

Guidance on Noise Nuisance

Antisocial Behaviour etc. (Scotland) Act 2004



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SCOTTISH EXECUTIVE

Guidance on Noise Nuisance

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INTRODUCTION

1. This guide provides operational guidance, primarily to local authority Environmental Health Officers, on how to administrate the noise provisions in Part 5 (sections 41 to 54) of the Antisocial Behaviour etc (Scotland) Act 2004. As these noise provisions are enabling and flexible, it will be for each local authority to decide if it wishes to adopt the provisions, and for what periods of the day and week.
2. The antisocial noise offence is a further tool to complement not replace existing legislation, in dealing with unreasonable noise within domestic dwellings. The offence is based on noise exceeding set permitted levels after a warning notice deterrent is not complied with. The investigation will require experienced officers to determine whether noise is caused by reasonable behaviour, including consideration of mental health, poor sound insulation, where use of mediation could be advocated.
3. The guidance is mainly technical and specific to local authority authorised officers and the police, The accompanying Regulations on Permitted Levels and Approved Noise Measuring Equipment will be laid in January 2005, on receiving clearance from the EC, whose member states must consider for a three month period under the terms of Trading Standards Directive 83/94EC.
4. The Antisocial Behaviour etc.(Scotland) Act received royal assent on 26 July 2004. The Act is available on the Scottish Executive Website at :

<http://www.scotland legislation.hms.gov.uk>

References and Further Information

5. The Scottish Executive would like to thank and acknowledge the work undertaken by consultants Hamilton & McGregor Acoustics Division, who produced the noise level feasibility study(4) and the research to inform this Antisocial Behaviour Noise Management Guide(3), which included a tele survey of all 32 Scottish local authorities, their responses(1) and additional information received(2). These four research documents are not included in this guidance, for reasons of brevity, but if you wish access to the complete documents, they can be accessed at weblinks listed below.

Weblinks

http://www.scotland.gov.uk/about/ERADEN/EcolAU/00017824/asbnmg_An1.pdf

http://www.scotland.gov.uk/about/ERADEN/EcolAU/00017824/asbnmg_An2.pdf

Full Report –Consultant’s complete Report

http://www.scotland.gov.uk/about/ERADEN/EcolAU/00017824/asbnmg_rpt.pdf

Noise Level Feasibility Research Report –full report

http://www.scotland.gov.uk/about/ERADEN/EcolAU/00017824/nlr_rpt.pdf

Contacts

6. If you have any queries relating to this document, please contact :
Air Noise and Nuisance Team, Scottish Executive 1H, Victoria Quay, Edinburgh EH6
6QQ. Tel. 0131 244 0393 e-mail duncan.mcnab@scotland.gsi.gov.uk

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

CONTEXT AND BACKGROUND

8. Part 5 of the Antisocial Behaviour etc. (Scotland) Act 2004 contains provisions in relation to noise nuisance. In particular it: gives local authorities additional powers to deal with noise nuisance; tackles the problems of night noise in dwellings.

9. These provisions are contained within sections 41 to 54 of Part 5 of the Act. If an officer of the local authority considers that the noise being emitted from a dwelling exceeds, or may exceed, the relevant permitted noise level, as measured from a relevant place, the officer may issue a Warning Notice under section 44. Where that Warning Notice is not complied with, within the stated time period, the person responsible for the noise will have committed an offence under section 45. The Officer may then issue a Fixed Penalty Notice, as described in section 46. The permitted noise levels will be determined by order from the Scottish Ministers. Recent research (McKell, 2004) has identified the objectively measured day, evening and night time permitted noise levels. The time periods and corresponding permitted noise levels have been defined as follows:-

- Daytime 07.00 – 19.00 hours L_{Aeq} 41dB
- Evening 19.00 – 23.00 hours L_{Aeq} 37dB
- Night-time 23.00 – 07.00 hours L_{Aeq} 31dB.

10. Whilst the provisions of Part 5 of the ASBA give local authorities power to implement a noise nuisance service for up to 24 hours a day, 7 days a week, it is recognised that not all local authorities within Scotland will require the same level of service. Therefore, to ensure best value is maintained within each local authority, individual authorities must be able to determine, based on local needs, the level of service best suited to their needs. Part 5 of the Act provides local authorities with the discretion to adopt a service, which if adopted, would have the power to set the times and days over which such a service would operate.

11. The provisions of the ASBA, in relation to noise nuisance, are intended to compliment the existing provisions for dealing with noise complaints, e.g. Civic Government (Scotland) Act 1982, Environmental Protection Act 1990, Control of Pollution Act 1974, civil actions and the use of mediation services. The offence is based on exceeding an objective measured sound level value ('the permitted level'). It has the advantage of not being subject to the same subjective uncertainties about judgements of nuisance which can prolong court proceedings for noise offences. The availability of a fixed penalty system, as well as providing a swifter sanction, may also prevent some cases being brought to court, and may relieve pressure on the Police to respond to complaints of party noise.

12. The permitted level, for the ASBA noise offence, should not be taken as an indication of whether or not noise is a statutory nuisance. It is possible that a noise which is not an offence under the ASBA may nevertheless be prejudicial to health, or a common law nuisance, and so be a statutory nuisance.

13. While the ASBA does not define the type of noise to which the ASB noise offence might apply, technical aspects of measuring the complained of noise means that there may be difficulties in assessing some impulsive or sporadic noises e.g. slamming doors and isolated incidents of shouting. The ASBA noise offence is likely to be most appropriate for cases of disturbance from persistent noises e.g. amplified music or prolonged noisy DIY activity

14. To maximise efficiency in dealing with noise complaints local authorities will require effective routing of incoming complaints of domestic noise and will be required to streamline initial investigations so as to ensure that the most appropriate course of action is taken. The routing of complaints of domestic noise will require alignment with the local antisocial behaviour strategies required by Part 1 of the ASBA.

THE SCOTTISH LEGISLATION

15. This Scottish legislation, which includes provisions similar to those contained within the Noise Act 1996, is the Antisocial Behaviour etc (Scotland) Act 2004, hereafter referred to as the ASBA. Part 5 of the ASBA deals with noise nuisance. However, the word 'nuisance' is taken to be representative of noise of a domestic origin that is found to be excessive, i.e., unacceptable to neighbours. It should not be confused with statutory nuisance. The fact that a permitted level is exceeded is not proof that a statutory noise nuisance exists. The provisions of the ASBA, like those of the Noise Act in England, Wales and Northern Ireland, are to complement the statutory nuisance controls on noise. The provisions are intended to allow a fast response and remedy to the problems of neighbour noise. For clarification, noise nuisance can be controlled either by action at common law or under statute.

16. Antisocial behaviour is defined in section 143 of the ASBA, and for the purposes of clarification, a person engages in anti social behaviour if he/she

acts in a manner that causes, or is likely to cause, alarm or distress;
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.

17. The Scottish Ministers wish to give local authorities the power to implement a noise nuisance service, in their area, up to 24 hours a day, 7 days a week. Local authorities will have the discretion to adopt such a service and, if adopted, will have the power to set the times and days on which such a service will operate. Also, if adopted, the local authorities will have a duty to take reasonable steps to investigate complaints of excessive noise and to take any appropriate enforcement action; in accordance with any adopted scheme

18. The proposed legislation is contained with sections 41 – 54 of the ASBA. Section 41 enables the local authorities to adopt the noise control provisions of Part 5 according to their needs with section 42 allowing a local authority to revoke, or vary, any resolution made under section 3. Section 43 sets out the duties of a local authority, and its officers, in relation to the investigation of noise from a dwelling. The provisions for the warning notice, the offence and the fixed penalty notice are contained within sections 44 to 46 respectively. Under section 48 the Scottish Ministers have the power, by order, to determine the maximum level of noise which may be emitted from a property, as measured from a relevant place. Section 49 provides for the Scottish Ministers to approve, by order, sound measuring devices and section 50 makes provision for Scottish Ministers to fund local authorities who wish to adopt the provisions. The format of the fixed penalty notice may be specified under the provisions of section 51 and section 47 allows for powers of entry and seizure of equipment used to make noise unlawfully.

19. The ASB offence requires that the noise emitted from the offending property be measured from a relevant place (complainant's dwelling) using an approved measuring device in a specified manner. The permitted level is set out, by order of the Scottish Ministers, in terms of section 43 of the ASBA. The Scottish Ministers also have the power to approve measuring devices for use in Scotland. The noise complained of must be measured using an approved device in accordance with any conditions, subject to which such approval is given.

RECENT RESEARCH ON PERMITTED LEVELS

20. Recent research (McKell, 2004) has identified the permitted levels appropriate for the different times of the day. It has been established that it is feasible to introduce objectively measured levels which, if breached during any time of the day, would cause an offence liable to conviction. The day, evening and night objectively measured intervention levels have been identified as 41dB, 37dB and 31dB respectively. The parameter to be used is the $L_{Aeq, 5min}$.

21. All relevant definitions and terms will be provided in the Regulations, to be issued by the Scottish Ministers, under section 48 of the ASBA. For the purposes of the ASB noise offence it is recommended that the permitted level (as defined in section 48 of the ASBA) shall be determined for each noise control period in accordance with the following:

22. In any case where the underlying level of noise does not exceed 21dB between the hours of 23.00 – 07.00 (night), 27dB between the hours of 19.00 – 23.00 (evening) and 31dB between the hours of 07.00 and 19.00 (day), the permitted

level shall be 31dB, 37dB and 41dB for each of the noise control periods respectively.

23. In any case where the underlying level of noise exceeds 21dB, 27dB and 31dB for night, evening and day time noise control periods respectively, the permitted level shall be 10dB in excess of that underlying level.

Underlying level of noise

24. The “underlying level of noise” can be determined even though the dominant noise, e.g. amplified music appears to be continuous. This can be achieved, using currently available instrumentation, the use of a statistical parameter (such as $L_{A99,8,5min}$, $L_{A99,5,2min}$ or $L_{A99,lmin}$) as a proxy for the underlying level of noise.

25. For measurement of the underlying noise using $L_{AN,T}$ measurements the equipment must meet certain criteria with regard to its sampling rate and its method of operation of statistical calculations, as detailed in the in the ASBA section 49 detailing the approval of measuring devices. It is understood that at the present time, only the instrument manufacturer, or their agent, can usually supply such information for such instruments. Details of the Class 1 noise measuring equipment approved by Scottish Ministers will be included in Regulations along with permitted noise levels for the proposed February 2005 commencement.

26. Local authority officers should be aware that the measurement procedure may require measurements of relatively low levels of noise. They should also recognise that the self-noise of the approved device (including the microphone) will always have the effect of elevating the underlying level of noise to a greater extent than the offending noise. At low levels of noise, the self-noise of the approved device can significantly affect the underlying level, making confirmation of an offence less likely.

27. To obtain suitable measurements, for the purposes of the legislation proposed by the ASBA, in situations where underlying levels of noise are around 21 dB(A), it is recommended that the self-noise of the measuring device (including the microphone) should be no greater than 17 dB(A).

28. Where the determination of the underlying level results in a non integer value, that value shall be rounded up to the next integer and where the determination of the noise giving rise to the complaints results in a non integer value, the value shall be rounded down to the next integer.

29. The information contained within Table 1 may assist with the appreciation of a typical subjective evaluation of objective levels.

Table 1 The dB(A) Scale

The dBA Noise Scale	
140	
130	
120	Jet taking off
110	Amplified Rock music
100	
90	Tractor at 15m
80	
70	
60	Normal Conversation at 1m
50	
40	Quiet living room
30	Bedroom of a country home
20	
10	

SUMMARY OF FEEDBACK FROM LOCAL AUTHORITY TELE-SURVEY

30. With the exception of Glasgow and Edinburgh and to a lesser extent Dundee, EHOs in all other local authorities will only respond, out of normal hours, on a pre-planned basis. In general, EHOs do not, at present, deal with party/loud music noise situations because they do not feel they have the means to do so.

31. In general, party/loud music noise (especially out of hours) is dealt with by the Police who may use CG(S)A s54 to deal with the problem. In some areas this type of noise complaint is a low priority for Police and if there is a 'history' of repeat offences EHOs or ASBO teams will generally become involved.

32. In Dundee and West Lothian there is a different approach to dealing with noise complaints which is based on the use of ASBO teams with good Police back up. These ASBO teams provide a form of out of hours service. In Dundee a freephone telephone number is provided for current complainants who are experiencing ongoing anti-social noise problems.

33. When EHOs do become involved in ASB noise complaints this is generally on a pre-planned basis. They normally handle these complaints by attempting to 'witness' the noise complaint first hand and, then either make a subjective assessment and/or (occasionally) make an objective assessment using a sound

level meter. In such circumstances EHOs will almost always work in pairs, and are most wary about personal safety. In Borders region, EHOs will ask for, and receive, back-up from Police, while in Shetland there is good communication between EHOs and the Police on an informal basis.

34. In almost all areas the Police support, in relation to ASB noise issues, is generally at a higher 'committee level' from senior officers, rather than at operational level, and EHOs seldom ask for the direct Police support, nor do they work closely with ASBO Teams in most areas.

35. Almost all local authorities agree that the current EPA s80 noise abatement procedure is inefficient and largely ineffective in dealing with ASB noise and related nuisance noise problems where there is no detectable 'behavioural' component. (In particular, see the recent South Ayrshire experience for an example of an exercise in frustration!)

36. Most EHOs recognise that the proposed ASBA FPN approach offers a potentially more effective method for dealing with ASB noise complaints. Their concern is centred on the actual implementation issues surrounding the use of the procedure, particularly its use out of hours when personal safety and non standard working practices would be required to support, and extended, evening and night services to a level that approaches the Glasgow City Council Night Noise Team system. Clearly this points to a need for specific training and a well thought out and safe investigation protocol.

37. During recent years the increase of mediation services has improved the handling of noise complaints of a domestic origin. This approach is particularly effective in local council housing and housing association tenancies where the noise maker and complainant are bound by tenancy agreements.

38. Mediation clearly has a place where non synchronised live styles create conflict. Mediation is a well established approach in Dundee, Falkirk, Highland region and other local authorities. There is also a recent move to establish community wardens through ASB strategies in some areas, this may increase the use of mediation services. However, it is hard to see how mediation will effectively deal with true ASB noise complaints, especially where there is an intent to annoy, or cause distress, or a clear disregard for those affected by the noise makers' activities.

39. In almost every local authority area the two main sources of noise complaint, of a domestic origin, are party/loud music noise (often out of hours) and barking dogs. A brief summary of the findings of the survey in relation to barking dogs is provided below.

40. The only 'legal' remedy available to complainants is CG(S)A s49. It may therefore be useful to create a national leaflet outlining this information. This could include information about Court pro- formas similar to those used in Edinburgh. East Dunbartonshire offer loan use of citronella collars to help train dogs. The use of a Bark Buster or even advice to owners regarding dog training is offered by some local authorities.

41. Dog Wardens in some local authorities appear to offer a highly cost effective method of responding to noisy dog issues by relieving the EHOs of a high volume non technical burden.

42. Extra resources, focussed on this area of high volume complaints, may bring relief to many complainants.

43. At present ASB noise complaints arising from a repeated pattern of party noise/ amplified music noise/ loud voices can be dealt with in a more immediate fashion by using section 54 of the Civic Government (Scotland) Act 1982. The survey suggests that this option works well where; there are good links between EHOs, ASBO teams and the Police; the Police have the resources and set priorities to deal with ASB noise complaints using CG(S)A s54. In fact this is the most favoured route used by local authorities to deal with night noise from parties/loud music even when Night Noise Teams and ASB/NeRT teams are available (as in Glasgow and Edinburgh). In Dundee and West Lothian ASBO Teams will respond to party/loud music noise complaints but only because they have good Police back up when required. This again reflects the concerns of EHOs and ASBO teams for personal safety, and the difficulties of applying EPA s.80 to such situations. The survey also suggests that Police in some areas are reluctant to apply this option (lack of awareness; unsure what noise level is acceptable; lack of training or lack of resources?).

44. Most local authorities recognise that, provided safety, resourcing and training concerns are addressed, the introduction of ASBA Noise FPN procedures will enable a more direct response to be made to ASB noise complaints. It is clear that improved Police awareness and support is also essential (see Dundee, West Lothian, Borders and Shetland) if such procedures are to be effective.

45. Many local authorities commented that poor sound insulation is at the root of many complaints, rather than true behavioural problems.

46. Without exception EHOs believe that the tackling of noise issues, including those of an ASB nature, requires EHO leadership to ensure that both subjective and objective assessments are undertaken on the basis of a full understanding of the nature of noise and other factors such as the likely level of sound insulation between the properties.

47. In summary, with the exceptions described above most local authorities deal with ASB noise complaints, and indeed general noise complaints on the basis of well established informal agreements and protocols. Many local authorities welcome the opportunity to benefit from the current research, whereby existing best practice can be identified and used as a basis for forging better local procedures and creating local protocols to make the handling of all types of noise complaints more efficient and thereby offer a better service to their residents.

TRAINING NEEDS

48. There is a need for all officers dealing with ASB noise to be able to assess the appropriateness of the different tools available to them, i.e. mediation, EPA and ASB provisions

49. The training needs identified during the discussions are as follows:

- familiarisation with basic acoustic theory;
- a recognised minimum level of formal training into the use of dedicated sound level meters for indoor measurement
- familiarisation with issues relating to sound insulation and potential legal remedies;
- safety training including how to deal with potential conflicts;
- serving of s.80 EPA abatement notices;
- training in ASBA provisions and procedures;
- training in use of appropriate use of Civic Government (Scotland) Act

50. The Institute of Acoustics (IOA) and REHIS have been approached with a view to formalising training courses. At this stage it is proposed that the IOA education committee, which has oversight of the delivery of current short courses and a one-year part-time postgraduate “Diploma in Acoustics and Noise Control”, at several universities and colleges in UK, will take responsibility for the quality assurance of the proposed ASB noise course, with final REHIS accreditation.

51. In the first instance the training course will need to address two distinct groups of personnel; those who have relevant experience of noise measurement and assessment and those who do not. Many of the former group will already hold the IOA’s Certificate of Competence in Environmental Noise Measurement and will be competent to make noise measurements outdoors and to make assessments, under the relevant legislation pertaining to the nature of the noise source, based on those measurements. For this group, a focused short course covering the measurement of noise indoors, under the circumstances likely to prevail in ASB situations, and the assessment and reporting of those measurements, will meet their needs.

52. For those who do not have relevant experience, further training will be needed and it is proposed that the IOA will utilise elements of their existing short courses syllabi, in environmental and workplace noise measurement, to cover aspects such as the basics of sound and the use of sound level meters.

53. It is proposed that, similar to the existing IOA courses, assessment will be by means of practical and written examinations, thus ensuring a threshold of proficiency is maintained.

54. For initial training to commence in November 2004 it is recommended that a series of one-day “update” courses for existing holders of the IOA Certificate of Competence in Environmental Noise Measurement be held in on-site locations throughout Scotland. The one day “update” course would include an assessment element. The IOA and REHIS will issue guidance on entry level requirements for each course.

DEVELOPMENT OF A MANAGEMENT GUIDE

55. This guidance document offers advice in relation to dealing with noise complaints of a domestic origin and possible options for action by the authorities involved. The guidance document includes reference to the existing framework for noise control, and overall ASBA strategy, and offers guidance on the use of permitted noise levels. This is presented in the form of an option matrix for ASB noise control and takes the form of a 3-stage flow chart, which allows the user to ensure that the most suitable means of control is selected for the problem in hand. The means of implementing that control are therefore clearly explained, thus ensuring comprehensive Good Practice and Management Guidance.

56. The flow chart contains references to paragraphs in this chapter, which expand on possible options or provides further information. The management guide provides local authority officers with a clear skeleton pathway from receipt of call to outcome. (outcomes are shown in yellow, ASB noise in pink, and non ASB noise in blue). The process between receipt of call and outcome, described in this chapter, is independent of the means of implementation. The means of implementation will be dependant upon the Part 1 ASB strategies adopted by local authorities. The implementation will be influenced by factors such as :-

resources – financial, available staffing levels and particular competencies;
main resource provider (EHOs .ASB teams, Police,);
needs assessment e.g. need for out of hours service.

57. It is also essential that the success, or otherwise, of the ASB policy is assessed as effectively as possible. This requires that ASB calls are identified and the complaint outcome logged. Every ASB noise complaint can be considered in terms of potential outcomes shown in Table 1.

Table 1 Possible Outcomes

Outcome 1	No Action
Outcome 2	Instigate EPA s.80 investigation
Outcome 3	Public Disorder issue identified. Police matter
Outcome 4	Referred to Mediation
Outcome 5	Poor sound insulation identified and remedial works investigated
Outcome 6	Subjective/Objective assessment made – No further action
Outcome 7	Subjective/Objective assessment made – WN issued
Outcome 8	Noise stops
Outcome 9	FPN issued
Outcome 10	Equipment seized
Outcome 11	Use of CG(S)A (caution or offence)
Outcome 12	ASB Noise complaint
Outcome 13	Non ASB Noise complaint

Stage 1 of Investigation

58. Upon receipt of a noise complaint, and at this stage it is assumed that there will be one contact point within each authority for receiving noise complaints, and that all normal contact details will be taken, it is recommended that potential ASB calls are filtered out as early in the process as is reasonably practicable. This can be achieved by the screening process illustrated in Figure 7.1. The non ASB noise complaints would simply be routed to the conventional investigation noise protocol adopted by that particular local authority. It should be noted that it is unlikely that a Warning or Fixed Penalty Notice would be the most appropriate remedy to deal with noise generated by an individual with autistic spectrum disorder or any disability or other developmental or medical condition which might cause their behaviour. Where an individual has such a condition, or is suspected of having such a condition, advice should be sought from medical experts on support which is available. The use of Mediation Services in such circumstances may also be appropriate.

Option Matrix for ASB Noise - Stage 1

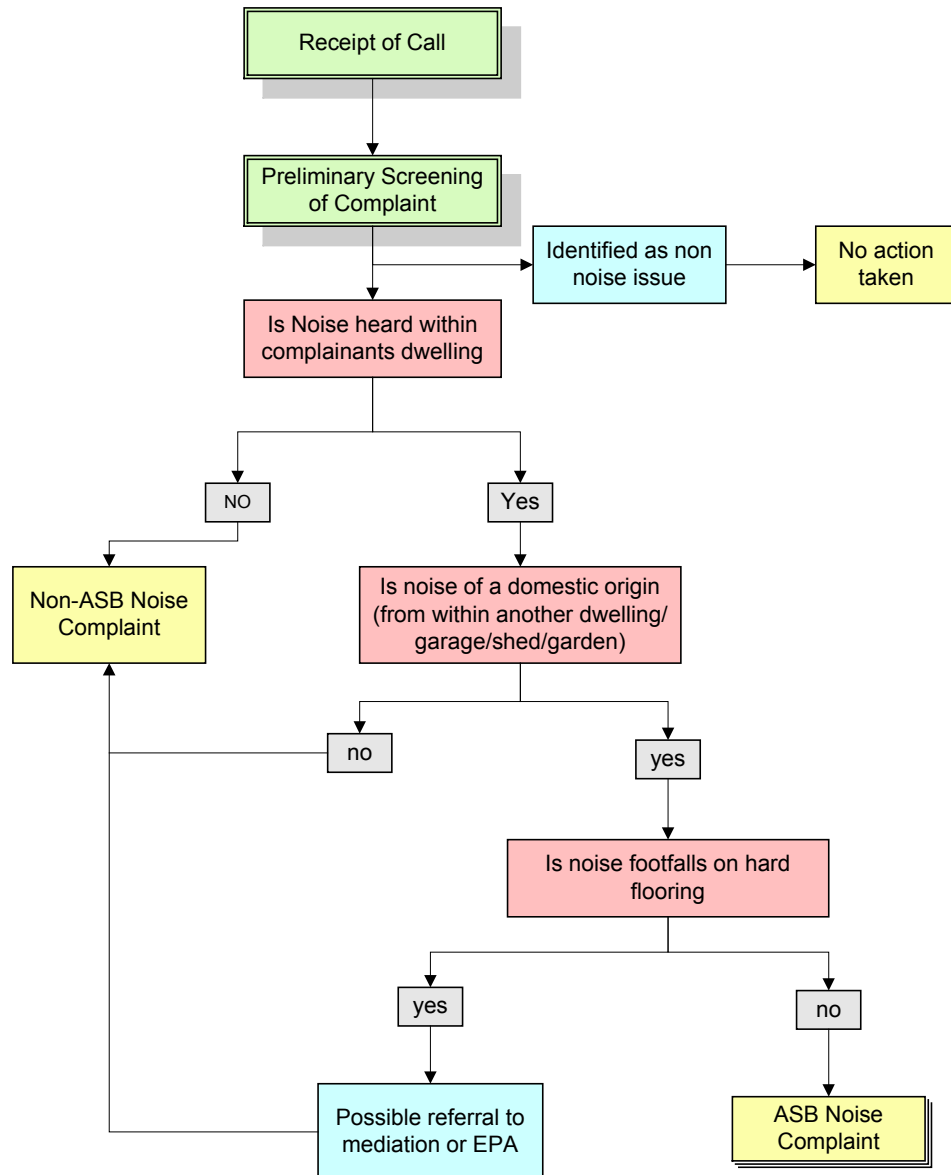


Figure 7.1

59. This Option Matrix covers the flow of decision from receipt of call to outcome. This process is independent of the implementation model and based on the information obtained in the tele-survey. It is recommended that a top tier is dropped on to the 3 stage assessment; the top tier is a local authority ASB screening process which will facilitate efficient progression through the Stage 1 flowchart

Stage 1 Outcomes

60. The outcomes (shown in yellow) at this stage of the process are therefore:
- Non ASB Noise complaint
 - ASB Noise complaint
 - No Action

Stage 2 of Investigation

Option Matrix for ASB Noise - Stage 2

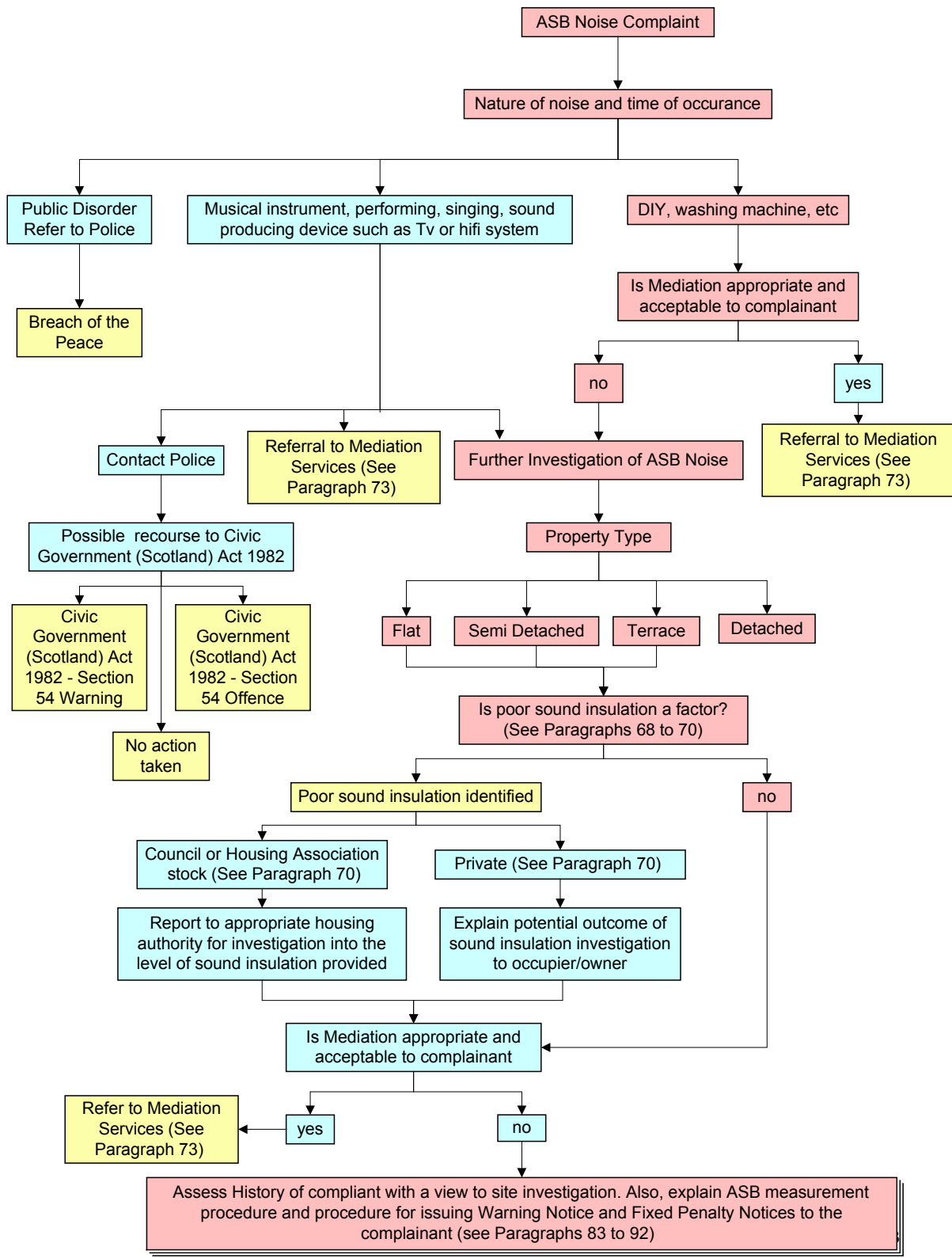


Figure 7.2

61. Once identified as an ASB noise complaint it is then necessary to determine the nature of the noise and the time of occurrence. Both of these factors will determine the action to be taken. For example, a call during out of office hours in a remote area may be routinely routed to the Police, whereas in a city authority it may, depending on the Part 1 ASB strategy adopted, be routed to a 24 hour Noise Response Team. The Noise Response team may comprise wholly of EHOs and Technical Officers, and could also involve ASB Officers, Community Wardens and Police Officers. The potential for a public disorder issue should be identified at this stage, if possible, to minimise the risk to non Police Officers.

62. If the Civic Government (Scotland) Act and Police action route is either not appropriate or is not relevant, as a consequence of the locally agreed ASB strategy, further investigation by the local authority is required. At this stage it is important to identify, if possible, whether or not poor sound insulation is likely to be a contributing factor to the complaints and whether or not mediation is an appropriate alternative strategy. Advice notes on sound insulation and mediation are offered in paragraphs 68 to 74.

63. The No Action outcome may occur as the result of the incoming call being identified as non-noise.

Barking Dogs and Domestic/ Car Intruder Alarms

64. Whilst the current Defra guidance, Circular NN/31/03/2004, specifically states, in paragraph 65, that the “1996 Act powers are not intended to cover noisy animals such as barking dogs”, noisy animals such as barking dogs could be included within the provisions of Part 5 of ASBA. The tele-survey revealed overwhelming evidence in relation to the problem of barking dogs. In almost every local authority the two main sources of noise complaints of a domestic origin were given as music noise and barking dogs. Similarly, a study of the role of mediation in tackling neighbour disputes ((Brown, Barclay, Simmons and Eley) revealed that dogs were amongst the most common presenting issues.

65. The tele survey revealed that the main issue with the legal remedy is once again the time taken from complaint to resolution. Section 49(2) of the Civic Government (Scotland) Act 1982 allows a person who has reasonable cause for annoyance, as a result of a barking dog, to make an application to the District court for an Order to be made requiring the owner of the creature to take action to prevent the annoyance from continuing. The application requires that the complaint be made on a specified form and, subject to the Court considering that there appeared to be reasonable cause for annoyance, a date is set for a Hearing. Both the complainant and the owner of the creature are required to attend the Hearing to state their cases. Subject to the Court agreeing that the complaint is justified, an Order is issued specifying what action the owner of the animal is required to take. The complainant would also be advised of the terms of the Order and if these are not complied with, subsequent complaints about failure to comply with the Order would then require to be made to the Police. If the Police can substantiate that the conditions in the Order are not being complied with they can then make a report to the Procurator Fiscal with a view to the Court taking action against the owner of the creature for failure to comply with the Order.

66. The whole process is lengthy and involves the complainant attending court at the same time as the person responsible for the dog. The use of ASBA Part 5 provisions could potentially allow a rapid resolution to the problem of barking dogs. However, Part 5 is only applicable where the dog is in a relevant property (relevant property is defined in section 53 of the ASBA). The noise from a continually barking dog is capable of being measured using the noise control provisions contained within ASBA Part 5. However, section 47 covers the powers of entry and of equipment used to make unlawful noise. The powers of seizure apply where, a warning notice has been served and the officer has reason to believe that, at any time in the period specified in the notice, noise emitted from the relevant property has exceeded the permitted level as measured from a relevant place. The officer (or authorised person) may, using the powers available under section 47, enter the premises and remove the equipment, which could apply to animals. As with other domestic noise sources, local authority officers will be required to decide on the most appropriate form of action, e.g. EPA nuisance action or ASB provisions or, in the case of noisy animals sec. 49 of the Civic Government (Scotland) Act 1982 or ASB provisions. A suggested protocol for obtaining a warrant has been included as Appendix 8.

67. In the case of domestic intruder alarms, presently dealt with using the Environmental Protection Act (1990), local authorities generally have established operational procedures for dealing with domestic and car alarms. The procedures involve local arrangements with the Police for the identification of vehicle owners and obtaining a warrant to break and enter premises to silence an alarm with the assistance of a locksmith and alarm specialist. Once the provisions of the ASBA are legally enforceable local authorities will also have the option of adopting their locally developed procedures so as to include the possibility of issuing a FPN's with respect to domestic/car intruder alarms if the noise originates in a relevant property.

Sound Insulation

68. Once the initial screening has identified an ASB noise complaint a further investigation in to the relevant facts pertaining to the complaint is required. Sound insulation is a major consideration as to whether or not it is appropriate to consider serving a WN or FPN. During the tele-survey all local authorities acknowledged the fact that some of the housing stock in their area has a poor standard of sound insulation. The issue of sound insulation and nuisance has received a great deal of attention in recent years and there is the notion amongst some EHOs that nuisance provisions do not apply to cases of poor sound isolation. The decision of the House of Lords in London Borough of Southwark -v- Mills and another, and Baxter -v- Mayor etc., of the London Borough of Camden ('Mills and Baxter') on 21 October 1999 has generally been regarded as a major setback for the rights of tenants and residents in England and Wales. While the House of Lords was primarily concerned with English common law remedies, and not statutory remedies under the Environmental Protection Act 1990 (EPA), the Mills & Baxter judgment has had a knock-on effect for remedies under the EPA.

69. In Mills & Baxter, the House of Lords held that there was no authority for the proposition that the normal and ordinary use of a property 'in a way which shows as much consideration for the neighbours as can reasonably be expected, can be an

actionable nuisance'. Accordingly, if neighbours were not committing a nuisance, the Council could not be held liable for authorising/allowing them to commit one. The tenants in Mills & Baxter accepted that their neighbours were not 'unreasonably noisy' and 'for the most part' were behaving 'quite normally'. The problem was their tenancy properties had no sound insulation, resulting in them being able to hear 'not only the neighbours' televisions and their babies crying but their coming and going, their cooking and cleaning, their quarrels and their love-making'.

70. How then does this decision affect remedies for noise nuisance under the EPA where section 79(1) creates a 'two limb' test; 'prejudicial to health' or 'nuisance'? The provision of such advice is outwith the scope of this guidance, however, it is clear that in a local authority area where poor sound insulation is likely to be an issue a clear and defensible policy statement should be drawn up by the local authority legal advisors and issued to enforcing officers to enable them to offer the appropriate advice and take appropriate action. Local authority officers considering the implications of poor sound insulation in deciding the options available for dealing with ASB noise and poor sound insulation should be aware that where the property is rented it would be open to the tenant to exercise his or her rights in terms of the contract of let. If poor sound insulation between two private properties is an issue the fact that an EPA abatement notice could be served on both parties should be explained to the complainant. Poor sound insulation is not defined in this document but it may be helpful for investigating officers to consider that whilst from time to time it is reasonable to expect to hear occasional loud noises you should not be able to routinely hear your neighbour's normal conversation or television.

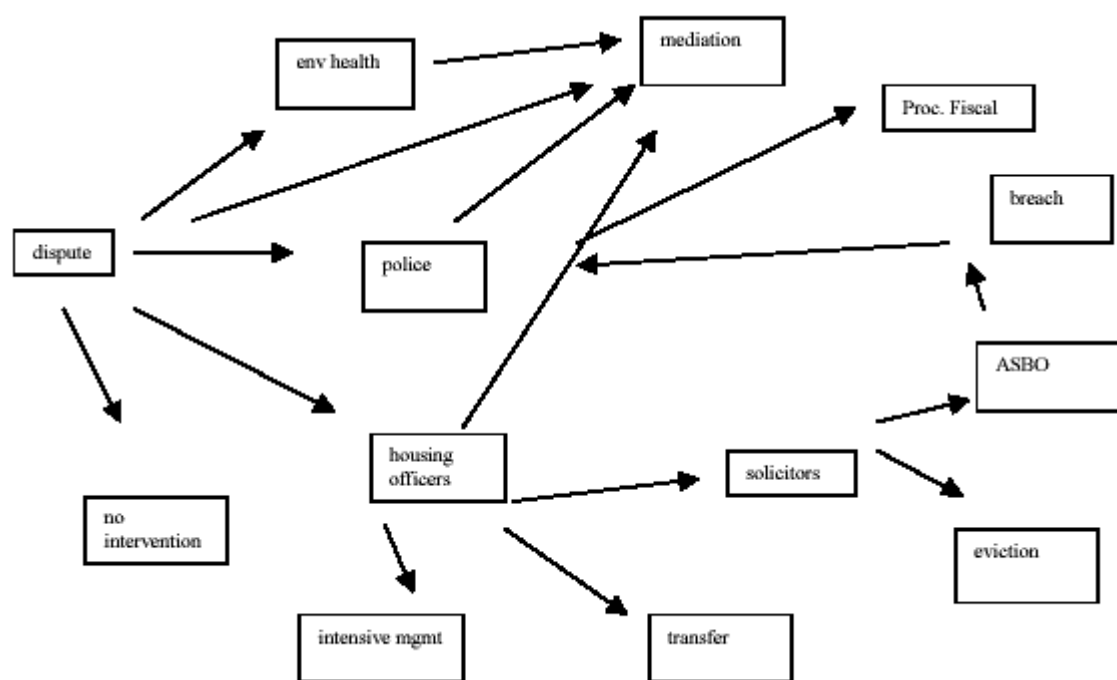
Civil Rights

71. Failure by an investigating officer to consider the influence of the level of sound insulation between properties could result in the local authority sanctioning inappropriate action. The prevention of crime and disorder is where the use of provisions contained within the Anti-Social Behaviour (Scotland) 2004 Act would be used in interfering with an individual's right to create as much noise as he/she pleases within their own home. However, in using the provisions of the Anti-Social Behaviour (Scotland) 2004 Act to protect others from the anti-social behaviour of an individual, the rights of that individual (the perpetrator of the noise) must not be prejudiced, and any action taken to stop the noise maker from making noise must be proportionate given the circumstances. Consequently, where there is poor sound insulation the use of a Warning or Fixed Penalty Notice in response to an exceedance of the Permitted Noise Level through normal everyday behaviour by the noise maker is unlikely to be an appropriate action/outcome.

72. There is also the concept of reasonableness, in that an investigating officer should determine if the antisocial noise from an offending property is caused intentionally or unintentionally, or reasonable in the circumstances. An example would be in dealing with people with disabilities, where the behaviour may be a consequence of a disability or other medical or developmental condition. Where an individual has such a condition, or it is suspected they may have such a condition, advice should be sought from medical experts or support where available. The investigation officer should give consideration to the wider circumstances, and possibly offer mediation as a resolution of complaints between neighbours.

Mediation

73. In a recent Scottish Executive funded research project (Brown, Barclay, Simmons and Eley) which investigated the role of mediation in tackling neighbour disputes and anti-social behaviour found that in most of the cited case studies, “the main presenting issue was noise, either noise of domestic appliances, children, dogs, and other 'normal' living, or noise of parties and loud music”. In 61 percent of cases, the outcome recorded by the mediation service, was either full or partial agreement or some improvement in the situation. In just under half of these cases (in 28 percent of all cases), the mediation service recorded an agreement on all presenting issues. Mediators themselves, however, suggest that there are likely to be positive outcomes which cannot easily be measured in terms of improved relationships and the capacity to handle disputes in future, even in 'unsuccessful' cases. The report acknowledged that mediation will not be sufficient to deal with serious anti-social behaviour, which is associated with alcohol and drug abuse, mental health problems or criminal activity. The crucial role that referral to mediation services can play in tackling anti-social behaviour noise is illustrated in a chart included in the aforementioned report (reproduced below). The chart shows that mediation has the potential to play a pivotal role in the local strategies required by Part 1 of the ASBA.



(Brown, Barclay, Simmons and Eley)

Stage 2 Outcomes

74. Prior to the consideration of a site visit; either immediate or pre-arranged, it is recommended that the possibility of referral to mediation services be highlighted as a possible option. It is possible that the offer of such a service may negate the need for a site visit by Noise Team Officers and may in fact be a more efficient use of

resources. The second stage of the investigation process is outlined in Figure 7.2. The possible Outcomes at this stage of the process are:

- Civic Government (Scotland) Act 1982 – Section 54 warning
- Civic Government (Scotland) Act 1982 – Section 54(1) offence
- No Action
- Breach of the Peace
- Referral to Mediation Services
- Poor sound insulation identified

Stage 3 Investigation

75. The Stage 3 investigation can be considered as detailed in Figure 7.3. However, it should be noted that any measurement procedure must take cognisance of The Regulation of Investigatory Powers (Scotland) Act 2000 (RIPSA). This subject is considered in some detail in the Noise Management Guide presently being prepared for the Scottish Executive by Temple Environmental Consultants Ltd. While it is unlikely that the RIPSA provisions will apply to ASB noise measurements all local authorities should consult their legal advisors in respect of RIPSA provisions.

Option Matrix for ASB Noise - Stage 3

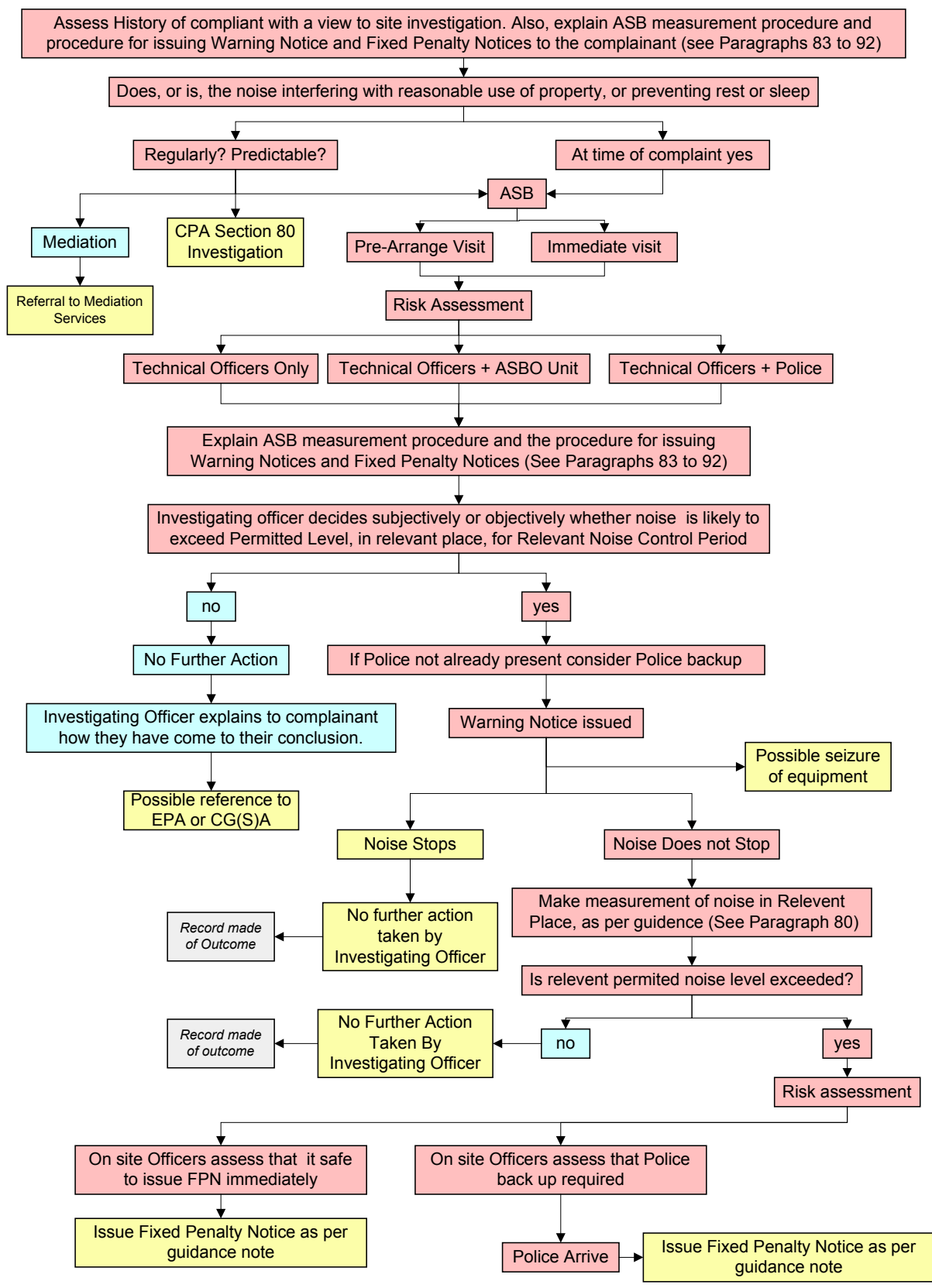


Figure 7.3

76. Once the preliminary investigation with respect to sound insulation has been completed a decision then has to be made as to the need and timing of a site visit for further investigations. Additionally, there may be times when, due to peaks in the demand for the service, especially any night noise service, or pressure from other competing priorities, a local authority may find that the level of service that can be provided within available resources will not meet the increased demand. In such circumstances, in order to ensure the most effective use of available resources, complaints may need to be subject to prioritisation, whereby the level of response to a complaint is based on a screening and assessment process in order to determine priority for action, based on factors which could include:

- how often the complained of noise occurs;
- how likely it is that investigating officers will be able to witness and measure the complained of noise; and
- how the noise is affecting the complainant.

77. If the occurrence is predictable (e.g. very loud music being played or generated between certain hours every weekend), and there is no immediate risk of adverse behaviour (e.g. one neighbour assaulting another), a pre-arranged visit may be a better use of resources than an immediate response. However, if the noise is occurring at the time of the complaint, and its occurrence is not predictable, then an immediate response is likely to be appropriate. At the stage of taking complaint details it is recommended that the local authority officer explains the procedure in investigating an ASB noise complaint, including the possible need to measure from within the complainant's dwelling, and the conditions under which the measurement would be made. Prior to any visit, whether it be pre-arranged or immediate, a risk assessment must be undertaken and, if necessary, a request for a Police presence to accompany the ASB officer(s) made. It is assumed that each local authority will make available to officers the details of areas where visits at particular times of the day or night would not be sensible without a Police presence. It is worth bearing in mind that, at this point in the decision process, Belfast City Council Officers, who have extensive experience in the implementation of the Noise Act 1996, routinely issue WN's without Police presence, but always request a Police presence prior to issuing a FPN. The outcome of the risk assessment will determine the presence required for the investigation.

ASB Assessment and Measurement

78. The provisions for the investigation of excessive noise from a relevant property are detailed within Part 5 of the ASBA. If it has been decided that a site visit is appropriate, the main purpose of the visit should be to decide whether or not the noise complained of exceeds, or may exceed, the permitted level for that noise control period (i.e. day, evening or night-time). In coming to a decision, it is for the local authority officer concerned to decide whether to assess the noise from inside or outside the complainant's dwelling and whether or not to use any device for measuring the noise. There is no requirement to measure the noise at this stage.

79. Where a local authority officer decides, by judgement or by taking a measurement, that the noise being emitted from the relevant property, during a noise control period, does not exceed the permitted level, for that period, or where it is

decided that the noise cannot be measured, or where it is considered that the provisions of the ASBA are inappropriate, the officer may nevertheless be satisfied that the noise is a statutory nuisance under the provisions of the EPA. In such cases, the local authority is under a duty to serve an abatement notice under section 80 of the EPA.

80. If the officer is satisfied, either by judgement or measurement, that the alleged noise being emitted from a relevant property, if it were measured from a relevant place, exceeds or may exceed, the permitted level during the relevant noise control period, then a warning notice may be served, although there is no requirement on the officer to do so. However, if a warning notice is not served, no ASBA noise offence is committed, even if subsequent measurement shows that the permitted level for the relevant noise control period is being exceeded.

81. The measurement must take place within a habitable room. Common sense dictates that a habitable room will usually be a living room, sitting room, study or bedroom. In the case of a dining kitchen area it may include the kitchen. It does not, in these circumstances, include a hallway, stairway, bathroom, lavatory or other areas such as utility rooms. Conservatories and holiday caravans are, at present, excluded because of the possibility of plastic roofs and the uncertainty over typical levels of sound reduction offered by such roofs. The measurement should be made at least 0.5m away from any room surface and from any items of furniture. Any windows and doors to the external environment must be closed. The microphone should be located at a height of 1.2 - 1.5m from the floor. Normally only one measurement will be required, but should that measurement be corrupted it may be necessary to undertake further measurements.

82. If the investigating officer is satisfied that a statutory nuisance is being caused, as well as the permitted noise level being exceeded, then the mandatory duty to serve an abatement notice also applies. However, should the permitted noise level, for the relevant noise control period, continue to be exceeded, or a statutory nuisance continue after service of both a warning notice and an abatement notice, the local authority has discretion, whether to follow the remainder of the ASBA provisions or the EPA enforcement processes. In such cases it would be inappropriate to use both enforcement regimes; the local authority must decide which is the most appropriate. .

ASB Warning Notice (see Annex 3 for example)

83. The warning notice must be served by delivering it to any person present at, or near, the offending property and appearing, to the local authority officer, to be responsible for the noise, or if it is not reasonably practicable to identify such a person, by leaving the notice at the relevant property (e.g. post through the letterbox). It is not an offence to refuse to provide a name for the Warning Notice. The Warning Notice can be addressed to the person who is responsible for noise.

84. For the purpose of the noise control provisions, a person is responsible for noise emitted from the relevant property if the emission of the noise is wholly or partly attributable to the person's act, failure or sufferance.

85. The warning notice, must state:

that the officer of the authority considers that noise is being emitted from the offending property during a noise control period; and
that the noise exceeds, or may exceed, the permitted level, as measured from a relevant place; and
that any person who is responsible for noise which is emitted from the offending property, in the period specified in the notice, and exceeds the permitted level as measured from a relevant place, may be guilty of an offence;
the specified period, beginning not earlier than 10 minutes after the time when the notice is served; and ending at the relevant time;
the time at which the notice was served.

86. There is no provision in the ASBA for a standard form for a Warning Notice, but a sample of the form used by Belfast City Council is included as Annex 3.

87. The period of the notice cannot begin earlier than ten minutes after the notice has been served, although the notice may provide that the period commences later. An example of this could be where the officer responds to a complaint of a noisy party and, on attempting to serve the warning notice, is assured that the party will cease in twenty minutes. If the officer believes that it is a reasonable response in the circumstances, the initial period before the warning notice comes into effect could then be extended to twenty minutes.

The warning notice is valid until the end of the noise control period.

ASB Noise Offence

88. Where a warning notice has been served with respect to noise emitted from the offending property and the noise level measured in accordance with the required procedures, using approved devices, at a relevant place, exceeds the permitted noise level for the relevant noise control period, the person responsible for the noise shall be guilty of an offence and liable on summary conviction or a fine not exceeding level 3 on the standard scale. The measurement protocol is included as Annex 5 and the instrumentation specification as Annex

89. At this stage it is recommended that if an offence has been committed, and a FPN is to be served, that the relevant officer, if a Police Officer is not present, considers the need to request the presence of a Police Officer prior to issuing the FPN.

ASB Fixed Penalty Notice

The relevant officer can offer a person who is committing, or has just committed, an ASB noise offence the option of discharging liability to conviction by payment of a fixed penalty notice (FPN). The FPN is given to the person responsible for the noise emitted from offending property in the period specified in the warning notice. No further FPN can be given to that person with respect to noise emitted from the

offending property during that noise control period, although further exceedances of the permitted level may be reported to the Procurator Fiscal.

90. The FPN may be served by delivering it to the person, or by leaving the FPN, addressed to the person, at the offending property. The FPN must state the following:

the period during which, by virtue of paragraph (a) of section 51(2), proceedings will not be taken for the offence;
the amount of the fixed penalty; and
the person to whom, and the address at which, the fixed penalty may be paid.

91. Section 51 of the ASBA enables the Scottish Ministers, by order, to specify the form in which a FPN must be issued.

92. As a result of section 42 of the Criminal Procedure (Scotland) Act 1995 no child under the age of 16 years shall be prosecuted for any offence except on the instruction of the Lord Advocate. Therefore, consideration should be given to this provision when considering issuing a Fixed Penalty Notice to a child under 16 as non payment may result in a criminal prosecution.

Powers of Entry and Seizure

93. Where a warning notice has been served with respect to noise emitted from an offending property, and the local authority officer has reason to believe that, at any time in the period specified in the notice, noise emitted from the relevant property has exceeded the permitted level for that noise control period, as measured from a relevant place, the authorised officer may enter the offending property to seize the noise-making equipment. These powers are likely to be considered when it is abundantly clear to the officers involved that the serving of a FPN will have absolutely no impact on the noise generated or if a Fixed Penalty Notice has been served and the problem continues or recurs. The procedures for using powers of entry are fully detailed within the “summary procedures for dealing with noise from certain places” in Part 5 of the ASBA. Such noise-making equipment will typically comprise electronic items such as a Hi-fi, mixer desk, loud speakers, TV, DIY equipment, and musical instruments such as drum-kits, keyboards or guitars and their amplification. It may, potentially, also include a collection of CDs, records, mini-discs or tapes. As referred to in paragraph 64 it may also include dogs or other noisy animals. The seizure of equipment may also take place when a FPN has not been complied with. A suggested protocol for obtaining a warrant has been included as Appendix 8.

The Stage 3 assessment is represented in Figure 7.3.

Stage 3 Outcomes

94. The possible Outcomes at the end of Stage 3 are as follows:

- EPA s.80 Investigation
- Referred to Mediation
- No further action
- Noise stops
- WN issued
- FPN issued
- Seizure of equipment

95. The process from receipt of call to outcome is now complete. As was stated in 56 the process between receipt of call and outcome described in this chapter is independent of the means of implementation. The means of implementation will be dependant upon the Part 1 ASB strategies adopted by local authorities and consideration of the alignment of Part 1 and Part 5, is considered in Paragraph 97.

ALIGNMENT OF ASB PART 5 NOISE ISSUES AND ASB PART 1 STRATEGIES

96. The survey of local authorities has identified that a key issue, and one which applies to noise complaints generally, is that the receiving, and first screening, of ASB noise complaints can lead to significant double handling by the many agencies involved, giving rise to confusion. Poor communications may result in a significant waste of expensive professional resources. This may be aggravated by the actions of the complainants, who in their frustration, or lack of understanding, make several complaints to various agencies, thus adding to potential for confusion. This is particularly bad in larger local authorities, but it is likely to occur to a significant degree in most local authorities. From the residents point of view, when lodging a complaint out of hours, there is the added uncertainty about whom to complain to, and it seems very likely that many noise complaints (including those not of an ASB nature) will be directed toward the Police, thus unnecessarily adding to their workload.

97. It is therefore recommended that each local authority establish an ASB noise screening process so as to make an initial screening of incoming telephone calls prior to directing the ASB noise complaint to the appropriate agency (possibly by email?), and in accordance with the ASBA Part 1 adopted local strategy agreement. This process is illustrated in Figure 7.4.

Option Matrix for ASB Noise - With Top Tier

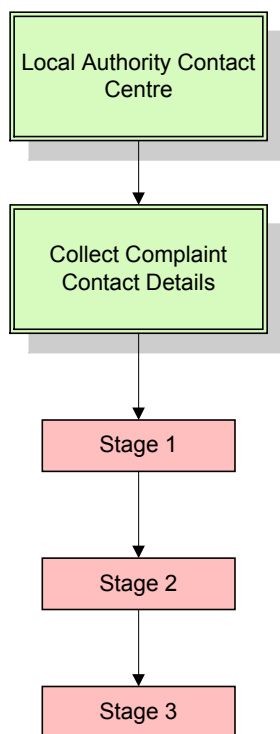


Figure 7.4

98. To make such a system work effectively a public awareness campaign will need to be run. (Belfast has undertaken a similar exercise on a smaller scale. Each Police Station in Belfast is visited annually by an EHO to ensure that contact details for the night noise service are prominently displayed within the station for the benefit of the public and the duty desk sergeant. In this way all calls received by the Police in respect of noise at night are routed to the night noise service.) It is however, recognised that complainants may still wish to report party/loud music noise complaints to the Police. A well and regularly run awareness campaign should minimise this with time. It will remain for the Police to filter out, from such complaints, those where a Public Disorder or other potential misdemeanour may be involved.

99. The requirement, under Part 1 of the ASBA, to 'set a local strategy for ASB' will enable each local authority to decide the appropriate level of response for their area, based on best value principles. From the information obtained in the tele-survey three models are offered for consideration.

Model 1 (Direct Action by Noise Response Team)

100. Using Model 1 the local authority elects to provide a 24/7 cover for ASB noise complaints. The first step would be for the ASB noise complaint to be filtered and classified as a genuine complaint by the LA ASB Noise screening process as described in Annex 4.

101. First screening of these calls would be by Clerical Support Officers (CROs) working to a questions script as set out at Annex 4. Genuine ASB noise complaints would then be forwarded (by email) to the relevant mailbox for the Agency identified by the Part 1 ASBA local strategy for each LA.

102. For Model 1 it is suggested that a Noise Response Team act as the primary Agency to receive the Stage 1 Reports from the CROs.

103. The CRO team would also make monthly reports to the Scottish Executive (SE) on the Stage 1, Stage 2 and Stage 3 Outcomes of ASB Noise complaints. To do this they would need to facilitate and collect reports from the relevant agencies tasked with completion of the Stage 2 and Stage 3 investigations and Outcome(s) reporting.

104. On receipt of the Stage 1 report, of what is likely to be a genuine ASB Noise complaint, the (Trained Technical Officers) TTO in the relevant Agency would then be responsible for initiating appropriate follow up action by making a Stage 2 Assessment (with an associated report to the CRO team) and possibly a Stage 3 investigation and assessment (again with an associated report to the CRO Team).

105. In summary, the above process for Model 1 would be: the LA Noise Response Team (NRT) receives the contact information from the ASB Noise Contact Centre, preferably by email. This team would operate up to 24*7, or perhaps to 2 am weekdays and 4 am weekend days, as appropriate.

Stage 1 screening by CROs with report to NRT.

106. It is recommended that this NRT be led by EHOs (and/or Trained Technical Officers (TTOs)) and supported by ASB Officers experienced in noise complaints.

107. Given the importance and sensitivity of party/loud music ASB noise complaints it is vital that a clear understanding is forged between the NRT and the Police regarding how such calls will be dealt with. (It may also be useful to have a Community Police Officer seconded (part-time) to work within the NRT, particularly during the set up period. This will be a key issue to be agreed between the parties when agreeing the ASBA Part 1 Local Strategy Agreement.

108. When the NRT receives a Stage 1 report of an ASB noise complaint they will carry out the Stage 2 and 3 assessments/investigations as illustrated, in outline, in Figure 7.4. The Stage 2 assessment should be assisted by the initial Stage 1 report received from the CROs which should provide all the essential contact and other details.

109. The NRT will may also be able to establish, from their local knowledge or records, a previous 'history' from the complainant or the likely noise maker.

110. As part of the above process the NRT will make a risk assessment according to their own operational guidelines and the Part 1 Local Strategy agreement with the Police and either elect to respond to the call under ASBA FPN procedures, with or

without Police in attendance, for all or part of the process, or on health and safety grounds refer the matter to the Police for action under CG(S)A sec. 54.

111. It is to be hoped that, based on the experience of Dundee and West Lothian that the NRT approach with EHOs/TTOs providing 'noise expertise' and ASB Officers providing 'expertise in dealing with ASB situations' that most ASB noise complaints, including party/loud music noise complaints will be handled without direct Police intervention.

112. When the NRT attends to make a site investigation and finds that the situation should either be referred to the Police for action under CG(S)A Section 54, the use of s54 would still be a possible option. Alternately the NRT may require Police back up to issue a FPN.

The NRT will provide the CRO Team with Stage 2 and Stage 3 reports (by email).

The CRO Team will make monthly reports on ASB noise complaints to the SE.

Model 2 (Combined Direct and Delayed Action by NRT)

113. This model is intended for use in local authorities which have a smaller proportion of urban housing and a significant proportion of suburban and rural housing. For these local authorities there may not be a justification for a 24/7 NRT cover but provide only NRT cover for certain 'noise hotspots' at certain times (for example weekends only).

114. Under this Model the Part 1 Local Strategy Agreement relating to party/loud music ASB noise complaints would reflect local needs to get best use of resources for both the local authority and Police. The form of NRT cover may dictate, for example, that during weekday out of hours periods the LA ASB Noise Contact Centre would automatically refer party/loud music noise complaints to the Police (by email) with a copy of the email going to the NRT for delayed follow up, NRT action by telephone the next day and the establishment of a history of the complaint. (It is recognised that for smaller LAs the ASB Noise Contact Centre may well be combined with other 'emergency response services' to ensure best value use of resources.)

115. The primary advantage of this approach is that the Police would, in general, only receive party/loud music noise complaints, rather than the wider range of more general noise complaints which they may well receive at present (particularly out of hours).

116. When responding to any ASB noise complaint the NRT would follow established risk assessment procedures, may ask for Police support, or may refer the call to the Police for action, all as previously described for Model 1.

117. Clearly there would be scope for adjoining local authorities to pool resources and/or provide a service when establishing and operating NRTs.

Model 3 (Delayed NRT Action Model)

118. For certain rural areas (the Islands, Highlands and parts of Perth and Kinross and others) the very low level of noise complaints, generally, and of ASB noise complaints in particular, would appear to make investment in the Model 1 or Model 2 type of out of hours reactive service seem poor value for money.

119. For Model 3 it is recommended that the Part 1 Local Strategy Agreement would be based on a form of the delayed action Model 2 but probably with all out of hours ASB noise complaints relating to party/loud Noise, that are received at the LA ASB Contact Centre, being referred directly to the Police for action under the CG(S)A section 54.

120. (It is recognised that for smaller LAs the ASB Contact Centre may well be combined with other 'emergency response services' to ensure best value use of resources.) This would be done by email to the Police mailbox, with a copy going to the NRT for delayed follow up action, all previously described in Model 1 and 2.

121. It is recommended that one or two administrative support staff be designated as CROs responsible for first screening and facilitating the provision of Monthly Reports to the SE all as previously described for Models 1 and 2.

ASB Noise Complaints Monitoring

122. Monitoring of the outcomes at each key stage in the process, from first receipt of a call through to the final outcome(s), is essential to facilitate an evaluation of the success of the ASBA provisions in controlling ASBA noise, and also for an evaluation of the alignment of ASBA Parts 1 and 5. The Scottish Executive intend to review the effectiveness of the ASBA Noise provisions, including the permitted noise levels, one year after implementation, and therefore effective local authority monitoring systems will be a prerequisite for evaluation and future planning.

ANNEXES

ANNEX 1- Local authority completed tele-survey forms

http://www.scotland.gov.uk/about/ERADEN/EcolAU/00017824/asbnmg_An1.pdf

ANNEX 2- Additional information provided by local authorities:

http://www.scotland.gov.uk/about/ERADEN/EcolAU/00017824/asbnmg_An2.pdf

ANNEX 3- Belfast City Council Warning Notice



Serial N0 1154~

WARNING NOTICE REGARDING EXCESSIVE NOISE

Noise Act 1996 : Section 3

WHEREAS Belfast City Council has adopted the provisions contained in Sections 2 to 9 of the above Act AND NOW in consequence of the investigation of a complaint made to it about excessive noise an officer of the Council considers

(i) that noise is being emitted from the dwelling known as

.....
(the 'offending dwelling') during night hours², and

(ii) the noise exceeds, or may exceed, the permitted level³ as measured from within the complainant's dwelling.

TAKE NOTICE THAT any person who is responsible⁴ for noise which is emitted from the offending dwelling, in the period specified below, and exceeds the permitted level, as measured from within the complainant's dwelling, may be guilty of an offence.⁵

The period referred to above is the period beginning (time) on (date)
(being a time not earlier than 10 minutes after the time when this Notice is served) and ending with the following 7 am.

Signed: (an officer of the Council)

Date: (Time)

(for notes, see reverse)

ANNEX 4 - NNCC–possible service levels- for access to complete ASB NMG research report:
http://www.scotland.gov.uk/about/eraden/ecolau/00017824/nlr_rpt.pdf

ANNEX 5 MEASUREMENT PROTOCOL

1. This measurement protocol is intended for use by local authority officers investigating complaints received by the local authority in terms of the Anti-Social Behaviour Act 2004 (ASB Act). It details the measurement requirements and procedures required to ensure compliance with the ASB Act.
2. All noise investigations will be undertaken in response to complaints received by the local authority as there is no requirement within the ASB Act for the local authority to inspect its area. It will generally not be possible to plan too far in advance and it is therefore important that all officers involved or likely to be involved in such measurements are familiar with the requirements of the legislation. As with all complaint investigation officers must carry out an initial risk assessment and should be continually aware of any change in circumstances that may result in an increases risk to personal safety or the safety of others present.
3. There are some definitions which must be understood prior to embarking on an ASB noise investigation. Definitions can be found in section 53 of the ASB Act.
4. Relevant Place means any place within accommodation (except, in the case of measurement of noise emitted from relevant property which is accommodation, that accommodation). Accommodation means a building or other structure (or part of a building or other structure) used or intended to be used as a separate unit of accommodation (whether on a permanent basis or otherwise).
5. Relevant Property means any accommodation or land associated with that accommodation, (e.g. garage, shed yard etc).

Information to be given to the complainant

6. Section 43(2) requires that “Where a local authority receives a complaint from an individual that excessive noise is being emitted from relevant property during a noise control period, it shall ensure that that an officer of the local authority investigates the latter matter”. If the officer is satisfied that noise being emitted from relevant property would, or might, if measured exceed the permitted level, the relevant property then becomes known as the offending property. At this stage in the investigation it is for the officer concerned to decide the place from which to assess the noise. Therefore, the assessment at this stage could be based on a subjective assessment made by the investigating officer. It is recommended that at the initial stages of the investigation the officer informs the complainant of the full procedure and obtains an agreement that if the warning notice is not complied with entry to their home must be obtained for the purposes of obtaining measurements from a relevant place. If this agreement is not obtained it is for the investigating officer and the local authority policy to

decide on the appropriateness of allocating time to an investigation which cannot be followed through to a conclusion.

Warning Notice

7. If the officer decides that the noise, if it were measured from a relevant place would, or might exceed the permitted noise level, a warning notice may be served. The warning notice must be served by delivering it to any person present at, or near, the offending property and appearing to the officer to be responsible for the noise or, if it is not reasonably practicable to identify such a person, by leaving the notice at the offending property. The provisions of the ASB Act define a person is responsible for noise emitted from relevant property if the emission of the noise is wholly or partly attributable to the person's act, failure or sufferance.
8. The warning notice, must state:
 - that the officer considers that noise is being emitted from the offending dwelling during a noise control period;
 - that the officer considers that the noise exceeds, or may exceed, the permitted level, as measured from a relevant place;
 - that any person who is responsible for noise emitted from the offending dwelling, in the period specified in the notice, which exceeds the permitted level when measured from within a relevant place, may be guilty of an offence;
 - the specified period; and
 - the time at which the notice was served.
9. The period of the notice cannot begin earlier than ten minutes after the notice has been served, although the notice may provide that the period commences later. An example of this could be where the officer responds, to a complaint of a noisy party, and, on attempting to serve the warning notice, is assured that the party will cease in twenty minutes. If the officer believes that it is a reasonable response in the circumstances, the initial period before the warning notice comes into effect could then be extended to twenty minutes.

Measurement of the ASB Noise

10. The measurement of the permitted level is determined by reference to the underlying level of noise. There will be cases where the level of noise complained of is clearly substantially above the level of noise that would otherwise be present and where there will be obvious gaps or lulls in the noise. The measurement technique makes it is possible to determine the underlying level of noise even if the dominant noise, such as amplified music, appears to be continuous. This can be done, using currently available instrumentation, by the use of a statistical parameter (such as $L_{A99,8,5min}$, $L_{A99,5,2min}$ or $L_{A 99,1min}$) as a proxy for the underlying level of noise.
11. For measurement of the underlying noise using $L_{AN,T}$ measurements the equipment must meet certain criteria with regard to its sampling rate and its

method of operation of statistical calculations, as detailed in the in the ASBA section 49 detailing approval of measuring devices. It must sample the sound pressure level at a rate of not less than 10 times per second, and use in the statistical calculation a class interval of no greater than 0.5dB. (It will be necessary to check with the manufacturer.)

12. It is necessary to ensure that the following measurement requirements are adhered to.

- The equipment used must comply with the requirements of Type 1 of British Standard BS EN 61672-1:2003.
- Where necessary the appropriate parameter must be selected, i.e. L_{Aeq} for measurement of noise emitted from the offending dwelling and $L_{AN,T}$ for the measurement of the underlying noise. The underlying level is, using time weighting 'F', the A weighted sound pressure level which is not exceeded for 0.6 seconds and it shall be determined in a period which shall be no shorter than 1 minute and no longer than 5 minutes. This determination shall be made within the same 15 minute period within which the noise emitted from the offending dwelling may be measured.
- Where measurement of the underlying level results in a non integer value, that value shall be rounded up to the next integer.
- The number of people in the room should be approximately as would normally use the room. The presence of additional bodies may have an adverse effect on the measured level as a consequence of additional absorption in the room. In addition anyone in the room other than the officer actually carrying out the measurement must be at least 1m away from the microphone as it can be demonstrated that at frequencies of around 400Hz reflections from a person may cause errors of up to 6dB when measuring at less than 1m away from a person.
- Within the dwelling the measurement must take place within a habitable room. Common sense dictates that a habitable room will usually be a living room, sitting room, study or bedroom. In the case of a dining kitchen it may include the kitchen. It does not, in these circumstances, include a hallway, stairway, bathroom, lavatory or other areas such as utility rooms. Conservatories and holiday caravans are, at present, excluded because of the possibility of plastic roofs and the uncertainty over typical levels of sound reduction offered by such roofs.
- Where the measurement of the noise causing the complaint is a non integer value, the value shall be rounded down to the next integer.

13. Prior to commencing the measurements the following steps should be taken:-
- A check should be made on the available battery power to ensure that the sound level meter will not cut out during the measurement. Spare batteries should always be carried.
 - The orientation of the relevant place to the offending dwelling.
 - The number of people present in the room should be noted.
 - Any animals should be removed from the room.
 - A general note on the external noise climate should be made, e.g. traffic audible, rain on windows etc.
 - The windows and doors in the room in which the noise measurements are made shall be closed.
 - A note should be made of the subjective assessment of the 'offending noise' as heard in the relevant place.
 - The sound level meter must be calibrated and the calibration level noted.
 - An appropriate dynamic range must be selected.
 - The measuring microphone of the approved device shall be positioned at least 0.5m from any room surface (including the floor) and from any items of furniture and be located at a height of 1.2-1.5m from the floor.
 - If possible a tripod should be used for supporting the sound level meter.
14. Once the equipment is ready to measure the procedure requires that within a period of no more than 15 minutes the equivalent continuous A weighted sound pressure level of the noise emitted from the offending dwelling shall be measured for a continuous integration time of 5 minutes ($L_{Aeq,5min}$), except for pauses to exclude from the measurement any significant noise other than that causing complaint. Where the measurement results in a non integer value, that value shall be rounded down to the next integer.
15. Once the measurement has been completed the sound level meter should be calibrated. Where there is a variation of 0.5dB or more then any measurements made by that device, between the time when the sensitivity of that device was checked and rechecked, shall not be used for any purpose determination of the permitted level

Assessment of Offence

16. The assessment of whether or not a FPN should be issued is clearly dependant upon the permitted level, the underlying level and the relationship between them.
17. In any case where the underlying level of noise does not exceed 21dB between the hours of 23.00 – 07.00 (night), 27dB between the hours of 19.00 – 23.00 (evening) and 31dB between the hours of 07.00 and 19.00 (day), the permitted level shall be 31dB, 37dB and 41dB for each of the noise control periods respectively.
18. In any case where the underlying level of noise exceeds 21dB, 27dB and 31dB for night, evening and day time noise control periods respectively, the permitted level shall be 10dB in excess of that underlying level.
19. If it is established has been established that the permitted noise level has been exceeded and the warning notice has been served any person who is responsible for the noise can be served with a fixed penalty notice (FPN). The form of the FPN may be specified in an order made by the Scottish Ministers and if such an order is made the FPN must be issued in that form.

Seizure of Equipment

20. An authorised officer may seize and remove equipment which is being, or appears to have used in the emission of noise. This can only be done after a warning notice has been served and the officer of the local authority believes that, at any time in the period specified in the noise, noise emitted from the relevant property has exceeded the permitted level as measured from a relevant place. An officer of the local authority or person authorised by them may enter the offending property to seize and remove the equipment that he or she believes is being, or has been used, in the emission of noise during the period when the noise exceeded the permitted level. The person carrying out the seizure must produce their authority to do so, if requested. The powers of entry and seizure of equipment used to make noise unlawfully are detailed in section 47. Noise-making equipment will typically comprise electronic items such as a HiFi, mixer desk, loud speakers, TV, and DIY equipment, and musical instruments such as drum-kits, keyboards or guitars and their amplification. It may potentially also include a collection of CDs, records, minidisks or tapes. If the noise producing source is an animal then the animal cannot be removed without the presence of the local authority Dog Warden or the RSPCA. The seizure of equipment may also take place when a FPN has not been complied with. A suggested protocol for obtaining a warrant is included as Appendix 8.

ANNEX 6 SUMMARY OF INSTRUMENTATION REQUIREMENTS

1. For measuring the noise emitted from the offending dwelling:
2. Integrating sound level meters, or measuring equipment or measuring systems, must comply with the requirements of Class 1 of British Standard BS EN 61672-1:2003 "Electroacoustics - Specification."
3. For measuring the underlying level of noise:
 - (i) Subject to paragraph (ii) below, sound level meters, measuring equipment or measuring systems, must comply with the requirements of Class 1 of British Standard BS EN 61672-1:2003 "Electroacoustics - Specification" and be capable of determining the A weighted sound pressure level, time weighting 'F', which is not exceeded for 0.6 seconds in a time period of no shorter than 1 minute and no longer than 5 minutes.
 - (ii) Where $L_{AN,T}$ measurements are used for the measurement of the underlying level, the sound level meters, measuring equipment or measuring systems mentioned in paragraph (i) above shall:
 - sample the sound pressure level at a rate of not less than 10 times per second; and
 - use in the statistical calculation a class interval of no greater than 0.5dB.
4. For measuring both the noise emitted from the offending dwelling and the underlying level of noise:

Single meters or measuring equipment or measuring systems which satisfy the requirements of paragraphs (1) and (2) above.

Conditions

5. Testing and verification of approved devices etc:
 - (a) An approved device shall, within a period of not more than 24 months before being used for any purpose set out in this Approval, be verified together with an acoustic calibrator or pistonphone in accordance with BS 7580: Part 1:1997 'Specification for the verification of sound level meters.'

Self Noise

6. The self noise of the sound level meter must be no greater than 17dB(A).

ANNEX 7 OPTION MATRIX MANAGEMENT GUIDE SUMMARY

1. This summary guide is intended to provide investigating officers faced with noise complaints of a potentially ASB nature with a guide to assist in deciding whether or not the ASB fixed penalty notice (FPN) route is appropriate in the circumstances, or whether in fact other available legislation may be more appropriate in the circumstances. The three stage flow charts are simply to provide guidance in relation to the options and are not intended to be prescriptive or exhaustive. All references to paragraphs within the flowcharts are to the text within the main report and not the summary.

Stage 1 Assessment

1. Upon receipt of a noise complaint all potential ASB calls should be filtered out as early in the process as is reasonably practicable. This can be achieved by the screening process illustrated in the Stage 1 flow chart. The non ASB noise complaints would simply be routed to the conventional investigation noise protocol adopted by that particular local authority.
2. The potential use of formal mediation services should always be considered where appropriate.
3. All outcomes (shown in yellow) should be recorded. The possible outcomes of the Stage I investigation are:
 - Non ASB Noise complaint
 - ASB Noise complaint
 - No Action

Stage 2 Assessment

4. The Stage 2 flow chart describes a process for determining whether or not the fixed noise penalty route (FPN) should be pursued. Paragraphs 6 – 9 below provide further information on various noise sources where other remedies may be more appropriate.

Barking Dogs and other Noisy Animals

5. There may often be questions raised in relation to the use of FPNs to deal with barking dogs or other noisy animals. The main issue with the use of sec. 49(2) of the Civic Government (Scotland) Act 1982 is the time taken from complaint to resolution. Section 49(2) allows a person who has reasonable cause for annoyance as a result of a barking dog to make an application to the District court for an Order to be made requiring the owner of the creature to take action to prevent the annoyance from continuing. The application requires to be made on a specified form and, subject to the Court considering that there appeared to be reasonable cause for annoyance, a date is set for a Hearing. Both the complainant and the owner of the creature are required to attend the Hearing to

state their cases. Subject to the Court agreeing that the complaint is justified, an Order is issued specifying what action the owner of the animal would require to take. The complainant would also be advised of the terms of the Order and if these are not complied with, subsequent complaints about failure to comply with the Order would then require to be made to the Police. If the Police can substantiate that the conditions in the Order are not being complied with they can then make a report to the Procurator Fiscal with a view to the Court taking action against the owner of the creature for failure to comply with the Order. The whole process is lengthy and involves the complainant attending court at the same time as the person responsible for the dog. The use of FPNs will potentially allow a rapid resolution to the problem of barking dogs. However, FPNs are only applicable where the dog (or other noisy animal) is in a relevant property.

6. Section 47 of the Act covers the powers of entry and seizure of equipment used to make noise unlawfully. The powers of seizure apply where, a warning notice has been served and the officer has reason to believe that, at any time in the period specified in the notice, noise emitted from the relevant property has exceeded the permitted level as measured from a relevant place the officer (or authorised person) may using the powers available under section 47 enter the premises and remove the equipment, which may apply to animals.

Domestic/ Car Intruder Alarms

7. In the case of domestic intruder alarms, presently dealt with using the Environmental Protection Act, local authorities generally have established operational procedures for dealing with domestic and car alarms. The procedures involve local arrangements with the Police for identification of vehicle owners and obtaining a warrant to break and enter premises to silence an alarm with the assistance of a Locksmith and Alarm Specialist. The FPN route provides local authorities with the option of adopting their locally developed procedures to include the possibility of issuing a FPN's in respect of domestic/car intruder alarms if the noise originates in a relevant property.

Potential Issues with Civil Rights and Sound Insulation

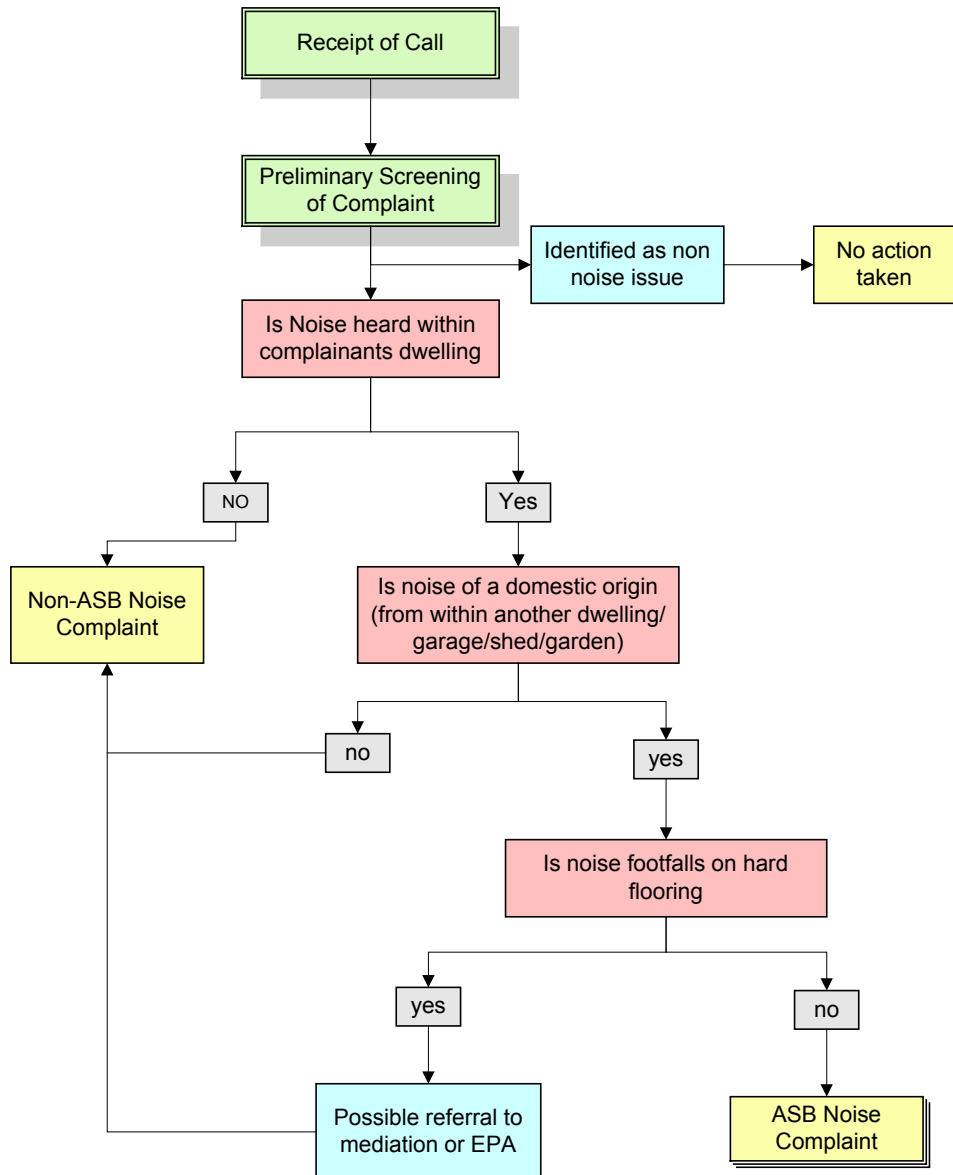
8. In using the provisions of the ASB Act to protect others from the anti-social behaviour of an individual, the rights of that individual (the perpetrator of the noise) must not be prejudiced and any action taken to stop the noise maker from making noise must be proportionate given the circumstances. Consequently where there is poor sound insulation exceedance of the Permitted Level, with normal everyday behaviour by the noise maker, is unlikely to be an appropriate action/outcome. Therefore, the issue of sound insulation must be taken into account when assessing the appropriateness of using the provisions of the Act. If lack of sound insulation is a significant factor in the excessive noise complained of there are various options for legal remedy to lack of sound insulation. A more detailed consideration of these matters is contained in paragraphs 68 to 70 in the full Management Guide.

9. The possible Outcomes at this stage of the process are:
- Civic Government (Scotland) Act 1982 – Section 54 warning
 - Civic Government (Scotland) Act 1982 – Section 54(1) offence
 - No Action
 - Breach of the Peace
 - Referral to Mediation Services
 - Poor sound insulation identified.

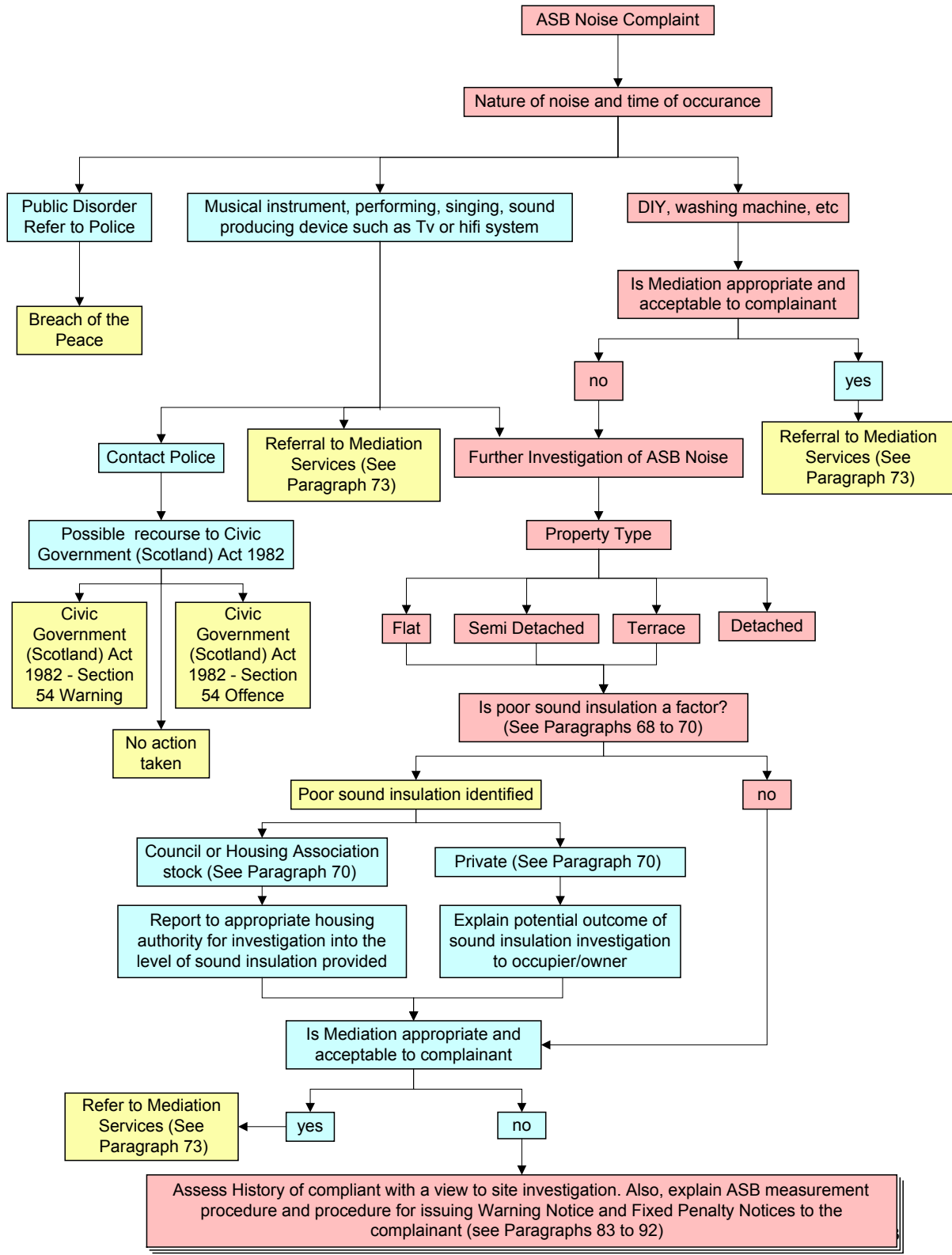
Stage 3 Investigation

10. The investigation then moves on to Stage 3 as outlined in the Stage 3 flow chart. However, the some additional information in relation to the possible use of the EPA is provided in paragraphs 11 – 13.
11. Where a local authority officer decides, by judgement or by taking a measurement, that the noise being emitted from the relevant property during a noise control period does not exceed the permitted level for the relevant noise control period, or where it is decided that the noise cannot be measured or where it is considered that the provisions of the Act are inappropriate, the officer may nevertheless be satisfied that the noise is a statutory nuisance under the provisions of the EPA. In such cases, the local authority is under a duty to serve an abatement notice under section 80 of the EPA.
12. If the officer is satisfied, either by judgement or measurement, that the alleged noise being emitted from a relevant property, if it were measured from a relevant place exceeds or may exceed the permitted level during the relevant noise control period, then a warning notice may be served, although there is no requirement on the officer to do so. However, if a warning notice is not served, no ASB noise offence is committed if subsequent measurement shows that the permitted level for the relevant noise control period is being exceeded.
13. If the investigating officer is satisfied that a statutory nuisance is being caused as well as the permitted noise level being exceeded, then the mandatory duty to serve an abatement notice also applies. However, should the permitted noise level for the relevant noise control period continue to be exceeded, or a statutory nuisance continue after service of both a warning notice and an abatement notice, the local authority has discretion as to whether to follow the remainder of the Act provisions or the EPA enforcement process. In such cases it would be inappropriate to use both enforcement regimes; instead the local authority must decide which is the most appropriate and either cease that under the Act provisions or stay with that under the EPA.
14. The outline of the procedures for measurement in a relevant pace and the possible issue FPNs are provided in the Stage 3 flowchart. The measurement protocol is included as Annex 5 in the main document and a summary of the instrumentation requirements in Annex 6.

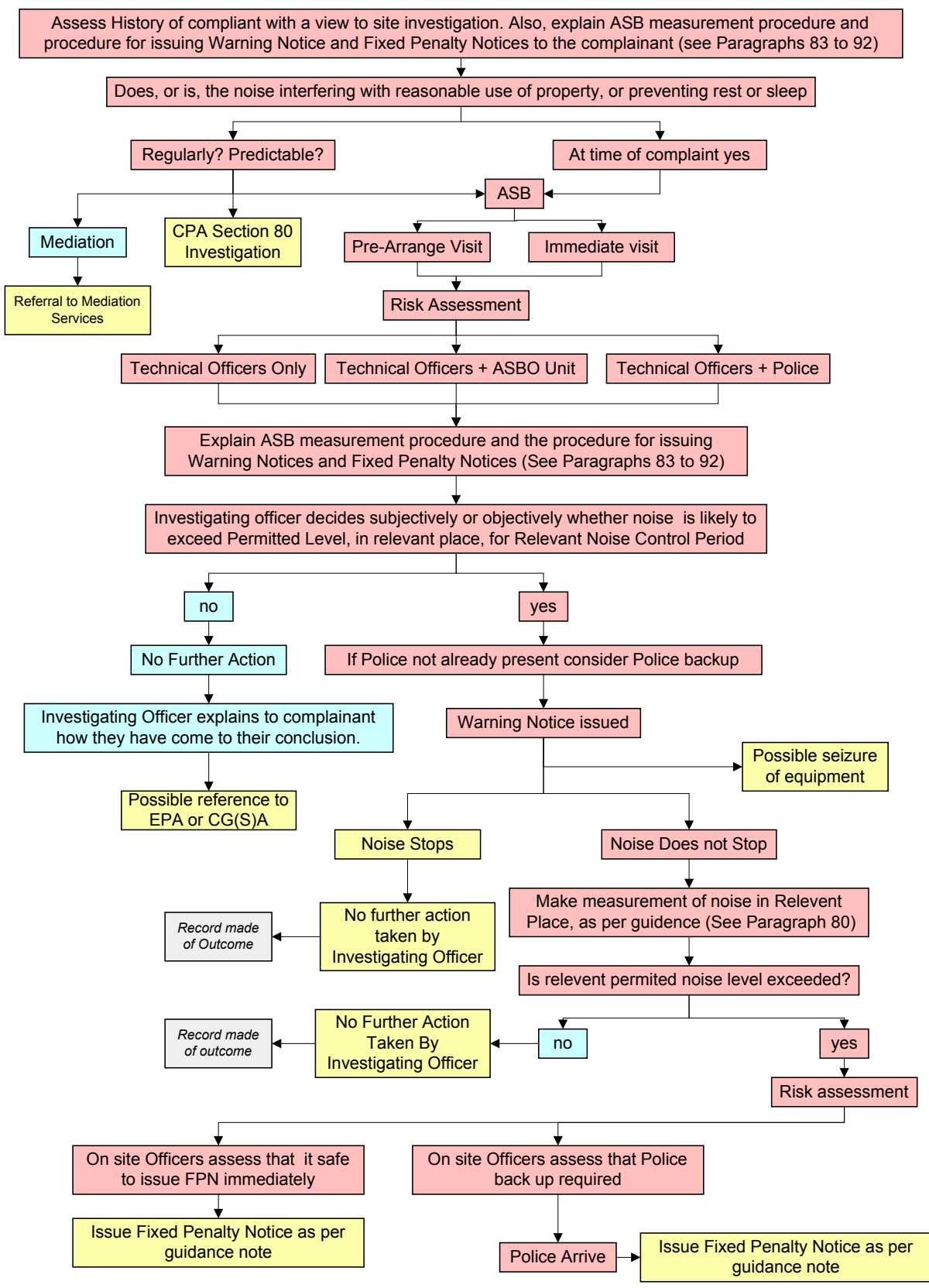
Option Matrix for ASB Noise - Stage 1



Option Matrix for ASB Noise - Stage 2



Option Matrix for ASB Noise - Stage 3



ANNEX 8 SUGGESTED PROTOCOL FOR OBTAINING A WARRANT

APPLICATION FOR WARRANTS (from Strathclyde Police)

PROCEDURE

1. Applications for all search warrants should be submitted in writing to the Procurator Fiscal, for consideration of the granting of a Sheriff Warrant. This procedure requires to be followed in all cases and at all times, even outwith office hours, except in cases of emergency or where it is otherwise not practicable for the police to contact the Procurator Fiscal.
2. The police may only make application directly to a Justice of the Peace, without prior consultation with the Procurator Fiscal where the aforementioned criteria apply, and then only for the grant of a warrant to search in terms of the Misuse of Drugs Act 1971, Section 23(3) or at Common Law to search for property obtained by theft, any aggravation of theft or robbery. The latter does not include applications for warrants to search for evidence of the commission of an offence e.g. weapons, clothing etc. Furthermore, cases which involve large quantities of drugs or where the circumstances are particularly unusual, the police must make application to the Procurator Fiscal and not to a Justice of the Peace.
3. A warrant must only be craved from a Justice of the Peace where immediate police action is required and therefore normally precludes pre-planned operations.
4. So far as possible, applications for search warrants should be submitted to the Procurator Fiscal during office hours, with the Procurator Fiscal only being contacted out of office hours in cases of genuine emergency, as in circumstances where it would not be appropriate to contact a Justice of the Peace directly.
5. Applications for warrants under the Mental Health (Scotland) Act 1984, the Wildlife and Countryside Act 1981, the Forgery and Counterfeiting Act 1981, the Immigration Act 1971 and the Asylum and Immigration Act 1996 should be made to the Procurator Fiscal and within office hours. Out of hours applications must also be made to Procurators Fiscal. Only in highly exceptional circumstances and where there is difficulty in contacting a Sheriff and where evidence may (on a specified and not merely conjectural basis) be lost, authority may be given to approach a Justice of the Peace direct. Applications for those warrants specified, must not under any circumstances be made direct to a Justice of the Peace without the express authority of the Procurator Fiscal.
6. A summary of the evidence upon which each warrant application is based must be submitted for the consideration of the Procurator Fiscal. Applications supported only by vague or imprecise information will be refused. All applications for warrants should be examined and authorised by a supervisory officer.

7. Where the Procurator Fiscal directs that a Justice of the Peace warrant will suffice, or where the aforementioned exceptional circumstances exist, the Investigating Officer will make a written request to the Duty Officer. This report should outline the circumstances surrounding the warrant application and the reason why the sheriff warrant was not obtained.
8. The Duty Officer will, where appropriate, issue an original warrant of an approved style – 1:25:15 or 1:25:16, complete the counterfoil receipt or if not the Justice of the Peace Warrant Control Sheet (Form 1:25:21) and issue a consecutive number to the warrant. “On no account should a Justice of the Peace Warrant of any description be photocopied.” Whenever practicable, when Justice of the Peace warrants have been signed, a supervisory officer should again examine it to ensure its accuracy prior to execution.
9. Irrespective of whether the warrant is executed, a subject report outlining the circumstances should be submitted to the Divisional Commander and retained within the Divisional Registry, together with the original request.
10. Where a Sheriff Search warrant has been granted, a brief subject report providing detail of the outcome must be submitted to the Procurator Fiscal, whether executed or not. The warrant should thereafter be retained as a production or within the Divisional Registry as appropriate.
11. Where execution of any search warrant results directly or indirectly in evidence being obtained, the original warrant must be lodged as a production and included in the Police Report submitted to the Procurator Fiscal.
12. Where no report is submitted to the Procurator Fiscal, the warrant is to be retained in the Divisional Registry.
13. The permitted exception will not apply where the case is of an unusual nature or of particular importance. In such cases the application **MUST** be made to the Procurator Fiscal.

