ANTISOCIAL BEHAVIOUR ETC. (SCOTLAND) BILL

EXPLANATORY NOTES

(AND OTHER ACCOMPANYING DOCUMENTS)

CONTENTS

1. As required under Rule 9.3 of the Parliament’s Standing Orders, the following documents are published to accompany the Antisocial Behaviour etc. (Scotland) Bill introduced in the Scottish Parliament on 29 October 2003:

   - Explanatory Notes;
   - a Financial Memorandum;
   - an Executive Statement on legislative competence; and
   - the Presiding Officer’s Statement on legislative competence.

A Policy Memorandum is printed separately as SP Bill 12–PM.
EXPLANATORY NOTES

INTRODUCTION

2. These Explanatory Notes have been prepared by the Scottish Executive in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

3. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

THE BILL

4. The Bill is in 13 Parts.

5. These are:
   - Part 1 – Antisocial behaviour strategies
   - Part 2 – Antisocial behaviour orders
   - Part 3 – Dispersal of groups
   - Part 4 – Closure of premises
   - Part 5 – Noise nuisance
   - Part 6 – The environment
   - Part 7 – Housing: antisocial behaviour notices
   - Part 8 – Housing: registration areas
   - Part 9 – Parenting orders
   - Part 10 – Further criminal measures
   - Part 11 – Fixed penalties
   - Part 12 – Children’s hearings
   - Part 13 – Miscellaneous and general.

6. Commentary explaining the changes introduced by each Part is provided below. A definition of antisocial behaviour for the purposes of the Bill is provided at section 110.
COMMENTARY ON PARTS

PART 1 – ANTISOCIAL BEHAVIOUR STRATEGIES

Section 1 – Antisocial behaviour strategies

7. Section 1 places each local authority under a duty to prepare, publish and keep under review an antisocial behaviour strategy for its area. The strategy is to be prepared jointly with the “relevant chief constable”, who is defined in subsection (11) as being the chief constable for the police area which forms all or part of the area of the local authority. “Local authority” is defined in section 110 as 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 for which the council is constituted.

8. Subsection (3) sets out particular provision that should be included in the strategy. Subsection 3(d) provides that the strategy should include provision as to the exchange of information between other persons and bodies, as well as local authorities and the chief constable.

9. Subsection (4) places the local authority and the relevant chief constable under a duty to keep the strategy under review and gives them the power from time to time to revise the strategy.

10. Subsection (6) introduces a requirement for the local authority to consult in preparing, reviewing and revising the strategy. The local authority is under a duty to consult the Principal Reporter, registered social landlords which provide or manage property in their area and such community bodies and other persons as they consider appropriate. “Community bodies” are defined in subsection (11) by reference to section 15(4) of the Local Government in Scotland Act 2003. Section 15(4) of that Act defines “community bodies” as bodies or other groupings, whether or not formally constituted, established for purposes which consist of or include that of promoting or improving the interests of any communities resident or otherwise present in the area of the local authority. Subsection (7) provides that the local authority must seek to include those bodies and persons which are representative of persons adversely affected by antisocial behaviour in considering which persons to consult.

11. Subsection (8) provides that the local authority and chief constable shall have regard to any guidance issued by Scottish Ministers in exercising their functions under this section and in implementing a strategy.

Section 2 – Directions: registered social landlords

12. Section 2 provides Scottish Ministers with the power to direct a registered social landlord to work with a local authority and chief constable on the preparation of a strategy to tackle antisocial behaviour.

Section 3 – Reports and information

13. Subsection (1) requires each local authority to publish from time to time reports on how the authority and chief constable have implemented the antisocial behaviour strategy and what
the results of that implementation have been. Subsection (3) provides that Scottish Ministers may make regulations determining the form, content, frequency and timing of reports made under subsection (1). Before making such regulations by statutory instrument, Scottish Ministers shall consult such associations of local authorities and other persons as they think fit. Subsection (5) enables Scottish Ministers to require a local authority to submit reports or information to them on the implementation and results of implementation of the strategy.

14. Subsection (2) places a duty on registered social landlords and the Principal Reporter, as well as the chief constable, to provide such information as the local authority may reasonably require to enable the local authority to comply with the duty under subsection (1).

PART 2 – ANTISOCIAL BEHAVIOUR ORDERS

15. Part 2 replaces sections 19, 21 and 22 of the Crime and Disorder Act 1998 to the extent to which they make provision on antisocial behaviour orders.

Section 4 – Antisocial behaviour orders

16. Section 4 enables a sheriff to make an antisocial behaviour order (ASBO), on the application of a relevant authority as defined in section 15, if the sheriff is satisfied:
   - that the person specified in the application is at least 12 years of age;
   - that the person specified in the application has engaged in antisocial behaviour towards a person who is a relevant person as defined in subsection (10);
   - that the order is necessary for the purposes of protecting relevant persons from further antisocial behaviour by the specified person.

In addition, where the specified person is aged 12 to 15 years of age, the sheriff must have had regard to any views expressed by the Principal Reporter.

17. The definition of “antisocial behaviour” is provided at section 110. This provides that a person engages in antisocial behaviour if the person:
   - acts in a manner that causes or is likely to cause alarm or distress; or
   - pursues a course of conduct that causes or is likely to cause alarm or distress, to at least one person who is not of the same household as themselves.

18. Subsection (6) extends the classes of persons who can be protected by an antisocial behaviour orders applied for by local authorities by allowing the order to include such additional prohibitions as are necessary for the purpose of protecting persons other than relevant persons (referred to as “affected persons”) from further antisocial behaviour by the person subject to the order. This enables an order to be made that will protect persons outwith the applicant local authority area.

19. Subsection (8) makes provision at to what consultation or notification is required before an application for an antisocial behaviour order is made. A local authority must consult the police force for its area and, where the application relates to someone under 16, the Principal
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Reporter. Further, where the application is intended to protect an “affected person” (i.e. one who does not live within that local authority area) then the local authority must also consult the local authority and police for that area. A registered social landlord must consult the police force for the area in which the person who is proposed to be subject to the order resides and, where the application relates to someone under 16, the Principal Reporter and the local authority for the area in which the child resides. Where a registered social landlord is making an application in relation to an adult it is required to notify the local authority for the area in which the adult resides.

Section 5 – Antisocial behaviour orders: variation and revocation

20. Section 5 provides that on the application of the relevant authority that obtained an antisocial behaviour order, or the person subject to the order, the sheriff may vary or revoke the order. The relevant authority must consult the relevant consultees, as defined in section 15, before making such an application. Before making an application under this section, a registered social landlord shall consult the local authority if the specified person is aged 12 to 15, but only has to notify the local authority if the person is aged 16 or over.

Section 6 – Appeals: effect on competence of application under section 5

21. Section 6 provides that a person appealing against the making or variation of an antisocial behaviour order may not make a further application to vary or revoke that order before the appeal is determined or abandoned.

Section 7 – Interim antisocial behaviour orders

22. Section 7 makes provision for interim antisocial behaviour orders.

23. Section 7(2) provides that the sheriff must be satisfied that the person is aged 12 years or more, 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 relevant persons from further antisocial behaviour.

24. Subsection (3) provides that an interim order can be appealed, though the order will continue to have effect pending the outcome of the appeal. This is without prejudice to any power of the court to recall the order.

Section 8 – Notification of making etc. of orders and interim orders

25. Section 8(2) provides that where an antisocial behaviour order is made or varied the clerk of the court by which the order is made or varied shall arrange for a copy of the order to be served on the person subject to the order and given to the relevant authority on whose application the order was made. This also applies where an interim order is made.

26. Subsection (4) provides that where an antisocial behaviour order is revoked or an interim order is recalled, the clerk of the court by which the order is revoked or recalled shall notify the relevant authority on whose application the order was made.
27. Subsection (5) provides that for the purposes of subsection (2)(a), a copy of the order is served on the person subject to the order if it is given to them or sent to them by registered post or the recorded delivery service. Where the order is sent, subsection (6) provides that a certificate of posting issued by the postal operator concerned shall be sufficient evidence of the sending of the letter on the day specified on such certificate.

Section 9 – Breach of orders

28. Subsection (1) provides that breach of an antisocial behaviour order or an interim order is a criminal offence.

29. Subsection (2) explains that the maximum penalty for breach of an antisocial behaviour order or an interim order is six months imprisonment and a fine on summary conviction and 5 years imprisonment and a fine on conviction on indictment. Subsection (7) provides a caveat to subsection (2) by specifying that in dealing with a breach of an antisocial behaviour order by a person aged 12 to 15, that person shall not be liable to imprisonment.

30. Subsection (3) provides that where a person in breaching the antisocial behaviour order has also committed a separate offence and that person is charged with that separate offence they will not be liable to be proceeded against for the breach of the order. However, subsection (4) provides that if the person is convicted for the separate offence, the sheriff must have regard to that fact that the person was subject to an ASBO at the time, the number of orders the person was subject to, any previous conviction for breach of an ASBO or interim ASBO and the extent to which the sentence or disposal for any previous breach would have differed but for this subsection.

Section 10 – Breach of orders: arrest without warrant

31. Section 10 introduces a statutory power of arrest for breach of an antisocial behaviour order or interim order. This is without prejudice to any power of arrest conferred by law apart from section 10(1).

Section 11 – Sheriff’s power to refer case to children’s hearing

32. Where an antisocial behaviour order or interim order is granted against a person aged 12 to 15 years, section 11 introduces a power for the sheriff to require the Principal Reporter to refer the case to a children’s hearing.

33. Subsection (2) makes a consequential amendment to section 70(1) of the Children (Scotland) Act 1995 reflecting the fact that a case may be referred to the children’s hearing under this section as well as under section 65(1) of the Children (Scotland) Act 1995.

Section 12 – Sheriff’s power to make parenting order

34. Section 12 provides that where a sheriff makes an antisocial behaviour order in civil proceedings in respect of a child, the sheriff may make a parenting order as well if satisfied as to the matters mentioned at section 77(1)(b) and 77(4)(b) of the Bill. The conditions are that the
sheriff must be satisfied that Scottish Ministers have notified the court that the relevant authority has made arrangements that would enable the parenting order to be complied with and that the making of the parenting order is desirable in the interests of preventing the relevant child from engaging in further antisocial behaviour.

35. Where a court is considering making a parenting order under section 12 it will be obliged to comply with the provisions about procedural requirements in section 78 and the substantive considerations set out in section 79. The provisions of sections 81, 82 and 83 in relation to review of the order, appeals and failure to comply with the order also apply to a parenting order made under this section.

Section 13 – Provision of information to local authorities

36. Section 13 requires that registered social landlords provide the relevant local authority with a copy of each order it obtains - including variations or revocations thereof - to ensure records of orders maintained by the local authority are comprehensive. Subsection (2) provides the interpretation of “relevant local authority” in this context. It means a local authority whose area includes premises provided or managed by the social landlord in relation to any person for whose protection the order was made.

Section 14 – Records of orders

37. Section 14 places a duty on local authorities to keep records of antisocial behaviour orders made on the application of the authority and of orders in respect of which a copy has been received from the registered social landlord (who is obliged under section 13 to provide such information).

38. Subsection (2) provides that the record shall specify the person in respect of whom the order was made, the prohibitions imposed by the order, the time period of the order, any variation of the order, the date is revoked if it is revoked and any other matters as specified by Scottish Ministers.

39. Subsection (3) provides that local authorities shall have regard to guidance issued by Scottish Ministers about the record of orders.

40. Subsection (4) makes provision about the disclosure of information contained in the record of orders. The local authority shall, on a request to do so by Scottish Ministers, another local authority, a chief constable or a registered social landlord, disclose to that person making the request information contained in the record of antisocial behaviour orders.

Section 15 – Interpretation of Part 2

41. Section 15 provides interpretation of a number of terms used in Part 2.
PART 3 – DISPERSAL OF GROUPS

Section 16 – Authorisations

42. Section 16 gives senior police officers (that is officers of or above the rank of superintendent) power to issue authorisations in respect of particular localities within their police area where that police officer has reasonable grounds for believing that alarm or distress has been caused to members of the public by the presence or behaviour of groups in that locality. That locality is defined as “a relevant locality” for the purposes of Part 3 at subsection (1). Before giving an authorisation the officer must also have reasonable grounds for believing that significant and persistent antisocial behaviour has occurred in the locality.

43. Subsection (2) sets out that the authorisation will last for a specific period and that the authorisation may also choose to refer to times or days within the period: for example to Friday and Saturday nights. Subsection (3) sets out the form in which the authorisation must appear and what it must include (for example when the powers are exercisable). Subsection (4) provides that the senior officer must consult the local authority before giving an authorisation; and subsection (5) that the authorisation shall not exceed 3 months.

Section 17 – Authorisations: supplementary

44. Before the powers under section 18 become exercisable, the senior officer will have to ensure that an authorisation notice is published in a newspaper circulating in the relevant locality and that it is displayed in some conspicuous place or places within the relevant locality.

45. Subsection (2) sets out what must be included in an authorisation notice: specification of the area affected and the period it will last (and any specified times within that period).

46. Subsection (3) makes provision for withdrawal of the authorisation (for example, if the police are satisfied that it is no longer necessary to prevent the occurrence of disorder or serious nuisance). Subsection (4) requires the police officer to consult the relevant local authority about the proposed withdrawal. Subsections (5) and (6) set out that the withdrawal of an authorisation shall not affect the exercise of any power which occurred before the withdrawal and that the giving or withdrawal of an authorisation shall not prevent the giving of a further authorisation in respect of a locality to which the earlier authorisation relates.

Section 18 – Powers exercisable in pursuance of authorisations

47. Subsections (1) and (2) set out that where a constable has reasonable grounds for believing that the presence or behaviour of a group of two or more people in the relevant locality has resulted, or is likely to result, in any members of the public being alarmed or distressed, the constable may give a direction requiring the persons in the group to disperse. The constable may also give a direction requiring any of those persons who do not live in the locality to leave it; or a direction prohibiting any of those persons who do not live in the area from returning to it for a specified period of up to 24 hours. Subsection (3) requires that the constable may require any of these directions to be complied with at such a time and in such a way as is specified in that direction.
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48. Subsection (4) sets out that such a direction may not be given in respect of a group of persons who are taking part in a procession which has been notified, if necessary, in accordance with section 62 of the Civic Government (Scotland) Act 1982.

Section 19 – Powers under section 18: supplementary

49. Subsection (1) sets out that a direction may be given orally; to an individual or to a group; and that it may be withdrawn or varied by the person who gave it.

50. Subsection (2) sets out that knowingly contravening a direction, without reasonable excuse, will be an offence and could result in a fine, or imprisonment or both. Subsection (3) sets out that where such an offence is being committed the constable may arrest the person without warrant. Subsection (4) provides that subsection (3) is without prejudice to any power of arrest conferred by law apart from that subsection.

Section 20 – Guidance

51. Subsection (1) provides that Scottish Ministers may issue guidance in relation to how the police use these powers and to any other matters relating to these powers. Subsection (2) requires the police to have regard to this guidance.

Section 21 – Directions

52. Subsection (1) provides that Scottish Ministers may give directions on the exercise of these powers and to any other matters relating to these powers. Subsection (2) requires such directions to be complied with.

Section 22 – Interpretation of Part 3

53. Section 22 provides interpretation of Part 2. Interpretation is provided of “public place”, “relevant locality” and any reference to the presence or behaviour of a group of persons in Part 2.

PART 4 – CLOSURE OF PREMISES

Section 23 – Authorisation of closure notice

54. Section 23 gives senior police officers (that is officers of or above the rank of superintendent) power to authorise service of a closure notice. The effect of such an authorisation is that a constable will serve on the relevant premises a closure notice. A closure notice prohibits access to the premises by any person other than a person who habitually resides in the premises, or the owner of the premises. Failure to comply with the notice amounts to an offence under section 34.

55. The senior police officer may only authorise service of a closure notice where that officer has reasonable grounds for believing that at any time during the immediately preceding 3 months a person has engaged in antisocial behaviour on the premises; and that the use of the premises is
associated with the occurrence of significant and persistent disorder or significant, persistent and serious nuisance to members of the public.

56. Subsection (4) provides that an authorisation for service of a closure notice may be given orally but if so it must be confirmed in writing as soon as is practicable. Subsection (3)(b) sets out the procedural requirements which must be met before service of a closure notice can be authorised. These requirements include that the local authority must have been consulted about the proposed closure and that all reasonable steps must have been taken to establish the identity of any person who lives on, has control of, or responsibility for, or has an interest in, the premises.

57. Subsection (2) provides that Scottish Ministers can exempt certain premises from such authorisations by means of regulations.

Section 24 – Service etc.

58. Subsections (2), (3) and (5) set out the form a closure notice shall take and the procedure associated with its service. As well as explaining the effects of a closure notice, the notice must contain certain information including details of the court hearing and information about access to advice on housing and legal matters. The notice must be attached to prominent places on the premises and served on persons living in, having control of or responsibility for or having an interest in the premises. Under subsection (3), the notice must also be served on anyone the constable believes, following reasonable enquiries, whose access to the premises would be impeded by the making of the closure order.

59. Subsection (4) sets out that failure on the part of the constable to give a copy of the notice to any of the persons set out above shall not affect the validity of the closure notice.

Section 25 – Application to sheriff

60. Subsections (1) and (2) require that once the police have served the closure notice, a senior police officer must apply to the sheriff for a closure order to be made. Subsection (3) sets out when the police must make this application and subsection (4) contains a provision for the sheriff to allow late applications. Subsection (5) sets out what is required in an application, which must include a specification of the premises in respect of which the closure order is sought and the grounds on which the application is made.

Section 26 – Closure orders

61. Subsections (1) to (3) set out the scope of a closure order including a limitation that a closure order may be made only in respect of all or any part of the premises that are the subject of the a closure notice; and a provision allowing the sheriff to rule on matters of access at the premises specified in the order. The effect of a closure order is that the premises specified in the order are closed to all persons for such period not exceeding 3 months as is specified in the order.
Section 27 – Application: determination

62. This section sets out the process the sheriff must go through before making a closure order in respect of premises.

63. Subsection (2) sets out the conditions that must be met before the sheriff makes an order. The sheriff must be satisfied that a person has engaged in antisocial behaviour on the premises and that the use of the premises is associated with the occurrence of significant and persistent disorder or significant, persistent and serious nuisance to members of the public; but also that the making of an order is necessary to prevent future significant and persistent disorder or significant, persistent and serious nuisance.

64. Subsections (3) to (5) set out that the sheriff shall determine the application within 2 court days following the day on which the application is made; makes provision for the sheriff to postpone determination of the application, for a period of not more than 14 days following the day on which the application is made, to enable a person to show why a closure order should not be made; and sets out who is entitled to attempt to show the sheriff why a closure order should not be made. Those persons are the occupier of the premises specified in the closure notice; any person who has control of or responsibility for those premises; and any other person with an interest in those premises.

65. Subsection (6) provides that where the sheriff postpones determination of an application the sheriff may order that the closure notice continues in effect until the determination of the application.

Section 28 – Enforcement

66. Subsections (1) to (3) provide that, after a closure order is made, a constable or any other person authorised by the chief constable may enter the property and secure it against entry by any other person or to carry out essential maintenance or repairs. Proof of identity and authorisation and the use of reasonable force are also provided for.

Section 29 – Extension

67. Subsections (1) to (3) set out that the sheriff may make an order extending a closure order for a further period not exceeding three months; the maximum period for an order to be in force (it cannot exceed 6 months in total); and the conditions that must be met before an application for an extension is allowed by the sheriff.

Section 30 – Revocation

68. Subsection (1) provides for revocation of the order where the court is satisfied that it is no longer necessary to prevent the occurrence of significant and persistent disorder or significant, persistent and serious nuisance. Subsection (2) sets out who can apply to the sheriff to have the order revoked.
Section 31 – Access to other premises

69. Subsections (1) to (4) provide for the court to make an order allowing access to the building in which the closed premises are located. The subsections set out who can apply for such access; when such an application can be made; and the process for dealing with such applications.

Section 32 – Reimbursement of expenditure

70. Subsections (1) to (4) make provision for the court, upon application from a police authority or a local authority, to make an order for the reimbursement of relevant expenditure incurred in clearing, securing or maintaining the premises from the owner of the premises. Subsection (2) sets out when such an application must be made and subsection (3) the persons on whom the application shall be served.

Section 33 – Appeals

71. Subsections (1) to (6) provide for the making of appeals in respect of orders under this Part. Subsection (1) sets out who can appeal against closure orders and extensions of closure orders and subsection (2) sets out who can appeal a decision to refuse to make a closure order. Subsections (3) to (5) clarify the persons who may appeal a decision to make or refuse an order.

Section 34 – Offences

72. Subsections (1) to (4) set out that if without reasonable excuse a person remains on or enters premises in contravention of a closure order or notice or obstructs an authorised person who has entered the premises to secure it or carry out essential repairs, they will be guilty of an offence, which could result in a fine, or imprisonment or both. While subsection (2) – setting out that it is an offence to obstruct an authorised person – applies only to an authorised person, section 41 of the Police (Scotland) Act 1967 protects constables in a similar way.

Section 35 – Procedural rules

73. This section sets out that proceedings under this part are civil proceedings for the purposes of section 32 of the Sheriff Courts (Scotland) Act 1971.

Section 36 – Interpretation of Part 4

74. Section 36 provides interpretation of Part 4.

PART 5 – NOISE NUISANCE

Section 37 – Application of noise control provisions to local authority areas

75. Section 37 enables a local authority to adopt the noise control provisions in Part 5 of the Bill.
76. Subsection (1) applies the noise control provisions set out in sections 39 to 42 of the Bill to the local authority area if the local authority resolves that the provisions should apply to its area.

77. Subsection (2)(a) provides that if a local authority resolves to apply the noise control provisions to its area, there must be a period of 3 months before the provisions take effect (the “commencement date”).

78. Subsection (2)(b) requires a local authority to specify the periods of the week on which the noise control provisions will apply in the local authority area. This is known as the “noise control period”.

79. Subsection (3)(a) gives a local authority discretion to specify a noise control period for the whole week if they decide to adopt 24 hours per day, 7 days a week as the noise control period.

80. Subsection (5) requires advance notification of the resolution, at least 2 months before the commencement date, to Scottish Ministers and by way of a notice in a local newspaper. Subsection (6) specifies what must be contained in the notice.

Section 38 – Revocation or variation of resolution under section 37

81. This section allows a local authority to revoke or vary any resolution made under section 37.

Section 39 – Investigation of excessive noise from a dwelling

82. Section 39 sets out the duties of a local authority and its officers in relation to the investigation of noise from a dwelling.

83. Subsection (1) places a discretion on a local authority to investigate the emission of excessive noise from a dwelling, without a specific complaint being received.

84. Subsection (2) requires a local authority to ensure that a complaint of excessive noise during a noise control period is investigated by an officer of the local authority.

85. Subsection (3) enables a complaint to be made by any means.

86. Subsection (4) enables a local authority officer, having undertaken an investigation, to serve a notice under section 40, if the local authority officer is satisfied that noise is being emitted from the offending dwelling during a noise control period, and the noise, if measured from a relevant place, would or might exceed the permitted level.

87. Subsection (5) provides that it is for the local authority officer, when making the assessment under subsection (4), to decide whether any noise, if measured from a relevant place, would or might exceed the permitted level.
88. Subsection (6) makes provision for a situation where one local authority receives a complaint and the offending dwelling is situated in another local authority area. It enables the local authority which receives the complaint to apply the noise control provisions as if the offending dwelling were situated in its area.

Section 40 – Warning notices

89. Section 40 makes provision for the issue of a warning notice.

90. Subsection (1) requires a notice issued under this section (referred to as a “warning notice”) to state that:
    - the local authority officer considers that noise is being emitted from the offending dwelling during a noise control period;
    - the local authority officer considers that the noise exceeds, or may exceed the permitted level, as measured from a relevant place; and
    - the person responsible may be guilty of an offence.

91. Subsection (2) provides that the period specified in the warning notice must begin not earlier than 10 minutes after the time when the notice is served, and must end at the relevant time. Subsection (3) defines this as either the end of the noise control period as prescribed by the local authority or the point where the permitted noise level ceases to be applicable.

92. Subsection (5) requires a warning notice to be served at the offending dwelling, if it is not reasonably practicable to locate the “responsible person”, as defined in subsection (7).

93. Subsection (6) requires the notice to state the time at which it is served.

Section 41 – Offence where noise exceeds permitted level after service of notice

94. Subsection (1) provides that an offence is committed, if after service of a warning notice, noise still exceeds the permitted level.

95. Subsection (2) provides that a person guilty of an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale (currently £1,000).

96. Subsection (3) provides a defence for a person charged with an offence to show that there was a reasonable excuse for the act, default or sufferance in question.

97. Subsection (4) makes provision for it to be lawful to convict a person for an offence under this section on the evidence of one witness and evidence of the measurement of noise from any device is not admissible unless it is from an approved device and any conditions to which that approval was subject have been satisfied.
Sections 42 – Fixed penalty notices

98. Section 42 makes provision for the content of and procedure relating to the issue of fixed penalty notices (“FPNs”).

99. Subsection (1) provides that where a “relevant officer” has reason to believe that a person is committing or has just committed an offence, the relevant officer may serve on that person a FPN.

100. Subsection (2) defines a “relevant officer” as either an officer of a local authority (e.g. an environmental health officer or community warden) or a police constable.

101. Subsection (3) provides that only one FPN may be issued to a person in respect of noise emitted from a dwelling during the period specified in the warning notice.

102. Subsections (4) and (5) allow a FPN to be given to a person by delivering the FPN to that person. However if it is not reasonably practicable to deliver the FPN to the person, the FPN may be addressed to the person, and left at the offending dwelling.

103. Subsections (6) and (7) make provision for the content of FPNs.

104. Subsection (10) specifies the amount of the fixed penalty at £100. The power to vary this amount by order is contained in section 46(4).

105. Subsection (11) requires the fixed penalty to be paid to the local authority which investigated the noise and issued the warning notice.

Section 43 – Permitted level of noise

106. Subsection (1) gives Scottish Ministers the power, by directions, to determine the maximum level of noise which may be emitted from a dwelling (“the permitted level”).

107. Subsection (2) provides that the permitted level is that level applicable to noise measured from within any relevant place. The level of noise is to be measured by a device, approved in terms of section 44, used in accordance with any conditions subject to which the approval was given.

108. Subsection (3) enables different permitted levels to be determined for different circumstances and for different periods of the day, week, year, and areas within a local authority area.

Section 44 – Approval of measuring devices

109. Section 44 provides the procedures and conditions for Scottish Ministers to approve sound measuring devices.
Section 45 – Power to provide funds to local authorities

110. Section 45 makes provision for Scottish Ministers to fund local authorities who wish to adopt the noise nuisance provisions.

Section 46 – Fixed penalty notices: supplementary

111. Section 46 contains supplementary provisions concerning FPNs.

112. Subsection (1) enables Scottish Ministers by order to specify the form in which a FPN must be issued.

113. Subsection (2) provides that proceedings for the offence cannot be instituted before the end of a period of 28 days following the date of service of the notice, and the person cannot be convicted of the offence if the person pays the fixed penalty before the end of that period. Furthermore it provides that a person may be convicted of a further offence under section 41 for noise emitted from the dwelling after the FPN is served but before the end of the period specified in the warning notice.

114. Subsection (3) would apply in the event of proceedings for an offence under section 41. It enables evidence of the payment or non-payment of a fixed penalty before the end of any period to be produced.

115. The effect of subsection (5) is to enable a local authority to retain the proceeds of FPNs payable to it (in the same way as for district court fines).

Section 47 – Powers of entry and seizure of equipment used to make noise unlawfully

116. Section 47 provides a local authority officer with the power on obtaining the necessary warrant to enter premises and seize and remove any equipment used in the emission of noise above permitted levels.

117. Subsection (2) confers a general power on a local authority officer to seize and remove equipment.

118. Subsections (4) and (5) enable a local authority officer to obtain a warrant to enter premises, and subsection (6) allows the officer to be accompanied by any person or equipment as necessary.

119. Subsection (7) creates an offence of wilful obstruction of any person exercising powers under this section, and subsection (8) specifies the penalty in relation to that offence.

Schedule 1 – Powers in relation to equipment seized under section 47

120. Schedule 1 makes further provision in relation to the seizure of equipment. Paragraph 2 allows for the retention of equipment in certain circumstances. Paragraph 3 allows for the
forfeiture of equipment where a person has been convicted of a noise offence. Paragraph 4 enables a person to seek delivery of equipment, including a person who owns that equipment but is not responsible for the noise offence. Paragraph 5 confers on a court the general power to return equipment and paragraph 6 in circumstances where no proceedings are taken.

Section 48 – Interpretation of Part 5

121. Section 48 provides interpretation for Part 5.

PART 6 – THE ENVIRONMENT

Section 49 – Offences under section 33 of the Environmental Protection Act 1990: fixed penalty notices

122. Section 33 of the Environmental Protection Act 1990 (“the 1990 Act”) is the statutory provision criminalising fly-tipping, and sets out penalties for that offence.

123. The 1990 Act envisages only pursuit through the prosecution system as a penalty for fly-tipping. Section 49 of the Bill, which inserts a new section 33A into the 1990 Act, makes provision for the payment of a fixed penalty fine as an alternative to prosecution for fly-tipping offences.

124. Under subsection (1) of the new section 33A of the 1990 Act, as read with subsection (11), an authorised officer of a local authority, a police constable or an officer of SEPA (as the waste regulation authority), on observing a fly-tipping offence being committed, has the power to give the offender a notice inviting the offender to pay a fixed penalty.

125. Subsections (2) to (7) of section 33A set out the procedure for issuing a fixed penalty notice. It is administered by the local authority in whose area the offence occurred. In terms of subsection (2), a duplicate of the notice is given to the local authority to process. If payment is made within 14 days then, in terms of subsection (3), no further proceedings will be instituted in relation to that offence. Subsection (4) makes provision for what the fixed penalty notice must contain and, as read with subsection (5), for the payment of the fixed penalty to which the notice relates. Subsection (6) permits Scottish Ministers to prescribe by order the form of fixed penalty notices. Under subsection (10), the local authority keeps the proceeds of fixed penalties, as occurs at present in the case of fines imposed by the district courts.

126. If the fixed penalty fine is not paid, the alleged offender will be reported to the Procurator Fiscal for consideration of prosecution. Subsection (9) simplifies evidential requirements for demonstrating that the offender was given the opportunity to pay a fixed penalty notice but did not pay the fixed penalty within the time required.

127. In terms of subsection (7) of section 33A, the level of fixed penalty fine will initially be £50. However, Scottish Ministers have the power, under subsection (8), to vary this amount by order.
128. The definition of “authorised officer” in subsection (11) of section 33A, as read with subsection (1), seeks to ensure that is the authorised officer of the local authority in the area where the offence is committed who has the power to issue the fixed penalty notice. The “proper officer” in terms of the Local Government (Scotland) Act 1973 is the individual who has financial oversight of the relevant local authority’s affairs.

Section 50 – Litter: power of constables to issue fixed penalty notices

129. This section amends section 88 of the 1990 Act to give police constables, as well as authorised officers of the local authority (as at present), the power to issue fixed penalty notices in respect of littering offences (under section 87 of that Act). The subsequent administration will remain exactly as it is at present.

Section 51 – Directions in respect of duty under section 89 of the Environmental Protection Act 1990

130. Under section 89(1) and (2) of the Environmental Protection Act 1990 a number of bodies have duties in respect of litter clearance. Bodies or individuals responsible for “relevant land” must clear it of litter, so far as is practicable. “Relevant land” includes public open spaces, roads, railways, the grounds of educational institutions, areas of Crown land, and other areas which local authorities designate as part of litter control areas. In this explanatory note such bodies are referred to as “duty bodies”. In discharging their duties, duty bodies must have regard to a code of practice prepared by Ministers under section 89(7).

131. Subsection (2) of section 51 of the Bill, which inserts new subsections (6A) to (6C) into section 89 of the 1990 Act, gives Scottish Ministers the power to supplement the existing code of practice with specific directions to duty bodies for the purpose of securing compliance with those duties. The new subsection (6B) makes it compulsory for those bodies to comply with any such directions. The new subsection (6C) permits the directions to address particular litter problems, or particular areas, in detail, thus enabling them to give more focussed guidance in the performance of the litter clearance duty than the code of practice is able to.

132. Under section 91 of the 1990 Act, any person aggrieved by the defacement by litter or refuse of relevant land may, having given notice to the relevant duty body, apply to the sheriff court for a litter abatement order instructing that body to carry out its duty by clearing the litter or refuse away. Moreover, under section 92 of that Act, a local authority (as the litter authority) may issue a litter abatement notice to any other duty body, where the local authority feels that duty is not being adequately performed, requiring it to do so. Non-compliance with a section 91 litter abatement order or a section 92 litter abatement notice is an offence. Subsections (3) and (4) of section 52 of the Bill, through amendment of sections 91(11) and 92(8), enable any directions issued under section 89(6A) to be admissible in evidence in these proceedings.

Section 52 and schedule 2 – Penalties for certain environmental offences

133. Section 52 of the Bill introduces schedule 2, which contains amendments relating to penalties for certain environmental offences. They relate to:
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- offences under the Sewerage (Scotland) Act 1968, involving harm to, or impairment of, the working of sewerage or sewage treatment;
- offences causing or allowing the water environment to become polluted (these offences are currently set out in the Control of Pollution Act 1974, which will be superseded in due course by a new regulatory framework under the Water Environment and Water Services (Scotland) Act 2003);
- offences involving harm to the general environment under the Environmental Protection Act 1990 or giving rise to a statutory nuisance;
- failing to observe regulations for industrial pollution control under the Pollution Prevention and Control Act 1999.

134. The maximum fine currently applicable to the above, on summary conviction, is £20,000. The effect of the amendments to those provisions in schedule 2 to the Bill is to double the fine on summary conviction for all these offences to £40,000.

PART 7 – HOUSING: ANTISOCIAL BEHAVIOUR NOTICES

Section 53 – Antisocial behaviour notices

135. Section 53 permits a local authority to serve an antisocial behaviour notice on the landlord of a relevant house if any person who occupies the house under a tenancy or occupancy agreement or visits the house is engaging in antisocial behaviour at or in the locality of the house. The relevant house must be in the local authority’s area and in terms of the interpretation section (section 64) is a house owned by a private landlord.

136. Under subsection (3) of the section the antisocial behaviour notice must describe the antisocial behaviour which has led to the serving of the notice and require the landlord to take specified action within a specified period. The subsection requires the notice to state the consequences of a failure to take the action, and to inform the landlord of the right to request a review.

137. Subsection (4) requires the local authority to send a copy of the notice to any agent of the landlord of whom it is aware, and subsection (5) provides the local authority to publish the notice where it cannot identify the landlord and for service of the notice at the house and at the landlord’s last known address if the current address is not known.

Section 54 – Review of antisocial behaviour notice

138. Section 54 gives the landlord a right for the notice to be reviewed by the local authority provided the landlord applies for a review within 21 days of the service of the notice or such longer period as the local authority may allow.

Section 55 – Internal procedure on review
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139. Section 55 provides that the review must be conducted by a person who was not involved in the decision to issue the notice and who is senior to the person who made that decision. The reviewer may confirm, vary or revoke the notice and may suspend the notice pending completion of the review. The local authority must notify the landlord of the outcome of the review and the reasons for that outcome.

Section 56 – Failure to comply with notice: order as to rental income

140. Section 56 provides that the sheriff may make an order that no rent or other consideration shall be payable or exigible for occupation of the house if the local authority applies for such an order and the sheriff is satisfied both that the landlord has failed to comply with the antisocial behaviour notice and that it would not have been unreasonable for the landlord to have done so. The sheriff can also make incidental orders.

Section 57 – Orders under section 56: revocation and suspension

141. Section 57 allows the sheriff to revoke or suspend an order as to rental income made under section 56 on application by the local authority or the landlord, if the sheriff is satisfied either that the action specified in the antisocial behaviour notice has been taken or that it is unreasonable for the order to continue.

Section 58 – Failure to comply with notice: management control order

142. Section 58 provides that the sheriff may make a management control order if the local authority applies for such an order and the sheriff is satisfied that the landlord has failed to comply with the antisocial behaviour notice, that it would not have been unreasonable for the landlord to have done so and that such an order is necessary to enable the antisocial behaviour described in the notice to be dealt with. A management control order transfers to the local authority for a period not exceeding 12 months the rights and obligations of the landlord under the tenancy or occupancy arrangements existing at the time of the order, and makes such other incidental provision as the sheriff considers necessary. The section also gives effect to schedule 3.

Schedule 3 – Management control orders

143. Schedule 3 makes detailed provision for management control orders in connection with the effect of the order on occupants, the keeping of accounts by the local authority, the making of regulations to govern expenditure recoverable by the local authority from the landlord, the recovery of rent arrears from the tenant, the delegation by the local authority of management functions to third parties and the requirement for the landlord to obtain the local authority’s approval to re-let part of shared accommodation while it is subject to an order.

Section 59 – Management control order: notification

144. Section 59 requires the local authority to inform the landlord and the tenant, or the occupant under an occupancy arrangement, of the making of the order and to send a copy to any known agent.
Section 60 – Management control order: revocation

145. Section 60 allows the sheriff to revoke a management control order on application by the local authority or the landlord in like manner as for the revocation of an order as to rental income under section 57.

Section 61 – Management control order: notification of revocation

146. Section 61 requires that when a management control order has been revoked, the party which applied for the revocation (which could be the local authority or the landlord) notifies the other party and the occupiers. This avoids an interruption in the management responsibility for the property through lack of awareness.

Section 62 – Failure to comply with notice: action by authority at landlord’s expense

147. Section 62 provides that a landlord who fails to comply with an antisocial behaviour notice shall be liable for the local authority’s expenses, including administrative costs, in taking such steps as the local authority considers necessary to deal with the behaviour described in the antisocial behaviour notice, where those steps are a consequence of the landlord’s failure to comply.

Section 63 – Failure to comply with notice: offence

148. Section 63 provides that a landlord who has failed unreasonably to comply with an antisocial behaviour notice shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale (currently £5,000).

Section 64 – Interpretation of Part 7

149. Section 64 defines landlord, occupancy arrangement and relevant house so that the provisions in this Part relate to houses which are the subject of formal tenancies and the full range of formal and informal occupancy arrangements including shared accommodation. However, it excludes properties owned by local authorities, registered social landlords, Scottish Homes, care accommodation regulated by the Scottish Care Commission and other more minor categories of property not regarded as a house for the purposes of licensing houses in multiple occupation. It also defines antisocial behaviour as, for the purposes of this Part, affecting persons in or in the locality of the relevant house.

PART 8 – HOUSING: REGISTRATION AREAS

Section 65 – Designation of registration areas

150. Section 65 provides that, to designate an area, the local authority must consider that persons occupying relevant houses in the area are persistently engaging in antisocial behaviour and that the use of the registration powers is likely to prevent or reduce that behaviour. Relevant houses are defined in section 75 as explained in paragraph 162. The behaviour must affect people in the locality of the relevant house. The local authority must consult affected landlords
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and any agents of whom it is aware and such other persons as it thinks fit, and must consider any resulting representations before making a designation.

**Section 66 – Notice of designation**

151. Section 66 provides for a designation notice to be published and sent to the people consulted. The section prescribes the contents of the notice and provides for Scottish Ministers to make further provision as to the procedure and the form and content of the notice by regulations.

**Section 67 – Duration, review and revocation of designation**

152. Section 67 provides that the designation shall come into force 3 months after being made. The local authority shall specify how long it will have effect, up to a maximum of 5 years, and is also required to keep under review the need for registration to continue. When the designation is in the local authority’s view no longer needed it must be revoked.

**Section 68 – Notice of revocation of designation**

153. Section 68 provides that a revocation notice must be published and sent on a similar basis as applies to the notice of designation under section 66, allowing for the possibility that there may at this stage be others whom it would be appropriate to notify.

**Section 69 – Registration of relevant houses within designated area**

154. Section 69 allows a landlord to apply for registration within 3 months of the designation (or longer if the local authority so decides in individual cases).

155. The section provides for the local authority to determine and charge a registration fee but allows Ministers to make regulations in relation to fees. No fee is payable for registering a house in multiple occupation which is already licensed. The section also specifies the details that must be included in the application and requires changes to be notified to the local authority by the person who applied for registration.

**Section 70 – Registration and its consequences**

156. Section 70 requires a local authority to register a property in response to an application unless it has reasonable cause to believe that the landlord will fail to comply with registration conditions or specific requirements. Properties which are the subject of a current registration under a previous designation will be treated as registered under the new designation. The section requires the local authority to maintain a register, deleting properties which are no longer relevant, and provides for the register, including the details required in the application, to be open for public inspection.

157. The section imposes a duty on landlords of registered property to comply with registration conditions determined by the local authority in connection with the management of antisocial behaviour in the designated area, and with any specific directions made by the local
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authority in relation to the property. Such specific directions require the landlord to take specific steps that the local authority considers to be necessary or expedient for preventing or reducing antisocial behaviour.

Section 71 – Offences

158. Section 71 makes it a criminal offence to knowingly be a landlord of a property which should be registered and is not, unless an application has been made and not yet processed. It will be a defence that the landlord is taking all reasonable steps to withdraw the property from private letting. The section also makes it a criminal offence for the landlord to fail to comply with a registration condition or a specific direction. The penalty for these offences is a fine not exceeding level 5 on the standard scale (currently £5,000).

Section 72 – Order that no rent payable

159. Section 72 provides that the sheriff may make an order that no rent or other consideration shall be payable or exigible for occupation of the house if the local authority applies for such an order and the sheriff is satisfied that in all the circumstances the order would be appropriate, and either the house is not registered when it should be, or the landlord has failed to comply with a registration condition or a specific direction. The sheriff can also make incidental orders.

Section 73 – Appeals

160. Section 73 provides for appeal to the sheriff against a decision to refuse registration or against the terms of a specific direction. The section also allows the sheriff to suspend the effect of sanctions under sections 71 or 72 while the appeal is in progress.

Section 74 – Amendment of Housing (Scotland) Act 1988

161. Section 74 is relevant to both Parts 7 and 8 of the Bill. Under the Housing (Scotland) Act 1988, antisocial behaviour is a ground for seeking possession under an assured or short assured tenancy, but only on condition that the lease specifically provides for it to be such a ground. The section removes that condition.

Section 75 – Interpretation of Part 8

162. Section 75 defines landlord, occupancy arrangement and relevant property so that the provisions in this Part relate to properties which are the subject of formal tenancies and the full range of formal and informal occupancy arrangements including shared accommodation. However, it excludes properties owned by local authorities, registered social landlords, Scottish Homes, care accommodation regulated by the Scottish Care Commission and other more minor categories of property not regarded as a house for the purposes of licensing houses in multiple occupation. It also excludes properties which are subject to a management control order in terms of section 58 and are therefore being managed by the local authority. The section defines antisocial behaviour as, for the purposes of this Part, affecting persons in or in the locality of the relevant property.
PART 9 – PARENTING ORDERS

Section 76 – Parenting orders

163. Section 76 provides for parenting orders to be made by the sheriff. An order will direct a parent as to how he or she should behave in respect of their child. A parenting order may last for up to 12 months and the parent subject to the order must comply with the requirements of it for that whole period. Further, an order will include a requirement to attend counselling or guidance as directed by a local authority supervising officer for a maximum period of 3 months during the period of the order unless the parent has previously been the subject of a parenting order. In that situation the guidance/counselling requirement is not mandatory.

164. Subsection (4) provides that an order, or directions made under the order, should not, as far as is practicable, conflict with the parent’s religious beliefs or with their work or educational commitments.

165. The reference in subsection (6) to an “education establishment” as defined in the Education (Scotland) Act 1980 means a school, college or university.

Section 77 – Applications

166. Section 77 provides that a parenting order may be made by a court on the application of the Principal Reporter to the children’s panel or the local authority for the area in which the child of the parent normally resides. Subsection (1) provides that a court may not make a parenting order until it has been notified by Scottish Ministers that the local authority has put in place the necessary arrangements for the operation of parenting orders in that area.

167. Subsection (2) provides that a local authority may apply for a parenting order on one of two grounds. The first ground is that the child has engaged in antisocial behaviour and that the order is desirable in the interests of preventing further such antisocial behaviour by the child. The second is that the child has engaged in criminal conduct and that the order is desirable in the interests of preventing further such criminal conduct by the child.

168. Subsection (3) provides that the Principal Reporter may apply for a parenting order on one of three grounds: the two grounds set out above on which a local authority may apply plus another ground that the order is desirable in the interests of improving the welfare of the child.

169. Subsection (8) provides that an application for a parenting order shall be made by summary application to the sheriff court for the area in which the parent normally resides.

170. Subsection (9) requires the Principal Reporter and the local authority to consult the other before making an application for a parenting order.

Section 78 – Procedural requirements

171. Section 78 regulates the procedure the court must follow in determining an application for a parenting order. It requires the court to give the parent and child – where that is appropriate
given his or her age and maturity – an opportunity to express their views about the application. Where the parent is present it provides that the court must explain in ordinary language the effect of the order as well as the consequences of breaching the order and the opportunities in relation to review and appeal of the order. The court must also obtain information about the family and the likely effect of the order on it.

Section 79 – Considerations relating to making of order

172. Section 79 provides for the considerations the court must take into account when deciding whether to make a parenting order and what the content of the order should be. Subsection (2) provides that the court must have particular regard to any views expressed by the child and the information it gained about the circumstances of the family. The court must also consider the behaviour of the parent who is proposed to be subject to the order. This provision will allow the court to take into account whether a parent has been offered and engaged with voluntary support in relation to their parenting skills.

173. Subsection (3) provides that the welfare of the child concerned should be the court’s paramount consideration in determining whether to make an order and what the content of an order should be.

Section 80 – Notification of making of order

174. Section 80 provides for the arrangements for notification of the making of an order. Where the parent is in court when the order is made the clerk of court will give him or her a copy of the order there and then. In any other situation the clerk must send a copy of the order to the parent by registered post or recorded delivery.

175. Subsection (2) provides that an acknowledgement or certificate of posting issued by the postal operator shall be sufficient proof of the proper delivery of the order.

176. Subsection (3) provides that ‘postal operator’ in this context means a person who provides the service of conveying postal packets from one place to another by post or any of the incidental services of receiving, collecting, sorting and delivering such packets.

Section 81 – Review of order

177. Section 81 sets out the arrangements for review of a parenting order. Subsection (1) provides that on application for a review the court may revoke the order or vary it by deleting or adding any requirement it contains. This power to vary also includes the power to amend the time during which a parent must undertake counselling or guidance, subject to the maximum period of 3 months set out in section 76.

178. Subsection (2) provides that the parent, the child or the local authority for the area in which the parent resides (which will be the authority supervising the order) may apply for a review.
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179. Subsection (4) provides for the situation where a parent moves to another part of Scotland outwith the jurisdiction of the sheriff court which made the parenting order. In that situation, and if it is appropriate to do so, the court may specify another sheriff court as the court which will deal with applications for review or revocation of the order.

Section 82 – Appeals

180. Section 82 sets out the arrangements for appeals in relation to certain decisions made in relation to parenting orders. It provides that an interlocutor varying or refusing to vary a parenting order or making a parenting order in the course of proceedings for an antisocial behaviour order under section 12 is an appealable interlocutor. The effect of this is that where the sheriff makes decisions which vary or refuse to vary a parenting order or make an order under section 12 those decisions of the sheriff may be appealed to the sheriff principal. In general the terms of section 27 and 28 of the Sheriff Courts (Scotland) Act 1907 will apply to decisions made by the sheriff in relation to parenting orders. These provisions generally set out the circumstances in which an appeal against the decision of the sheriff can competently be appealed to the sheriff principal or the Court of Session.

Section 83 – Failure to comply with order

181. Section 83 provides that failure without reasonable excuse to comply with a parenting order is an offence and that the penalty for that offence shall be a fine not exceeding level 3 on the standard scale (currently £1,000). This section should be read in conjunction with the amendments to the Criminal Procedure (Scotland) Act 1995 in schedule 4 which provide that if a fine imposed under this section is not paid a court shall impose a supervised attendance order. Only where that supervised attendance order is breached will the court have its normal powers of sentence – including imprisonment – available to it.

182. Subsection (3) requires the court to take into account the welfare of any child of the parent subject to the order in determining what sentence to impose for failure to comply with a parenting order.

Section 84 – Power of court to direct reporter to consider application for parenting order

183. Section 84 provides that in any proceedings, except applications for antisocial behaviour orders or for a parenting order itself, a court may require the Principal Reporter to consider whether to apply for a parenting order under this Part. The court would do so where it appears to the court from those proceedings that a parenting order might be appropriate.

Section 85 – Guidance

184. Section 85 provides that any person or body, other than a court, discharging any functions in relation to parenting orders shall have regard to guidance issued by Scottish Ministers.
Section 86 – Amendment of Children (Scotland) Act 1995

185. Section 86 provides for a new section to be added to the Children (Scotland) Act 1995. The effect of that new section is to allow a children’s hearing, when considering the case of a child referred to it, to require the Principal Reporter to make an application for a parenting order in relation to a parent(s) of the child concerned.

186. Subsection (3) of the new section provides that the children’s hearing must, when making such a requirement of the Reporter, specify the parent(s) in respect of whom the application should be made and which of the three grounds for parenting orders the application should be based upon.

Section 87 – Interpretation of Part 9

187. Section 87 provides for the meaning to be given to various terms used in the rest of Part 9. It provides that a child in relation to Part 9 is a person under the age of 16. It also provides that a parent for the purposes of Part 9 – i.e. those in respect of whom a parenting order is competent – is a natural person who has parental responsibilities in relation to a child in terms of Part I of the Children (Scotland) Act 1995. That includes the child’s genetic mother, the genetic father where he was married to the mother at the time of conception or where he has subsequently acquired parental responsibilities and any other person who has acquired parental responsibility for the child in terms the Children (Scotland) Act 1995. This definition excludes a local authority.

PART 10 – FURTHER CRIMINAL MEASURES

Section 88 – Antisocial behaviour orders

188. Section 88 provides that a court may impose an antisocial behaviour order instead of, or in addition to any sentence where the person is convicted of an offence involving antisocial behaviour. The court must be satisfied that the making of an antisocial behaviour order is necessary for the purpose of protecting other persons from further antisocial behaviour by the offender and that the offender was aged 12 years or more at the time of the offence. The standard for imposing an antisocial behaviour order as part of the sentence is on the balance of probabilities.

189. The definition of antisocial behaviour inserted at section 234AA(3) of the Criminal Procedure (Scotland) Act 1995 is the same as the definition used in the general interpretation section of the Bill (section 110(1)).

Section 89 – Community reparation orders

190. Section 89 inserts a new section 245K into the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”), to make available to courts a new community sentence to be known as a community reparation order. The new order will be confined to summary proceedings cases, where the offender is aged between 12 and 21 and where the offence contains an element of defined antisocial behaviour. An order will require the offender to carry out such tasks as the supervising officer, who will be appointed by a local authority, may direct for a specified number
of hours (between 10 and 100 hours). Courts will require to explain in ordinary language the purpose and effect of the order, including the consequences of non-compliance. The supervising officer will require to ensure that the offender’s religious beliefs and employment or educational needs are not prejudiced.

191. Insertion by section 89 of a new section 245L into the 1995 Act sets out the arrangements for notification to the offender and the local authority of details of the order. New section 245M makes provision for continuation of the order where it has not been completed within the normal 12 months period. New section 245N gives courts powers, where it appears that non-compliance has occurred, to cite the offender to appear in court or to order a warrant for his or her arrest. New section 245P sets out the power of courts in relation to extending, varying or revoking the order. The court will have the ability to extend the normal period of 12 months for completion of the order, to vary the number of hours specified, to revoke the order or to sentence the offender in any manner which would have been available to the court at the time of imposing the order.

Section 90 – Restriction of liberty orders

192. Section 90 and schedule 4, paragraphs 3(5) to 3(7) amend provisions relating to restriction of liberty orders in the Criminal Procedure (Scotland) Act 1995.

193. Section 90 amends section 245A(1) of the Criminal Procedure (Scotland) Act 1995 by removing the minimum age limit under which the court cannot currently impose a restriction of liberty order. The amendment has the effect of providing the court with the power to impose a restriction of liberty order on offenders aged under 16 years.

194. Restriction of liberty orders were introduced in Scotland by section 5 of the Crime and Punishment (Scotland) Act 1997. An order may require an offender to be restricted to a specified place for up to 12 hours per day or restricted from a specified place for up to 24 hours per day, or both, for a maximum period of 12 months. Compliance with a restriction of liberty order is monitored electronically. Section 50(3) of the Criminal Justice (Scotland) Act 2003 made provision for a restriction of liberty order to be imposed as a direct alternative to custody.

195. Paragraph 3(5) of schedule 4 makes consequential amendments to section 245D of the 1995 Act dealing with combination of a restriction of liberty order with other orders. Section 245D subsections (1)(b) and (3) are amended to ensure that a restriction of liberty order cannot be combined with a drug treatment and testing order in respect of offenders aged under 16 years. For those aged under 16 years old the court may only combine a restriction of liberty order and a probation order.

196. Paragraph 3(6) of schedule 4 amends section 245E(1)(b) of the 1995 Act to insert the word “apply” after the word “court” where it first occurs. This word was omitted by a previous amendment to this section effected by section 43(3) of the Criminal Justice (Scotland) Act 2003.

197. Paragraph 3(7) of schedule 4 amends section 245G (2) of the 1995 Act to insert the word “of” after the word “disposing”. This word was omitted by a previous amendment to this section effected by paragraph 4 (2) of Schedule 6 to the Crime and Disorder Act 1998.
Section 91 – Offence of selling spray paint to child

198. Section 91 introduces a new criminal offence of selling a spray paint device to a person under the age of 16. The maximum penalty for a person guilty of an offence under section 90(1) shall be a fine not exceeding level 3 on the standard scale, which is currently £1,000. The offence will be dealt with on a summary basis. Subsection (4) provides that it shall be a defence for a person charged with the offence to show they took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

Section 92 – Requirement to display warning statement

199. Section 92(1) introduces a requirement on retailers to display a notice stating that “It is illegal to sell a spray paint device to anyone under the age of 16.” Subsection (4) introduces a new criminal offence for a failure to fulfil the requirement at subsection (1). The maximum penalty for the offence under subsection (4) is a fine not exceeding level 2 on the standard scale, which is currently £500. The offence will be dealt with on a summary basis.

Section 93 – Offences under sections 91 and 92: enforcement

200. Section 93 places a duty on local authorities to enforce, within its area, the ban on the sale of spray paint to under 16s and the requirement to display warning statement in premises at which spray paint devices are sold by retail. Subsection (2) provides that the local authority is not authorised to institute proceedings for an offence under section 91(1) or 92(4).

Section 94 – Offences under section 91 and 92: powers of entry, inspection and seizure

201. Section 94 confers statutory powers of entry, inspection and seizure on an authorised officer of a local authority for the purpose of enforcing the offences under sections 91(1) and 92(4). Subsection (2) provides that an “authorised officer” in relation to a local authority, means an officer of the authority authorised in writing by it for the purposes of this section.

PART 11 – FIXED PENALTIES

Section 95 – Fixed penalty offences

202. Section 95 sets out those offences, both statutory and at common law, which are fixed penalty offences and may therefore be the subject of a fixed penalty notice. Scottish Ministers are empowered to amend the table of offences by order.

203. Matters of prosecution of criminal offences are in the exclusive jurisdiction of the Lord Advocate in Scotland. The Lord Advocate has the power to direct the police as to the circumstances in which a fixed penalty notice should be used or not used in respect of the offences where fixed penalty notices are applicable.

Section 96 – Fixed penalty notices

204. Section 96 provides that a police constable may issue a fixed penalty notice to a person aged 16 or over whom he or she believes has committed a fixed penalty offence. It further
provides that a fixed penalty notice offers the opportunity to pay a fixed penalty – a set monetary amount – to discharge any liability to be convicted of the offence to which the notice relates.

**Section 97 – Amount of fixed penalty and form of fixed penalty notice**

205. Section 97 sets out that Scottish Ministers may set out the amount of the penalty payable for a fixed penalty offence by order. Subsection (2) provides that the amount must not exceed level 2 on the standard scale (currently £500).

206. Subsection (3) sets out what the fixed penalty notice must contain. This includes the details of the offence, the amount of the fixed penalty, where it should be paid, the fact that the person has a right to dispute his or her guilt by asking to be tried for the offence and the period during which the fixed penalty may be paid or the person should exercise their right to ask to be tried.

**Section 98 – Effect of fixed penalty notice**

207. Section 98 sets out what happens if a fixed penalty notice is issued but not paid within the specified time (i.e. 28 days beginning on the day on which the fixed penalty notice is given). Subsections (2) and (3) provide that the person who has been issued with the fixed penalty notice may request to be tried for the alleged offence by giving a notice (in the manner specified in the fixed penalty notice) within the specified time. In that case, it is a matter for the Procurator Fiscal to determine whether a prosecution is in the public interest.

208. Alternatively, subsections (5) and (6) provide that if the penalty is not paid within the specified time and a request to be tried is not received, then the person issued the fixed penalty notice will be liable to pay a sum 150% of the amount of the fixed penalty and that increased amount will be treated as if it is a fine imposed by the district court.

**Section 99 – General restriction on proceedings**

209. Subsection (1) of section 99 provides that a prosecution for an offence in relation to which a fixed penalty notice has been issued may not be initiated until 28 days have elapsed from the day on which the notice was issued. This is the period during which the person issued with the notice may pay the fixed penalty or exercise his or her right to ask to be tried for the offence.

210. Subsection (2) provides that if the fixed penalty is paid within the 28 day period then no prosecution for that offence is competent.

211. Subsection (3) provides that the restriction on prosecution within the 28 day period does not apply if the person issued the notice exercises their right to request to be tried for the offence.

**Section 100 – Payment of fixed penalty**

212. Section 100 makes provision in relation to payment of fixed penalties. Subsection (1) provides that the fixed penalty should be paid to the clerk of the court set out in the notice.
These documents relate to the Antisocial Behaviour etc. (Scotland) (SP Bill 12) as introduced in the Scottish Parliament on 29 October 2003

213. Subsection (2) provides that payment may be made by posting a letter containing cash – or other form of payment – for the required amount to the proper address. Subsection (7) provides that the proper address is the address described in the fixed penalty notice.

214. Subsection (3) and (4) provide that, where a person claims to have paid the penalty by post in terms of subsection (2) and he or she is able to show evidence that the letter was posted, then the payment will, unless the contrary is proved, be treated as having been made at the time at which the letter would be delivered in the ordinary course of post.

215. Subsection (5) provides that provision for payment by post in terms of subsection (2) does not preclude payment by other means.

Section 101 – Revocation of fixed penalty notices

216. Section 101 makes provision for revocation of a fixed penalty notice in certain circumstances. Subsection (2) provides that these circumstances are that a police officer believes that either the offence to which the notice relates was not in fact committed or that the notice was issued to the wrong person.

217. Subsection (3) provides that where a fixed penalty notice is revoked then no money shall be payable in terms of that notice and any money that has already been paid shall be refunded.

Section 102 – Interpretation of Part 11

218. Section 102 provides for the meaning to be given to “fixed penalty notice” and “fixed penalty offence” where they appear in Part 11.

PART 12 – CHILDREN’S HEARINGS

Section 103 – Supervision requirements: conditions restricting movement

219. Section 103 amends section 70 of the Children (Scotland) Act 1995 to enable children’s hearings to impose, as a condition of a supervision requirement, a “movement restriction condition” which includes monitoring arrangements.

220. Subsection (4) inserts new subsection (5A) and (5B) which enables Scottish Ministers to make regulations to prescribe how monitoring of movement restrictions will operate, including specification of the devices which may be used and who may carry out the monitoring. Subsection (5C) provides how Scottish Ministers may provide the service.

Section 104 – Supervision requirements: duties of local authorities

221. Section 104 clarifies the duties on local authorities to implement decisions of children’s hearings contained in supervision requirements and empowers hearings to require the Reporter to apply for an order from the sheriff court requiring a local authority in breach of its duty to perform that duty. The section also sets out the procedures to be observed.
222. Subsection (1)(a) states that a hearing may impose duties on the local authority and that these duties may include the securing or facilitating of services other than those provided by the local authority.

223. Subsection (1)(b) sets out the procedure to be observed. In new subsection 7B, where the Reporter is required to send the notice to any person appointed under section 41 of the 1995 Act. This may be a safeguarder, a curator ad litem or a legal representative appointed under The Children’s Hearings (Legal Representation) (Scotland) Rules 2002.

224. Section 71 of the Children (Scotland) Act 1995 places a duty on the local authority to give effect to a supervision requirement. Subsection 104(2) clarifies that where a hearing imposes duties on a local authority in the context of a supervision requirement, the local authority must perform these duties.

225. Section 104(3) introduces a new section into the 1995 Act to specify the procedures and circumstances in which the Reporter may apply to the sheriff principal for an order and that the sheriff principal’s decision shall be final.

Section 105 – Failure to provide education for excluded pupils: reference

226. Section 105 gives the Reporter and a children’s hearing power to refer a child who has been excluded from school to Scottish Ministers if it appears that the local authority concerned has failed to comply with its duty under section 14(3) of the Education (Scotland) Act 1980 to provide education to a pupil excluded from school.

227. Subsection (2) deals with children who are referred to the Reporter but not to a hearing. Subsection (3) concerns those children who are referred to a hearing.

PART 13 – MISCELLANEOUS AND GENERAL

Section 106 – Disclosure and sharing of information

228. Section 106 makes provision for the disclosure of information to relevant authorities for the purposes of any provision of the Bill. It further provides that Scottish Ministers may provide guidance to those providing or receiving that information.

Section 107 – Equal opportunities

229. Section 107 provides that any person or body discharging a function in terms of the Bill is required to do so in a manner that promotes equal opportunities and the equal opportunity requirements. Section L2 of Part II of Schedule 5 to the Scotland Act 1998 provides that equal opportunities means the prevention or elimination 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.
Section 108 – Orders and regulations

230. Section 108 provides that powers to make orders or regulations in the Bill shall be exercisable by statutory instrument.

231. Subsection (3) provides that except where otherwise provided the statutory instruments containing such orders or regulations shall be subject to negative procedure in the Scottish Parliament. Subsections (3) and (4) provide that the following orders or regulations shall be the subject of affirmative resolution:

- an order under section 76(3) varying the maximum length of a parenting order and/or the maximum period in a parenting order during which the requirement to attend counselling or guidance can subsist;
- an order under section 95(2) amending, adding, or removing an entry in the table under that section which specifies those offences which are fixed penalty offences; and
- an order under section 106(5) which modifies the meaning of ‘relevant authority’ set out in subsection (2) of that section. ‘Relevant authority’ in this context refers to those authorities whose right to receive information under the Act is improved by virtue of this section.

Section 109 – Directions

232. Section 109 makes provision for the giving of directions by Scottish Ministers under the Bill. It provides that any power to give directions includes a power to vary or revoke the direction and that any direction shall be in writing.

Section 110 – Interpretation: “antisocial behaviour” and other expressions

233. Section 110 provides for the meaning to be given to antisocial behaviour for the purposes of the Bill. A person engages in antisocial behaviour if he or she acts in a manner that causes or is likely to cause alarm or distress or pursues a course of conduct that causes or is likely to cause alarm or distress to another person who does not live in the same household.

234. Subsection (2) provides that conduct includes speech and that a course of conduct must involve conduct on at least two occasions. This subsection also provides for the meanings to be given to ‘local authority’ and ‘registered social landlord’ when used elsewhere in the Bill.

Section 111 – Minor and consequential amendments and repeals

235. Section 111 subsection (1) provides that schedule 4 of the Bill shall have effect. The provisions of schedule 4 have been explained at the relevant place in these notes.

236. Subsection (2) provides that the enactments set out in schedule 5 are repealed.
Section 112 – Short title and commencement

237. Section 112 provides for the short title to the Bill. Subsection (2) provides that the Bill shall come into force as Scottish Ministers may provide by order and that different provisions may be commenced on different dates.

FINANCIAL MEMORANDUM

INTRODUCTION

238. The provisions in the Bill will introduce a range of measures to help prevent and tackle antisocial behaviour. These measures form part of the Executive’s wider antisocial behaviour strategy: to deal with the causes and effects of antisocial behaviour in order to make a real difference in communities and to improve the quality of life for all of Scotland’s people.

239. The Executive has made available significant new resources - £65m over the next 2 years - to help implement the antisocial behaviour strategy. This money will be used to take forward initiatives in the Bill and those not requiring new legislation.

240. The Bill will have a number of types of financial implications for those involved in the implementation of measures to tackle antisocial behaviour. Firstly, there are a small number of statutory requirements such as the duty to prepare antisocial behaviour strategies and the duty to enforce the ban on the sale of spray paint to under 16s. Secondly, there are a number of provisions that increase the range of options available to authorities in considering the most appropriate means of tackling antisocial social behaviour in their area. For example, the extension of antisocial behaviour orders to 12 to 15 year olds and the introduction of parenting order extend powers available, but do not place a statutory obligation on authorities to use those powers. Thirdly, there are costs involved for those who provide and fund support services linked to provisions which may be used by others. This includes the implementation of parenting orders and community reparation orders.

241. Significant resources are already available to local authorities and other agencies to deliver services targeting antisocial behaviour and youth offending. This includes “mainstream” investment in local authority youth justice services and support to the justice system, as well as within the context of specific programmes such as the Quality of Life Initiative, the Better Neighbourhood Services Fund, Community Safety Partnerships and the Youth Crime Prevention Fund. Estimated costs therefore only cover those areas where funding is needed for new activity that flows from the proposals in the Bill, for which no funding is already in place.

242. Antisocial behaviour lessens the positive effects of other investment, such as community regeneration. Over the past 5 years the Executive has invested over £1billion in housing development and regeneration. Whilst difficult to quantify, some of this investment has been undermined or held back by the effects of antisocial behaviour.
243. Antisocial behaviour reduces the quality of life within the community. It can cause families and businesses to move out and houses to become abandoned, contributes to fears about safety and crime, both of property and person, leads to a reduction in range and quality of amenities and places increased demands on the police and local authority services. All of this concludes with a decline in economic activity and prosperity in the area which reinforces the down turn and increases the impact of the antisocial behaviour.

PART 1 – ANTISOCIAL BEHAVIOUR STRATEGIES

Costs on the Scottish Administration

244. The administrative costs for the Executive in preparing guidance on antisocial behaviour strategies and monitoring implementation of the strategies at a national level are expected to be marginal.

Costs on local authorities

245. The duty to prepare antisocial behaviour strategies will involve some additional administrative costs for local authorities and those involved in the preparation of strategies such as the police. Costs will mainly be associated with implementation, rather than the processes of preparing, publishing, reviewing and reporting on strategies. The Executive estimates that around £500,000 may be needed between all local authorities for this work in 2004-05 with ongoing costs of around £300,000 per annum. There are varying levels of preparedness on antisocial behaviour strategies in different areas at present. Costs of implementing the strategies will depend on the content of the strategies prepared locally, but is linked in part to the implementation of other Parts of the Bill.

Costs on other bodies, individuals and businesses

246. There will be a small additional administrative cost for registered social landlords (RSLs), who will be expected to participate in consultation on antisocial behaviour strategies and fulfil requirements to provide information. Participation of RSLs is considered to be part of their responsibilities as good landlords and will benefit their tenants. An effective strategy will save the RSL costs overall as it supports good management practice and helps prevent further antisocial conduct.

PART 2 – ANTISOCIAL BEHAVIOUR ORDERS

247. Antisocial Behaviour Orders (ASBOs) are currently available for those aged 16 and over. Part 2 extends the use of ASBOs to 12 to 15 year olds and introduces a number of changes to improve the effectiveness of ASBOs.

Costs on the Scottish Administration

248. It is difficult to estimate how many ASBOs will be sought in relation to under 16s as the uptake of ASBOs for over 16s has been relatively low to date. The latest provisional figures from the Chartered Institute of Housing’s survey on the use of ASBOs indicates that 226 ASBOs
These documents relate to the Antisocial Behaviour etc. (Scotland) (SP Bill 12) as introduced in the Scottish Parliament on 29 October 2003

have been granted in Scotland up to 31 March 2003 (ASBOs came into effect in April 1999)\(^1\). The Executive is anticipating that use of ASBOs will increase since interim orders came into effect at the end of June and it may be that the amount of attention being given to tackling antisocial behaviour will increase awareness of ASBOs and lead to more requests for them to be applied for. Based on this, the Executive estimates that up to 50 applications for ASBOs for under 16s will be made in 2004-05 given that the necessary provisions are unlikely to be commenced until the autumn. It is estimated that up to 100 applications will be received in 2005-06. While the policy intention of ASBOs is the same for adults and under 16s, there are a wider range of alternative approaches to deal with antisocial behaviour by young people. It is therefore expected that an ASBO application will only be made in relation to an under 16 where there is evidence of persistent or serious antisocial conduct. The overall number is likely to be fairly low and an estimate of 100 per annum is higher than is likely to be required in practice.

249. The Executive has allocated £1.5m over the next two years to meet the costs of additional court business. This includes provisions for all new orders planned in this Bill. Anticipated costs on the Court Service are specified throughout the memorandum.

250. Based on 100 applications for ASBOs for under 16s, the additional costs to the Scottish Courts Service would be £187,000 per annum, including shrieval costs. Costs are likely to be around half this in 2004-05 when up to 50 applications are expected. This is met within the additional resources allocated for new court orders.

251. It is estimated that up to £200,000 may be required from the Legal Aid budget to deal with 100 ASBO cases involving under 16s. Up to around £100,000 may be required in 2004-05. For each type of application the legal aid board would have to be satisfied that the tests for legal aid were met. These costs can be met within the legal aid baseline which is in the region of £150m. The assumption is based on all cases being challenged and legal aid being granted.

252. The role of children’s reporters in the ASBO application process and in dealing with referrals from the court to convene hearings for those being placed on ASBOs will form part of Scottish Children’s Reporter Administration’s (SCRA’s) broader influencing role in the children’s hearing system. This broader role was established following SCRA’s policy and financial management review in 2002. Additional resources are being made available to SCRA to enable it to carry out this new role effectively.

253. There will be some additional work for SCRA in providing information for ASBO applications (and in applying for parenting orders and the new measures around local authority accountability). SCRA will also need to convene hearings for those referred by the courts when considering granting ASBOs. Based on 100 ASBO applications per annum, 10 to 50 parenting order applications and fewer than 10 local authority referrals, additional work will be limited, possibly around a 1% increase in workload. In particular the number of additional hearings will be small as the vast majority of those on ASBOs would be attending regular Hearings in any event. In the light of the significant increase in funding for SCRA already agreed, the Executive expects that limited additional resource will be needed for SCRA to fulfil its role with regard to

\(^1\) Figures for 1 December 2001 to 31 March 2003 based on returns of 28 out of 32 local authorities. CIH report due to be published shortly.
ASBOs and the other measures in the Bill. It is estimated that SCRA will have costs of around £150,000 in 2004-05 and ongoing costs in the region of £200,000.

254. There will be a need to provide additional training for children’s panel members on the use of ASBOs and the type of measures needed to support those subject to one. The Executive will need to ensure that children’s panel training organisers (CPTOs) have sufficient resources to plan and administer a training package covering this. Training will also need to cover the implications of other new measures, such as electronic monitoring, the role of Hearings in the application process for parenting orders and in alerting the Reporter in cases when a local authority is failing in its duty to implement a supervision requirement or to provide education and community reparation.

255. The Executive has recent experience of setting up and providing new training for panel members in 6 local authority areas as part of the pilot of fast track children’s hearings. The cost of initial development and delivery of training to panel members (and others involved in the pilot) was around £27,000, or around £100 per head. It is estimated that taking account of the more varied nature of this new training (which will increase the cost) and economies of scale (which reduce it) the cost of the new training will be around £90 to £100 per head. There are around 2500 panel members in Scotland resulting in an estimated cost of £225,000 to £250,000 the majority of which will be incurred in 2004-05.

256. Further resources will be needed in 2005-06 for training new panel members and those who were unable to make the initial training round (experience of the fast track pilot was that 80 to 90% of panel members attended the initial round of training). Training in the new procedures will also be needed for around 400 Children’s Panel Advisory Committee members and safeguarders. This training will be shorter and less detailed than for panel members and is therefore likely to cost no more than £50 per head, or £20,000 in total. From 2006-07, training on ASBOs will form part of the training package for new panel members. Funding for panel member training in 2006-07 and beyond will be decided as part of normal funding discussions.

257. There may be a need for additional short term increases in staffing resources in the children’s panel training units to ensure delivery of training. This is being investigated. Under discussion is whether this training could be provided as part of the normal round of in-service training that CPTOs provide or whether separate, additional training events will be needed. This will depend upon the detailed level and scope of the training. If provided as part of in-service training, any additional resources will be minimal, probably less than £25,000. If additional events are required costs could be double this. The estimated start-up cost includes £50,000 to cover this.

258. There will also be an indirect cost of the time taken given up by panel members and other volunteers. It is impossible to quantify the cost at this stage, but should be noted that the hearings system relies upon this voluntary input. The Executive will also need to monitor whether the involvement of children’s hearings in the use of ASBOs (and electronic monitoring) for under 16s brings with it the need for additional hearings and therefore additional panel members.
The start-up costs of additional training and recruitment of panel members are estimated at up to £320,000, most of which will be in 2004-05. There will be some additional ongoing cost depending on levels of recruitment required in future. This ongoing cost is estimated at £50,000 per annum.

Costs on local authorities

Research into the costs of applying for ASBOs in Scotland suggest that the average cost of an ASBO was just over £2,000, but costs varied between £500 and £6,500. Home Office research showed that 35% of ASBOs were granted to under 16s (minimum age for ASBO is 10 in England and Wales). In Scotland, around 100 ASBOs were applied for in 2001. The uptake of ASBOs is expected to increase following the introduction of interim ASBOs in June.

It will be the responsibility of local authorities and registered social landlords to meet the costs of applying for antisocial behaviour orders. The extension of ASBOs to under 16s extends a power and does not impose a duty. It will be for relevant authorities to consider whether it is appropriate to apply for an ASBO having considered the range of options that are available and the circumstances of the case.

The Executive expects that ASBOs for under 16s will in most cases be supported by compulsory measures of supervision imposed by a children’s hearing – either prior to the application for an ASBO or subsequently on referral from the court making an order. These measures are likely to include a range of intensive support/programmes designed to help the young person change their behaviour. These programmes will be provided where the young person lives, either directly by the local authority or by a voluntary organisation under contract to the authority. Intensive programmes are at the top of the hierarchy of intervention with young people through the hearings system and will usually only be called for when lower-level interventions have failed or where significant welfare concerns exist.

The Executive asks local authorities to carry out an annual mapping exercise on the availability of youth justice services and programmes. The most recent figures (2002-03) indicate that whilst there are some good quality services available, there is a significant gap between the supply of places and demand for them. The mapping suggests there are around 200 intensive programme places currently available across Scotland aimed at the kind of persistent young offenders who might be subject to ASBOs (and/or electronic monitoring). It is estimated that, based on SCRA referral data, there will be around 600 to 700 young people in need of this kind of programme at a time. Core elements of these programmes will be things like education and training, interventions to tackle offending behaviour, restorative justice, interpersonal skills and family support. Additional elements will be added according to the needs of the young person, for example help with substance misuse, mental health problems, accommodation difficulties, and counselling/mentoring.

Not all those who need these kind of programmes will also be made subject to an ASBO or electronic monitoring. However, the Executive would expect most if not all of those on

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2 The Role of Mediation in Tackling Neighbour Disputes and Anti-Social Behaviour; Brown A, Barclay A, Simmons R, Eley S; Stirling University; March 2003
3 Home Office Research Study 236, 2002: A review of anti-social behaviour orders
ASBOs or electronic monitoring to need intensive programmes. Irrespective of how many under 16s are placed on ASBOs much wider availability of intensive programmes will be needed so that to they can be accessed through supervision requirements when ASBOs are made or when electronic monitoring is introduced through the hearing system. More generally, wider coverage of programmes will be needed to help local authorities meet their statutory duty to implement all supervision requirements. It is likely that failure to make these programmes available will adversely impact on the success of ASBOs, electronic monitoring and other measures in the Bill.

265. The existing cost of providing these programmes varies depending on the type and range of support offered. Typically, the mapping suggests that they cost between £200 and £500 per week, although services which include 24 hour support can cost as much as £1000 per week. Young people usually attend the programmes for around 6 months – although it may be for longer depending on the recommendations of the children’s hearing. The number of hours of contact time per week will normally be tapered down to help the young person make the transition back to normal life.

266. Based on use of a range of interventions, more effective use of existing resources and additional local authority youth justice money, it is estimated that the additional cost on local authorities will be £4m in 2004-05 and £9m in 2005-06. This includes the cost of additional programme places, comprising intensive programmes as well as lower-level interventions and parental support. This additional funding is over and above the additional youth justice money.

Costs on other bodies, individuals and businesses

267. Wider use of ASBOs brings a benefit to individuals and businesses as they help protect communities from further antisocial conduct. If there is less antisocial behaviour and the fear and intimidation such behaviour can generate, communities will be safer and more attractive and businesses will be able to prosper more easily.

268. The voluntary sector is expected to play a significant role in the delivery of the wider range of programmes and services that will be available to those subject to ASBOs. There should be no financial implications of this involvement for the voluntary sector. These programmes and services will be purchased either directly by the Executive or on a contract basis by local authorities. Discussions will be held with interested parties over the most effective allocation of these resources.

PART 3 – DISPERSAL OF GROUPS

269. Part 3 will confer powers on the police to disperse groups from public places where alarm or distress has been caused to members of the public in an area within which antisocial behaviour is a significant problem.

Costs on the Scottish Administration

270. The Scottish police service will be responsible for implementing this new provision. It is expected that it will be used sparingly and as a measure of last resort where other enforcement strategies have been used and found not to be effective.
271. The police service is funded to undertake a wide range of duties and the level of funding it receives is reviewed in the course of spending reviews which the Executive undertakes. As a result of the latest such review, forces will receive additional resources and these are considered sufficient to encompass the additional tasks that will result from the new legislation. Additional costs involved in implementing this power are expected to be marginal and will be accommodated within existing budgets. This will include meeting the costs of placing notices in locally circulating newspapers.

Costs on local authorities

272. The police will be required to consult the relevant local authority about the introduction of a dispersal of groups authorisation. There will be some additional costs associated with the proposed arrangements in terms of responding to this consultation exercise. Any such costs are likely to be minimal.

273. Improvements both to communities in reducing the fear of crime and in the business environment in making properties/businesses more marketable are anticipated. Other benefits could be realised through the reduction in instances of shoplifting, truanting and criminal damage.

Costs on other bodies, individuals and businesses

274. No costs on other bodies, individuals and business.

PART 4 – CLOSURE OF PREMISES

275. Part 4 will confer a power on the police to close and prohibit access to certain premises (of any type including private, commercial, rented, owner-occupied or other, except where excluded by regulation) where a person has engaged in antisocial behaviour on that premises at any time over the preceding 3 months and where the premises are associated with the occurrence of significant and persistent disorder or significant, persistent and serious nuisance to members of the public.

Costs on the Scottish Administration

276. The Scottish police service will be responsible for implementing this new provision. It is expected that it will be used sparingly and as a measure of last resort where other enforcement strategies have been used and found not to be effective. In this connection existing registration and licensing laws already allow the authorities to close down certain commercial premises where such unlawful activity takes place. On that basis it is anticipated that between perhaps around 10 to 30 properties may be closed under this power in Scotland (i.e. all closure notices are converted into closure orders) per annum. Whilst the cost of securing and maintaining closed premises will fall initially to the police authority or local authority to meet, the Bill contains provision for the court to make an order for the appropriate reimbursement of expenditure. Costs will be accommodated within existing budgets, this will include meeting the serving notices and legal costs in cases of appeals.
277. Costs to the Scottish Court Service, including shrieval costs, are estimated at £39,000 in 2004-05 and **£77,000** in 2005-06. This is based on an assumption that 10 orders will be taken out in the second half of 2004-05 and 20 in the whole of 2005-06.

**Costs on local authorities**

278. There will be minimal resource implications for local authorities according to the use made of the power and in terms of processing information.

**Costs on other bodies, individuals and business**

279. There are no additional costs envisaged for these interests.

**PART 5 – NOISE NUISANCE**

280. The noise provision proposal are enabling and flexible, thus local authorities can choose whether to adopt a noise nuisance service, and for what periods of the day or week. The proposals also include giving community wardens, as officials of local authorities, together with environmental health officers the power to issue fixed penalty notices, as well as the police.

281. The main costs from the provisions of this Part of the Bill relate to the extra burdens which local authorities may have to undertake. There may be some minor costs attributable to the police, but these will be negligible, as fixed penalty notices (FPN) are an alternative to prosecution, and local authorities will be undertaking the administration of FPN collection, and will be responsible for reporting cases to Procurators Fiscal in the event of non-payment.

282. In relation to provisions for FPNs, while some very small initial increase in administrative costs may be expected, the intention of this Part is to reduce the occurrence of offending behaviour rather than necessarily to increase the number of notices issued, by the issuing of warning notices as a deterrent. The expectation is that potential offenders will be discouraged by this Part’s provisions, so that offending and therefore enforcement costs should diminish over time.

**Costs on the Scottish Administration**

283. It is not anticipated that the provisions of this Part should impose any further direct costs on the Scottish Executive. Any costs involved in preparing guidance would be minimal and can be absorbed.

284. Use of FPNs for noise offences is expected to result in marginal savings to the Scottish Court Service. Costs are expected to be offset against savings as prosecution under the nuisance provisions of the Environmental Protection Act 1990 will not be required in these cases.
These documents relate to the Antisocial Behaviour etc. (Scotland) (SP Bill 12) as introduced in the Scottish Parliament on 29 October 2003

Costs on local authorities

285. The provisions of this Part envisage granting the power to issue fixed penalty notices for noise offences to local authorities, and the police. Since in all cases the administration of these powers would be carried out by local authorities, these provisions are considered together.

286. The fixed penalty provisions of this Part are enabling and flexible, so if a local authority decide to implement a noise nuisance service, there will be a requirement on local authorities to recruit additional staff. To the extent that this Part permits local authorities to designate employees as officers permitted to issue noise fixed penalty notices, it is expected that this will necessitate the creation of new environmental health officer (EHO) posts. Separate funding for community wardens is being provided centrally by the Executive.

Staff costs

287. Estimated costs, based on an existing night noise service operating in Belfast (and one just commenced in Glasgow) are an additional £120,000 per annum for two EHOs and approved sound level meter recording equipment.

288. Thus if all 32 statutory local authorities decide to implement a 24 hour per day 7 days a week noise nuisance service, the additional annual estimated cost would be £3.84m. It is likely that this provision will be adopted mainly by the urban local authorities. Allowing for some take-up in all types of authority area, it is estimates that additional costs will be in the region of £2.5m, as the EHOs will be working with community wardens and the police. While such a noise nuisance service supports the implementation of FPNs for noise and this additional cost is required, it is important to note that these officers can have a substantial deterrent effect and a high level of usage of FPNs may not be required.

Administration costs

289. Training will not require familiarising staff with a complex administrative system. A system for processing fixed penalty notices for littering already exists. It is proposed that the administration for local authority officers issuing fixed penalty notices for noise offences, and administration on behalf of other bodies authorised to issue the notices proposed in this Part, should be carried out in the same way. This will involve using similar (or ultimately the same) forms, to be processed by the same personnel, as are already in place for administering fixed penalty notices for littering. Similarly, minor adjustments may be required to IT systems, but the costs will be marginal.

290. As to potential volume of fixed penalty notices for noise offences issued, Belfast City Council estimate they are only issuing 15 per annum, as the required warning notice acts as an effective deterrent and abates the noise nuisance in 95% of reported incidents. Thus if all 32 local authorities decide to adopt a 24 hour a day, 7 day a week noise nuisance service, one could assume there could be 480 to 500 fixed penalty notices issued annually.

291. While the number of police officers greatly exceeds the number of local authority officers authorised to issue fixed penalty notices, it is expected that only a very small proportion of police time will be available to deal with noise nuisance issues. In addition, police officers will still
have discretion merely to warn noise offenders. It is envisaged that police officers will be used mainly to accompany EHOs when confronting the responsible person at the dwelling from where the offending noise is emanating. The local authority will absorb all related administration costs.

**Enforcement costs**

292. These costs will increase where the fixed penalty fine is not paid. Payment of fixed penalty fines are an alternative to prosecution. Where the fine is not paid, the enforcement mechanism is the preparation of a report by the local authority for consideration by the Procurator Fiscal.

293. Consultation with local authorities suggests that some 90% of fixed penalty notices for littering result in payment of the fine within the due time. Feedback from English local authorities who adopted the night noise service suggested 66% paid the £100 fixed penalty fine within the required 28 days. There is no reason to believe the provisions of this Part will reduce this figure. Indeed, extension of these powers to the police is likely to lend further authority to the procedure. However, this still means that some 33% of cases are not resolved simply. Again, accepting a figure of 500 notices a year would suggest that the provisions of this Part would result in 166 cases a year where enforcement action should be considered.

294. Local authorities may choose, of course, not to pursue these cases further. If they do so, consultation with a local authority which issues significant numbers of fixed penalty notices (for littering) suggests that where the need to prepare a report for the Procurator Fiscal arose, this would take three hours of staff time (which figure includes the time allowed for issuing the original notice). The average total employment cost for the staff involved is about £35,000, which suggests a staff cost to local authorities of £100 per case. If all 166 extra cases posited were followed up by a report to the Procurator Fiscal, therefore, this would result in an annual burden of £16,600 spread over 32 authorities. This can be absorbed within the estimated total cost for local authorities.

**Costs on other bodies, individuals and businesses**

295. There are no costs anticipated on other bodies, individuals or businesses.

**PART 6 – THE ENVIRONMENT**

296. The main costs from the provisions of this Part of the Bill relate to the extra burdens which local authorities may have to undertake. There may be some minor costs attributable to the police, the Scottish Environment Protection Agency (SEPA), and bodies having a duty to clear litter from specified areas of land, such as roads, railways, schools etc.

297. It is not anticipated that any costs should arise from increasing the level of fines applicable to a range of environmental offences. The intention is that the number of these offences should decrease as potential offenders are deterred.

298. It is not anticipated that many fixed penalty notices will be issued in respect of fly-tipping, since the less serious manifestations of this offence may already generally be treated as
littering, and more serious offences will continue to be prosecuted in the normal way. However, it is likely that widening the power to issue fixed penalties for littering might considerably increase the number of FPNs issued. This memorandum considers the effect of a tripling of the number of notices issued, to 3,000 a year spread over the 32 Scottish local authority areas – that is, an increase of about 2,000 over the present figures (based on estimates from Keep Scotland Beautiful).

Costs on the Scottish Administration

299. The Scottish Executive itself is one of the bodies which Ministers, under the provisions of this Part, could direct to clear litter, in respect of its responsibilities for trunk roads. The Executive, however, has a responsibility to clear litter already, which it discharges at present through its contracts with road operators. The intention of the proposals to direct litter clearance is to clarify how the existing duty should be carried out and thus to prioritise, rather than necessarily increase, expenditure. Even if the expedient of Scottish Ministers directing themselves were actually to be adopted (perhaps as a consequence of a general direction to duty bodies), therefore, no significant additional costs are anticipated.

300. Information supplied by the Scottish Court Service and the Procurator Fiscal service suggest that where a trial is held a half-hour hearing costs some £250, with an additional cost of some £40 on the Procurator Fiscal for preparing papers. If it is assumed the total costs were £300, and all reports led to half-hour hearings, the provisions of this Part would result in trial costs of some £60,000 across Scotland. Assuming that not all of these lead to full court procedures, the Executive estimates an additional cost of £40,000 per annum.

301. As noted above, it is estimated that the provisions of this Part may result in the issue of up to 2,000 extra notices a year throughout Scotland. The only circumstances in which local authority officers would be able to issue notices under the provisions of this Part, where they are unable to at present, are less serious cases of fly-tipping. The environmental resources management review found that local authorities are not heavily involved in enforcement action on fly-tipping at present. Therefore it is likely that the great majority of the extra 2,000 notices issued would be issued by the police or by SEPA. However, there will only be marginal additional costs incurred in implementing the power to issue fixed penalty notices for littering and fly-tipping by the police and, in respect of fly-tipping only, by the Scottish Environment Protection Agency.

302. Administration will continue to be according to the system created for littering notices, and carried out by local authorities. It is not envisaged that any new posts will be created as a result of the by the provisions in this Part. Administrative costs on SEPA and the police will therefore be limited to staff sending copies of notices issued to the local authority for further processing. The staff time used, and the postage costs, would be negligible.

Costs on local authorities

303. In relation to provisions for fixed penalty notices, while some very small initial increase in administrative costs may be expected, the intention of this Part is to reduce the occurrence of offending behaviour rather than necessarily to increase the number of notices issued. Should
These documents relate to the Antisocial Behaviour etc. (Scotland) (SP Bill 12) as introduced in the Scottish Parliament on 29 October 2003

potential offenders be discouraged by this Part’s provisions, enforcement costs (and clearance costs for local authorities and other bodies) would diminish over time.

Staffing/administration costs

304. The fixed penalty provisions of this Part impose no requirement on local authorities to recruit additional staff. To the extent that this Part permits local authorities to designate employees as officers permitted to issue fly-tipping fixed penalty notices, it is not expected that this will necessitate the creation of new posts. Local authorities will, however, have to provide training to any staff designated as officers for these purposes.

305. Training will not, however, require familiarising staff with a complex administrative system. A system for processing fixed penalty notices for littering already exists. It is proposed that the administration for local authority officers issuing fixed penalty notices for fly-tipping, and administration on behalf of other bodies authorised to issue the notices proposed in this Part, should be carried out in the same way.

306. There will be an administration cost for local authorities to bear in relation to the printing of fixed penalty notices, and possibly of minor adaptations to IT systems. It is not possible to estimate the latter, while figures provided by a local authority in connection with fixed penalty notices for litter indicate that the cost of printing notices, even in large numbers, is negligible.

307. Consultation with a local authority which issues a considerable number of fixed penalty notices suggests the staff time involved in processing them (where the notices are paid) is also negligible.

Enforcement costs

308. Consultation with local authorities suggests that some 90% of fixed penalty notices for littering result in payment of the fine within the due time. There is no reason to believe the provisions of this Part will reduce this figure. Indeed, extension of these powers to the police is likely to lend further authority to the procedure. However, this would still mean that some 10% of cases are not resolved simply. Again, accepting a figure of 3,000 notices a year would suggest that the provisions of this Part would result in 200 extra cases a year where enforcement action should be considered.

309. Local authorities may choose, of course, not to pursue these cases further. If they do so, consultation with a local authority which issues significant numbers of fixed penalty notices suggests that where the need to prepare a report for the consideration of Procurators Fiscal arose, this would take three hours of staff time (which figure includes the time allowed for issuing the original notice). There is no reason to believe that this figure should vary widely among local authorities. The average total employment cost for the staff involved is about £35,000, which suggests a staff cost to local authorities of £10 per case. If all 200 extra cases posited were followed up by a report to the Procurators Fiscal, therefore, this would result in an annual burden of £20,000 spread over 32 authorities.
Costs on other bodies, individuals and businesses

310. There are no costs anticipated on other bodies, individuals or businesses.

PART 7 – HOUSING: ANTISOCIAL BEHAVIOUR NOTICES

311. Part 7 will give power to local authorities to serve notices on the private landlords of individual properties where there is antisocial behaviour by tenants or occupiers or visitors, requiring specific steps to manage that behaviour. It gives authorities power to seek sanctions from the sheriff in the event that a landlord does not comply with the notice. Non-compliance is also an offence.

312. The powers in Part 7 complement those in Part 8, which have similar application on an area basis. Costs are based on the assumption that in the majority of cases the Part 7 powers will be used where an area approach is not appropriate, generally because the problem is an isolated one.

313. It is estimated that in a year there will be approximately 100 occasions on which a local authority requires to use the Part 7 powers because a landlord is failing to manage antisocial behaviour appropriately and does not do so in response to advice and information. It is further estimated that on 20% of those occasions, or 20 times per year, the landlord will not respond to the threat of sanctions and the local authority will make application to the court. It is also assumed that in all those cases the local authority will charge the landlord for consequential expenses in dealing with the antisocial behaviour described in the notice, and in a further 20 cases the authority will make such a charge but will consider that an application to the sheriff for sanctions is not warranted.

314. It is assumed that in the majority, say 75%, of cases where the local authority seeks sanctions, it will apply for rental liability to cease since that will affect the landlord’s income stream. It is further assumed that in the remaining 25% of those cases the local authority will seek a management control order so that it can deal with a situation because there is little prospect of the inadequate or ill-motivated landlord doing so.

315. There is a substantial margin of error in these estimates because there are no comprehensive records or research evidence on the number of occasions on which a private landlord’s failure to manage antisocial behaviour has made a significant contribution to the impact of that behaviour to the extent that intervention would be justified.

Costs on the Scottish Administration

316. It is not expected that the provisions in Part 7 will impose any direct additional costs on the Scottish Administration, other than some court costs. The cost of producing guidance to local authorities on the use of the powers will be met within existing budgets.

317. The estimated cost to the courts system of 20 applications to the sheriff for sanctions and 10 prosecutions for the offence of failing to comply with the notice is £37,200 on the basis of 2.5 hours of court time per case. The estimated cost, on the same basis, of 5 revocations of
management control orders is £6,200. The total costs for the court system per year would therefore be £43k, including shrieval costs.

Costs on local authorities

318. It is expected that the general administration of the powers in Part 7 by local authorities will be carried out by the same staff who deal with the exercise of powers under Part 8, and their costs are estimated in that context.

319. For the 20 cases that the local authority takes to court, it is expected that the local authority will meet its costs of court action from within its existing resources. In addition, management control orders would in due course be revoked, but it is assumed that in most cases this would be at the instance of the landlord and the local authority would meet its relevant costs from its existing resources. The local authority would potentially have some income from being able to charge landlords for expenses for consequential action it has had to take to deal with antisocial behaviour described in the notice.

Costs on other bodies, individuals and businesses

320. The landlord may as a result of the local authority’s action have increased management costs, either through increased time and expense in dealing with tenants and neighbours or through the cost of employing an agent. Since those costs are simply those of meeting appropriate standards for the letting of property, which a good landlord faced with an antisocial tenant would have to bear anyway, they should not be regarded as an additional burden. Similarly the loss of income resulting from the application of a sanction should not be regarded as an additional burden because it is a direct and proportionate consequence of the landlord’s failure to adopt good standards.

321. Use of the powers is likely to improve the neighbourhood through a reduction in antisocial behaviour and to have a positive impact on property values and marketability for neighbouring home owners.

322. Landlords who comply with notices and the advice and support that goes with them will, by adopting better management practices, potentially reduce the impact of antisocial behaviour on their letting costs – for example the cost of repairs – and increase the rental potential of their properties. Rents tend not to reflect condition to a great extent, but it is thought that better management and reduction in antisocial behaviour could increase rental income by 5% per year.

PART 8 – HOUSING: REGISTRATION AREAS

Costs on the Scottish Administration

323. It is not expected that the provisions in Part 8 will impose direct additional costs on the Scottish Administration, other than some court costs. The cost of producing guidance to local authorities on the use of the powers is marginal and will be met within existing budgets.
324. It is assumed that the fact of an offence and the financial effect of the suspension of rent liability will be sufficient in most cases and there will be relatively few occasions, say 10 per year, on which a prosecution for an offence reaches court. It is also assumed that there will be a small number of appeals against local authorities’ refusal to register a property, say 10 per year. On this basis the estimated annual cost to the courts system would be £25,000 including shrieval costs.

Costs on local authorities

325. The private rented sector has around 150,000 tenancies in Scotland. The Scottish Household Survey records that the following percentages of private sector tenants experience the following as ‘very common’:

- groups of young people hanging about: 8.3%
- noisy neighbours/loud parties: 2.9%
- people drinking or using drugs: 7.6%

These figures do not necessarily indicate antisocial behaviour nor are they directly or solely related to the landlord’s attitude. They suggest that a working assumption for the number of properties which might in due course be subject to registration or management sanctions could be in the region of 2% to 5%, i.e. between 3,000 and 7,500 properties. Using the median number of 4 properties per landlord found in the English House Condition Survey (and assuming that these tend to be clustered) this suggests that, in round terms, between 700 and 2,000 landlords could be involved. A designated area in a traditional renting market might reasonably have 150 properties (say 20 tenement properties in a street). The bulk of these would be in the cities and in the centres of medium to large towns. Some designated areas might have smaller numbers of private rented properties – say 20 to 50 – scattered in mixed tenure developments. Below around 20 the measures for individual properties might be more appropriate. Assuming an average overall of 100 properties in designated areas that would suggest between 30 and 75 designated areas throughout Scotland in the medium term.

326. The direct cost to a local authority of establishing a register would be small, given the type of information required and their existing experience in licensing houses in multiple occupation. Greater cost would arise in dealing with poor landlords, giving them support and advice and if necessary issuing notices and proceeding to prosecution. This would not be a direct cost of registration but would relate to a closer attention to private landlords’ management as part of the authority’s strategic approach to antisocial behaviour, of which registration and the use of the powers in Part 8 would be an integral part.

327. Discussion with a sample of local authorities suggests that these broader activities could require the input of a full-time member of staff in a city, and part of the time of a member of staff dealing with antisocial behaviour or housing issues in other situations. To reflect the range of local authorities, it is assumed that 4 would employ an additional full-time member of staff, and on average 16 would require an additional half-time post each, and the remaining 12 would not require additional staff. At a total employment cost of £50,000 this suggests total additional costs of £600,000. This would include the authority’s costs for the preparation of referrals to the Procurator Fiscal.
328. It would not be reasonable for local authorities to set fee levels to cover the whole of this cost since much of it would fund preventative work with landlords who were not, in the event, included in registration areas. The direct costs of registration would include the costs of consulting, advertising, sending notifications, processing individual applications and dealing in due course with revocation. A reasonable fee level could, as an illustration, be £50, equating to around 3 hours’ work. On this basis, fee income would range between £150,000 and £375,000.

329. There will be additional costs for local authorities of £0.5m in establishing and operating registration systems. This is based on a cost of £0.6m and a fee income of £0.1m, which is lower than expected.

Costs on other bodies, individuals and businesses

330. The costs for landlords and agents of providing the information necessary for registration will be minimal, as they should already have that information. They are likely to require to pay a one-off fee which could be of the order of £50 or around a week’s rent at the low end of the market, totalling between £150,000 and £375,000. They will benefit from advice from the local authority and action which should raise standards in the area, potentially reducing letting costs and increasing market rent levels.

331. Where action is taken to ensure that individual landlords meet the registration conditions or specific requirements, the landlord may have increased management costs, either through increased time and expense in dealing with tenants and neighbours or through the cost of employing an agent. Since those costs are simply those of meeting appropriate standards for the letting of property, which a good landlord faced with an antisocial tenant would have to bear anyway, they should not be regarded as an additional burden. Similarly the loss of income resulting from the application of a sanction should not be regarded as an additional burden because it is a direct and proportionate consequence of the landlord’s failure to adopt good standards.

332. Use of the powers is likely to improve the designated area and the surrounding neighbourhood through a reduction in antisocial behaviour and to have a positive impact on property values and marketability for home owners in those areas.

PART 9 – PARENTING ORDERS

333. Part 9 makes provision for parenting orders which are designed to improve the parenting of children whose parents refuse to engage voluntarily in support offered to them to improve their parenting.

Costs on the Scottish Administration

334. There will be additional court costs involved in introducing parenting orders. It is estimated that once parenting programmes are available across Scotland around 100 parenting orders will be applied for per annum. In the first 3 years of parenting orders in England and Wales around 3,500 parenting orders were made, although these were linked to other orders or convictions rather than applications. Allowing for 10% of the average annual figure for England
These documents relate to the Antisocial Behaviour etc. (Scotland) (SP Bill 12) as introduced in the Scottish Parliament on 29 October 2003

and Wales gives just over 100. An estimate of 100 per annum for Scotland is reasonable, as applications will be required rather than an automatic procedure linked to other orders or convictions.

335. It is however expected to take some time before parenting programmes are available in all areas. Existing provision of programmes is limited and even with significant levels of investment from the Executive it will take time to put good quality programmes in place in all areas. Current estimates from the mapping of youth justice services suggest that only around 25% of the places needed are currently available. Given this, and that parenting order provisions will not come into force until part of the way through next year it is estimated that in 2004-05 there will only be around 10 to 15% of the likely annual take-up (around 10 to 15 orders). Continued investment should see this rise to 40 to 50 orders by 2005-06.

336. Based on 15 applications for parenting orders in 2004-05 and 50 in 2005-06, the additional costs to the Scottish Courts Service, including shrieval costs would be £27,000 in 2004-05 and £90,000 in 2005-06. Once programmes are available in all areas court costs are expected to be around £187,000 per annum.

337. It is not certain what level of legal aid applications will be pursued or granted with respect to parenting orders. For each type of application the legal aid board would have to be satisfied that the tests for legal aid were met. On average, 72% of applications for legal aid lead to grants being made. Based on limited take-up to begin with, this could result in an additional legal aid bill of around £20,000 in 2004-05 and £50,000-£60,000 in 2005-06.

338. The additional work and cost implications for SCRA resulting from the introduction of parenting orders is set out in Part 2 on ASBOs.

339. The introduction of parenting orders will mean additional training for panel members is required. The expected cost implications of this additional training is also set out in the section on Part 2.

340. While parenting orders are intended to be used for the most part after voluntary approaches have been tried and legal costs are involved, savings in spending on intensive social work intervention may occur as the parenting order can help prevent further intervention, such as the removal of a child. Evaluation of previous family intervention work to tackle antisocial behaviour is relevant in this respect. The Evaluation Of The Dundee Families Project (September 2001), which was undertaken by the University of Glasgow, reported following analysis of previous research that families benefit when there are a range of options but that the families with the greatest difficulties may be hardest to gain co-operation from.

341. Research into the effectiveness of parenting programmes in England\(^4\), including those imposed by parenting orders suggests that these programmes have had a positive impact on behaviour.

Costs on local authorities

342. Local authorities will need to provide parental guidance, counselling and skills training for those parents on orders. For parenting orders to be made however, a parent must first have failed to engage with support/programmes offered on a voluntary basis. As noted in the previous section, these programmes are not widely available at present.

343. The Executive asks local authorities to carry out an annual mapping exercise on the availability of youth justice services and programmes. The most recent figures (2002-03) indicate that whilst there are some good quality programmes available for parents, there is a significant gap between the supply of places and demand for them. The mapping suggests there are around 200 parenting programme places currently available funded by local authorities and a further 450 funded by the Executive through the Youth Crime Prevention Fund. It is the Executive’s view that parents of many children referred to the children’s hearings system would benefit from some kind of parenting support. This is little evidence as to how many parents this would include, but as a working estimate, the Executive has assumed that parents of around half those referred to hearings will need parenting support each year – around 2700 to 2800 (according to SCRA referral data), including those for whom parenting orders are made. This means an estimated shortfall of just over 2000 places across Scotland.

344. The cost of parenting programmes depends very much on the type and range of support offered. Work around counselling, parenting skills etc can be relatively cheap, for example the Executive is funding a course of classroom based parental skills training through the Youth Crime Prevention Fund costing around £100 to £150 per place. More intensive parent/family support interventions supported through the Fund cost almost £3000 per family. Current estimates of the cost of a parenting programme in England suggests an average cost of around £500.

345. The estimated cost of additional parenting support programmes, is included in the £4m in 2004-05 and £9m for 2005-06 figures under ASBOs in Part 2. This is in addition to increases in local authority youth justice funding.

Costs on other bodies, individuals and business

346. Provision has been made in the Bill that a parenting order should not interfere with a parent’s work, education or religious beliefs.

347. The voluntary sector is expected to play a significant role in the delivery of parenting programmes. There should be no financial implications of this involvement for the voluntary sector, as this is covered within allocations to local authorities.
PART 10 – FURTHER CRIMINAL MEASURES

SECTION 88 - ANTISOCIAL BEHAVIOUR ORDERS

Costs on the Scottish Administration

348. The power for the court to grant antisocial behaviour orders on conviction of an offence will involve marginal additional costs to the Scottish Court Service. Costs would be marginal as the evidence presented to the court during the proceedings for the offence would provide the basis for the court’s decision. The police will be involved in dealing with breaches of orders issued on conviction, but the costs will be marginal and are expected to be offset by the preventative effect of the order.

Costs on local authorities

349. Local authorities will not apply for antisocial behaviour orders on conviction so they will not incur the costs in applying for ASBOs in the civil court. No application is made and the decision is a matter for the sheriff in the course of the criminal proceedings.

350. Any additional support costs involved in implementing antisocial behaviour orders on conviction issued to under 16s are covered within Part 2.

Costs on other bodies, individuals and businesses

351. None.

SECTION 89 – COMMUNITY REPARATION ORDERS

352. The principal additional costs from this part of the Bill will fall on local authorities, who will have responsibility for supervision of the orders. Other agencies involved in the criminal justice system such as the police, Crown Office and Procurator Fiscal Service and court service will continue to incur costs in relation to the pre-sentence stage but these costs will be no different from those currently incurred in securing a conviction. The new order in providing the court with a new sentencing option will not give rise to any significant additional costs for these latter agencies.

Costs on the Scottish Administration

353. It is difficult to estimate the use courts, which have responsibility for sentencing decisions, might make of this new order. However the opportunity provided by the new order for the offender to make reparation to the local community is likely to prove an attractive option to judges.

354. It is estimated that the costs on the Scottish Court Service, including shrieval costs, will be £96,000 based on 500 orders in the sheriff court and a breach rate of 40%.
Costs on local authorities

355. Local authorities will incur the majority of the additional costs arising from the introduction of this new order. The Executive estimate that in a full year up to 1000 orders might be imposed, which assuming a unit cost of £1,100 per order suggests a funding need of £1.1m per annum. The estimate of £1,100 per order is based on £250 to £300 for an assessment report, £600 to £750 for supervising the order and the rest in district court costs.

356. Legislative provision for the funding of costs incurred by local authorities in providing offender services in the community is provided through section 27 of the Social Work (Scotland) Act 1968. This prescribes the services local authorities are to provide to offenders and also makes provision for the funding of these services. It is intended to extend section 27 to cover community reparation orders, thereby allowing the Scottish Executive to make direct grants to local authorities for the assessment and supervision costs they incur in respect of the new order. Local authorities will meet the costs on the district court which are estimated to be around £25,000, based on 500 CROs. It is estimates that 50% of orders will be issued in the district court.

Costs on other bodies, individuals and businesses

357. None.

SECTION 90 – RESTRICTION OF LIBERTY ORDERS

Costs on the Scottish Administration

358. It is anticipated that introducing provisions to allow courts to impose restriction of liberty orders (RLOs) on children under the age of 16 years as an alternative to detention in secure accommodation will result in increased costs to the Scottish Executive for the services of the electronic monitoring provider. However, it is expected that this cost could be offset by the saving in secure accommodation.

359. As an example the cost of a 6 month RLO is approximately £6,500. The cost of secure accommodation for the same period is approximately £40,000. A total of 80 children were dealt with by the adult courts in 2001, 16 of whom where detained in secure accommodation.

360. It is estimated that the additional court time involved in dealing with RLOs will involve an additional cost to the Scottish Court Service, including shrieval costs, of £15,000. This is based on 80 orders per annum.

Costs on local authorities

361. There may also be a small increase to local authorities for assessment purposes for restriction of liberty orders. The estimated total cost of these assessments based on 80 cases is £10,000.
Costs on other bodies, individuals and businesses

362. None.

SECTIONS 91 TO 94 – SALE OF SPRAY PAINT TO CHILDREN

Costs on the Scottish Administration

363. The Executive will meet the costs of publicising the ban on the sale of spray paint to under 16s. This would be done primarily through producing posters, leaflets and stickers for display retail premises. It is estimated that around £10,000 would be sufficient to meet the costs of providing materials to retailers and local authorities. Premises at which spray paint is sold will be required to display a notice stating that it is illegal to sell spray paint to any person under the age of 16.

Costs on local authorities

364. The Bill includes a duty on local authorities to enforce the ban on the sale of spray paint to under 16s. It is not anticipated that this requirement will be particularly onerous, but costs will be involved as this places an additional pressure on trading standards officers. The Executive will work in partnership with local authorities to consider the most effective means of enforcement within funding available, bearing in mind potential savings in removing graffiti through the implementation of the ban. There is a substantial cost associated with taking steps to remove graffiti. There is also evidence in the London Assembly Report on Graffiti (May 2002) and from local authority surveys that young people are responsible for much of the graffiti through misuse of the aerosol spray paints in their possession.

Costs on other bodies, individuals and businesses

365. The UK spray paint market in 2001-02 is estimated at a market size totalling some £130 million per annum broken downs as follows: DIY £50m, automotive £40m, industrial £25m and specialist £15m. The number of retail outlets selling spray paint is estimated to be 28,000. A ban on the sale of spray paint to under 16s could damage the specialist market for such things as models, leisure products, replicas etc. Communities should benefit from less graffiti.

PART 11 – FIXED PENALTIES

Costs on the Scottish Administration

366. The extension of the use of fixed penalty notices to a range of low-level antisocial offences is not expected to impose any direct costs on the Executive, once the decision is made to implement the scheme on a national basis. The Executive will meet the costs of an evaluation of the pilot planned on the FPNs for antisocial behaviour. It is estimated this would cost £20,000. The Executive would meet the cost of a pilot which it is estimated would cost around £150,000 for set up and evaluation. Savings would be anticipated in a national scheme, but to allow for the administrative costs in extending the use of FPNs, it is being assumed that the ongoing costs across Scotland would be similar to that of the pilot. More detailed consideration to ongoing costs will be given as part of evaluation of a pilot.
367. The police will enforce FPNs for low-level disorder and antisocial behaviour offences. Initial costs will relate to the pilot planned. This will include costs such as purchase of FPN tickets and some upgrades to IT equipment. Following evaluation of the pilot, a system will be designed which ought to result in savings for the police, the courts and the Crown Office and Procurator Fiscal Service.

**Costs on local authorities**

368. There will be no costs incurred by local authorities.

**Costs on other bodies, individuals and businesses**

369. Individuals issued with FPNs will be expected to pay the penalty. There are no costs for businesses.

**PART 12 – CHILDREN’S HEARINGS**

**SECTION 103 – SUPERVISION REQUIREMENTS: CONDITIONS RestrictING MOVEMENTS**

370. Section 102 introduces the use of electronic monitoring as a disposal of a children’s hearing when that is in a child’s best interests. These sections provide that electronic monitoring can be used, where appropriate, in relation to a young person who would otherwise be placed in secure accommodation and when a children’s hearing believes it is the best interests of the young person to protect their welfare or to stop them offending.

**Costs on the Scottish Administration**

371. The Executive will need to contract with a provider to put in place the technology required to make electronic monitoring work. The existing cost of placing tags on adults subject to restriction of liberty orders is around £5000 per tag. The cost of electronic monitoring for under 16s will of course depend on the detail of the contract, but if a similar number of tags are employed for this age group, it is expected that the cost per tag for under 16s will be about the same. If fewer under 16s are monitored, the unit cost is expected to be higher.

372. It is difficult to estimate the precise number of young people who will be made subject to electronic monitoring. It will of course depend upon the individual circumstances of the young person in question, the views of the children’s hearing that considers their case and the package of support measures already in place to help address their needs and behaviour. The Executive’s working assumption is that a number of the most persistent offenders (including those who breach ASBOs) will be subject to electronic monitoring. In addition, it is open that young people leaving secure accommodation might benefit from electronic monitoring as part of their programme of re-integration into society, as well as a small number who will be monitored on welfare grounds. The Executive has set aside up to £1.5m in 2005-06 to meet the cost of electronic monitoring through the hearings system. This is likely to be more than is required. Any excess funds will be channelled into programme provision.
373. The imposition of electronic monitoring on a young person will constitute a restriction of liberty. It is therefore expected that young people will ask for legal representation at Hearings at which electronic monitoring is under consideration. This will include all those where electronic monitoring is imposed, plus a number where a panel decides it is not appropriate. The standard fee for providing legal representation costs at hearings at present is £200. With various incidental expenses and add-ons it usually works out at around £300 per hearing. The Executive has set aside up to £100,000 to meet these costs.

374. There will be a need to provide additional training for panel members on the use of electronic monitoring as a disposal. Some additional recruitment may also be required. Details of the costing assumptions made by the Executive are detailed in Part 2 of the financial memorandum on antisocial behaviour orders.

Costs on local authorities

375. Electronic monitoring will only be used in support of other compulsory measures of supervision imposed by a children’s hearing in relation to the young person. These measures are likely to include a range of intensive support/programmes designed to help the young person change their behaviour. These programmes will be provided by the local authority where the young person lives, either directly by the authority or by a voluntary organisation under contract to the authority. Intensive programmes are at the top of the hierarchy of intervention with young people through the Hearings system and will usually only be called for when lower-level interventions have failed or where significant welfare concerns exist.

376. The existing cost of providing these programmes varies depending on the type and range of support offered. Explanation of the Executive’s assumptions and estimated costing for 2004-05 and 2005-06 is provided in Part 2 of the Financial Memorandum.

Costs on other bodies, individuals and business

377. The voluntary sector is expected to play a significant role in the delivery of the wider range of programmes and services that will be available to those subject to electronic monitoring. There should be no financial implications of this involvement for the voluntary sector as any costs are covered within the allocation for local authorities.

SECTION 104 – SUPERVISION REQUIREMENTS: DUTIES OF LOCAL AUTHORITIES

378. Section 104 makes provision for holding local authorities to account in respect of a failure to comply with their statutory duty to give effect to a supervision requirement imposed by a children’s hearing.

Costs on the Scottish Administration

379. The Audit Scotland report into youth justice Dealing with offending by young people published in December 2002 found that around 400 children were not receiving a service in support of a disposal by a hearing. The Executive does not however expect the figure to be so
These documents relate to the Antisocial Behaviour etc. (Scotland) (SP Bill 12) as introduced in the Scottish Parliament on 29 October 2003

high once the provisions in section 104 are introduced. It is estimated that the new provisions, combined with the additional funding for local will encourage authorities to carry out their statutory duties and result in very few cases actually coming to court.

380. For this power to be effective, children’s hearings will need to set out clearly and precisely what support the child should receive as part of their supervision requirement so that a court is able to take a view on whether the terms of the supervision requirement are being met. The need for detailed and specific supervision requirements will be emphasised to panel members through training. Costing assumptions about the additional training requirements for panel members is detailed in Part 2.

381. The additional work and cost implications for SCRA resulting from the introduction of this power to refer and other measures in the Bill are also set out in Part 2 of the Financial Memorandum.

Costs on local authorities

382. Audit Scotland found that the main reason behind local authorities’ failure to implement supervision requirements was staff shortages. The Executive accepts that social work staff shortages are a significant issue across Scotland. The Executive is in discussion with COSLA about how best to address this shortage, and an extensive recruitment campaign is underway to help bring in new social work staff.

383. Youth justice performance data from local authorities demonstrates that staffing shortages are, however, only one of the factors which affect local authority performance. Some authorities show strong performance despite significant vacancies. The Executive will therefore pursue with COSLA what can be done to support the development of local capacity. For example through the identification and sharing of good practice and promoting understanding of the new national standards (to be in place by 2006). The Executive is also considering proposals for the inspection of front-line services.

384. £1.5m per annum in 2004-05 and 2005-06 will be made available from the antisocial behaviour fund to offset these costs. This is in addition to the increase in local authorities youth justice GAE announced in August (rising to £13m in 2004-05 and £15m in 2005-06). New resources for programmes from the antisocial behaviour fund will also increase local authorities’ ability to spot purchase services/programmes from the voluntary sector.

Costs on other bodies, individuals and business

385. There are no additional costs envisaged for these interests.

SECTION 105 – FAILURE TO PROVIDE EDUCATION FOR EXCLUDED PUPILS: REFERENCE

386. Section 105 provides that where it appears to a Reporter that a local authority is not complying with its duty (under section 14 of the Education (Scotland) Act 1980) to provide
education for a child who is excluded from school, the Reporter has the power to refer the matter to Scottish Ministers.

Costs on the Scottish Administration

387. The number of children who will be affected by this power is likely to be very small. The powers are simply intended to close an existing gap so that Scottish Ministers can act where a problem has been identified.

388. Costs are expected to be minimal. The Executive will continue to monitor the situation and discuss the need for additional resources with those involved if required.

Costs on local authorities

389. Local authorities are already funded to carry out their duty to provide education for all school age children in their areas. No additional costs are involved.

Costs on other bodies, individuals and business

390. No additional costs are expected for these groups.

SUMMARY OF ESTIMATED COSTS

391. Actual costs will depend in large measure on use by local authorities and police and others of the legal options established by the Bill and on the incidence of the forms of antisocial behaviour described in the policy memorandum.

392. Other than initial costs which will be ongoing, the start up costs are:
   - ASB strategies £500k
   - training and recruitment costs for—
     - Children’s Panel members etc £320k
     - Pilot on Fixed Penalty Notices £150k
These documents relate to the Antisocial Behaviour etc. (Scotland) (SP Bill 12) as introduced in the Scottish Parliament on 29 October 2003

SUMMARY OF ESTIMATED COSTS
FULL YEAR (BASED ON 2005-06)

<table>
<thead>
<tr>
<th>Part of Bill - number</th>
<th>Scottish Administration £(000s)</th>
<th>Local authorities £(000s)</th>
<th>Others £(000s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Antisocial behaviour strategies - 1</td>
<td>-</td>
<td>300</td>
<td>-</td>
</tr>
<tr>
<td>ASBOs - 2</td>
<td>637 (includes total costs for Hearings (except tagging) and SCRA from all parts of Bill)</td>
<td>9,000 (includes elements of costs for Parts 9, 10 and 12 as well as Part 2)</td>
<td>-</td>
</tr>
<tr>
<td>Dispersal of groups - 3</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Closure of Premises - 4</td>
<td>77</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Noise - 5</td>
<td>-</td>
<td>2,500</td>
<td>-</td>
</tr>
<tr>
<td>Environment -6</td>
<td>40</td>
<td>20</td>
<td>-</td>
</tr>
<tr>
<td>Housing - 7&amp;8</td>
<td>68</td>
<td>500</td>
<td>-</td>
</tr>
<tr>
<td>Parenting Orders – 9</td>
<td>150 (Hearings and SCRA cost inc in ASBO figure)</td>
<td>Included in ASBO figures</td>
<td>-</td>
</tr>
<tr>
<td>CROS, RLOs, spray paint – 10</td>
<td>121</td>
<td>1,110 (plus elements of 9m in ASBO section)</td>
<td>-</td>
</tr>
<tr>
<td>Fixed Penalty Notices – 11</td>
<td>150</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Children’s hearings - 12</td>
<td>850 (plus elements of funds in ASBO section)</td>
<td>1,500 (plus elements of 9m in ASBO section)</td>
<td>-</td>
</tr>
<tr>
<td>TOTAL</td>
<td>2,093</td>
<td>14,930</td>
<td>-</td>
</tr>
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</table>
EXECUTIVE STATEMENT ON LEGISLATIVE COMPETENCE

393. On 29 October 2003, the Minister for Communities (Margaret Curran) made the following statement:

“In my view, the provisions of the Antisocial Behaviour etc. (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE

394. On 24 October 2003, the Presiding Officer (George Reid) made the following statement:

“In my view, the provisions of the Antisocial Behaviour etc. (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”