

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

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This guide has been produced to provide tenants with information about the Antisocial Behaviour etc. (Scotland) Act 2004 and other methods of dealing with antisocial behaviour. Its purpose is to supply tenants with an information resource which can be used when they are working in their communities to influence antisocial behaviour strategies or policies. The guide is not meant to be read from cover to cover but should be used as a reference guide when trying to find information about a particular aspect of the legislation.

The Scottish Executive's ultimate aim in addressing antisocial behaviour in Scotland is to have safer communities where fewer people suffer from the problems of antisocial behaviour. In trying to achieve this aim, the Scottish Executive passed the Antisocial Behaviour etc. (Scotland) Act 2004. This was a new piece of legislation designed to deal with all aspects of antisocial behaviour not just those associated with tenants living in the public sector. The Act covers housing, the environment and child welfare including noise nuisance, antisocial behaviour orders and parenting orders. It also includes fixed penalty notices for vandalism, being drunk and incapable in a public place and annoying others by playing musical instruments, singing or playing radios or stereo systems.

The introduction of the Act requires local authorities and Police authorities to work together legally to develop antisocial behaviour strategies. This also for the first time requires Registered Social Landlords (RSLs) to be involved. Antisocial behaviour strategies are seen as the cornerstone of the Act. They should implement local solutions for local problems and develop partnership working by drawing together all the local agencies involved. If the Act is implemented successfully at a local level it should mean that there is good community planning taking place. The Act also moves the emphasis away from it being seen as the job of housing professionals to deal with antisocial behaviour and makes other agencies commit to doing something too. Antisocial behaviour is no longer regarded as just being a housing management issue.

The guide provides detailed information in the following sections about the measures contained within the Antisocial Behaviour etc. (Scotland) Act 2004. It is not meant to be read entirely at once. If you are looking for a specific piece of information you will find it in the appropriate section listed here:

- Section 1 Background to the Act
- Section 2 Security of tenure for Council and Housing Association Tenants
- Section 3 Implementation of the 2004 Act
- Section 4 Antisocial Behaviour Strategies
- Section 5 Antisocial Behaviour Orders
- Section 6 Other Measures to Deal with Antisocial Behaviour
- Section 7 Dealing with Antisocial Behaviour in the Private Rented Sector
- Section 8 Further Criminal Measures
- Section 9 Miscellaneous and General Issues
- Section 10 Non-legal Remedies
- Section 11 Conclusion

Section 1

Background to the Act

When the consultation document about the Act was published, many people working to deal with antisocial behaviour across Scotland believed that the Scottish Executive was placing too much emphasis on punitive measures to deal with antisocial behaviour rather than on preventative measures to deal with the causes of people's antisocial behaviour. However, the Scottish Executive has stated that it wishes to tackle the underlying causes of antisocial behaviour by promoting regeneration, health projects and youth services across Scotland.

What is Antisocial Behaviour?

The most up to date definition of antisocial behaviour is the one contained in the Antisocial Behaviour etc. (Scotland) Act 2004. This defines a person to be acting in an antisocial manner if they:

- Act in a manner that causes or is likely to cause alarm or distress;
- 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.

The Act clarifies that:

- "conduct" includes speech;
- "a course of conduct" must involve conduct on at least two occasions;
- "likely to cause" has the effect that someone apart from the victim of the antisocial behaviour can provide evidence of it happening. This is so that professionals can be used as witnesses where those people affected by antisocial behaviour feel unable to come forward for fear of reprisals or intimidation.

Antisocial behaviour therefore covers a wide range of behaviours including:

- Harassment and intimidating behaviour
- Behaviour that causes fear
- Noisy neighbours
- Drunken and abusive behaviour
- Vandalism, graffiti and other deliberate damage to property
- Nuisance from vehicles, including parking and abandonment
- Dumping rubbish and litter

The Causes of Antisocial Behaviour

The Scottish Executive has identified the following causes of antisocial behaviour:

- Family problems - parental criminality, poor parental supervision, discipline or conflict
- School and educational problems – non-attendance, lack of motivation, poor educational attainment
- Employment problems – lack of skills, qualifications and jobs, low income
- Social and medical problems – drug and alcohol abuse

In most cases, the victims of antisocial behaviour will be able to identify that the perpetrators may be suffering from one or more of the above problems.

In relation to resolving the problems of antisocial behaviour, the Scottish Executive recognises that a wide range of organisations must be involved in developing antisocial behaviour strategies. These organisations include tenants and residents organisations, community organisations, the police, several departments of local authorities, Registered Social Landlords, schools, health workers and community wardens. The experience of community based services should also be drawn upon such as mediation services, drug and alcohol support services and mental health projects.

The Scottish Executive's Approach to Antisocial Behaviour

The Scottish Executive committed itself to dealing with antisocial behaviour in 2003 by publishing the consultation document "Building Safe, Secure and Attractive Communities", which led to the passing of the 2004 Act. However, the Act is only one part of the Executive's strategy, which has four themes:

- Protecting and empowering communities;
- Preventing antisocial behaviour by working with children and families;
- Building safe, secure and attractive communities;
- Effective enforcement.

The strategy has five key guiding principles, which are:

- Everyone has the right to live without antisocial behaviour but everyone also has their own responsibilities;
- Building on what has gone before – building on good work already being done across Scotland;
- Prevention is better than cure and voluntary or negotiated solutions usually better than sanctions;
- Tackling antisocial behaviour is not about stigmatising particular groups of people;
- Joined up action should be in place at a local level taking account of the national framework and national priorities.

Section 2

Security of Tenure for Council and Housing Association Tenants

Council and housing association tenants have very strong rights to stay in their homes due to the Scottish Secure Tenancy which was introduced in September 2002. Only a court can remove their right to stay in their home, when an order for eviction is granted to a landlord. Before a court can do this, it must be satisfied that grounds for eviction, as listed in the Housing (Scotland) Act 2001 exist.

Tenants can be evicted when they or other members of their household, or their visitors behave in an antisocial manner in their home or in the immediate surrounding area of their home. The law provides for two scenarios. The first where the evicting landlord is not obliged to re-house the tenants and a second in which the landlord believes it is appropriate to re-house the tenants elsewhere.

There has been some experience in the past of tenants avoiding eviction for antisocial behaviour by exercising the right to buy. This option is now prevented by the right to buy being suspended while a landlord is seeking an order for eviction in a Sheriff Court.

If a tenant loses their homes the whole family can suffer, not just the person causing the offending behaviour. For this reason, a Sheriff will not grant an eviction order lightly. The Sheriff will always look to what else has been tried already to stop or prevent the antisocial behaviour before using this measure.

The law allows councils and housing associations to use a much less secure form of tenancy in some circumstances. This takes the form of a Short Scottish Secure Tenancy (SSST). It gives only 6 months security of tenure at a time. Landlords can convert a Scottish Secure Tenancy into its Short equivalent, if a member of a tenanted household is served with an Antisocial Behaviour Order (ASBO). Further information about Short Scottish Secure Tenancies can be found in Section 5.

Section 3

Implementation of the 2004 Act

This table shows those agencies responsible for implementing each part of the 2004 Act. It also shows the date on which each part came into effect.

Table 1 – Implementation of the Act

Part of the act	Responsibility	Date of introduction
1 – Antisocial Behaviour Strategies	Local Authority, Police, Scottish Children’s Reporter Administration (SCRA), Registered Social Landlords (RSLs)	28 th October 2004
2 – Antisocial Behaviour Orders	Local Authority, SCRA, RSLs	28 th October 2004
3 – Dispersal of Groups	Police	28 th October 2004
4 – Closure of Premises	Local Authority, Police	28 th October 2004
5 – Noise Nuisance	Local Authority (Environmental Services)	1 st February 2005
6 – The Environment	Local Authority, Police, Scottish Environmental Protection Agency (SEPA)	28 th October 2004
7 – Housing: Antisocial Behaviour Notices	Local Authority	30 th April 2006
8 – Registration of Certain Landlords	Local Authority	30 th April 2006
9 – Parenting Orders	Local Authority, SCRA	4 th April 2005
10 – Further Criminal Measures	Police, local Sheriff Court, SCRA, Local Authority	28 th October 2004
11 – Fixed Penalties	Police	Pilots from April 2005
12 – Children’s Hearings	SCRA, Local Authority	Pilots from April 2005
13 – Miscellaneous and General	All relevant agencies	28 th October 2004

The 2004 Act, like all other pieces of legislation was not implemented in its entirety in October 2004. This would have been too difficult for local authorities, the Police and all the other agencies involved to manage in terms of their workload and the financial constraints of their budgets. As Table 1 illustrates some parts of the Act were introduced at later dates and other parts were introduced as pilots within some local authorities. The Fixed Penalties, for example, are being piloted by Tayside Police and since their introduction more than 3000 tickets have been issued.

Section 4

Antisocial Behaviour Strategies

Community Involvement in Antisocial Behaviour Strategies

It is important that tenants and residents umbrella organisations such as federations are involved in community planning partnerships within their local authorities. If they are not involved it may be difficult to influence policies such as the antisocial behaviour strategy which impacts on housing services to tenants and environmental services which affect all residents. Community Planning should not replace tenants and residents organisations who have a valuable role to play in influencing housing and environmental issues within their areas. The two aspects of community participation should be interlinked and work closely together to influence improved services for local people. Community organisations should be consulted by the local authority and Chief Constable when devising the antisocial behaviour strategy.

Community planning in Scotland is the key method of promoting and sharing best practice in the planning and delivery of public services locally. Community Planning Partnerships (CPPs) exist in all 32 local authorities within Scotland. Community Planning Partnerships should include agencies working more effectively to target their budgets and programmes within areas by joining up their services and working in partnership with smaller community and voluntary organisations.

Community Planning has a legal underpinning within Scotland contained within the Local Government in Scotland Act 2003. It is recognised as being the partnership framework at a local level that provides opportunities to improve the planning and delivery of services by making them more responsive to the needs and aspirations of local communities. Community planning is about managing services better and making long-term changes within communities.

When devising antisocial behaviour strategies to meet Part 1 of the 2004 Act the Scottish Executive advises that local authorities and their partners should note the statutory guidance on community planning. The duty to prepare an antisocial behaviour strategy is a new legal duty contained within the 2004 Act. Previously agencies involved in antisocial behaviour often had agreed strategies in place setting out their methods for tackling antisocial behaviour. These may have been part of Community Safety Partnerships. Therefore, when drawing up new strategies the agencies involved should look at what already exists to ensure the new strategy is in keeping with current practice and will fit in well locally. Strategies which may already be in existence include:

- Community Plan;
- Community Learning and Development Strategies;
- Community Safety Strategies;
- Regeneration Outcome Agreements;
- Local Housing Strategies;
- Tenant Participation Strategies;
- Homelessness Strategies;
- Equalities strategies;
- Health Improvement Strategies such as drug and alcohol strategies;
- Integrated Children's Services;
- Justice Strategies; and
- Victims Support Strategies.

There is also a need to link action to tackle antisocial behaviour at a local level to neighbourhood structures such as:

- Neighbourhood Management Schemes;
- The integration of Social Inclusion Partnerships (SIPs) into Community Planning Partnerships;
- Integrated Community Schools;
- Neighbourhood Watch Schemes.

In practice, the local authority and the relevant Chief Constable are responsible for jointly preparing antisocial behaviour strategies. It is the responsibility of the local authority to publish the strategy. The Scottish Executive believes that in practice use should be made of community planning processes and structures to involve community organisations and other agencies in agreeing the content of the strategy. Scottish Ministers also have powers to require Registered Social Landlords to participate in the process, particularly if they are large RSLs formed through a stock transfer of local authority housing.

In most local authorities it is housing staff who have taken the lead in the past in dealing with antisocial behaviour. Indeed, local Housing Officers are still often the first point of contact for tenants wishing to complain about antisocial behaviour. However, in recognition that antisocial behaviour is not only a problem for housing staff, the Scottish Executive has encouraged local authorities to establish specialist antisocial behaviour teams. North Lanarkshire Council for example has an Antisocial Task Force and Fife Council has set up a Safer Neighbourhoods Team since the Act was passed to manage all aspects of antisocial behaviour. The team includes a Safe Travel Liaison Officer and a Community Fire Safety Officer. Fife Council also has a Housing Investigation Team which existed prior to the 2004 Act to investigate complaints of antisocial behaviour from all tenants and residents of Fife. Scottish Borders Council has an Antisocial Behaviour Unit based in Jedburgh. Following stock transfer in Glasgow an Antisocial Behaviour Strategy group was established involving Glasgow Housing Association, Glasgow City Council, various other landlords and Strathclyde Police.

It is these groups which have been involved in devising antisocial behaviour strategies along with other partners within agencies and the community like social workers, health workers and local community organisations involved in community planning. In order to be successful the Scottish Executive guidance recommends that senior officers should be involved in the partnerships. This will ensure that key agreements can be reached quickly and without unnecessary bureaucratic delays. It also recommends that below this strategic group there should be an operational group to ensure implementation of key tasks and decisions and then specific groups set up to deliver on certain priorities.

As well as consulting with Registered Social Landlords and community bodies the local authority and Chief Constable must also consult the Principal Reporter who is the Chief Officer of the Scottish Children's Reporter Association (SCRA) when preparing their antisocial behaviour strategy. However, the Principal Reporter is a national officer so in practice it will be the Authority Reporter from SCRA for each local authority who will be involved. It is the role of the Children's Reporter to investigate the circumstances in a child's life which may require them to receive some kind of compulsory supervision.

The Contents of an Antisocial Behaviour Strategy

In Section 1 (3) of the 2004 Act it sets out what an antisocial behaviour strategy should contain. This includes:

- An assessment of the amount of and frequency of antisocial behaviour in the local authority's area;

- An assessment of the types of antisocial behaviour in the authority's area;
- Details of the methods being used to consult with community organisations and other agencies in areas of the local authority where antisocial behaviour is a problem or is likely to become a problem. This must include consultation with young people;
- Details of the range of services available for people generally but also for people under 16, and for victims and witnesses of antisocial behaviour including mediation services;
- How the local authority and the Chief Constable will work in partnership to address antisocial behaviour including how they will coordinate all the agencies and individuals involved and how information between partners will be exchanged.

In order to include these issues within their antisocial behaviour strategy, local authorities and Chief Constables must agree how to define various types of antisocial behaviour and their frequency within the local authority area. They may need to gather information from a variety of sources including information and statistics from:

- Mediation services;
- Community wardens;
- Tenants and residents organisations;
- Registered Social Landlords;
- Police Officers;
- Local authority staff such as social workers, environmental health officers and housing officers;
- Antisocial behaviour staff about the number of antisocial behaviour orders (ASBOs);
- The Children's Panel or Principal reporter.

The Scottish Executive guidance on antisocial behaviour strategies suggests that local authorities should use the PIER method of dealing with antisocial behaviour. This has been used by City of Edinburgh Council for several years and stands for:

- P** – Prevention;
- I** – Intervention;
- E** – Enforcement;
- R** – Rehabilitation.

In using the PIER method, local authorities and their partners must consider a balanced approach and a series of measures which when implemented will work effectively. This includes

- Prevention – developing services and facilities for young people to prevent them being antisocial; creating environments where antisocial behaviour is less likely to occur for example making landscaping improvements or removing graffiti quickly;
- Intervention – using measures such as mediation, acceptable behaviour contracts (ABCs); enforcing tenancy agreements and referrals to the children's reporter to try to divert people away from antisocial behaviour and to help both individuals and their communities;
- Enforcement – implementing new powers within the 2004 Act, alongside the Housing (Scotland) Act 2001, such as the extension of ASBOs and interim ASBOs; parenting orders; dispersal of groups and closure of premises;
- Rehabilitation – supporting young people and young offenders to break the cycle of antisocial behaviour to minimise other effects such as homelessness or drug or alcohol abuse which may lead to them being antisocial again.

Information Sharing

Tenants and residents in registered tenants organisations should ensure that their landlord whether it is a local authority or a Registered Social Landlord sign up to an information sharing agreement so that when they are dealing with cases of antisocial behaviour they have access to the relevant and appropriate information from other agencies. This will mean they can deal with cases more quickly and more effectively.

Information sharing is the single most important aspect of dealing with antisocial behaviour. If individual staff members within agencies do not share information with colleagues in other agencies then the entire process of trying to deal with antisocial behaviour will fall down.

One of the greatest frustrations amongst staff in attempting to do their best to resolve a problem for a tenant or resident is if they are prevented from doing that by someone in another agency either refusing to co-operate or withholding information. There may be agreement at senior management level that information should be shared but the effectiveness of this is dependent on staff briefings and staff training to ensure that all staff understand the importance of this. Staff need clear guidelines about the Data Protection Act and its requirements so that they understand when it is possible to pass on information to others.

In Glasgow, an Under 16 ASBO Working Group has been established and through this group an information sharing agreement was created which all landlords follow. As soon as a child is identified as a candidate for an ASBO a case conference is called by one of the agencies involved. This case conference involves Strathclyde Police, which has contributed to the success of the group. As a result of this approach no child has ever been the subject of an ASBO because other preventative measures have been used to improve their behaviour. The information sharing agreement is not legally binding but it suits all the agencies to ensure they exchange the information required.

There is a model agreement for information sharing in the Scottish Executive guidance which can be used as a guide for staff. There is also detail about what is possible when sharing information. The key partners involved in dealing with antisocial behaviour should sign up to the information sharing agreement as a matter of good practice but other agencies may wish to sign up too such as voluntary, community and tenants and residents organisations.

Section 139 of the 2004 Act offers protection to staff and agencies that disclose information as part of meeting their duties under the Act. This is explained in paragraph 308 of the explanatory notes to the Act as "Section 139...provides a legal protection for those who disclose information to a relevant authority where the disclosure of information is necessary...". There are two main categories of information which can be shared. The first is depersonalised which does not identify an individual and may be needed to map hotspots and identify trends of antisocial behaviour. The second is personal information about an individual which is needed when investigating or gathering evidence about incidences of antisocial behaviour.

Monitoring and Reviewing Strategies

Tenants and residents organisations and other community organisations should be fully involved as equal partners in monitoring and reviewing antisocial behaviour strategies. Representatives from these organisations can contribute valuable information about how antisocial behaviour is being dealt with at a local level. They will be able to inform the local authority and Chief Constable if local public opinion supports the antisocial behaviour strategy because it is making a visible difference or whether there have been no improvements in the levels of antisocial behaviour since the strategy was introduced.

When reviewing the success of the antisocial behaviour strategy the local authority and Chief Constable should consider who else was involved in the original consultation to devise the strategy. These agencies should be involved in the review along with Registered Social

Landlords and the Area Reporter from the SCRA who must be included. It may be that the original consultation exercise is repeated again with some slight alterations to find out what progress has been made since the strategy was implemented.

The Scottish Executive requires that local authorities produce regular progress reports on how their antisocial behaviour strategies are being implemented. These progress reports will be based on monitoring and measuring outcomes and outputs and achieving targets and objectives. In order to be effective they will need to engage with other organisations and people affected by the strategy. These monitoring and reviewing mechanisms may need to be reviewed if the Scottish Executive alters how it expects progress reports to be compiled.

Outcomes which could be monitored include;

- A reduction in the number of groups causing harassment;
- A reduction in people's concerns about their personal safety due to antisocial behaviour

The targets for these would be to reduce both by a certain percentage within the first year of the strategy being implemented.

Section 5

Antisocial Behaviour Orders

An Antisocial Behaviour Order (ASBO) is used as a preventative measure to try to stop a person continuing with the behaviour which has made them antisocial. Antisocial Behaviour Orders were introduced in Scotland in the Crime and Disorder Act 1998. Since April 1999 local authorities have had the power to apply to the Sheriff Court for an ASBO to be granted against someone over the age of 16. An ASBO can be applied for if it appears a person has acted in an antisocial manner or pursued a course of conduct that caused or was likely to cause alarm or distress. The Criminal Justice (Scotland) Act 2003 extended the power to apply for ASBOs to Registered Social Landlords and introduced interim ASBOs as a way of improving the effectiveness of ASBOs and speeding up the application process. The Antisocial Behaviour etc. (Scotland) Act 2004 replaced both the relevant sections of the previous Acts in 1998 and 2003. It also brought Scotland into line with England by introducing ASBOs for 12-15 year olds and further changes to the ASBO system.

Applying for an ASBO

Before applying for an ASBO the agency wishing to do so must consult with its partner agencies. If the application is being made by a local authority they must consult with the Chief Constable for their area and the Chief Constable and local authority for any additional local authority area where there are people being affected by the person's antisocial behaviour. If an RSL is applying for an ASBO they must consult with the Chief Constable for the area where the antisocial person resides. In the case of an ASBO application for a child both the local authority and the RSL must consult with the Principal Reporter or Area Reporter within their area.

In addition an RSL must also either:

- Inform the local authority if the antisocial person is a child who lives in their area; or
- Inform the local authority if the person is not a child

Along with its other partners the agency seeking the ASBO should discuss whether an ASBO application is the most suitable action to take against the antisocial individual. If the local authority or RSL is seeking an interim ASBO they must ensure that the antisocial person is aware of this. They must also consider what restrictions they wish imposed on the person to prevent their antisocial behaviour.

Interim Antisocial Behaviour Orders

Interim ASBOs can be used to provide quicker more immediate protection to victims of antisocial behaviour. An interim order can be granted at an initial court hearing held in advance of a full hearing and can impose the same restrictions and the same penalties as a full ASBO. The interim ASBO does not usually specify how long the conditions should apply for but will last until the application for the full order has been heard in court.

When granting the interim ASBO the Sheriff must be satisfied that:

- The person is over 12 years of age;
- There is sufficient evidence to presume that the person has acted in an antisocial manner and there is a victim or victims;
- An interim ASBO is necessary to protect the victims from further antisocial behaviour by the individual.

ASBOS for Under 16s

Where an agency is trying to secure an ASBO against a 12-15 year old the Sheriff will seek advice from the Reporter before deciding if it is appropriate to grant an interim ASBO. The Sheriff is also obliged to seek advice from a Children's Hearing before deciding if a full ASBO is appropriate and should be granted. The purpose of the Hearing is to advise the Sheriff on whether an ASBO is the correct measure to use to prevent that child from continuing to be antisocial. The Sheriff must be satisfied that by granting an ASBO for an under 16 year old the victims of the child's antisocial behaviour will be protected.

If a Sheriff does believe that an ASBO is an appropriate course of action for an under 16 year old they have the power to refer that child to a Children's Hearing to consider the wider help and support the child may need to change their behaviour. The Sheriff also has the power to grant a Parenting Order at the same time as granting an ASBO for an under 16. If an under 16 year old breaches the conditions of their ASBO it is considered to be a criminal offence and will be reported to the Procurator Fiscal and the Children's Reporter. In discussions between these two agencies it will be decided what action should be taken depending on the circumstances of each case. If a child under 16 is convicted of breaching their interim ASBO or full ASBO they cannot be imprisoned for that offence.

Other Changes to ASBOs in the 2004 Act

The changes to ASBOs included in the 2004 Act are that:

- An ASBO is no longer limited to the geographical boundaries of one local authority area. If a person is being antisocial in more than one local authority the ASBO can now cover all of these areas;
- Copies of the Order, whether an interim or full ASBO, must be given to both the offender and the local authority. Local authorities must keep a record of these orders and make this information available to relevant agencies such as the Police or other local authorities;
- Registered Social Landlords must provide information to the local authority in respect of any interim or full ASBOs granted or of any revoking of orders that has been granted;
- Since October 2004 a power of arrest is now attached to the breach of an ASBO;
- ASBOs can now be granted by Sheriffs when they convict someone of a criminal offence. These are known as CRASBOs.

Criminal ASBOs (CRASBOs)

In some local authority areas where there is a good working relationship with the local Sheriffs CRASBOs are being granted regularly when someone is convicted of a criminal offence. They also help Registered Social Landlords, particularly small RSLs, to save their own financial resources because they do not have to take their own action to secure an ASBO against an antisocial person. CRASBOs would not normally be granted against someone who is a first offender.

In January 2006, Scottish Borders Council was the local authority with the most criminal ASBOs imposed on individual people. At that time there were 43 ASBOs in operation in the Borders of which 25 were CRASBOs, 11 were ASBOs and seven were interim ASBOs. The success of the use of CRASBOs, according to the Council's Mediation and ASBO Manager was due to the good working relationship in place with the Police, the Procurator Fiscal and the Court Service. CRASBOs are also now being granted regularly by Glasgow Sheriffs but in other parts of the country like Fife the Courts have granted no CRASBOs. In order to address this issue Fife Police have now established a working group to examine this issue and to introduce guidelines for their use.

Breaching an ASBO

If a person breaches the terms of their ASBO or interim ASBO they can be fined or imprisoned. The penalties which can be imposed are:

- If convicted under summary conviction, to imprisonment for no more than 6 months or a fine up to £5000. In exceptional circumstances fines of up to £50,000 can be imposed;
- If convicted on indictment, to imprisonment for no more than 5 years, a fine or both. This fine is unlimited as there is no maximum fine for conviction on indictment.

Agencies working in an antisocial behaviour partnership group should implement effective procedures for monitoring breaches of ASBOs. The antisocial behaviour strategy should cover how breaches of ASBOs will be dealt with including how alleged breaches are notified to the Police. There should be discussion with the Procurator Fiscal about the evidence which would be required to successfully prosecute the breach of an ASBO.

Security of Tenure and ASBOs

The introduction of the 2004 Act now means that if an ASBO is granted against the tenant or a person living with the tenant of a local authority or Registered Social Landlord it can now affect their right to stay in their home. This is due to the fact that a Scottish Secure Tenancy (SST) can be converted to a Short Scottish Secure Tenancy (SSST). If this conversion takes place landlords have a duty to provide housing support services to the tenant and their family with a view to helping them convert back to a full SST at the end of 12 months. This can happen whether or not the ASBO is granted to someone under or over the age of 16. When the landlord is considering the conversion of an SST it should take into account these issues:

- Is the ASBO linked or not to the person's behaviour in the vicinity of their home?;
- Would converting their tenancy act as a deterrent to further antisocial behaviour?;
- Does the person have support needs that could be alleviated by linking support to an SSST?;
- Is an SSST the preferred course of action to eviction?

As well as converting existing tenancies to SSSTs, if a new tenant or a person living with them is the subject of an ASBO the local authority or RSL can offer them an SSST. An SSST only offers six months of security at a time. It can only be renewed once and last for a maximum of 12 months. If the landlord is satisfied that the antisocial behaviour has stopped the tenant can resume their full SST after six months. Conversely, if the antisocial behaviour has continued it is relatively straightforward for the landlord to be granted an order for eviction.

If a tenant is evicted for antisocial behaviour the local authority continues to have duties to that person under the Housing (Scotland) Act 2001 and the Homelessness etc. (Scotland) Act 2003. After a person is evicted they retain the right to some form of ongoing accommodation from the local authority. It is therefore important when considering eviction action that the landlord considers the costs and benefits to the person and the wider community of pursuing eviction action compared to the costs and benefits of allowing the person to remain in their existing tenancy or to transfer them to another tenancy with support.

Section 6

Other Measures to Deal with Antisocial Behaviour

Dispersal of Groups

Part 3 of the 2004 Act gives the Police in Scotland powers to disperse groups of two or more people who are behaving in an antisocial manner. Previously the Police had powers to disperse groups if they were causing trouble such as football supporters after a football match. The new powers are much more detailed about how the Police can disperse groups. An authorisation notice must be publicised in the area before the powers can be used.

In consultation with the local authority a senior Police Officer, of Superintendent rank or above, can designate an area where antisocial behaviour is a significant, persistent and serious problem and where the presence or behaviour of groups has caused alarm or distress. Where an area is designated, the Police must specify the start and end of the period for designation and to what days and times of the day the designation applies. A designation can last up to but no longer than 3 months. This cannot be extended but the Police can submit a new authorisation notice for another 3 months.

Police have powers within the designated area to disperse people whose behaviour or presence continues to cause alarm or distress. They can be excluded from the area for up to 24 hours. Individuals who live within the affected area can be ordered to disperse but cannot be required to leave the area completely. If a person is in the designated area this is not an offence but if they refuse to disperse when asked to do so by the Police that is an offence. The Police are not required to obtain names and addresses of people in the area unless they commit the offence of refusing to leave. If this happens the Police have powers of arrest without the need for a warrant. A person guilty of an offence can be penalised either with a maximum fine of £2,500 or of imprisonment for up to three months, or both.

The size of the dispersal area is a decision for the Police which should be based on the circumstances within each area and take account of the resources available to the Police to enforce the designation. The Police should also have regard for any antisocial behaviour strategies which are in place within the area.

Closure of Premises

The powers to close down premises which are a constant focus of antisocial behaviour are contained within Part 4 of the 2004 Act. The Police have the powers to serve a closure notice which prevents people from entering the premises. In doing this, the Police must have reasonable grounds for believing that the premises have been used for significant and persistent antisocial behaviour within the last three months.

The powers should only be used after informal attempts to deal with the problems have failed and after consultation with the local authority. The antisocial behaviour strategy should include details of how and when closure notices will be issued. There should be an agreed process for monitoring and recording closed premises. The Police must also have made attempts to identify the owner of the property and anyone who lives in the property. Once a closure notice has been served the Police must then apply to the Sheriff Court for a closure order. This order can close the premises for up to three months. The application for the order must be made on the first court day after the date on which they served the closure notice. However, the Sheriff can adjourn

the hearing for a period of up to fourteen days to allow for representation from the occupiers or owners. The Police have the power to secure closed premises once they are empty.

If vulnerable people stay within the premises the Sheriff is required to take into account their ability to get alternative accommodation and the vulnerability of anyone within the household. In Fife two premises have been closed, one of which was a private house where the father worked away from home and while he was away young people were turning up at the house and being antisocial. The son was powerless to prevent the people from coming to the house so eventually the house was closed and the son moved into supported accommodation. The father then decorated the house and sold it.

A closure order can be extended for a further period not exceeding a total of six months, including the time the premises have already been closed. The extension must be applied for at least 21 days before the original order expires. It is an offence for someone to remain in or enter the premises where a closure notice or closure order has been served. It is also an offence to try to obstruct the closing of the premises. The Police have the power to arrest without a warrant the person they believe has committed the offence. The penalties for offending are the same as those for committing an offence in a designated area for the dispersal of groups. However, if someone is convicted for the same offence within two years they could be fined up to £5,000 and imprisoned for nine months, or both.

If it is a local authority or RSL property which is closed the landlord should consider ways of bringing the property back into use so it does not attract problems as a vacant property. They will also need to consider if eviction action against a tenant is appropriate or if an ASBO is relevant for anyone involved in the antisocial behaviour that led to the disclosure of the premises.

Noise Nuisance

The most common forms of noise nuisance reported to agencies concern loud parties, amplified music and barking dogs. Mediation is increasingly used as a first response to new noisy neighbour complaints. Research has shown it to have a good success rate, while recognising it is not an effective remedy for persistent, serious antisocial behaviour.

When introducing noise control provisions the local authority should consult its partners involved in dealing with antisocial behaviour. This consultation will help in identifying areas that could benefit from noise controls and the time and duration of such controls. As well as consulting with other agencies such as the Police and RSLs, there should also be consultation with the community through the community planning partnership and tenants and residents organisations.

Agencies have different responsibilities for responding to noise nuisance such as landlord staff, environmental health officers and the Police. The local antisocial behaviour strategy should clearly identify which agency is responsible for which service and how that service can be accessed. The environmental health officers and Police Officers should inform the Council's housing services or the RSL involved when action has been taken against one of their tenants. The landlord should also consider what further action it may be appropriate to take against any tenants involved in noise nuisance complaints and what support may need to be given to the tenant who has made the complaint.

The Antisocial Behaviour etc. (Scotland) Act 2004, Part 5, provides new powers to deal with serious and persistent noise problems which neighbours find unacceptable. The new powers are for local authorities to have the option to introduce noise control provisions to specific areas on certain days and at certain times. If the provisions are implemented they can be for 24 hours a day, 7 days a week. In practice this will work as follows:

- Council officers or Police Officers have the powers to investigate noise complaints;

- If an officer believes noise from a domestic property exceeds or may have exceeded the permitted level, he or she may issue a warning notice. Scottish Ministers have set permitted maximum noise levels for daytime, evening and night time against which the officers can measure excessive noise;
- If the noise continues after the warning notice has been issued a Fixed Penalty Notice (FPN) of £100 can be issued to the offender;
- If they pay the FPN no further action will be taken;
- If the FPN is not paid within 28 days the local authority can proceed to prosecution through the Procurator Fiscal;
- The money paid for FPNs is kept by the local authority.

By May 2006, 1200 warnings about noise nuisance had been issued in twenty two local authorities in Scotland. Local authority officers can also now seize noise making equipment. Previously under the Civic Government (Scotland) Act 1982 and the Crime and Disorder Act 1998 only Police Officers had powers to seize noise making equipment. They can keep it for 28 days and charge the person with storage costs. The person does not have to be charged with an offence.

The Environment

Part 6 of the 2004 Act addresses issues of environmental concern such as fly-tipping, graffiti, littering and abandoned vehicles. The new powers include a greater use of Fixed Penalty Notices (FPNs) for various offences including:

- Litter – Police now also have this power as well as local authorities;
- Fly-tipping;
- Graffiti – local authorities now have powers to serve graffiti removal notices.

This part of the Act does not specify an age at which FPNs can be issued. It is therefore interpreted as the age of criminal responsibility which is 8 years and over in Scotland. There may be some issues however with children paying FPNs and if they do not pay they are likely to be referred to the Children's Reporter rather than to the Procurator Fiscal.

Local authorities' powers to issue graffiti removal notices relate specifically to those responsible for graffiti on street furniture, statutory transport and educational establishments. If the notice is not complied with the local authority has the power to remove the graffiti and to recover their costs.

This part of the Act also increases the fines for certain environmental offences from £20,000 to £40,000.

Parenting Orders

New powers in Part 9 of the 2004 Act introduce Parenting Orders. The local authority or the Children's Reporter can apply to the Sheriff for an order on three grounds:

- The child has been engaged in antisocial behaviour and the order is to prevent further such behaviour;
- The child has engaged in criminal conduct and the order is in the interests of preventing further criminal conduct;
- The order is in the interests of the improved welfare of the child.

The Reporter and local authority are required to consult each other before applying for a Parenting Order. The orders are being introduced as part of a national pilot so that local authorities can plan and develop local parenting services with additional resources and compel parents to use them through a parenting order if necessary. The Scottish Executive made available £1 million for start up costs in 2004-05 and £2 million per annum will be available for

local authorities during the pilot phase which takes place over a three year period ending in March 2008.

A parenting order is a civil court order and not suitable for a children's hearing. If a hearing considers that a parenting order is appropriate in an individual case, there are provisions within the Act for the hearing to direct the Reporter to consider whether or not to apply to the court for a parenting order.

Parents will normally be required to attend counselling or support services as part of the order. If a parent breaches an order imprisonment would be a last resort only considered if parents had not complied with the order, failed to pay a fine or failed to comply with a supervised attendance order. The maximum fine is £1,000. When using any of these measures the Sheriff must take into account the best interests and welfare of the children involved.

The Scottish Executive is keen to prevent antisocial behaviour within families by providing them with intensive support and in March 2006 announced funding for three new projects. These are in Perth and Kinross, Falkirk and South Lanarkshire Council areas.

These projects are joint projects involving housing, social work and health professionals and will provide intensive intervention and support to antisocial families. The projects are based, with some variations, on the model of the Dundee Families Project established in the early 1990s by National Children's Homes (NCH) and Dundee City Council to provide intensive support to families with histories of antisocial behaviour but who indicated a desire to change their behaviour. The success of this project has been recognised not only in Scotland, but also in England, with several local authorities establishing their own models of the Dundee Families Project.

Section 7

Dealing with Antisocial Behaviour in the Private Rented Sector

Antisocial Behaviour Notices (Covering the Private Rented Sector)

Local authorities now have new powers to serve Antisocial Behaviour Notices (ABNs) on private landlords. These are contained within Part 7 of the Act. Antisocial Behaviour Notices specify the action that landlords must take and the period within which it must be taken to address antisocial behaviour within their property. The notice must be served in response to serious antisocial behaviour by the tenant, occupant or visitor to the house or in the locality of the house.

Antisocial Behaviour Notices would only be served after the local authority has worked informally with the landlord to try to improve housing management practice and encouraged the private landlord to enforce the tenancy agreement. The local authority should agree procedures for this with any private landlord forums that exist or with management and letting agents that represent private landlords. Agreement will also be needed about how the antisocial behaviour is identified through Housing Officers, Environmental Health Officers, the Police, Community Wardens and community groups.

There are new powers for Sheriffs to make an order to stop any rent from being payable on a property where the landlord has failed to comply with an Antisocial Behaviour Notice. It is the duty of the local authority to provide a copy of the order to the tenant and any person who acts on behalf of the landlord.

In addition, the local authority could apply to the Sheriff Court to take over management control of the property. A management control order transfers the landlord duties and obligations to the local authority. Again the local authority has a duty to notify the landlord, tenant and person acting for the landlord when a management control order has been made. When a management control order is granted to the local authority it has the power to recover any rent that may be paid to the landlord while it is in force. This will cut off the private landlord's income supply and act as further incentive to take action to deal with the antisocial behaviour.

If a landlord fails to comply with an antisocial behaviour notice they are deemed to be guilty of an offence which could lead to a fine of £5,000 on conviction.

Registration of Certain Landlords (Covering the Private Rented Sector)

Local authorities now have a duty to compile a register of private landlords in their area and make it available for public inspection. Private landlords are required to register and failure to do so or failure to provide correct information in the application is an offence.

It is the decision of the local authority to register or refuse to register a private landlord. The local authority can determine the fitness of people to let houses. This gives them the scope to prevent certain people from operating as a landlord, by refusing them entry to the register or removing them from the register. The local authority must notify the applicant of its decision. The private landlord can appeal to the Sheriff Court against a refusal to register or a removal from the register.

Once a landlord is registered they must inform the local authority of any change in their circumstances relating to the registration. If they fail to do so they will be deemed to have committed an offence.

The local authority has the power to serve a notice on a non-registered landlord preventing rent from being payable. Again, this cuts off their income supply. Local authorities must develop procedures for dealing with landlords who refuse to register.

Section 8

Further Criminal Measures

In order to tackle antisocial behaviour more effectively the Scottish Executive has introduced a new range of criminal measures contained within Part 10 of the Act. This part of the Act gives courts new powers to deal with cases where antisocial behaviour has been an element of the offence. It also makes it illegal to sell spray paint to children under 16 and allows the seizure of vehicles in certain circumstances.

Community Reparation Orders

Sheriff Courts now have the power to issue Community Reparation Orders instead of imposing a sentence on someone if the offence was committed by an act of antisocial behaviour. Community Reparation Orders require someone to give something back to the community they have disturbed with their antisocial behaviour. The order may specify between 10 and 100 hours of unpaid work of value to the community. The local authority must have procedures in place to ensure the order is complied with.

Restriction of Liberty Orders

Restriction of Liberty Orders (RLOs) were implemented under the Criminal Procedure (Scotland) Act 1995 and Part 10 of the 2004 Act extends them to offenders under the age of 16. The aim of an RLO is to confine an offender to a particular place for up to 12 hours per day, or restrict him or her from a particular place. The order can last for up to 12 months and compliance with it is monitored by electronically tagging the person.

RLOs can only be used for dealing with under 16s where there is agreement that the local authority has the appropriate support in place for the young person and their family.

Sale of Spray Paint to Children

It is now an offence for anyone to sell spray paint to children under the age of 16. If a person is convicted of doing this they can be fined up to £1,000. Shops must also display notices stating that it is illegal to sell spray paint to under 16s. If the notice is not displayed and someone does sell spray paint to a child and are convicted they could be fined up to £500.

Seizure of Vehicles

Police officers now have powers to issue a warning and seize a vehicle where a vehicle is being used in a manner which is causing or likely to cause alarm or distress to the public and also contravenes either section 3 or section 34 of the Road Traffic Act 1998. This power has been used in Kirkcaldy to prevent boy racers racing their cars along the seafront boulevard.

When a warning is issued it should be issued against the individual using the vehicle and against the vehicle itself. Therefore, if the vehicle is used in a similar manner again but by a different person the vehicle can still be seized as it already has a warning attached to it. Similarly, where a person has a warning attached to them and they use another vehicle in such a manner it too can be seized.

Once a seizure has taken place the warning on the person driving or the vehicle seized should be removed.

Fixed Penalties

New powers have been given to the Police to issue Fixed Penalty Notices (FPNs) of up to £500 for disorderly behaviour. The aim is to provide a swift and effective response and reduce the burden on the courts of dealing with relatively minor cases. A pilot is being undertaken by Tayside Police and by May 2006 over 3000 FPNs had been issued in their area. After the pilot is evaluated, guidance will be issued by the Scottish Executive about how the powers should be used.

A FPN can be issued to anyone over the age of 16. They then have 28 days to either pay the fine or challenge it. If they pay there will be no further action. If they do not pay court proceedings can be pursued. The types of behaviour which could attract a FPN are:

- Riotous behaviour while drunk in licensed premises;
- Refusing to leave licensed premises when asked to do so;
- Urinating or defecating in a public place likely to cause offence;
- Being drunk and incapable in a public place;
- Being drunk in a public place in charge of a child;
- Persisting in playing musical instruments, singing, playing radios etc when required to stop;
- Vandalism;
- Consuming alcohol in a place not allowed by a byelaw;
- Breach of the peace;
- Malicious mischief

Children's Hearings

Part 12 of the 2004 Act allows a Children's Hearing to require remote monitoring of children being supervised by local authorities who, while not offending, may be putting themselves at risk. Part 12 also provides for other means of support to children including educational support.

A Children's Hearing and the Principal Reporter have powers to act against a local authority that does not comply with the supervision duties given by a Children's Hearing. The Sheriff Principal has the power to order a local authority to fulfil its duty upon application from the Principal Reporter.

Section 9

Miscellaneous and General Issues

Part 13 of the 2004 Act introduces a number of measures that apply generally across all Parts of the Act. Their main purpose is to ensure implementation of the Act in an equal and effective manner.

Powers for the disclosure of information are covered where disclosure may be necessary and it is not already included in other parts of the Act. It includes provisions to ensure that the functions set out in the Act are implemented with regards to equal opportunities. Antisocial behaviour is also defined in detail.

Section 10

Non-legal Remedies

Much of the information in this guide so far has explained legal approaches to antisocial behaviour. Some of these measures penalise antisocial behaviour, but most are designed to try to prevent a continuation of it. Many other non-legal strategies are used in Scotland to prevent or divert people from antisocial behaviour.

Mediation is one such strategy, which research shows is effective and less costly in many of the “lower level” cases. It does not rely on applying the law or tenancy obligations. Instead, it is a method of encouraging the parties in disagreement to work out their own way to live and let live.

When a council or landlord believes that mediation should be tried, the different parties involved are approached individually to enlist their agreement to mediation. Only where they agree can mediation proceed. A mediator, who remains neutral, tries to understand the point of view of both parties. She/he then brings them together and helps them work towards a solution of their own making. The mediator does not impose a solution on them.

If mediation fails, some of the stronger options can then be tried.

Various approaches to neighbourhood housing management can help prevent antisocial behaviour. This includes involving tenants and residents organisations in neighbourhood management co-ordination groups. Issues that can be addressed include when letting houses, landlords can try to avoid households with very different lifestyles from being close neighbours. However to do this successfully relies on good local knowledge. Early action on graffiti, stair cleaning and vandalism can change the circumstances of neighbours helping avoid direct clashes between them.

Section 11

Conclusion

Antisocial behaviour is not an easy issue to resolve but the implementation of the Antisocial Behaviour etc. (Scotland) Act 2004 has provided agencies with new wide ranging measures to tackle antisocial behaviour more effectively and more quickly. However, legislation is not enough. There needs to be more open and honest joint working between agencies and a more consistent approach to using the measures efficiently.

Communities must be involved centrally in implementing antisocial behaviour strategies. This will ensure that those people living as victims of antisocial behaviour start to feel that a difference to their lives is being made by the successful use of the new measures and the people who are behaving antisocially realise their behaviour is no longer acceptable.

Appendix One

Useful Reading

Chartered Institute of Housing (2005) "A Guide to the Antisocial Behaviour etc. (Scotland) Act 2004" (CIH, Edinburgh)

Scottish Executive (2005) "A Guide to the Antisocial Behaviour etc. (Scotland) Act 2004" (Scottish Executive, Edinburgh)

Scottish Executive (2005) "Guidance on Antisocial Behaviour Strategies" (Scottish Executive, Edinburgh)

Scottish Executive (2004) "Local Government in Scotland Act 2003 Community Planning Advice Notes" (Scottish Executive, Edinburgh)

Scottish Executive (2005) "Progress on Tackling Antisocial Behaviour" (Scottish Executive, Edinburgh)

Scottish Executive (2005) "Standing up to Antisocial Behaviour – First Anniversary Report" (Scottish Executive, Edinburgh)

Other Resources

www.antisocialbehavioursotland.com – website full of advice for anyone seeking information about antisocial behaviour.

Appendix Two

Key Contacts

Chartered Institute of Housing (CIH)

6 Palmerston Place
Edinburgh EH12 5AA
Phone: 0131 225 4544
E-mail: scotland@cih.org

Communities Scotland

Tenant Participation Development Team

Thistle House
91 Haymarket Terrace
Edinburgh EH12 5HE
Phone: 0131 479 5317
E-mail: cooka@communities.scotland.gov.uk

Legal Services Agency

3rd Floor, Fleming House
134 Renfrew Street
Glasgow G3 6ST
Phone: 0141 353 3354
E-mail: lsa@btconnect.com

Positive Action in Housing (PAIH)

98 West George Street
Glasgow G2 1PJ
Phone: 0141 353 2220
E-mail: home@paih.org

Scottish Community Development Centre

Suite 329, Baltic Chambers
50 Wellington Street
Glasgow G2 6HJ
Phone: 0141 248 1924

Scottish Council for Voluntary Organisations (SCVO)

Mansfield Traquair Centre
15 Mansfield Place
Edinburgh EH3 6BB
Phone: 0131 556 3882
E-mail: enquiries@scvo.org.uk

Scottish Federation of Housing Associations (SFHA)

38 York Place
Edinburgh EH1 3HU
Phone: 0131 556 5777
E-mail: sfha@sfha.co.uk

Shelter

4th Floor, Scotia Bank House
6 South Charlotte Street
Edinburgh EH2 4AW
Phone: 0131 473 7170
E-mail: shelterscot@shelter.org.uk

Tenant Involvement in Islands Grampian Highland and Rural Areas (TIGHRA)

Fairfax House, 64 Market Place
Inverurie AB51 3XN
Phone: 01467 672233
E-mail: info@tighra.org

Tenants Information Service (TIS)

Suite 124-128, Baltic Chambers
50 Wellington Street
Glasgow G3 6HJ
Phone: 0141 248 1242
E-mail: info@tis.org.uk

Tenant Participation Advisory Service (TPAS)

74-78 Saltmarket
Glasgow G15 5LD
Phone: 0141 552 3633
E-mail: enquiries@tpasscotland.org.uk



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50 Wellington Street, Glasgow G2 6HJ
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