



Direct Measures

Standard Operating Procedure

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Owning Department:	Criminal Justice Services Division
Version Number:	2.00 (Publication Scheme)
Date Published:	06/04/2020

Compliance Record

Equality and Human Rights Impact Assessment (EqHRIA) Date Completed / Reviewed:	03/04/2020
Information Management Compliant:	Yes
Health and Safety Compliant:	Yes
Publication Scheme Compliant:	Yes

Version Control Table

Version	History of Amendments	Approval Date
1.00	Initial Approved Version – this SOP is an amalgamation of the previous Recorded Police Warnings SOP and Antisocial Behaviour Fixed Penalty Notices SOP which have been archived.	30/05/2018
2.00	Removal of reference to the colour of the RPW form in section 4.15.2	06/04/2020

Contents

1. Purpose
2. Background
3. The Lord Advocates Guidelines – ASB FPN and RPW
4. Issuing an RPW or ASB FPN
5. Guidance on Completion – ASB FPN only
6. Appeal or Court Hearing Request
7. Command and Control – RPW and ASB FPN
8. Productions – RPW and ASB FPN
9. Criminal History System (CHS)
10. Use of the Scottish Intelligence Database (SID)
11. Foreign Nationals
12. National Cross Boundary Fixed Penalty – ASB FPN only

Appendices

Appendix 'A'	List of Associated Legislation
Appendix 'B'	List of Associated Reference Documents
Appendix 'C'	List of Associated Forms
Appendix 'D'	List of Divisional Guidance Documents

1. Purpose

- 1.1 This Standard Operating Procedure (SOP) supports the Police Service of Scotland, (hereafter referred to as Police Scotland) Criminal Justice Policy. In addition, this SOP sees the amalgamation of the Recorded Police Warnings SOP and the Antisocial Behaviour Fixed Penalty Notices SOP into one new, Direct Measures SOP.
- 1.2 This SOP provides a standard for national consistency to Police Officers and staff. In particular, the SOP provides instruction where an officer dealing with an incident, may issue a Recorded Police Warning (RPW) or an Antisocial Behaviour Fixed Penalty Notice (ASB FPN) to an offender, where he or she has reason to believe that the person has committed one of the relevant offences (see Section 3) and meets the necessary criteria.
- 1.3 For guidance in relation to Conditional Offer of Fixed Penalty Notices (COFPN), please refer to Conditional Offer of Fixed Penalty Scheme - Traffic Offences SOP.

2. Background

- 2.1 In April 2015 the Lord Advocate revised the guidelines for the offences that could be dealt with by means of what was previously known as Formal Adult Warnings. The name for this type of warning is now Recorded Police Warning (RPW).
- 2.2 Recorded Police Warnings (RPW) and Antisocial Behaviour Fixed Penalty Notices (ASB FPN) provide an intervention mechanism that is timely, justifiable and proportionate. The acceptance of an RPW or ASB FPN by the offender is not to be regarded as an admission of guilt. Both schemes seek to have a positive impact on individuals by not criminalising them, minimising police bureaucracy and maximising operational officers' time.
- 2.3 RPWs can be issued to persons aged 16 years or older (who are not subject to a Compulsory Supervision Order (CSO)), for a minor offence, in a public or private place. ASB FPNs will **not** form part of an escalation process for offending by 16 and 17 year olds. For additional information regarding 16/17 year olds, please refer to Section 4.14.
- 2.4 RPWs can be issued at the time of the offence, or on release from custody and retrospectively. The offender is **not** cautioned and charged with the offence. If however, an offender absolutely refuses the RPW, the enquiry officer can escalate to an ASB FPN or where no ASB FPN offence exists, to SPR.
- 2.5 RPWs and ASB FPNs will **NOT** be issued to persons under the age of 16 years. Consideration can be given to Early Intervention (EEI) alternative approaches where appropriate. For further guidance please refer to Offending by Children SOP.

- 2.6 ASB FPNs result in a fine for a minor offence. ASB FPNs can be issued at the time of the offence, or subsequently by an officer reviewing the circumstances i.e. Custody Officer or Crime Manager. The offender **is** cautioned and charged with the offence. The person can appeal within 28 days and payment of an FPN will not result in a record of criminal conviction.
- 2.7 The schemes complement the discretion a police officer already has to administer an on-the-spot warning or fine, for a trivial or minor offence. It is an **alternative to reporting** not an alternative to a verbal warning. For circumstances when a verbal warning may be appropriate, please refer to Section 5 (Power of Discretion) of the Scottish Crime Recording Standard - Counting Rules (SCRS).
- 2.8 The guidance contained within this SOP is **flexible** and enables **discretion**. The decision whether or not to issue an RPW or ASB FPN is that of the enquiry officer. Whichever disposal option is used, the officer must ensure it is proportionate and justifiable.
- 2.9 Powers of arrest, where available for offences included in the scheme, remain unchanged.

3. The Lord Advocate's Guidelines – ASB FPN & RPW

- 3.1 The Lord Advocate has instructed that, in general, ASB FPNs should be issued only in respect of minor examples of those offences listed below.
- 3.1.1 Offences for which an ASB FPN can be issued under Part II of the Antisocial Behaviour etc. (Scotland) Act 2004 are:
- Section 115 of the Licensing (Scotland) Act 2005 – Disorderly conduct while drunk in licensed premises and other relevant premises;
 - Section 116 of the Licensing (Scotland) Act 2005 – Behaving in a disorderly manner and refusing to leave licensed premises on being requested to do so;
 - Section 47 of the Civic Government (Scotland) Act 1982 – Urinating or defecating in circumstances causing annoyance to others;
 - Section 50(1) of the Civic Government (Scotland) Act 1982 – Being drunk and incapable in a public place. (Offences of this nature should generally be treated as a welfare issue unless there is an aggravating factor involved in the offending. ASB FPN and RPW should not routinely be issued for these offences and an iVPD should be submitted on all occasions in line with local procedures);
 - Section 50(2) of the Civic Government (Scotland) Act 1982 – Being drunk in a public place in charge of a child. (It will rarely be appropriate to issue a fixed penalty notice in respect of this offence, and would only be suitable where the offender's ability to care for the child in his/her charge does not appear to be significantly impaired by the fact of being under the influence of alcohol);

- Section 54(1) of the Civic Government (Scotland) Act 1982 – Persisting to the annoyance of others, in playing musical instruments, singing, playing radios etc. on being required to stop;
- Section 52(1) of the Criminal Law (Consolidation) (Scotland) Act 1995 – Vandalism;
- Sections 201 and 203 of the Local Government (Scotland) Act 1973 – Consuming alcoholic liquor in a public place;
- Breach of the peace. An ASB FPN should **not** be issued in relation to S38 of Criminal Justice and Licensing (Scotland) Act 2010 (threatening or abusive behaviour);
- Malicious mischief

3.2 Information has been removed due to its content being exempt in terms of the Freedom of Information (Scotland) Act 2002, Section 35 Law Enforcement.

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3.7 When taking into consideration the vulnerabilities of victims and offenders, officers should consider the submission of an iVPD concern report for persons over the age of 18 years. An iVPD **must** be submitted for all offenders aged 16/17 years old in line with current guidance.

4. Issuing an RPW or ASB FPN

4.1 RPWs and ASB FPNs can be issued to persons 16 years of age or older (who are not subject to a Compulsory Supervision Order (CSO)), for a minor

offence, in a public or private place. **They must not be issued to persons under 16 years.**

4.2 Criteria for issuing an RPW –

4.2.1 An RPW may be issued by the enquiry officer in circumstances where:

- the offender is 16 years of age or older and not subject to a CSO;
- the offence is minor in nature and suitable for being dealt with by an RPW ;
- there is sufficient evidence to report the offender to the Procurators Fiscal (PF);
- the offender meets the criteria for issue and able to understand the RPW that is being issued;
- the identity of the offender can be proved, should this be disputed at a later date.

4.2.2 Repeated use of RPWs is possible, but a level of police scrutiny and judgement is required to assess the appropriateness of a subsequent RPW being given, including factors such as:

- the nature of the offence; or
- whether it is similar to the offence for which an RPW was previously given; and
- the length of time since the previous RPW was issued.

4.2.3 Officers should **not** issue an RPW for an offence:

- which involves persistent or alarming conduct which makes individuals scared for their safety;
- which involves a major disturbance;
- which involves an aggravation (e.g. racial, religious, domestic, football, sexual, breach of a court order etc. or other hate related conduct);
- that relates to a repeat victim;
- that relates to harm to an individual or community, including economic harm;
- where the offender is the subject of a supervision order, or an Anti-Social Behaviour Order (ASBO);
- where the offender is to be charged with a more serious offence (any lesser offence from the same incident should **not** be dealt with by way of an RPW);
- where the offender has a previous conviction in court for a comparable charge in the previous three years;
- where the offender has any link to serious and organised crime groups.

- 4.2.4 The enquiry officer **must** carry out a PNC/CHS check to ascertain if the offender is eligible to be dealt with by means of an RPW.
- 4.2.5 There is no requirement to caution and charge the offender.
- 4.2.6 The issuing of an RPW will not result in a record of criminal conviction; it will be recorded as an alternative to prosecution and will be retained for a period of two years on the Criminal History System (CHS) **Information has been removed due to its content being exempt in terms of the Freedom of Information (Scotland) Act 2002, Section 35 Law Enforcement.**
- 4.2.7 An RPW may be considered relevant information for the purposes of a Protection of Vulnerable Groups (PVG) disclosure certificate and an enhanced disclosure certificate.
- 4.2.8 Where an offence which may be dealt with by way of an RPW is reported to the PF as a result of escalation through re-offending or other relevant circumstances, this must be highlighted in the remarks section of the SPR, indicating that an RPW was considered but deemed not appropriate on this occasion.
- 4.2.9 Where local issues arise, the Area Commander may direct that offences in a particular area are not, or that a named individual is not to be, dealt with by means of RPW.
- 4.2.10 Where an offender is the subject of an outstanding warrant, this should take precedence. However, the presence of a warrant does not prevent an RPW being issued for minor offending and each case should be assessed on its own merits. In all cases, the range of criminal justice disposal options available must be considered before concluding the most appropriate course of action.
- 4.2.11 The enquiry officer should consult with a supervisor and consideration should be given to the type of warrant in force and the nature of offending as an RPW for a comparable offence for which the warrant has been issued, is unlikely to be appropriate.
- 4.2.12 Information has been removed due to its content being exempt in terms of the Freedom of Information (Scotland) Act 2002, Section 35 Law Enforcement.**
- 4.2.13 All relevant information should be recorded in a Police issue notebook/PDA.
- 4.2.14 Prior to conclusion of duty, the enquiry officer will raise a crime report on their Crime Recording System. The relevant crime/case number should be recorded within the evidential notes on the police copy ticket. This is required to comply with Scottish Crime Recording Standards. The incident summary does not require to be detailed but should contain sufficient information to

allow a reviewing officer to make a decision, in the event of a subsequent appeal, prior to an SPR being submitted where relevant.

- 4.2.15 Where possible, the RPW should be checked by a supervisor and thereafter stored in line with local arrangements. The RPW is not a document which will require to be sent to any other agency. For further information on retention time periods, please refer to the Record Retention SOP.
- 4.2.16 Local process should be followed to ensure that the RPW is updated on the offender's CHS record.
- 4.2.17 Where the offender is 16 or 17 years of age, an iVPD Concern Form **must** be completed, in line with local procedures, prior to conclusion of duty. This should focus on the concern for the offender/offence and provide sufficient detail to allow an accurate assessment of the offender/offence.
- 4.2.18 RPWs issued for suitable offences (see Sections 3.1.1 and 3.2), cannot be escalated to SPR or other disposals, based solely on the opinion of a review that considers an alternative preferred disposal. Even if a review considers the issue of an RPW to have been the wrong option, unless the criteria in paragraph 4.2.19 are met, the RPW will remain as issued.
- 4.2.19 Only where a subsequent review of a case results in a change of charge to comply with SCRS and that new or alternative charge is not a suitable offence for disposal by RPW, can it be escalated to SPR. In such circumstances, the RPW must be removed from CHS and all other local systems updated to reflect this. The offender must also be updated (by the enquiry officer) with this outcome and where necessary, cautioned and charged and informed of the new disposal.
- 4.2.20 If an RPW was issued in good faith, but following review it is established there is insufficient evidence, the RPW must be removed from CHS and all other local systems updated to reflect this. It is the responsibility of the enquiry officer to ensure that the offender is also updated with this outcome.
- 4.2.21 If an officer's intention was to submit an SPR and a review of the circumstances decides an RPW to be suitable, an RPW can be retrospectively issued. See Section 4.19.

4.3 Criteria for issuing an ASB FPN -

- 4.3.1 An ASB FPN may be issued by an enquiry officer in circumstances where:
- he or she has reason to believe a person has committed a fixed penalty offence and there is sufficient evidence to report that individual to the PF;
 - the offence is minor and is of a nature suitable for being dealt with by an ASB FPN;
 - the offender is suitable, compliant and able to understand the offence(s) he/she is alleged to have committed;

- the offence did not involve an offender below the age of 16 years; and
- officers are able to prove the identity of the offender, should this be disputed at a later date.

4.3.2 Officers **should not** issue an ASB FPN for an offence:

- which involves persistent alarming conduct; or
- which involves a major disturbance; or
- which involves a pattern of behaviour involving harassment or intimidation; or
- which involves an aggravation, (e.g. racial, religious, domestic, football, sexual, breach of a court order etc. or other hate related conduct); or
- where the offender is the subject of a supervision order. If such an offender is issued with an ASB FPN, this can be revoked as per Section 5.6 and an SPR submitted in the usual manner. Where there is more than one offender, they can be dealt with as individuals as per the provisions in Section 4.11; or
- where the offender has been issued recently with more than one ASB FPN, or has convictions, for the same offence, details of which are held on CHS (the Lord Advocate defines 'recent' as being within the last six months); or
- where the offender is to be charged with a more serious offence (any lesser offence should not be dealt with by way of ASB FPN); or
- where the offender has no verifiable address.

4.4 The enquiry officer **must** carry out a PNC/CHS check to ascertain if the offender is eligible to be dealt with by means of an ASB FPN.

4.5 The offender will be cautioned and charged by the officer issuing the ASB FPN.

4.6 ASB FPNs will be issued by the enquiry officer concerned, be completed before the end of their tour of duty and wherever possible, checked by the Supervisor. The ASB FPN will thereafter be forwarded in accordance with Divisional Guidance (see Appendix D).

4.7 Where an offender is detected after a crime has been reported, so long as it is within a reasonable time scale, it will be competent to issue an ASB FPN. This will, however, require the officer to update the crime report with 'Disposal by way of FPN' or relevant disposal code.

4.8 Where an offender is the subject of an outstanding warrant, given the wide range of offences and different types of warrants available, it is imperative that each case is assessed on its own merits as to whether an ASB FPN is an appropriate disposal option. The following is not a definitive list, however, in general:

- (a) **Means Enquiry** - An ASB FPN may be an appropriate disposal.
- (b) **Extract Conviction** - An ASB FPN may be a competent option for disposal based on whether the offender is able to pay the amount outstanding or indeed the period of detention is sufficiently short to allow for the payment of the ASB FPN or request a hearing within the 28 day period.
- (c) **Apprehension** - Given the potential for that person to receive a custodial sentence/remand for the apprehension warrant, it may not be appropriate to issue an ASB FPN.
- (d) **English/Welsh** - Given the broad spectrum of offences and circumstances for which an English/Welsh warrant may be issued, each case must be considered on its own merits.

4.9 In all cases an officer must carefully consider the range of criminal justice disposal options available to them before deciding on the most appropriate course of action.

4.10 When a court hearing is requested, where there is a question around the offender's identity, or where an offender refuses to accept an ASB FPN, the enquiry officer will be required to submit an SPR.

4.11 Multiple Offenders and Offences

4.11.1 RPW

In respect of multiple offenders acting together:

- where all offenders meet the criteria for an RPW, it is competent to issue an RPW to each offender;
- where a case is to be reported in respect of one accused, then all accused should be reported together.

Where a person aged below 16, and an individual aged 16 years or over, who is not subject to a CSO, are jointly responsible for a qualifying offence, an RPW can be issued to the person aged 16 years or over, however, established procedures in respect of child offenders must be adhered to (i.e. caution and charge and submit an iVPD Concern Form).

Where it is an adult and a child offending together, the officer is required to use discretion about whether an RPW is suitable. If the circumstances suggest the adult is involving the child in committing an offence, this may make it inappropriate to issue an RPW.

Careful consideration should be given when it is known that a person has committed multiple offences in relation to the same incident. Whilst this does not preclude the issuing of an RPW, the matter may no longer be minor in nature.

Where there is evidence that more than one qualifying offence has been committed and they are minor in nature, it **may** be proportionate to deal with

the incident by means of an RPW. The circumstances of the case should justify this course of action.

Officers must be able to provide their rationale for the decision. If in doubt, consult with a supervisor prior to issuing the RPW.

4.11.2 ASB FPN

In respect of multiple offenders acting together:

- where the police have used direct measures, in this case ASB FPNs, in relation to multiple offenders and one or more of these individuals contest the ASB FPN, the fact that other persons were involved, should be included in an SPR. The name, date of birth of all offender(s) and type of direct measure(s) used must be included in the 'Remarks' section;
- where a person aged below 16 and an individual aged 16 years or over are jointly responsible for an ASB FPN offence, an ASB FPN **will not** be appropriate;
- an ASB FPN will not be issued to any person who is known to have committed more than one offence in relation to the same incident.

4.12 Repeat Offenders

4.12.1 RPW and ASB FPN schemes are not to be used routinely to allow repeat offenders to avoid Court proceedings. Each offence/offender should be assessed individually to determine the most appropriate disposal.

4.13 More Serious Offences

4.13.1 Where an RPW is issued and it subsequently comes to light through new evidence, that a more serious offence was committed on the same occasion, the matter should be reported in its entirety. The report must highlight to the PF the fact that an RPW was issued along with the new evidence, which justifies the submission of the report.

4.13.2 Where an ASB FPN is issued and it subsequently comes to light that a more serious or non-ASB FPN offence was committed on the same occasion, officers may report the offender for the subsequent offence. Payment of an ASB FPN discharges the recipient's liability to conviction only for the offence for which the notice was issued. Ultimately, the PF will determine, based on the facts of the case, whether a prosecution may be brought in respect of the subsequent offence, and it will be for SCTS to decide whether or not to allow such a prosecution.

4.14 16 and 17 year old Offenders

4.14.1 RPW

Information has been removed due to its content being exempt in terms of the Freedom of Information (Scotland) Act 2002, Section 35 Law Enforcement.

It is essential that the Remarks section of any report sets out the previous RPWs issued and the nature of the previous offending. The Remarks section should also include an overview of relevant recorded information from previous concern forms, including engagement with interventions, if recorded and suitability for diversion from prosecution.

It must be emphasised, however, that where a pattern of offending is identified which has been dealt with by more than one RPW, the frequency and nature of the offending and the circumstances of the young person must be carefully considered. That consideration must include whether it is still proportionate and appropriate to deal with such further offending by the means of an RPW, or if it would be more appropriate to submit an SPR.

4.14.2 ASB FPN

ASB FPNs will **not** form part of an escalation process for offending by 16 and 17 year olds.

4.15 Administration

4.15.1 The RPW Ticket will have space for two officers' details to be recorded on it. Any offence requires sufficient evidence to be present, however the issuing of the ticket itself does not require to be corroborated.

4.15.2 The RPW must be fully completed and legible.

4.16 Timelines for issue

4.16.1 Information has been removed due to its content being exempt in terms of the Freedom of Information (Scotland) Act 2002, Section 35 Law Enforcement.

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4.17 On Street Issuing – RPW and ASB FPN

4.17.1 For RPW and ASB FPNs, the enquiry officer should issue to the offender, having taken the aforementioned guidelines into consideration and read the RPW/ASB FPN over to ensure their understanding.

4.17.2 On electing to dispose of an offence by way of an RPW, the enquiry officer will:

- **not** caution and charge the offender;
- create a crime/case on local Crime/Case Recording systems, prior to finishing his/her tour of duty;
- ensure the relevant tasks are completed prior to end of duty for the update on CHS, as per local arrangements;
- record the Crime/Case number on the 'evidential notes' section of the police copy; and
- where possible, ensure the 'ticket' is checked by a supervisor and thereafter stored in line with local arrangements.

4.17.3 On electing to dispose of an offence by way of an ASB FPN, the enquiry officer will:

- charge the person in the usual manner;
- update the relevant data systems prior to finishing his/her tour of duty (see Divisional Guidance at Appendix D); and
- where possible, ensure the 'ticket' is checked by a supervisor and thereafter forwarded to the relevant department for processing.

4.18 Issuing from Custody – RPW and ASB FPN

4.18.1 The relevant supervisor, in consultation with the enquiry officer, may agree to dispose of an offence by way of an RPW or ASB FPN.

- offenders shall be processed in the normal manner and the relevant data system updated. Fingerprints, photographs and DNA will be taken where appropriate; (See DNA Sampling and Retention SOP) the RPW or ASB FPN will then be placed within the offender's property bag. The enquiry officer will thereafter update the relevant data systems prior to completing his/her tour of duty;
- where the offender is not in a position to accept the RPW or ASB FPN by virtue of his/her condition, this will be completed by the enquiry officer and placed within the offender's property bag. It is the responsibility of the police officer releasing the offender, to ensure that prior to being released from custody, the RPW or ASB FPN is read over to the offender to ensure their understanding;
- should the offender refuse to accept the RPW or ASB FPN on release from custody, the Custody Sergeant will be responsible for ensuring that the RPW or ASB FPN is voided and forwarded to the relevant Department for progression. The Custody Sergeant will advise the enquiry officer that a crime report should be raised and the relevant data systems updated.

4.19 Retrospective issue – RPW only

4.19.1 The enquiry officer, where further investigation is required, may issue an RPW

retrospectively:

- in circumstances where the officer has dealt with the offender directly and informed them that should enquiries reveal there is evidence of the offence (e.g. found in possession of suspected controlled drugs which require presumptively tested), the RPW may be placed in a sealed envelope with the Recorded Police Warning (Letter accompanying notice) (Police Scotland 070-006) and posted to the offender;
- in circumstances where the officer has not dealt with the offender directly, efforts should be made to speak with the offender in person and to issue the RPW as per 4.17 above and ensure their understanding;
- where efforts have been made to trace the offender without success, the matter should be reported by way of SPR. It should be highlighted to the PF in the Remarks section that the offender meets the criteria for an RPW but could not be traced.

4.19.2 In all circumstances, sufficient enquiry must be made to confirm the identity and address of the offender.

4.20 Refusal

4.20.1 An RPW is an **alternative to prosecution** and is designed as a proportionate way to address low-level offending behaviour, which may have otherwise resulted in either a non-court disposal, or no action being taken by COPFS.

4.20.2 It is not an admission of guilt and is not a conviction. If however, an offender absolutely refuses the RPW, the enquiry officer can escalate to an ASB FPN or where no ASB FPN offence exists, to SPR.

4.20.3 Where an SPR is submitted to the PF following the refusal of an RPW, or an ASB FPN has been issued and a court hearing is requested, this should be highlighted in the 'Remarks' section of the SPR.

5. Guidance on Completion – ASB FPN only

5.1 General operational guidance, relevant offences and instructions on how to complete ASB FPNs can be found on the cardboard cover of the notice book.
Note: Procedures involving PDA may differ.

5.2 Handwriting should be in black ink, clear and concise, and should:

- state the full wording of the alleged offence, e.g. “breach of the peace”;
- give such particulars of the circumstances alleged to constitute the offence as are necessary to provide reasonable information about it, e.g. shout and swear to the annoyance of the lieges;
- state the amount of the ASB FPN;
- state the Clerk of the Court to whom, and the address at which, the ASB FPN may be paid (although, can be paid at any Scottish Court);

- inform the person to whom it is issued of his/her right to request a Court hearing for the alleged offence and explain how that right may be exercised;
- if an error is made during the completion of an ASB FPN, the entry in question will be scored through with a single line. No attempt will be made to obliterate or alter the entry. The correction will then be entered in the succeeding box/space in the field concerned; and
- where the error cannot be corrected, e.g. insufficient space is left in the field for an amended entry, the ASB FPN in question should be spoiled (see section 5.5) and a fresh ASB FPN issued.

5.3 The ASB FPN book cover/PDA details offences and their codes. It also shows the Court codes. These should be entered in the appropriate section of the ASB FPN.

5.4 Where an ASB FPN is partly completed, but not issued for any reason, the ASB FPN should be clearly marked as 'VOID' and the ASB FPN (in its entirety) passed to the appropriate department for audit purposes. Any identified training issues should be notified by e-mail to the respective Divisional Administration Department.

5.5 Faulty/Spoiled ASB FPN

5.5.1 ASB FPN ticket books should be checked on issue and where a printing error is found, it should be returned to the relevant Department for cancellation of that ASB FPN. Serviceable ASB FPN's remaining in the book can be issued as normal.

5.5.2 Where an ASB FPN is 'spoiled' through damage or irretrievable error, it should be passed to the relevant Department for audit purposes. (see Divisional Guidance documents at Appendix D).

5.5.3 Where an ASB FPN is issued and later found to be invalid, this should be reported to the PF and it will be for the PF to decide on the action taken on receipt of the report.

5.6 Revocation of ASB FPN

5.6.1 If an ASB FPN is issued to a person and a constable determines that either of the conditions mentioned below are satisfied, the constable may revoke the ASB FPN.

5.6.2 Those conditions are:

- that the offence to which the ASB FPN relates was not committed; and
- that the ASB FPN ought not to have been issued to the person named.

- 5.6.3 Unpaid (Offender Denies Receipt of ASB FPN) – Scottish Courts and Tribunal Service (SCTS) will notify Police Scotland that the offender has denied receipt of the ASB FPN. The enquiry officer will be required to confirm the identity of the recipient. In circumstances where there has been an error in the identity of the offender, the officer will revoke the ASB FPN. Where the ASB FPN was correctly issued, namely the identity is confirmed, the enquiry officer shall submit an SPR and revoke the ASB FPN as above. The 'Remarks' section of the SPR should highlight that the offender has denied receipt of the ASB FPN.
- 5.6.4 All revoked ASB FPNs should be forwarded to the relevant department for administration and CHS updated accordingly.
- 5.6.5 Where the ASB FPN is revoked, no amount shall be payable and any amount paid will be refunded by the appropriate Court. This will not prevent the subsequent submission of an SPR.

5.7 Payment of ASB FPN only

- 5.7.1 The sum stated on the ASB FPN is payable as per the instruction provided on the ticket.

6. Appeal or Court Hearing Request

6.1 RPW

6.1.1 An offender can appeal an RPW in writing to the following address:

Criminal Justice Services Divisional Co-ordination Unit (DCU)
Police Service of Scotland
Falkirk Police Station
West Bridge Street
Falkirk FK1 5AP

6.1.2 When an appeal has been received, a Recorded Police Warning (Acknowledgement of Appeal) Letter (070-003) will be sent to the offender by the Criminal Justice Services Divisional Co-ordination Unit advising the matter has been passed to the area in which the offence occurred. The case will be reviewed and they will receive a response within 28 days from the date of the acknowledgment letter.

6.1.3 The Single Point of Contact (SPoC) to administer the process of all appeals within Division will be the supervisor in the Divisional Case Management/local Criminal Justice Delivery Unit.

6.1.4 Divisional Case Management, or local Criminal Justice Delivery Units will appoint an officer to review each appeal and establish if the criteria has been met in respect of level of evidence i.e. sufficiency of evidence is the same as would be required when reporting the matter to the PF. The review must be completed and letter advising of the outcome sent to the offender within 28 calendar days.

6.1.5 Where there is sufficient evidence, the reviewing officer will send a Recorded Police Warning (Appeal Declined) (070-004) letter to the offender explaining the matter has been reported to the PF for consideration of a prosecution. If productions relative to the offence have been seized, the reviewing officer must send notification to the appropriate production officer, instructing the case has moved from RPW to SPR and thereafter, any productions relative to the offence are to be moved out of the RPW scheme and stored in line with local procedures.

6.1.6 Where there is insufficient evidence, the reviewing officer will send a Recorded Police Warning (Appeal Upheld) (070-005) letter to the offender explaining the appeal has been upheld and their reasoning for this.

6.1.7 Where an appeal has been lodged and the status of the RPW has altered as a result, the reviewing officer will arrange for CHS and the local crime recording systems to be updated accordingly.

6.2 ASB FPN

- 6.2.1 If the recipient requests a court hearing for the alleged offence, an SPR will be submitted to the PF for their consideration.
- 6.2.2 Such a request shall be made by the recipient, in the manner specified on the ASB FPN and within the period so specified by virtue of the Act (28 days).
- 6.2.3 SCTS will notify the appropriate department that the offender has requested a Court hearing, and who, in turn will ensure the offender's CHS record is updated to show a pending case. An SPR will thereafter require to be submitted by the enquiry officer.

6.3 Failure to Pay within 28 Days – ASB FPN only

- 6.3.1 If, by the end of the period of 28 days, the ASB FPN has not been paid and the recipient has not made a request for a court hearing, then he or she will be automatically liable to pay to the Clerk of the Court specified in the ASB FPN, a sum equal to one and a half times the amount of the notice.
- 6.3.2 A sum for which the recipient is liable by virtue of the Act shall be treated as if it were a fine imposed by the court specified in the ASB FPN.

7. Command and Control – RPW and ASB FPN

- 7.1 Officers will ensure the Command and Control incident is updated in accordance with local procedures. The corresponding Crime/Case number should be recorded on the Command and Control system prior to final closure. For further guidance see Command and Control SOP.
- 7.2 Any other relevant data/information systems must also be updated appropriately.

8. Productions – RPW and ASB FPN

- 8.1 Where applicable, productions will be handled in accordance with existing procedures. For most cases being dealt with by way of RPW or ASB FPN, it will not be proportionate or necessary to take any productions. If productions are seized during the investigation of a crime, they should be retained and lodged in the normal manner. Where a production is taken and all processes are complete including any appeals made, the enquiry officer must liaise with productions staff to return or dispose of the item, no longer than six months from the time of seizure (see Productions SOP).

8.2 RPW Only

- 8.2.1 Where a production is taken under the RPW scheme, the enquiry officer should indicate this clearly on the paperwork submitted to the production keepers.
- 8.2.2 If as a result of an appeal the matter is to be reported by SPR, it is the responsibility of the Divisional Case Management/local Criminal Justice Delivery Unit Supervisor to inform the appropriate Production Officer that the case has moved from RPW to SPR and thereafter, any productions relative to the offence are to be moved out of the RPW scheme into business as usual.

9. Criminal History System (CHS)

9.1 RPW

- 9.1.1 It is the enquiry officer's duty to ensure that local procedures to update CHS are completed prior to termination of duty. This is imperative so that CHS accurately reflects the offender's record for considering future RPWs.
- 9.1.2 Where an appeal has been lodged and the status of the RPW has altered as a result, the reviewing officer will arrange for CHS and the local crime recording systems to be updated accordingly.

9.2 ASB FPN

- 9.2.1 CHS will be updated for each ASB FPN issued. The relevant department will ensure CHS are advised where an offender has requested a Court hearing. This will allow for the offender's record to be updated, showing a pending case.

10. Use of the Scottish Intelligence Database (SID)

- 10.1 Where the issue of an RPW or ASB FPN includes intelligence which meets the standard grounds for intelligence submissions, the enquiry officer must submit an intelligence entry on SID. **Please note that to access this system, officers and staff must receive appropriate training.**

11. Foreign Nationals

- 11.1 It is unlikely that the circumstances would allow for the issue of an RPW or ASB FPN to a foreign national, unless he/she has a permanent address in the U.K. If deemed appropriate, however and the offender's first language is not English, guidance contained in the Interpreting and Translating Services SOP should be followed. The use of Community Advisors may also be considered in this instance (refer to the Community Advisors SOP).

11.2 There may be intelligence gathering opportunities and if officers are in any doubt over the suitability of the offender to receive an RPW, taking into account any potential immigration issues, the matter should be reported to the PF.

12. National Cross Boundary Fixed Penalty – ASB FPN only

For full details of Cross Boundary issue of ASB FPNs, please see the Divisional Guidance documents (Appendix D).

List of Associated Legislation

- Antisocial Behaviour etc. (Scotland) Act 2004
- Civic Government (Scotland) Act 1982
- Criminal Justice and Licensing (Scotland) Act 2010
- Criminal Law (Consolidation) (Scotland) Act 1995
- Licensing (Scotland) Act 2005
- Local Government (Scotland) Act 1973
- Misuse of Drugs Act 1971

List of Associated Reference Documents

Policy

- Criminal Justice Policy

Standard Operating Procedures

- Command and Control SOP;
- DNA Sampling and Retention SOP
- Drugs Investigation SOP
- Interpreting and Translating Services SOP
- Community Advisors SOP
- Records Retention SOP
- Productions SOP
- Conditional Offer of Fixed Penalty Scheme - Traffic Offences SOP
- Vehicle Defect Rectification Scheme SOP
- Crime Recording SOP
- Offending by Children SOP

Guidance

- The Use of Recorded Police Warnings and Early and Effective Intervention for 16 and 17 Year Olds
- Scottish Crime Recording Standard Counting Rules

List of Associated Forms

- Recorded Police Warning Notice (Police Scotland **070-002**)
- Recorded Police Warning (Acknowledgement of Appeal) (Police Scotland **070-003**)
- Recorded Police Warning (Appeal declined) (Police Scotland **070-004**)
- Recorded Police Warning (Appeal upheld) (Police Scotland **070-005**)
- Recorded Police Warning (Letter accompanying notice) (Police Scotland **070-006**)

List of Divisional Guidance Documents

To view your updated Divisional Guidance, please click on the appropriate link below. These documents can also be accessed via the national Guidance intranet site:

A Division

C Division

D Division

E & J Divisions

G, U, Q, K & L Divisions

N Division

P Division

V Division