to any previous conviction of the person for breach of an ASBO or interim order and the extent to which the sentence or disposal in respect

of any previous conviction differed from that which the court would have imposed but for section 9.

138. The police will investigate alleged breaches and report these to the procurator fiscal. Breach of ASBOs by 12-15 year olds will be jointly reported to the procurator fiscal and the children's reporter, as is appropriate in accordance with the Lord Advocate's guidelines. The procurator fiscal has the discretion to pass such cases to the Reporter where appropriate. In addition, young persons aged 16 or 17 who are subject to a supervision requirement will be referred jointly.

139. The police should keep local authorities and registered social landlords informed of breaches of orders in cases relevant to them.

140. If criminal proceedings are taken against a child for breach of an ASBO and he/she pleads or is found guilty, the court shall, if the child is subject to a supervision requirement, seek advice from the children's hearing on how the child might be treated, or indeed remit the case to the hearing for disposal. If the child is not subject to supervision the court may still seek the advice of a hearing.

141. If the case is dealt with by the Reporter, the reporter or a hearing will take into account what more can be done to address the child's behaviour and needs, considering the range of options available to them.

Power of arrest

142. Section 11 provides a statutory power of arrest for breach of an ASBO or interim order under section 9 (1) . This ensures that where a constable reasonably believes that a person is committing or has committed an offence under section 9(1), the constable may arrest the person without warrant. This is without prejudice to any power of arrest conferred by law, apart from section 11(1).

143. The police already had powers to make an arrest under common law and other statutory provisions, but there had been a lack of clarity about whether an arrest should be made in individual cases. To enable the police to act immediately to stop any further antisocial conduct taking place, and clarify the law in this area, the Act introduces a statutory power of arrest for breach of an ASBO.

Record of Orders

144. Section 15 imposes a duty on each local authority to establish and maintain a record of ASBOs and interim ASBOs granted in their area, including those on 12-15 year olds. That record will include details of ASBOs granted on the application of that local authority but also of ASBOs granted on the application of registered social landlords that relate to that local authority area. The record of orders is intended to assist the monitoring and evaluation of orders and the exchange of information to prevent crime and disorder. The record of orders will also inform the research study into the operation of Part 2 which Ministers are required to arrange and lay before Parliament within 3 years of the Part being commenced in whole.

145. To ensure the record maintained by each local authority is complete, provision is made at section 14 regarding ASBOs granted on the application of a registered social landlord. Where an ASBO is made on the application of an RSL the RSL will copy the order as made or varied to each relevant local authority. The RSL will also notify each relevant local authority of the date on which an order is revoked, if the order is revoked.

146. The local authority will also maintain a record of orders made on conviction in the criminal court. Under section 234AB of the Criminal Procedure (Scotland) Act 1995, inserted by section 118 of the 2004 Act, the court shall copy the order as made or varied to the relevant local authority and notify the authority of the date the order is revoked, if that occurs. The record of antisocial behaviour orders made in the criminal courts will be maintained in the same way as the record of orders under section 15.

147. The exchange of information about individuals between landlords and other agencies is an important and sensitive area. Where a relevant authority is aware that an individual plans to move or has moved to a different area, the authority should, as part of its established procedures for the exchange of information, inform the “receiving” authority that an ASBO was granted against the individual, so that the information can be taken into account in considering the individual’s suitability for housing, or where the local authority or RSL has to consider action because of complaints about antisocial behaviour in relation to the individual in the future.

Content of record of orders

148. Each local authority shall keep records of antisocial behaviour orders and interim orders made on the application of the authority. The local authority shall also keep records of orders which have been copied to the authority under section 14(1) and antisocial behaviour orders made in the criminal courts copied to the authority.

149. Section 15(2) sets out what the record of orders must specify. In addition, local authorities must specify in the record of orders any matters relating to the order as prescribed in regulations by Scottish Ministers.

150. Information should be retained on the use and effect of interim ASBOs and ASBOs to support monitoring and evaluation exercises.

Sharing of information on record of orders

151. Section 15(3) provides that a local authority shall, on request to do so by persons mentioned at 15(5), disclose to that person information contained in the record of orders.

152. Local authorities, any police force, any registered social landlord and the Principal Reporter have a right to request the information held on the record of ASBOs. This will allow a landlord or prospective landlord or the police to check whether an ASBO has been granted in relation to an individual with whom they are dealing.

153. The Act also provides that Scottish Ministers may request information held on the record. In the past obtaining information about the use of ASBOs across Scotland has been difficult and time consuming. Ministers believe it is important that a national picture of the use of ASBOs can be obtained regularly and this power will make that possible.

154. Where a local authority receives a request for information on the record of orders from a person not specified under section 15(4), they will have to consider whether the sharing of information is proportionate having considered the rights of the person named on the order and the need to prevent crime and disorder. The authority may consider, for example, that it is appropriate to share information with persons affected by an order or to anonymise information on an order to assist in research.

ASBOs on conviction – record of orders

155. Under section 234AB of the Criminal Procedure (Scotland) Act 1995 – as inserted by section 118 of the ASB Act 2004 - , the court is required to serve a copy of antisocial behaviour orders made or varied by the criminal court on the offender and the local authority it considers most relevant. The court has discretion over which local authority to copy the order to, to take account of where the antisocial behaviour occurred and the residence of the offender. The court shall also notify the local authority if the order is revoked. A copy is served on an offender if it is given to him or sent to him by registered post or the recorded delivery service. A certificate of posting of a letter sent under subsection (4)(b) issued by the postal operator shall be sufficient evidence of the sending of the letter on the day specified in such certificate. As noted above, this is the minimum requirement for evidence of service. A sheriff officer could serve the order in person if the individual is not in court.

156. Local authorities should keep registered social landlords informed about any ASBOs made on conviction which are relevant to them.

Scottish Executive
October 2004

Annex A
SUMMARY APPLICATION PROCEDURE (PERSONS AGED 16 OR OVER)

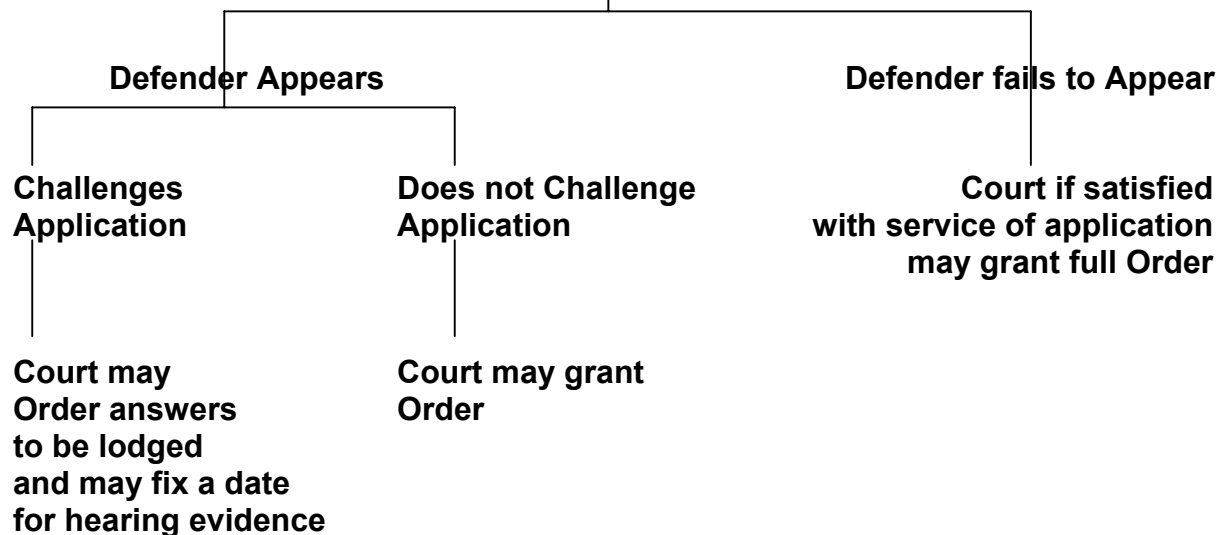
**Application in form of an Initial Writ lodged with Sheriff Clerk
(may include a crave to apply for an interim ASBO) (Rule 4)**

**Warrant to cite granted (includes date fixed for hearing)
(Period of notice normally 21 days where
Defender within Europe (Rule 2(1))
but may be shortened (Rule 7(2))**

**Applicant serves copy application etc on person (Defender)
subject to application (Rules 10, 11,12 and 13)**

**“Interim Hearing” (if application made for interim ASBO)
Sheriff may grant interim ASBO**

Date of Hearing for full ASBO



Hearing – Evidence led by Applicant and Defender: Sheriff pronounces judgement either at the conclusion of the hearing or at a later date

