



# Information Note

## Antisocial Behaviour Orders

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SCOTTISH EXECUTIVE

# Introduction

This information note provides tenants and residents with useful material about Antisocial Behaviour Orders and their use in Scotland. The TIS Guide to the Antisocial Behaviour etc. (Scotland) Act 2004 provides more detailed information for anyone interested in finding out more about a range of measures which are available to tackle antisocial behaviour.

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 making 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 a Registered Social Landlord (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?

# Security of Tenure and ASBOs

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.

## Conclusion

There is much debate in Scotland about the use of ASBOs and their effectiveness. The Scottish Executive has placed dealing with antisocial behaviour including ASBOs high on its agenda of improving Scotland's neighbourhoods as places to live. However, local authorities appear to argue that ASBOs should only be used when other preventative measures have failed, particularly when they are being considered against under 16s.

If the statistics are low for the use of ASBOs in a local authority area this does not always mean that the local authority is being ineffective. It may be that they are being successful in dealing with a person's behaviour before they have to apply for an ASBO. This may be achieved through the use of Acceptable Behaviour Contracts or Agreements known as ABCs or ABAs. These are voluntary and are not legally binding. However if the terms of these agreements are breached the Police or local authority may then apply for an ASBO.

There is a danger that if ASBOs are used too frequently they will not continue to have the same deterrent for young people to cease their antisocial behaviour as they did when they were first introduced. ASBOs should not be regarded as "Badges of Honour" by young people within their communities. In order to prevent this from happening ASBOs should be used only when all other measures have failed. If the conditions of an ASBO are broken the Police also have to be efficient at dealing with this and ensuring the person does either receive a fine or imprisonment according to the legislation.

# 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.antisocialbehaviourscotland.com](http://www.antisocialbehaviourscotland.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@communitiesscotland.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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