

**GUIDANCE ON DRINKING
BANNING ORDERS
ON APPLICATION
AND CONVICTION**
FOR LOCAL AUTHORITIES,
POLICE FORCES, COURTS AND
COURSE PROVIDERS WITHIN
ENGLAND AND WALES



Home Office

Contents

Introduction	4
Approved courses	6
Other tools for tackling alcohol-related crime and disorder	6
Section 1: Drinking Banning Orders – the basics	7
What are DBOs, who can apply for them and who can they be made against?	7
When a DBO might be appropriate	7
When a DBO may not be appropriate, including position on vulnerable individuals	8
Prohibitions	9
Proposing prohibitions	9
Prohibitions should be proportionate	10
Where a DBO is valid	11
Duration of a DBO	11
Referral to an approved course	12
When DBOs take effect	13
Variation and discharge	13
Interim DBOs	13
Appeals	14
Breach of a DBO	15
Power of arrest following breach of a DBO	15
Informing licensed premises	16
Young people	16
Section 2: Drinking Banning Orders – seeking an order	17
Most effective route to seek a DBO	17
Applications to the magistrates’ court (acting in its civil capacity)	17
Consultation requirements	18
Pooling resources	19
Collection of evidence	19
Interim DBOs made in the magistrates’ court	20
Varying or discharging DBOs made on application	20
Summons procedure	20

DBOs in county court proceedings	21
Consultation requirements	21
Interim DBOs made in the county court	22
Varying or discharging DBOs made in the county court	22
DBOs on conviction in criminal proceedings	22
Varying or discharging DBOs made on conviction	23
Interim DBOs on conviction	23
Relationship between DBOs and other court disposals	23
DBOs for 16 and 17-year-old persons	24
Section 3: Other relevant information	25
Standard of proof	25
Disclosure	25
Use of hearsay and professional witness evidence	25
Witness support	26
Devolution	26
The Licensed Premises (Exclusion of Certain Persons) Act 1980	26
Court fees	26
Legal Aid	27
Contact details within the Home Office	27
Section 4: Drinking Banning Orders – after the order is made	28
Enforcement including the Police National Computer (PNC)	28
Licensed premises and the role of the alcohol industry	28
Monitoring and recording	29
Promoting awareness of those individuals who have received a DBO	29
Benefits of publicity	29
Publicity of orders	30
Photographs	30
Information sharing	31
Section 5: Course providers	32
Applications for approval	32
Duration of approval	32
Funding	33
Monitoring	33
Personnel	34
Freedom of Information implications	34

Section 6: Approved courses	35
Introduction	35
Course objectives	35
Course requirements	35
Minimum requirements	36
Methods	37
Materials	38
Changes in content	38
Course arrangements	38
Annexes	40
Annex A: Step-by-step approach for applications to the magistrates' court for a Drinking Banning Order	40
Annex B: Step by step approach for a Drinking Banning Order on conviction in criminal proceedings (in the magistrates' court or the Crown Court)	42
Annex C: Completion and non-completion certificates	44
Annex D: Application form for drinking banning order and interim drinking banning order	48
Annex E: Statutory Instruments	50
Annex F: Drinking Banning Order – Supplementary Information Form for DBOs on Conviction	53

Introduction

This guidance provides a single point of reference on Drinking Banning Orders (DBOs) for the police and local authorities, courts and approved course providers. This guidance document provides comprehensive information regarding the seeking, making and enforcement of a DBO, as well as covering matters relating to the recipient's attendance of an approved course. This has been supplemented for the police, local authorities and the courts by the Magistrates' Courts (Drinking Banning Orders) Rules 2009 (see Annex E) and the Civil Procedure on seeking DBOs; and, by Criminal Procedure Rules for DBOs on conviction which are set out in Section VI of Part 65 of the Criminal Procedure Rules which can be accessed on the Ministry of Justice website at: www.justice.gov.uk/civil/procrules_fin/contents/parts/part65.htm

DBOs are to be used to address an individual's alcohol misuse behaviour and protect others and their property from such behaviour. Alcohol misuse, and particularly that associated with anti-social and disorderly behaviour, is a significant concern for many people in our communities. Such alcohol misuse behaviour is a strong contributory factor associated with a wide range of crimes or disorderly behaviour that can include:

- public order offences (often anti-social by nature, these offences can involve rowdy, threatening and abusive behaviour, disorderly groups of people, and urinating in public);
- criminal damage;
- minor and serious assaults;
- violent offences; and
- traffic offences.

DBOs are civil orders that are similar to Anti-Social Behaviour Orders (ASBOs). The approved courses are similar in content and structure to the Drink Drive Rehabilitation Scheme. DBOs can be given for a duration of between two months and two years. They are available through the provisions of the Violent Crime Reduction Act 2006 (referred to in this guidance as the VCR Act 2006) that received royal assent on 8 November 2006. DBOs are intended to tackle alcohol-related criminal or disorderly behaviour. Individuals engaging in criminal or disorderly behaviour which is not alcohol related are not suitable for a DBO, and other sanctions such as ASBOs may be more appropriate.

The DBO is intended to deal with individuals who are involved in criminal and disorderly behaviour that is alcohol related, including alcohol-related anti-social behaviour and nuisance. In particular, they are intended for use in cases where other early intervention approaches have not worked. DBOs could also be relevant in cases of criminal damage to property, committed while under the influence of alcohol. They are also relevant following a conviction in criminal proceedings in cases where the offender was under the influence of alcohol.

DBOs must include any prohibitions on entering licensed premises as are necessary for the purpose of protecting other persons from criminal or disorderly conduct that the individual may commit under the influence of alcohol. They may also include any other prohibitions that are necessary for that purpose.

Ultimately, DBOs are designed to protect the community from a specific range of behaviour that is associated with an individual's alcohol misuse.

From 31 August 2009 the following courts can make a DBO on application:

- magistrates' courts (acting in their civil capacity); and
- county courts (where the principal proceedings involve alcohol misuse crime or disorderly behaviour by those who are party to the proceedings or could be made a party).

The VCR Act 2006 also has provision for the making of DBOs on conviction, where the courts can consider whether to make a DBO when a person is convicted of an offence that is committed while under the influence of alcohol.

From April 2010, magistrates' courts in 25 Local Justice Areas will be required to consider whether to impose a DBO when a person is convicted of an offence that is committed whilst they were under the influence of alcohol. The power was rolled out to a further 25 Local Justice Areas on 1st November 2010. A decision has not yet been made on a timescale for national rollout. The power will not be available in the crown court until DBOs on conviction are available nationwide. This applies even if the Crown Court sits within one of the Local Justice Areas where they are available on conviction in the magistrates' court.

An up-to-date list of the Local Justice Areas which have the power to implement Drinking Banning Orders on conviction is available at the following link:

www.homeoffice.gov.uk/drugs/alcohol/drinking-banning-orders/DBOs-on-conviction/

Once this power is commenced, the courts must consider applying DBOs on conviction in criminal proceedings (in addition to any other sentence or conditional discharge imposed).

The same rules apply for DBOs on application and conviction in that they may not be appropriate when:

- a ban of more than two years is needed;
- behaviour is related to attendance at a football match;
- the individual is subject to proceedings related to domestic violence or to non-molestation proceedings;
- an individual is vulnerable and suffering from drug or alcohol dependency, or mental health problems; or
- an individual's offending behaviour is solely related to drug use

Whether the offence was committed by the individual while they were under the influence of alcohol or not will be a matter for the courts to determine, based on the circumstances of each individual case. There is no requirement for the police or local authority to make an application to the court for a DBO on conviction. However they may wish to use the information form at Annex F to inform the court what prohibitions are being sought.

While it is for the court to decide whether or not it is going to make a DBO, the prosecution will need to decide whether or not they are going to lay extra evidence in support of the consideration of the DBO. The prosecution should give as much notice as possible to the defence that they intend to support the court's consideration of the matter.

A DBO on conviction comes into effect on the day on which it is made, or, if the person is in legal custody at that time, on the day on which the person is released from custody.

Recipients of a DBO on conviction can be referred to an approved course aimed at addressing their alcohol misuse behaviour. The court will take the decision as to whether or not to refer an individual and to the length of the reduction in their ban (if successfully completed).

Approved courses

The VCR Act 2006 and the VCR Act 2006 (Drinking Banning Orders) (Approved Courses) Regulations 2009 make provisions for the duration of a DBO to be reduced if an individual satisfactorily completes an approved course to address their alcohol misuse behaviour. The courses are similar in content and structure to the Drink Drive Rehabilitation Scheme.

This means that a court can propose to an individual that they attend a specified approved course to address their alcohol misuse. The court has to be satisfied that a place is available for the individual on a course, and the subject has voluntarily agreed to attend the course' and have it included in the DBO.

The Home Secretary has approved a number of course providers throughout England and Wales to follow a national model in the provision of approved courses. Details of the providers including the areas that they cover are available on the crime reduction website at www.homeoffice.gov.uk/drugs/alcohol/drinking-banning-orders/DBO-approved-courses/

Other tools for tackling alcohol-related crime and disorder

There is now a wide range of tools and tactics that can be used to tackle the problems of alcohol-related crime and disorder, which enables authorities and courts to take action that targets the particular problem in question. Details of these tools and powers can be found at www.homeoffice.gov.uk/drugs/alcohol

It is important that where it is appropriate to do so these tools are used energetically and constructively to tackle those in our communities who are responsible for alcohol-related crime or disorder.

Updates to this guidance will be available from the crime reduction website as above.

Section 1: Drinking Banning Orders – the basics

What are DBOs, who can apply for them and who can they be made against?

DBOs are civil orders that can be sought by relevant authorities. These are the police (including British Transport Police) or local authorities in England and Wales. Additionally, courts must consider whether to impose a DBO when a person is convicted of an offence which he committed whilst under the influence of alcohol. DBOs are not criminal penalties and they are not intended to punish the subject. DBOs can be made against an individual aged 16 years or over if:

- they have engaged in criminal or disorderly conduct while under the influence of alcohol; and
- the court considers that a DBO is necessary to protect persons and/or their property from further conduct by that person of that kind while under the influence of alcohol.

Local authorities will need to be clear as to who has delegated responsibility to act on behalf of the authority.

If a DBO is imposed, the court must include such prohibitions as it considers necessary for the purpose of protecting persons or their property from the subject's alcohol-related disorderly or criminal conduct, on the subject's entering licensed premises. The court may also impose any other prohibition that it believes is necessary for that purpose.

When a DBO might be appropriate

Alcohol misuse, particularly as a result of binge drinking, is associated with a wide range of crimes or disorderly behaviour. These can include:

- public order offences (often anti-social by nature);
- criminal damage;
- minor and serious assaults;
- violent offences; and
- traffic offences.

Typically, an application for a DBO may be made for drunk or disorderly behaviour, including persistent low-level, anti-social behaviour or nuisance that is alcohol related. In particular, an application may be made in cases where other early intervention approaches have not worked. DBOs could also be relevant (in addition to criminal sanctions) in cases of criminal damage to property committed while under the influence of alcohol, and some more serious alcohol-related crime and disorder or violence.

When a DBO may **not** be appropriate, including position on vulnerable individuals

DBOs are designed to protect individuals and their property from a specific type of behaviour that occurs as a result of alcohol misuse and is often associated with binge drinking. However, a DBO may not be appropriate if:

- A ban of longer than two years is needed. In such circumstances an ASBO may be considered more appropriate since DBOs can only be imposed for a maximum of two years (and a minimum of two months).
- The behaviour is alcohol related but clearly linked to attending a football match. It may be more appropriate to seek a Football Banning Order rather than a DBO, especially if an order is being sought on conviction.
- The individual is subject to proceedings relating to domestic violence or non-molestation proceedings.

Relevant authorities will need to take these factors into account when consulting each other on the appropriateness of seeking a DBO.

In addition, generally it is unlikely to be appropriate to seek a DBO for those individuals who are vulnerable, particularly if they are suffering from drug or alcohol dependency or mental health problems.¹ The VCR Act 2006 does not permit a DBO to be sought in respect of an individual who is only under the influence of drugs and not alcohol.

If an individual is vulnerable or suffering from alcohol dependency then such problems should be identified by the relevant authority at the statutory consultation stages of seeking a DBO (details are provided below) and during the collection of evidence stage prior to making an application for a DBO. Rather than seek a DBO, support should be provided for such individuals by social services or other support agencies. Local authorities also have a duty under section 47 of the National Health Service and Community Care Act 1990 to assess any person who may be in need of community care services. Rough sleepers should similarly be dealt with through existing arrangements between local authorities, homelessness agencies and the police for dealing with such individuals rather than through a DBO.

¹ Dependence is difficult to define, as it is not a single entity, but a constellation of behaviours and internal processes that combine to cause a chronic problem. The World Health Organization (WHO) defines dependence as:

‘a cluster of physiological, behavioural, and cognitive phenomena in which the use of a substance or a class of substances takes on a much higher priority for a given individual than other behaviours that once had greater value. A central descriptive characteristic of the dependence syndrome is the desire (often strong, sometimes overpowering) to take psychoactive drugs (which may or may not have been medically prescribed), alcohol, or tobacco. There may be evidence that return to substance use after a period of abstinence leads to a more rapid reappearance of other features of the syndrome than occurs with nondependent individuals.’

Alternatively, *Models of care for alcohol misusers* (MoCAM) (Department of Health/National Treatment Agency 2006) differentiates between moderate and severe dependence:

- *Moderately dependent drinkers* have a level of psychological dependence ‘with an increased drive to use alcohol and difficulty controlling its use, despite negative consequences’.
- *Severely dependent drinkers* have a severe level of psychological dependence and often have physical withdrawal upon cessation. They may have formed the habit of drinking to stop withdrawal symptoms. Their drinking is likely to comprise ‘habitual significant daily alcohol use or heavy use over long periods or bouts of drinking’.

There is no legislative bar to using a DBO on vulnerable individuals however when considering a DBO you need to look at how appropriate it would be for the specific individual, particularly if the individual is likely to be able to comply with the prohibitions.

The two main tenets of a DBO are (1) that prohibitions are imposed, which where breached the individual can be fined; (2) that the individual is given the opportunity to attend an approved course, which they are required to pay for.

You need to consider if the individual will be able to pay for the approved course and if their behaviour is likely to be altered by such a course.

Due to these factors DBOs may in many cases not be appropriate for vulnerable individuals however all individuals should be considered on a case by case basis.

Prohibitions

A DBO prohibits the individual subject to the order from doing the things described in the order. The prohibitions must be necessary for protecting others from the individual's criminal or disorderly conduct (or their property from unlawful loss or damage by the defendant – see section 14(2) of the VCR Act 2006) while under the influence of alcohol. It will be for the court to decide what prohibitions are necessary.

The court making the DBO must (see section 1(3) of the VCR Act 2006) include such prohibitions as are necessary for that purpose on the person's entering:

- (a) premises in respect of which there is a premises licence authorising the use of the premises for the sale of alcohol by retail; and
- (b) premises in respect of which there is a club premises certificate authorising the use of the premises for the supply of alcohol to members or guests.

(Note: The expressions used in (a) and (b) referred to above in relation to premises have the same meaning as those in the Licensing Act 2003.)

The court may impose such other prohibitions (see section 1(2) of the VCR Act 2006) as it believes necessary for the purposes of protecting others or their property from the criminal or disorderly conduct of the subject when under the influence of alcohol. This could mean restrictions on individuals from entering particular streets or areas. Prohibitions may be limited to certain times only. For example, under the terms of the prohibitions an individual could be prohibited from entering licensed premises on certain days of the week or at certain times of the day/night. Different prohibitions within a DBO can take effect for different periods within the overall period of the DBO. For example, a person can be prohibited from entering a particular area for a shorter period than the period for which they are prohibited from entering a specified set of licensed premises.

Proposing prohibitions

A relevant authority can propose the prohibitions it believes are necessary when making an application, or the court can do so of its own volition. Careful consideration should, however, be given to the formulation of the prohibitions so that they can be easily understood and enforced. The prohibitions should:

- cover the range of criminal or disorderly conduct committed by the defendant while under the influence of alcohol;
- be necessary for protecting other persons from the defendant's criminal or disorderly conduct (or property from unlawful loss or damage by the defendant) while they are under the influence of alcohol;

- be reasonable and proportionate;
- be realistic and practical;
- be clear, concise and easy to understand;
- be specific when referring to a named set of premises with a premises licence or club premises certificate in a given street (or streets) or within a defined geographic area;
- be specific when referring to matters of time if, for example, prohibiting the subject from being in a set of licensed premises at certain times;
- be specific when referring to exclusion from a geographic area, including street names and clear boundaries (a map with identifiable street names could be provided);
- be specific in the terms of the prohibitions in order for it to be easy to establish whether a breach had taken place; and
- seek to protect all people and property that need protection.

The prohibitions, however, must **not** (see section 1(4) of the VCR Act 2006) prevent the individual from:

- having access to their home;
- having access to their place of work;
- having access to a place where they need to attend to receive education, training or medical treatment;
- having access to a place that they have been ordered to attend, by an enactment or by the order of a court or tribunal; and
- having access to attend their normal place of worship.

Consideration should also be given to whether the prohibitions will prevent an individual from fulfilling any special dietary requirements, from taking a child to a place where they may receive medical treatment or from taking a child to school.

Prohibitions should be proportionate

Where appropriate, the relevant authorities should also ensure that prohibitions are not sought that could prevent an individual from being able to attend their normal place of worship, or for example taking wine as part of a religious service, or in rare cases prevent them from the need to fulfil any special dietary or medical requirements. Prohibitions should not be included that would prevent an individual from taking a child to a place where they may receive medical treatment or preventing a person from taking their child to school.

It should be noted that a prohibition on entering all licensed premises within a specific area would result in the individual being banned from entering all premises that hold a premises licence. This will include supermarkets, convenience stores, cinemas and other outlets that have a licence to sell alcohol. The relevant authority applying for the DBO may wish to consider instead banning the individual from named licensed premises, banning them from specific streets or, should the circumstances warrant it, banning them from purchasing alcohol within a specific area.

Prohibitions should not be sought to ban individuals completely from entering supermarkets that sell alcohol (or other food outlets that sell alcohol), or garages that have a licence to sell alcohol, unless this proves to be absolutely necessary given the circumstances of a particular case. Factors to take into account if proposing such

a ban would be whether such premises would be the only convenient and easily accessible food or fuel outlets within a locality to which the individual would have access to buy food or fuel.

Prohibitions could include, where necessary and proportionate:

- exclusion from an individual set of licensed premises or a number of licensed premises;
- exclusion from consuming alcohol in public places. What ‘public places’ means will need to be carefully explained in the DBO. For example, it could be any place to which the public has access (whether as of right or by express or implied permission). It could also include places to which the person gains unlawful access;
- exclusion from all licensed premises in a geographically defined area such as a street or town centre, or for the whole of England and Wales; and
- exclusion from purchasing alcohol in a particular set of licensed premises or a number of licensed premises or any licensed premises in England and Wales.

When considering what prohibitions might be appropriate, relevant authorities will need to take into account the issue of possible displacement of alcohol-related problems from one area to another. If a small geographical area is considered as part of a DBO prohibition, the relevant authority will need to consider the possible effect on the surrounding areas. In some cases, it might be both necessary and proportionate to include a larger geographical area in order to take account of the risks of displacing the problem.

Where a DBO is valid

The prohibitions that a DBO could impose can apply to the subject within England and Wales if it is considered to be reasonable and proportionate. Clearly, the wider the area over which the prohibition extends, the greater the justification required. DBOs are not applicable to Scotland or Northern Ireland. However, where necessary the appropriate authorities each side of the border should work closely together to ensure that information is shared and that displacement is anticipated and dealt with as necessary.

A DBO is designed to protect any member of the public. Relevant authorities could therefore apply for a DBO if they are satisfied that a DBO is necessary to protect a person who is from a different geographical area. However, in the majority of cases it is expected that the persons who are to be protected by the DBO will reside in the same area as the subject of the order.

Duration of a DBO

The minimum period for which a DBO can apply is two months and the maximum is two years (see section 2(1) of the VCR Act 2006). The length of a DBO cannot be varied to extend it beyond its maximum two-year duration. The duration of the DBO should, however, take into account the severity of the individual’s behaviour while under the influence of alcohol and the need to protect other people and their property from that behaviour, and the recipient’s response to any previous measures to deal with the behaviour. A longer DBO will generally be appropriate in the case of more serious or persistent alcohol misuse behaviour. The length of a DBO will, however, ultimately be a matter for the courts.

As outlined above, different prohibitions within a DBO can take effect for different periods within the overall period of the DBO, subject to the requirement that each prohibition is no less than two months and no more than two years (see section 2(2) of the VCR Act 2006).

When deciding on the length of a DBO, consideration should be given as to whether an approved course would be beneficial to the recipient. Those who receive a short DBO are likely to be unable to attend an approved course because of the time it takes to register and attend sessions over a number of weeks.

Referral to an approved course

Approved courses are established under the provisions of sections 12 and 13 of the VCR Act 2006 and the VCR Act 2006 (Drinking Banning Orders) (Approved Courses) Regulations 2009. The courses are similar in content and structure to the Drink Drive Rehabilitation Scheme.

Recipients of a DBO can be referred by the court to an approved course provider if the recipient consents (see section 2(6)(b) of the VCR Act 2006). Successful completion of an approved course can reduce the length of a DBO by up to half. Approved courses are undertaken on a voluntary basis as a means to address alcohol misuse behaviour. These courses focus on educating individuals about the serious social and health impacts of heavy alcohol consumption.

Information on course providers in a specific area will be supplied to the courts by the providers themselves; however, it is also available on the crime reduction website at www.homeoffice.gov.uk/drugs/alcohol/drinking-banning-orders/DBO-approved-courses/

Relevant authorities that have applied for and been granted a DBO against an individual should seek to remind the court that they may refer the individual to an approved course. Consideration should be taken as to how appropriate it would be for the specific individual, if they are likely to respond to the course, if they will be able to pay for the course and if their behaviour is likely to be altered by such as course. They should further remind the court of the requirement under section 2(8) of the VCR Act 2006 to give its reasons in open court for not referring an individual to an approved course.

A court making an order has to ensure that:

- it is appropriate for a recipient to attend an approved course, i.e. it may be not be appropriate if they have previously been allocated a place on a course and completed it/failed to attend, if it is perceived that they will not benefit from attendance on such a course;
- it has been explained to the recipient the effect of the order in ordinary language, what in general terms attendance on the course will involve, the fees for the course and that payment must be made in advance;
- a place is available on an approved course;
- if the recipient is under 18 years old, their age has been taken into consideration;
- consideration is given as to the proposed location of the course to be attended, i.e. how close to home, a place of work etc.; and
- the recipient has agreed to the inclusion of the completion of the course in the order.

Courts are required to specify in the order the course to which a recipient has been referred. The exact period of reduction should the course be satisfactorily completed must also be specified in the order.

It is then the responsibility of the court to notify the provider that a recipient has been referred. Specific instructions on this process will be given on the intranet of Her Majesty's Court Service. A referral form is available on the LIBRA system. A list of providers can be found at www.homeoffice.gov.uk/drugs/alcohol/drinking-banning-orders/DBO-approved-courses/

It is then for the provider to approach the recipient with an offer of a course – specifying the dates, times and location of attendance. Recipients can attend an approved course at any point during the term of their DBO, and there is no cut-off point. A course is only successfully completed when the course provider has sent the certificate to the court and it has been received.

The details of those recipients referred to an approved course should be recorded in the court register. If a court decides not to refer a recipient to an approved course, the reasons for this decision must be given in court.

When notifying the relevant course provider of the referral of a recipient the courts and/or the relevant authority that made the application should specify if the person concerned has a propensity to violence or if they have any special needs, for example any accessibility problems or difficulty in understanding English.

The scheme is voluntary. There is no additional penalty if an offender does not agree to attend a course or consents to the inclusion of the course in the DBO but then fails to attend a course.

When DBOs take effect

A DBO on application to the magistrates' court would come into effect once the case had been heard in court and the court had approved the application, so that the individual is fully aware of its terms. A DBO granted in the county court must be served personally on the recipient of a DBO and would not come into effect until it is served and the individual is therefore fully aware of its terms. The relevant authority that has made the application for the DBO is responsible for ensuring that the DBO is served on the individual. A DBO on conviction comes into effect on the day on which it is made or, if the individual is in legal custody at that time on the day on which the individual is released from that custody. In respect of interim DBOs, these will come into effect once the individual is made aware of its terms. The Magistrates' Court Rules provide further details on serving orders.

Variation and discharge

The VCR Act 2006 provides for the variation and discharge of DBOs made in the magistrates' court on complaint and in county court proceedings (see section 5 of the VCR Act 2006). An application to the court for variation or discharge can be made by the person subject to the DBO or the relevant authority on whose application the DBO was made. The VCR Act 2006 also provides for variation and discharge of a DBO made following a conviction (see section 8 of the VCR Act 2006). The subject of the DBO, the Director of Public Prosecutions, or a relevant authority may apply for variation or discharge.

Interim DBOs

The court can make an interim DBO (see section 9 of the VCR Act 2006) if they think it is just so to do, i.e. it is necessary to take immediate action to address the problem. Applications for interim DBOs will be appropriate where the relevant authorities believe that other persons or property are in need of urgent protection from further criminal or disorderly conduct by the subject while they are under the influence of alcohol before the main application for a full DBO can be determined.

Interim DBOs can be made at the outset of an application for a full DBO. The relevant authority should therefore request an interim DBO at the same time as making an application for a full DBO in the magistrates' court or the county court. An interim DBO can be made at an initial court hearing that is held in advance of the full hearing. Where a court considers granting a DBO on conviction, no application is made or required for an interim DBO since the court is required to consider the granting of a DBO independently of any application.

When considering whether to make an interim DBO the court will be aware that it may not be possible at the time of the interim DBO application to compile all the evidence that would prove that a full DBO is necessary. Rather, the court will determine the application for an interim DBO on the question of whether the application for the full DBO has been properly made and whether there is sufficient evidence of an urgent need to protect other persons or property from criminal or disorderly conduct by the subject while they are under the influence of alcohol.

An interim DBO can be applied for without notice of proceedings being given to the defendant (*ex parte*), and can be heard in the absence of the individual. Such an application can only be made with the permission of the court. In an application to the county court this means the court itself, and in the case of proceedings before a magistrates' court it means the permission of the proper officer (justices' clerk). Permission for an *ex parte* application for an interim DBO may only be given where the court or proper officer (justices' clerk) is satisfied that it is necessary – because of the urgent need for protection – for the application to be made without the individual concerned receiving notice, and without their presence.

Criminal courts can also convict and sentence *in absentia* and will therefore be able to make an interim DBO on conviction regardless of whether the defendant is present in court. This is in certain circumstances only, and not when a sentence of imprisonment is passed

Where an interim DBO is granted *ex parte* it is expected that the court will usually arrange for an early return date for consideration of the interim DBO and full DBO. The recipient would have the opportunity to respond to the case at the hearing for the full DBO. The recipient is also able to apply to the court for the interim DBO to be varied or discharged. In this instance the matter will be dealt with at a hearing that deals specifically with the interim matter.

The interim DBO:

- will be for a specified time period not exceeding four weeks;
- may be renewed once or more but for a period not longer than four weeks from the time it would otherwise have expired. While it is technically possible for an interim DBO to continue to be renewed this is not the best use of the courts', or relevant authorities', time. This should therefore be avoided;
- will contain any prohibitions that could be in a full DBO;
- can be varied or discharged on application by the subject to the magistrates' court, in county court proceedings and on conviction in criminal proceedings;
- will cease to have effect once the court has decided whether or not to make a full DBO; and
- will have the same breach penalties as for a full DBO.

If an interim DBO is made at a hearing of an application without notice, it will not take effect until it is served personally on the subject. The relevant authority that applied for the DBO will be responsible for serving the interim order on the recipient of the DBO.

If an interim DBO made without notice is not served on an individual within seven days of being made, it ceases to have an effect (see the Magistrates' Courts Rules (Drinking Banning Orders) 2009 at Annex E).

Appeals

Appeals against a DBO being made (see section 10 of the VCR Act 2006) on application or on conviction can be made through the following routes:

- Appeal from an order made in the magistrates' court sitting in its civil capacity is to the Crown Court by virtue of section 10(1) of the VCR Act 2006. By virtue of 79(3) of the Supreme Court Act 1981, appeal is by way of re-hearing.
- Appeal from an order made in the magistrates' court sitting in its criminal capacity is to the Crown Court by virtue of section 10(1) of the VCR Act 2006.

- An appeal from the Crown Court (where an appeal has already come from the magistrates' court) is by way of case stated to the Divisional Court under section 28 of the Supreme Court Act 1981.
- Appeals against county court orders made by district judges will be to a circuit judge, and against orders made by circuit judges to High Court Judges. There is no appeal to the Court of Appeal.

If a Magistrates Court makes a DBO following conviction, the appeal to the Crown Court is to be made in the normal time allowed for making of appeals from the Magistrates' Court to the Crown Court in criminal matters. The basic rule is that appeals from decisions of the Magistrates Court must be made within 21 days.

The procedure for appeals against an order made in the county court must be made in accordance with Part 52 of the Civil Procedure Rules and the Supplementary Practice Direction. It therefore does not feature in the VCR Act 2006.

Breach of a DBO

Breach of a DBO or an interim DBO (see section 11 of the VCR Act 2006) without reasonable excuse is an offence. A person found guilty of such an offence on summary conviction could be liable to a fine not exceeding level 4 on the standard scale. The Crown Prosecution Service (CPS) will be responsible for prosecuting any breach of a DBO. The police and local authorities will need to liaise with their local CPS contact to discuss what information the CPS will require for the prosecution file. As a minimum this should include:

- a copy of the DBO granted by the court;
- a summary of the evidence submitted to the court in the original DBO application;
- details/evidence of the alleged breach of the DBO e.g. witness statements, evidence from police officers, CCTV footage etc.;
- the defendant's explanation (if any) for the alleged breach, whether this be in a formal interview, or in Q & A recorded in the officer's notebook contemporaneously and offered for signature; and
- details of any previous breaches.

Power of arrest following breach of a DBO

The new s.24 of PACE provides that a constable can arrest anyone without warrant where that person is committing or is about to commit an offence, or where he has reasonable grounds to believe that the person has committed an offence. Further, the constable must have reasonable grounds to believe the arrest is necessary, for any of the reasons set out in s.24(5). This includes the person not giving a name or address; or to prevent the person causing injury or damage to property, committing an offence against public decency, or causing unlawful obstruction of the highway; to protect a child or vulnerable person from that person; to allow prompt and effective investigation of the offence or the conduct of the person in question; or to prevent hindrance to the prosecution of the offence by the disappearance of the person in question.

Which of those factors relate to the individual is a matter of operational discretion for the officer in the particular circumstances, but a number of those could potentially relate to a person breaching or about to breach a DBO. Alternatively, an officer could rely on the common law power to arrest for a breach of the peace, but this requires some incident of violence on the part of the person in question, ie not just verbal abuse.

Informing licensed premises

Relevant authorities should, where it is practical to do so, ensure that the licensed premises, which an individual who is a recipient of a DBO is prohibited from entering or buying alcohol from, are made aware of those individuals and the specific nature and duration of the prohibitions that apply to their DBOs. Those licensed premises should, as soon as is practically possible, also be informed about when a DBO is due to end or when the terms of a DBO have been varied or the DBO discharged. This should help to enforce the prohibitions in DBOs. Licensed staff should be encouraged to inform the police if an individual is seen breaching a DBO, for example if they enter a premises that they were excluded from under the terms of their DBO.

Young people

DBOs apply to those aged 16 or over. When applying for a DBO against a young person aged 16 or 17 an assessment should be made of their circumstances and needs. This will enable the local authority to ensure that the appropriate services are provided for the young person concerned, and for the court to have the necessary information about them. It is vital, however, that any assessment made does not cause delay to the application for a DBO. The lead agency must therefore liaise closely with the local social services department and Youth Offending Team (YOT) from the start of the process, so that where a new assessment is required it can be done quickly.

Those under 16 years of age who have come to the attention of the relevant authorities for alcohol misuse may best be diverted to an intervention programme, for example run by a YOT.

An application to the county court by a relevant authority under Section 4(4) of the VCR Act 2006 to join a person to the principal proceedings may only be made against a person aged 18 or over.

Section 2: Drinking Banning Orders – seeking an order

Most effective route to seek a DBO

Relevant authorities need to consider and identify the most effective route that should be adopted to seek a DBO. If an individual has engaged in criminal or disorderly conduct while under the influence of alcohol and it is necessary to protect other persons (or property) from further acts by the perpetrator then a DBO could be sought. Relevant authorities should work in partnership and if necessary liaise with other agencies to add value to a DBO application. The main routes for seeking a DBO are: on application to the Magistrates' court (acting in its civil capacity); in County Court proceedings; and on conviction in criminal proceedings.

A DBO remains a civil order irrespective of the issuing court.

Applications to the magistrates' court (acting in its civil capacity)

A DBO on application can be made (see section 3 of the VCR Act 2006) where an individual has engaged in some criminal or disorderly conduct while under the influence of alcohol within six months of the time when the matter of the complaint (the behaviour) arose. One incident may be sufficient for a DBO to be made. So, at least one incident of such behaviour must have occurred in the six months previous to the application to the court. If in addition there is relevant conduct outside the six-month period this can be relevant to support an application – to show, for example, that there is a pattern of behaviour that the DBO is intended to address. It will be for the court to then determine the weight to be given to that evidence in deciding whether the behaviour in question took place and whether it is necessary to make the DBO.

A DBO on application can be made by a relevant authority to the magistrates' court acting in its civil capacity. An application should, where it is practicable to do so, be made to the magistrates' court whose area includes the local authority area or police area where persons need to be protected from the individual's alcohol misuse behaviour. Under section 98 of the Magistrates' Courts Act 1980, evidence will be given on oath.

The lead police or local authority officer in charge of the case should ensure that all the evidence and witnesses are available at the hearing, including any evidence in support of the need for the court to make an immediate DBO. It is important to note that section 3(2)(a) of the VCR Act 2006 states that the criminal or disorderly conduct **must be committed after the commencement of section 3 of the Act**. Therefore DBOs will not be able to be applied for on the basis of criminal or disorderly conduct that took place before 31 August 2009.

Various provisions for adjournment, non-attendance at court and the issue of a warrant for arrest are contained in sections 54 to 57 of the Magistrates' Courts Act 1980.

The magistrates' court could, subject to some provisos about service, consider the complaint in the absence of the defendant (see section 55 of the Magistrates' Courts Act 1980) and make a full DBO in their absence. However, in practice this should only be done in exceptional cases. The court may consider an adjournment and use the powers to issue warrants to secure court attendance, but this will be a matter for the court to decide.

Where a number of individuals have engaged in alcohol misuse behaviour a case needs to be made against each individual on whom a DBO is sought, although cases can be heard together by the court.

The provisions governing applications for DBOs in the magistrates' court (in its civil capacity) will be set out in Magistrates' Courts Rules, which will be in effect from 30 November 2009. A copy can be found at Annex E.

A diagram showing the passage of a DBO on application through the magistrates' court is shown in Annex A.

Consultation requirements

Before making an application to the magistrates' court (in its civil capacity) the relevant authority must (see section 3(4) of the VCR Act 2006) consult with the relevant 'appropriate persons' for their application. For this purpose 'appropriate persons' are such of the following who are not party to the proceedings:

- (a) the chief officer of police for the police area in which the conduct in question took place;
- (b) the chief officer of police for the police area in which the subject usually resides;
- (c) every local authority in whose area the subject usually resides; and
- (d) the Chief Constable of the British Transport Police.

The British Transport Police have agreed for all consultation requests to be sent to a central contact that will then disseminate the requests to the relevant areas. Please see details below:

Andy Hunt
Chief Inspector
Community Safety & Engagement Unit
'Working in Partnership for the Railway Community'
0207-918-0064
Andrew.hunt@btp.pnn.police.uk

A district or county council and police division/basic command unit may each wish to establish a nominated contact for these orders. Local authorities need to ensure that they are clear as to whom they have delegated responsibilities to act as an appropriate person and who will act on behalf of the relevant authority. This will avoid potential confusions when making and consulting on DBO applications.

Consultation is required to inform the appropriate agency or agencies of the intended application for the DBO and to check whether they have any relevant information. It may also assist in the evidence-gathering process. Any reservations about an application should be resolved quickly. There is no requirement for the agencies to agree to an application being made, but they must be told of the intended application and given the opportunity to comment. No agency has a veto over another agency's application. Consultation ensures at a very minimum that actions taken by each agency regarding the same individual do not unknowingly conflict. It also ensures that full consideration is given as to whether a DBO is appropriate in situations where the individual may be vulnerable, may be suffering from drug or alcohol dependency or mental health problems or is a rough sleeper. In these cases individuals might not be in a position to be able to understand or keep to the conditions that might be imposed under a DBO. Relevant authorities would therefore need to consider whether alternative community care services may be more appropriate in these circumstances.

As a matter of good practice a letter/document showing proof of consultation is all that is required by the court. This should not indicate whether the party consulted was or was not in agreement. This is not required by the legislation. Supporting statements or reports from partner agencies should be provided separately.

Pooling resources

Where a number of applications are being made for DBOs then relevant authorities may want to consider obtaining specialist legal advice in blocks or pooling expertise and experience. This is likely to be more cost-effective than paying for legal advice on a case-by-case basis. However, cases should not be stockpiled as this could lead to delays in seeking DBOs.

Collection of evidence

When applying for a DBO the lead agency will be required to gather evidence to prove its case. Evidence put forward by the applicant can include hearsay evidence. The evidence in support of a DBO application should prove:

- (a) that the individual has engaged in criminal or disorderly conduct while under the influence of alcohol; and
- (b) that a DBO is necessary to protect other persons (or property) from further conduct by the individual of that kind while they are under the influence of alcohol.

The court will need to be satisfied that (a) the behaviour complained of has occurred and will then determine (b) whether a DBO is necessary for protecting other persons (or property) from criminal or disorderly conduct by the subject while they are under the influence of alcohol. Limb (b) of the test is not one to which a standard of proof will be applied. Instead, it is an assessment of future risk. The applicant can present evidence or argument to assist the court in making this evaluation.

Elaborate court files are not normally required or advantageous. If the criminal or disorderly conduct while under the influence of alcohol has been persistent, relevant authorities should focus on a few well-documented incidents. A large volume of evidence and/or a large number of witnesses creates its own problems as there is more material for the defence to contest and timetabling issues may increase delays in the process. Relevant authorities applying for DBOs should therefore strike a balance and focus on what is most relevant and necessary to provide sufficient evidence for the court to arrive at a clear understanding of the matter.

Examples of evidence may include:

- copies of custody records of previous arrests relevant to the application;
- previous relevant convictions;
- supporting statements or reports from other agencies;
- witness statements of officers who attended incidents;
- witness statements of people affected by the behaviour;
- statements from professional witnesses, for example council officers, health workers in A&E departments;
- video or CCTV evidence;
- warning letters;
- breach of acceptable behaviour contract or other non-statutory agreement;
- directions to leave (under section 27(1) of the VCR Act 2006); and
- Fixed Penalty Notices (FPNs)/Penalty Notices for Disorder (PNDs).

Interim DBOs made in the magistrates' court

An application for an ex parte interim DBO can only be made with the permission of the justices' clerk. If permission is given, a hearing may go ahead without notice being given to the individual. If the interim DBO is granted without notice to the individual, it should be served personally on the individual together with the application for the full DBO and a summons giving a date for the individual to attend court. Such an interim DBO will not have effect until it is served on the individual.

The forms to be used when applying for or making an interim DBO are provided at Annex D of this guidance.

Varying or discharging DBOs made on application

In certain circumstances an application can be made (see section 5 of the VCR Act 2006) to the court to vary or discharge a DBO which was made on application to the magistrates' court that made the order, or to any magistrates' court acting for the local justice area in which the subject normally resides. The application can be made by the person subject to the DBO or by the police or local authority on whose application the DBO was made. An application to vary or discharge the DBO has to be made by complaint. The DBO, however, may not be varied so as to extend the period for which it has effect to more than two years. An order also should not be discharged before the end of the period which is half the duration of its length, unless consent is given by the relevant authority on whose application the DBO was made. Therefore, for example, a two-month DBO could not normally be discharged until a month had elapsed.

Summons procedure

The lead police or local authority officer in charge of the case should arrange for a summons to be completed, with a copy retained on the application files, and for the defendant to be served with the following:

- the summons;
- a copy of the completed DBO application;
- documentary evidence of statutory consultation;
- guidance on how the defendant may obtain legal advice and representation;
- any notice of hearsay evidence;
- details of evidence in support of the application as agreed with the applicant agency's solicitor; and
- a warning to the defendant that it is an offence to pervert the course of justice, and that witness intimidation is liable to lead to prosecution.

Wherever possible the lead officer in charge will ensure that service of the summons is made on the defendant in person. If personal service is not possible, the summons should be served by post as soon as possible to the last known address.

Where a person under 18 is the subject of an application for a DBO, a person with parental responsibility must also be served with a copy of the summons. This could be a local authority social worker rather than the parent in the case of a young person who is cared for by that authority. ('Parent' has the same meaning as under section 1 of the Family Law Reform Act 1987 and 'guardian' is defined in section 107 of the Children and Young Persons Act 1933.)

The process for county court is set out in the Practice Direction of the Civil Procedure Rules published on www.legislation.gov.uk

DBOs in county court proceedings

A relevant authority can apply to the county courts for a DBO against an individual if they and that individual are already party to proceedings (see section 4 of the VCR Act 2006). Alternatively, they can apply to be joined to proceedings in which the individual is a party if they consider it would then be reasonable to make a DBO application in respect of that individual. A further alternative, where the relevant authority is already party to proceedings in relation to which a person's conduct is material, is for the relevant authority to make an application for that person to be joined to the proceedings and to proceed to apply for a DBO when that individual is so joined. Stand-alone applications for DBOs cannot be sought through the county court – they must be attached to existing proceedings. The detailed procedures for DBOs in the county court proceedings are available in the updated Civil Procedure Rules. The forms for an authority to use when making an application to join proceedings can be found at www.justice.gov.uk/civil/procrules_fin/menus/forms.htm These applications will require the form N244.

We do not expect a significant number of DBOs to be applied for in county court proceedings.

An example of where an application to join proceedings might be sought is where a local authority uses section 222 of the Local Government Act 1972 to bring injunction proceedings. This could be appropriate where a person has caused a public nuisance and there is a need to put a stop to such alcohol misuse behaviour. The local authority could make an application for a DBO against that individual if it is reasonable to do so, or the police could apply to be joined to those proceedings for the purposes of seeking a DBO, if it is reasonable to do so. Where local authorities issue possession proceedings in the county court to evict a family on grounds of anti-social behaviour, they can also attach an ASBO application against family members. This is another example of where an application for a DBO could be made if appropriate.

As explained earlier in this guidance, it is rarely going to be appropriate to seek a DBO in family proceedings and non-molestation cases. Domestic violence cases, for example, should be addressed through existing domestic-violence tailored measures such as restraining orders and non-molestation orders which should be tried first and enforced if breached. DBOs might then only be appropriate if, having tried these interventions, there is no other option to provide protection.

Consultation requirements

Before making an application to the county court for a DBO against an individual when the relevant authority is party to the proceedings, applying to be joined to proceedings, or making an application to join an individual to proceedings, the relevant authority must (see section 4(6) of the VCR Act 2006) consult with the relevant 'appropriate persons' for their application. For this purpose 'appropriate persons' are such of the following who are not party to the proceedings:

- (a) the chief officer of police for the police area in which the conduct in question took place;
- (b) the chief officer of police for the police area in which the subject usually resides;
- (c) every local authority in whose area the subject usually resides; and
- (d) the Chief Constable of the British Transport Police.

The British Transport Police have agreed for all consultation requests to be sent to a central contact that will then disseminate the requests to the relevant areas. Please see details on page 18.

A district or county council and police division/basic command unit may wish to establish a nominated contact to undertake this process.

As for DBOs made on application to the magistrates' court referred to earlier in this guidance, consultation is required to inform the appropriate agency or agencies of the intended application for the DBO and to check whether they have any relevant information.

Interim DBOs made in the county court

A person who can apply for a DBO under section 4 of the VCA 2006 can also apply to the county court for an interim DBO in the county court once it is party to the proceedings (see section 5 of the VCR Act 2006). Any application for an interim DBO should be made early in the proceedings. The procedure for making applications for interim DBOs in the county court will be set out in the Civil Procedure Rules.

Varying or discharging DBOs made in the county court

An application can be made to vary or discharge a DBO to the county court that made the order. This can be made by the person subject to the DBO or by the relevant authority on whose application the DBO was made. The DBO, however, may not be varied so as to extend the period for which it has effect to more than two years. An order also should not be discharged before the end of the period which is half the duration of its length, unless consent is given by the relevant authority on whose application the DBO was made.

DBOs on conviction in criminal proceedings

A DBO may be made against an offender who is convicted of a criminal offence where (a) the offender is aged 16 or over (b) the offender was under the influence of alcohol when committing the offence and, (c) a DBO is necessary to protect other persons from further conduct of that kind while the individual is under the influence of alcohol (see section 6 of the VCR Act 2006). DBOs on conviction will be considered for any individual where the court hearing takes place on or after 1st April 2010, or 1st November 2010 as applicable, within the relevant Local Justice Areas.

The courts must (see section 6(2) of the VCR Act 2006) consider applying DBOs on conviction in criminal proceedings (in addition to any other sentence or conditional discharge imposed) whenever a conviction relates to an offence committed whilst the offender was under the influence of alcohol. Whether the offence was committed by the individual while they were under the influence of alcohol will be a matter for the courts to determine based on the circumstances of each individual case. There is no requirement for the police or local authority to make an application to the court for a DBO. Where the court decides not to impose a DBO in such cases it must give its reasons in open court (see Section 6(4) of the VCR Act 2006). **Please note that the offence has to have been committed on or after 1st April 2010, or 1st November 2010 as applicable, if a DBO on conviction is to be considered.**

While it is for the court to decide whether or not it is going to make a DBO the prosecution will need to decide whether they are going to lay extra evidence in support of the consideration of the DBO. They may wish to use the information form at Annex F to inform the court what prohibitions are being sought.

The prosecution should give as much notice as possible to the defence that they intend to support the court's consideration of the matter. In the case of Football Banning Orders the court must normally be satisfied that the prosecutor gave notice to the defendant at least five days before the opening day of the trial. If appropriate it would be good practice for a similar level of notice to apply in respect of DBOs.

It would also be advisable to serve a copy of any draft DBO so that the defence can consider the terms of it prior to the hearing. If the additional evidence contains hearsay evidence, the provisions of the Civil Evidence Act 1995 and the Magistrates' Courts (Hearsay Evidence in Civil Proceedings) Rule 1999 should be complied with – notably the service of a hearsay notice with 21 day notice period.

The court may adjourn any proceedings in relation to a DBO following conviction. Where the offender does not appear for any adjourned proceedings, the court may further adjourn proceedings or may issue a warrant for his arrest. The court however may not issue a warrant for an offender's arrest unless it is satisfied that the offender has had adequate notice of the time and place of the adjourned proceedings. The courts retain discretion in relation to the notice – in terms of number of days - given on a case by case basis.

A DBO granted following conviction takes effect on the day on which it is made or, if the offender is in custody at that time, the day on which he is released from custody.

A diagram showing the passage of a DBO on conviction in criminal proceedings is shown in Annex B.

Varying or discharging DBOs made on conviction

Under certain circumstances the subject of the DBO, the Director of Public Prosecutions, or the relevant authority, can apply to vary or discharge a DBO imposed following a conviction (see section 8 of the VCR Act 2006). An application to vary or discharge a DBO can be made by the police or local authority, for example, if they consider that the protection of other persons from criminal or disorderly conduct by the subject while under the influence of alcohol would be more appropriately effected by a variation, or if, that in the case of a discharge, the DBO is no longer necessary for the protection of other persons. The DBO however may not be varied so as to extend the period for which it has effect to more than two years. An order should not be discharged on application by the subject before the end of the period which is half the duration of its length, unless consent is given by the Director of Public Prosecutions.

Interim DBOs on conviction

The courts can make an interim DBO where it is considering imposing one on conviction if they think it is just so to do. A court can consider the complaint in the absence of the defendant (section 55 of the Magistrates' Court Act 1980).

Relationship between DBOs and other court disposals

Individuals can only receive the reduction in the length of a DBO if they attend one of the approved courses. However, the DBO approved courses are not suitable for those individuals who are dependent upon alcohol and there may be situations where a court may decide to impose a DBO on conviction, but may take the view that a referral to a DBO course would not be appropriate. An example of this situation may be where the court decides to issue an alcohol treatment requirement (ATR), where the individual is psychologically and/or physically dependent on alcohol, or where the court imposes an alcohol specified activity requirement (ASAR) consisting of extended brief interventions or brief motivational counselling sessions as part of a community order or suspended sentence of imprisonment.

The court may take the view that it is necessary to impose the DBO as the prohibitions in the order can be used to protect property or persons from the individual's offending behaviour, but that the DBO course is not suitable for them due to the level of their dependency upon alcohol or to avoid possible duplication with the content of an ASAR. The court is entitled to take the view that the individual will not be referred to an approved course, as long as they give their reasons for doing so, as per the requirement set out in section 2(8) of the Violent Crime Reduction Act 2006. The court may take the view that as the individual is unable to benefit from the reduction in the length of the DBO, they may grant a shorter DBO than they otherwise would have done, however, this is a matter for the court to determine. The court may also advise the individual that if they successfully address their alcohol problems, they may wish to return to court and apply for a variation or discharge of their DBO. However, the court which hears the application to vary or discharge the DBO will not be bound by the previous court's suggestion in this matter, and will in any event, not be able to discharge the DBO until half the length of the original DBO imposed has passed.

DBOs for 16 and 17-year-old persons

The role of the YOT needs to be clearly set out in terms of what it can offer in the prevention of alcohol misuse behaviour, and in the DBO process. Other agencies should therefore involve the YOT in any consideration of an order at an early stage as it is likely to have much information to share about that young person.

The YOT has a responsibility to prevent alcohol-related crime and anti-social behaviour by young people, and should help partners to obtain a DBO to stop the behaviour continuing where it is deemed appropriate. If there are any doubts about the option of obtaining a DBO, these should be explored at an early stage with the YOT and other partners, rather than in court. The YOT can also have a role in explaining the prohibitions of an order to the young person and their parents, explaining the impact of that person's behaviour on the community and making it clear that the order is the consequence of that behaviour. In addition, the YOT and other partners should offer support in order to aid compliance.

In cases of a breach of an order, the pre-sentence report (PSR) provided to the court by the YOT should outline the impact of the alcohol misuse behaviour. The YOT can also use the PSR in criminal proceedings to recommend a DBO on conviction where that course of action has been agreed and deemed appropriate. The PSR should also address the issue of parenting and further support to the young person.

Section 3: Other relevant information

Standard of proof

DBOs are civil orders, but the standard of proof that is applied to whether the past criminal or disorderly conduct alleged against the individual has occurred is ultimately a matter for the courts. Although the imposition of a DBO is not a criminal penalty, a breach of a DBO without reasonable excuse is a criminal offence. It is likely that the courts would follow the case of McCann, where the House of Lords ruled in the context of ASBOs that the appropriate standard of proof was a 'heightened' civil standard (which in practical terms is the criminal standard) because of the quasi-criminal nature of the proceedings and because the breach of an ASBO has serious consequences. Although there are important differences between ASBOs and DBOs, we consider it probable that the courts will (in the absence of any direct precedent) follow the principles set out in this case, given the parallels between the procedures involved.

Disclosure

Before evidence is disclosed, the relevant authority making the application for the DBO should consult the local authority or police or other agencies to ensure that all reasonable steps have been taken to support witnesses and minimise any potential for witness intimidation.

The applicant should seek to maintain witness anonymity and ensure that it does not identify them by default (for example, through details of location, race, personal characteristics or age).

Use of hearsay and professional witness evidence

Hearsay and professional witness evidence allows for the identities of those too fearful to give evidence to be protected. Hearsay evidence cannot be excluded (at the request of defence lawyers) simply on the grounds that it is hearsay. It is a matter for the judge or magistrate to decide what weight they attach to hearsay evidence.

Hearsay allows the police officer (or other persons in receipt of second-hand information) to provide a statement on behalf of a witness or witnesses who may remain anonymous. Hearsay evidence must be relevant to the matters to be proved. It could include details such as dates, places, times, specific descriptions of actions, who was present and who said what.

Hearsay can include evidence from the person taking the statement. The person giving the hearsay evidence may attest to the observable conditions of the witness, for example that the witness appeared upset, and may give evidence based on their own judgement of the situation.

Where an applicant intends to rely on hearsay evidence in the county court, they must act in accordance with Part 33 of the Civil Procedure Rules.

The new Section 24 of the Police and Criminal Evidence Act 1984 provides that a constable can arrest anyone without warrant where that person is committing or is about to commit an offence, or where he has reasonable grounds to believe that the person has committed an offence. Further, the constable must have reasonable grounds to believe that the arrest is necessary, for any of the reasons set out in Section 24(5). These include:

- the person not giving a name or address;
- to prevent the person causing injury or damage to property, committing an offence against public decency, or causing unlawful obstruction of the highway;
- to protect a child or vulnerable person from that person;
- to allow prompt and effective investigation of the offence or the conduct of the person in question; or
- to prevent hindrance to the prosecution of the offence by the disappearance of the person in question.

It is up to the operational discretion of the officer to decide which of these factors relate to the individual. A number of these factors could potentially relate to a person breaching or about to breach a DBO. Alternatively, an officer could rely on the common law power to arrest for a breach of the peace, but this requires some incidence of violence on the part of the person in question – not just verbal abuse.

Witness support

The principal purpose of the DBO is to protect other persons or their property from an individual's disorderly, or criminal, conduct while under the influence of alcohol. The protection provided should where necessary aim to protect those who are personally targeted by perpetrators, other witnesses who see this happen and the wider local community. Engaging, developing and supporting those persons whom it is sought to protect must be a primary concern of any relevant authority managing a case and seeking to use DBOs. Local strategies should indeed have the interests of the witnesses and the community at their centre. The welfare and safety of those who complain must be the first consideration.

Devolution

DBOs can be applied for by relevant authorities throughout England and Wales. The scheme does not apply to Scotland or Northern Ireland.

The scheme will be operated by the Home Office, with close liaison with the Welsh Assembly Government with regard to matters involving provision in Wales.

The Licensed Premises (Exclusion of Certain Persons) Act 1980

Section 65 and Schedule 5 of the VCR Act 2006 state that the Licensed Premises (Exclusion of Certain Persons) Act 1980 will be repealed when DBOs are commenced. We have not commenced this provision in the Act so the Licensed Premises (Exclusion of Certain Persons) Act 1980 remains in force and is a tool which can be used to exclude certain persons from licensed premises.

Court fees

Relevant authorities that apply for a DBO will need to pay an application fee to the court to cover the cost of the court hearing. The amount payable for a DBO is £200. If the application is contested then a further fee of £500 is payable by the party that commenced the proceedings. The fee is payable on the day that the hearing commences and is payable only once in the same proceedings. These fees are laid down in the Magistrates' Courts Fees (Amendment) Order 2009, No.1496 which can be found at www.legislation.gov.uk/uksi/2009/1496/contents/made

Legal Aid

Legal Aid is available for individuals in relation to DBO proceedings, subject to them meeting the criteria set out by the Ministry of Justice.

Contact details within the Home Office

Home Office contacts:

Joanne French

Tel: 020 7035 0066

Email: Joanne.French@homeoffice.gsi.gov.uk

Emma Lawrence

Tel: 020 7035 4671

Email: Emma.Lawrence8@homeoffice.gsi.gov.uk

Section 4: Drinking Banning Orders – after the order is made

Enforcement including the Police National Computer (PNC)

Recording of DBOs on the PNC will help police forces to enforce DBOs where a PNC enquiry is conducted on the subject. The force that made the successful DBO application should update the PNC names application using the orders category and the Drinking Banning Order qualifier. This facility allows the recording of any conditions imposed. PNC enquiries on subjects of DBOs will inform police officers of the existence of the order so that they can take appropriate action regarding breaches.

It would also be helpful to inform the neighbourhood policing team of any DBOs in their area as they may be better placed to observe if a recipient had breached their DBO. The neighbourhood policing team will also be able to reassure residents that action has been taken, and to inform licensed premises where individuals have been banned from entering them.

Licensed premises and the role of the alcohol industry

As previously explained in this guidance, relevant authorities should, as soon as is practically possible, ensure that the licensed premises from which an individual who is subject to a DBO is prohibited from entering are made aware of those individuals and the specific nature and duration of the prohibitions that apply to their DBOs. This is particularly important where the licensed premises have been specifically named in the order or where the geographical area of the ban is relatively small. That information could be shared through local Pubwatch schemes or other appropriate networks, but it would also be helpful for the relevant authority to inform the premises via a letter or through visits from licensing officers.

An individual who is subject to a DBO may already have a common law ban imposed by a Pubwatch scheme. A decision will have been taken under the Pubwatch scheme to ban the individual based on their own criteria. The ban may be as a result of a specific act unconnected with the behaviour that instigated the DBO and will be limited to the premises forming the watch scheme. However, even if the Pubwatch scheme has taken a decision to ban the individual based in whole or in part on the incident(s) that forms the basis of the DBO application, they will be entitled to take that independent action to protect staff and customers. This independence of decision making does not prevent individual Pubwatch members from supporting a DBO application by making statements etc. as they would in any other criminal investigation.

Licensees should be encouraged to play their part in upholding DBOs as it is in their interest to do so. They should be made aware of their responsibilities and informed that if they are aware that an individual is the subject of a DBO that prevents the individual from entering their premises, then they should not allow them to enter, or if they have already entered, they should not serve that individual and should contact the police.

Monitoring and recording

Relevant authorities should agree common procedures for recording and monitoring both their successful and unsuccessful applications. Details of orders granted should be sent to the local Community Safety Partnerships and the local authority or police as appropriate as well as other agencies that may be involved with the subject (including the local YOT where the subject is an offender under 18 years old).

Promoting awareness of those individuals who have received a DBO

The effectiveness of a DBO will normally depend on its publicity. It is therefore essential that the public, support agencies and licensed premises know about the people who are subject to a DBO and know about the nature of the prohibitions. However, a case-by-case approach should be adopted by the relevant authority and each individual case should be judged on its merits as to whether or not the relevant authority wants to publicise the details of an individual who is subject to a DBO – but in most cases publicity should be expected. An individual who is subject to a DBO should also understand that the community is likely to learn about it. Publicity is not, however, intended to punish, shame or embarrass individuals. It is important to note that like ASBOs, a DBO is a civil order which restrains future alcohol misuse.

A court will not automatically impose restrictions on reporting cases concerning individuals who are subject to a DBO. Therefore the media can report on cases to inform local communities of action that is being taken against individuals to protect others from crime or disorder that is associated with alcohol misuse. The courts, however, retain the discretion to apply reporting restrictions if it considers it appropriate to do so.

Relevant authorities should ensure that Community Safety Partnerships' media strategies take account of the need to publicise those who are subject to DBOs and promote the use of the orders to tackle alcohol misuse. This should help to increase community confidence that problems of alcohol misuse are being addressed as well as deter potential offenders from alcohol misuse behaviour.

Benefits of publicity

Publicising DBOs has the following benefits:

- Deterrent – deters the recipient of the order from breaching the order and deters others from behaviour that can result in a DBO.
- Breach – local people have the information needed to identify and report breaches.
- Confidence – victims and people within the community can see that action is being taken against those who commit alcohol-related crime and disorder.

Any decision to publicise details of recipients of DBOs should be recorded and an individual identified as being in charge of the process. The information recorded should include details on the need for publicity, consideration of the human rights of the public and the recipient of the DBO, and details on what the publicity should look like.

The content of the publicity should be carefully considered. Information should only be disclosed if deemed essential and should be factual and accurate. Publicity should be consistent with the characteristics of a DBO, i.e. that it is a civil order.

Particular consideration should be given when the recipient of a DBO is under 18, although this does not mean that their behaviour is any less distressing or frightening than that of an adult. Factual information should be obtained about whether an individual is particularly vulnerable. This should be done as early as possible, to avoid delays in informing the public once an order has been obtained. An order made against a child or young person in open court is in the public domain and newspapers are entitled to publish details. However, if reporting restrictions have been imposed, they must be scrupulously adhered to. In applications involving children or people where evidence has consisted of details of their past convictions, and reporting restrictions were not lifted for the proceedings leading to those convictions, the publicity should not make reference to those convictions.

If reporting restrictions were imposed at the original DBO hearing, then unless there has been a significant change in the intervening period, it is likely that the court will impose reporting restrictions at the hearing for the breach. If no reporting restrictions were imposed at the original DBO hearing, it is still open to the court to impose reporting restrictions at the hearing of the breach case. If reporting restrictions are not imposed, publicity can be considered, taking into account all the matters that are relevant when considering publicising the DBO itself.

Publicity of orders

The purpose of a DBO is to protect persons from further criminal or disorderly conduct by the individual. In order to ensure that DBOs are effective, the local community, in particular the staff of licensed premises to which the DBO relates, needs to be aware of the subject of the DBO and its conditions. However, DBOs are not intended to 'name and shame' and any decision to publish should be made on an individual basis, and only to the extent necessary in that case. However, once the decision has been made, the distribution of publicity through leaflet drops, newsletters or print and television media should be made as soon as the order has been made. This should be in the area where the disorder has occurred. If an order has been imposed to include a wider area, consideration should be given to how this information can be disseminated to members of the public. Publicity can be issued and re-issued if needed at any time.

Photographs

A recent photograph of the subject of a DBO will usually be required to assist in their identification in the situation of a breach. This is particularly helpful for older people or housebound witnesses who may not know the names of those who have caused trouble in their area. There is no restriction on the police sharing photographs of DBO recipients, as long as they are shared to assist in the enforcement of the order.

Police forces may already have a well-established system in place for the sharing of photographs with Pubwatch members where the watch scheme has decided to ban an individual using their own common law powers. The decision to share photographs in these circumstances will have been taken in order to reduce the likelihood of crime and disorder. Such an established system may provide an appropriate cost-effective means of sharing photographs of persons who are recipients of DBOs. When providing photographs, the police should take care to ensure that there is no confusion as to whether the person is the subject of a Pubwatch ban or a DBO.

Information sharing

Section 115 of the Crime and Disorder Act 1998 empowers any person to disclose information, where necessary or expedient for the purposes of the Act, to the following persons: a chief officer of police, a police force, a local authority, a probation area or a health authority, or to a person acting on their behalf. Where the agency requesting the information clearly needs it for the purposes of reducing criminal or disorderly conduct of those under the influence of alcohol, the presumption should be that it will be supplied.

In addition, as well as the power to share information under section 17A of the Crime and Disorder Act 1998 and regulations made under that section, there is now a **duty** for those persons listed in the above paragraph to share de-personalised data that are relevant for community safety purposes.

Section 5: Course providers

Applications for approval

The Secretary of State, on the recommendation of a steering group, has approved a number of course providers throughout England and Wales to provide DBO-approved courses under a national model. Details of the providers, including the areas that they cover, are available on the crime reduction website at www.homeoffice.gov.uk/drugs/alcohol/drinking-banning-orders/DBO-approved-courses/

Any applications from prospective course providers are only to be submitted when a full tender process is launched.

Duration of approval

Course approval, once given to providers, has a maximum time limit of seven years, but can and will be withdrawn at any time if the Home Office is not satisfied that the terms and conditions of approval are being met. If the provision of the course is not satisfactory, the Home Office will outline in writing the changes that need to be made in order for the course to comply with the terms and conditions. Should improvement not be achieved, suspension or revocation of approval may occur. The Home Office reserves the right to update the course national model in the light of policy/legislative changes.

The Home Office should be notified as soon as possible if a provider is of the view that they may be unable to continue in the provision of courses in their given area. This should be done with as much notice as possible so that replacement provision can be organised if necessary.

A full review of approved courses will be held in two years' time, and is likely to result in some possible changes being made to the national model and terms and conditions. This review will take account of the effectiveness of the courses in driving behaviour change of the recipient of a DBO.

Funding

The Home Office does not support approved courses financially. Course providers will charge a fee for attendance on the course. The fee to be charged will be a matter for the individual providers to decide, but must be within the minimum (£120) and maximum (£250) limits set by the Home Office.

It is important for the cost of a course to be kept at a level that is affordable for the large majority of recipients; if fees are set too high there may be a low uptake. Course providers must notify the courts and the Home Office as to the level of fee they require to be paid by each recipient, including any concessionary rates.

Monitoring

Monitoring of courses will be carried out by the assessment of reports and other documentation received from course providers. The Home Office requires that each course provider notify the Home Office when they receive their first referral, confirming the court from which it was issued.

The Home Office also requires course providers to create a secure database to hold the following information fields in relation to each individual (to the extent applicable):

1. name (including initials);
2. date of birth;
3. unique identification number;
4. gender;
5. date of Drinking Banning Order;
6. date provider first contacted individual;
7. reason for refusal to attend a Drinking Banning Order course;
8. date notice of non-completion sent to applicant;
9. date on which the course began;
10. number of hours attended that involved individual sessions;
11. number of hours attended that involved group sessions;
12. date of completion;
13. date certificate sent to court; and
14. date certificate sent to applicant.

The Home Office requires each provider to submit the information in the list above that is recorded in each 3-month period within 28 days of the end of that 3-month period. This information is to be sent to the Home Office in the form of an Excel spreadsheet, and the Home Office can require any subset of the information to be sent in place of the full quarterly totals.

Course providers are also required to submit the annual totals for the list above at the end of every 12-month period and an annual report that provides a general progress summary evaluating the course(s) provided.

The 3-month and 12-month periods referred to above begin, in respect of each course provider, on the date the approval is granted in respect of that course provider.

In order to ensure that approved courses are being run in accordance with the terms and conditions and published guidance, Home Office officials or persons authorised on its behalf will carry out inspection visits when these are considered appropriate. These visits could be either pre-planned or unannounced. Investigations will also be carried out on receipt of any complaints about particular courses. Course organisers will be expected to co-operate fully with the Home Office or its agents when it carries out these functions.

Personnel

The way in which a course is presented will be vital to its success. Course providers must employ people with relevant teaching or training qualifications and/or experience, such as the Training and Development Lead Body (TDLB) competencies in training, which are the equivalent of National Vocational Qualifications. Tutors may also have TDLB: D32/33 (assessor awards) or D34 (internal verifier) or D36 (APL advisor). We suggest that the tutors/facilitators of the course should have two of the qualifications listed above or a recognised teaching qualification such as a certificate in teaching or training award from the Institute of Training and Development or equivalent. This is a preference and not a requirement, but providers should be satisfied that the qualifications and relevant experience of their facilitators meet those outlined above.

The tutors must have experience of working with offenders or of teaching in an adult environment. These people should be familiar with the latest teaching methods, as well as the available material on the effects of alcohol consumption and alcohol-related disorder. Experience of working with people who have a problem with excessive alcohol consumption is desirable.

Course providers should assess if a recipient of a DBO referred to them has other issues that require addressing such as mental health problems or drug dependency. In these instances, although the recipient should continue to attend the DBO course to which they have been referred by the court, the course provider should direct the individual towards appropriate support available in their area, which will assist in addressing their individual issues.

Freedom of Information implications

The Home Office is committed to meeting its responsibilities under the Freedom of Information Act 2000. Information submitted to a public authority may be subject to disclosure to a third party in response to a request for information under the Act. The Home Office may also decide to include certain information in the publication scheme that it maintains under the Act.

If a course provider considers any of the information held by the Home Office with regard to their organisation to be commercially sensitive and therefore exempt from disclosure under the Act, they should identify it and explain (in broad terms) what harm may result from disclosure if a request is received. Please also note that the receipt by the public authority of any information marked 'confidential' or equivalent should not be taken to mean that the public authority accepts any duty of confidence by virtue of that marking.

Section 6: Approved courses

Introduction

This section sets out the details of the content of approved courses, including which elements are considered to form the essential minimum national model requirements and standards for such courses.

The details are not, however, intended to be exhaustive. The Home Office welcomes different or new material, and courses that adopt different methods of working, provided it is satisfied that the course still meets the minimum national model requirements and objectives of the scheme.

The Home Office would particularly encourage providers to seek some form of accreditation for the course, which would allow participants to gain a qualification.

Participants on a DBO course will be referred by the court; however, the Home Office requires course providers to make provision so that voluntary referrals or participants referred from other areas can also be included on the courses if the course would be appropriate for them. Persons not referred by the courts would not have the opportunity to have the length of their DBO (should they have one) reduced.

Due to the nature of the behaviour for which a DBO is made, a recipient cannot be placed on an alternative course such as a drink drive rehabilitation course. They must attend a DBO-approved course.

Course providers must ensure that provision is made to protect against identity fraud such as another person attending a course in place of a recipient of a DBO.

Course objectives

A statement of the aims of the course should be provided. This should set out clearly and unambiguously the main objectives that the course is designed to achieve. The aims should be relevant to the overall objective, which is to protect people from alcohol-related crime and disorder.

Terms and conditions should be provided to the recipient on the first day of their attendance on a course. This will confirm what is expected of them in terms of behaviour and commitment and will make clear what they need to do to qualify for their completion certificate and so a reduction in their DBO.

Course Requirements

To gain a certificate of completion the participant must adhere to the conditions of the course which are:

- You must complete all sessions.
- You must arrive on time for each training session and when returning after breaks. Late arrival may lead to exclusion.
- You must follow any reasonable instructions/requests from the trainer. Examples of what could constitute reasonable requirements as listed below. However, this list is intended to be indicative only and is not exhaustive;
 - You must participate and contribute within the sessions in a meaningful way to the best of your ability, not obstructive to the course aims.

- You must give others a chance to express their views and respect those views even if they are different from your own.
- You must switch off all personal items such as mobile phones, pagers, MP3 players, laptops and games consoles.
- You must refrain from eating during the sessions.
- You must not talk with other participants when the trainer is speaking.
- You must be prepared to disclose information about your offending during the course sessions.
- You must respect and keep confidences shared on the course.
- Required course fees must be paid in full before the commencement of the course. Where a separate assessment is arranged by the provider before a course is confirmed, each required payment must be paid prior to attendance at any of the course sessions, or the assessment, as appropriate.
- You must not attend the course under the influence of alcohol or drugs and during the course, including break times, you must not consume alcohol or drugs. If you bring alcohol/drugs onto the course it will result in exclusion.
- Offensive comments or obscene language and threatening, abusive & confrontational behaviour to the trainer or other course participants will not be tolerated.
- You must respect the rules about the use of the building. These will be explained to you. In particular, you must not trespass into other areas or smoke anywhere inside the building.
- Smoking is not permitted during the training sessions. Short breaks will be provided.
- You are the rightful person referred by the court.

Non-compliance may lead to your exclusion from the course and the issue of a notice of non-completion.

Minimum requirements

The course must include the following essential elements:

- a knowledge check on alcohol issues and participants' attitudes towards their drinking habits at the beginning and end of each course;
- the use of the Alcohol Use Disorders Identification Test (AUDIT) to classify the type of drinker;
- information about alcohol and its effects on the body, including the concept of alcohol units, effects of alcohol consumption on different individuals, concepts of tolerance and dependence, alcohol-related disease, sensible drinking etc.;
- effects of alcohol consumption on behaviour;
- information about the rates at which the body loses alcohol and the effects of 'topping up';
- the legal alcohol limit for drivers and what it represents;
- police enforcement of alcohol-related crime and disorder;

- the legal consequences of alcohol-related crime and disorder, e.g. PNDs, arrest for being drunk and disorderly etc.;
- effects of alcohol-induced violence/criminality on victims and their families, and personal consequences for the participant such as employment, relationship with friends and relatives, victims and health;
- analysis of the participant's behaviour: what leads up to the offence, establishing patterns of drinking behaviour, examining results;
- alternatives to binge drinking and strategies for avoiding alcohol-related disorder, coping with pressures from peer groups, etc. The course should encourage the examination and discussion of personal drinking habits and promote a constructive change in attitudes towards alcohol consumption and related behaviours; and
- drug taking and its effect on behaviour when combined with alcohol.

Methods

The Home Office requires that at least one one-to-one session should be held with each individual participant at the beginning of the course before any other sessions are attended. This will include the assessment of the type of drinker using the AUDIT test, and the result of the test may then determine if following a one-to-one course or a group course would be more appropriate (if both are offered by the provider). This one-to-one session could also include an assessment of the participant's attitude to their drinking habits.

Some one-to-one sessions have been found to be particularly effective if family members or friends could also be present and the Home Office welcomes this participation where appropriate.

If deemed necessary, further referral should be made to a local GP or other treatment agency if a need is identified. Providers must take into account issues relating to drugs and mental health, and whether the participant requires referral to other experts in relation to these matters. Course providers should have close working relationships with local Drug and Alcohol Action Teams and other alcohol agencies in their areas to ensure that recipients receive all the additional support required. Leaflets and additional information should be available if required by the recipient.

Specific provision needs to be made for the delivery of courses to 16 to 17-year-olds with additional provision made to meet their requirements. It would not be acceptable to include a 16 or 17-year-old in a group course where adults were also present. Facilitators will need to have an enhanced CRB check before being able to deliver courses to this age group.

If interpreters are required for participants, the offer of the participant bringing a family member or friend should be made. Alternatively, a separate course should be considered if numbers requiring the individual language warranted it. Providers would be required to use facilitators or other staff who speak the language fluently. If an individual requires an interpreter an additional fee could be sought from the participant provided that the total amount charged is not more than £250.

Course providers should be fully aware of the requirements of the Disability Discrimination Act 1995 (as amended) that may apply to them so as to avoid discrimination against people with disabilities in the provision of DBO courses.

Course information must be presented using a variety of techniques that should be drawn from the following:

- short talks to convey essential information;
- group discussion – unless just one-to-one sessions are being used;

- self-observation forms/records of behaviour ('drink diaries');
- work sheets/exercises for individuals or group discussions including role-playing;
- audio/visual presentations;
- guest speakers, e.g. magistrates, police, other emergency services, victims of alcohol-induced offenders;
- information handouts to take away; and
- behaviour analysis, assessing performance and setting objectives.

Course providers/facilitators must closely monitor any talks by guest speakers to ensure that their tone and content are appropriate in every respect to the aims of the course.

Materials

The material, documentation and records developed and used for approved courses will remain the property of the organisers, but must be available to the Home Office if required. The Home Office will reimburse any reasonable costs incurred in reproducing material for its use. The Home Office expects course organisers to respect the confidentiality of course participants in making any public statements about the course.

If a course provider intends to use the Home Office logo in any of the materials they must submit a proof for approval by the Home Office prior to any publication.

Changes in content

Once a course has been approved, minor changes can be made to its organisation, methods and content provided that these still meet the minimum requirements. No major changes should be introduced without the prior approval of the Home Office. If there is any doubt as to the importance of a proposed change in the course, it is advisable to notify the Home Office in advance. Visits will be made from time to time by officials from the Home Office to monitor the operation of courses.

Course arrangements

The Home Office will specify which areas individual course providers have been approved to provide for. Provision should not be made outside these areas unless requested by the Home Office in situations of temporary provision if another provider is no longer able to provide courses.

The Home Office requires between 4 and 15 participants to be registered on each group course that is run unless solely one-to-one sessions are being provided.

The Home Office requires minimum hours of attendance by course participants. For solely one-to-one sessions there should be 6 hours' teaching time, and for group work 16 hours' teaching time, including the initial one-to-one session. However, there is no limit on the number of sessions that can be provided.

Sessions should be flexible to provide the recipient with a choice of attendance such as morning/afternoon/evening/weekend. The Home Office requires a short reflection time to be available between sessions; therefore sessions should not be held on consecutive days.

Appropriate venues should be used in the delivery of courses. Venues should allow easy access on transport routes and should meet health and safety requirements etc.

The Home Office has set a fee of between £120 and £250, which must be adhered to. A number of payment options should be available for course fees such as cash, cheque, debit cards or credit cards, with instalment payments acceptable. If course providers offer concessions, the concessionary fee must not be below £120.

Course providers are required to provide a certificate of completion or notice of non-completion to each person in respect of whom their course is specified in a DBO. Copies must be provided to the court that made the DBO. Templates are available in Annex C.

On receipt of contact details from the court, the provider must make at least three attempts to contact each recipient of a DBO via two different methods (e.g. letter and telephone call) to invite them to attend an approved course and to offer at least two available dates.

Course providers are also required to make contact with the courts in their specified area to provide information/training on DBOs and their specific approved course. Providers should provide as much assistance and information as possible, which could include leaflets, holding regular liaison meetings or providing presentations to court representatives and administrative staff on DBOs.

Course providers must provide opportunities for course evaluation and client feedback. Internal quality assurance, including assessment of individual course content and trainers' performance, must also be carried out regularly.

Course providers will send certificates out to individuals in the post once the individual has successfully completed the course. The certificate needs to be received by the court before any reduction in the length of the DBO can take effect.

Annex A

Step-by-step approach for applications to the magistrates' court for a Drinking Banning Order

Undertake statutory consultation

Documentary evidence of consultation (not agreement) is required by the court.



Collect evidence

Relevant authorities focus on what is most relevant and necessary to provide evidence for the court to arrive at a clear understanding of the matter.



Draw up prohibitions

The DBO must be drafted in full including its duration and take account of the licensed premises that the individual must be prohibited from entering along with any other necessary prohibitions.



Make application to the magistrates' court

An application for a DBO is by complaint to the magistrates' court using the appropriate form at Annex C.

The complaint must be made within six months from the time when the matter of the complaint (the criminal or disorderly conduct while under the influence of alcohol) arose. A complaint may be made on the basis of one incident if sufficiently serious. Earlier incidents outside the six-month period may be used but it will be for the court to determine the weight to be given to them.

As a matter of good practice the application should primarily be made to the magistrates' court for the area in which the complaint arose or the individual resides.

A summons together with the application should be either given to the defendant in person or sent by post to the last known address.



Applying for an interim DBO

Where there is an urgent need for a relevant authority to protect other persons or their property from an individual's criminal or disorderly conduct while under the influence of alcohol a court can make an interim DBO. Applications are likely to be appropriate where urgent protection is needed from the potential further conduct. Interim DBOs can be made at the outset of an application for a full DBO.

An interim DBO on application can be applied for without notice of proceedings being given to the defendant (ex parte) and can be heard in the absence of the individual. Such an application can only be made with the permission of the court and in the magistrates' court this means that the permission of the proper officer (justices' clerk) has to be given. Permission for such applications may only be given where the court or proper officer (justices' clerk) is satisfied that it is necessary for the application to be made without the individual concerned receiving notice, and without it being heard in the individual's presence.

If an interim DBO is granted it should be served personally on the defendant together with the application for the full DBO and a summons giving a date for the defendant to attend court. The interim DBO will not take effect until it has been served on the defendant, who will then be aware of its terms. The interim order shall cease to have effect once the court has decided whether or not to make a full DBO.



The hearing

The lead officer in charge of the case should ensure that all the evidence and witnesses are available at the hearing, including any evidence in support for the court to make an immediate order. The lead officer should also seek to remind the court that they may refer the individual to an approved course and of the requirement under section 2(8) of the VCR Act 2006 to give its reasons in open court if not referring an individual to an approved course.

The defendant(s) should attend but a DBO can be made in their absence.



Immediate post-DBO procedure

Where a DBO is granted it is preferable for a copy of the order to be served on the defendant in person prior to their departure from the court. If it is not possible, personal service should be arranged as soon as possible thereafter. In the case of a juvenile the DBO should also be served on the parent, guardian or appropriate adult. In all cases service should be recorded.

If the original application is made by the local authority then it should ensure that a copy of the DBO is forwarded immediately to the police. Copies of the DBO should also be given to any other relevant agency and Community Safety Partnerships. Licensed premises should also be informed, where it is practical to do so, of those who have been prohibited from entering those premises.

A DBO comes into effect when the subject is made aware of its terms and in most cases this will be from the day it is made while the subject is in court. Alternatively, it will come into effect once served personally on the subject.



Other matters

An application can be made to vary or discharge a DBO. This can be made by the person subject to the DBO or by the relevant authority on whose application the DBO was made. A DBO made by a magistrates' court can be varied or discharged by any other magistrates' court acting for the local justice area in which the subject normally resides. Appeal from the making of a DBO in the magistrates' court is to the Crown Court. Breach of a DBO is a summary offence.

Annex B

Step by step approach for a Drinking Banning Order on conviction in criminal proceedings (in the magistrates' court or the Crown Court)

Collect evidence

Evidence may be collected for presentation to the court post-conviction. This is not a requirement as the court may make an order on conviction on its own initiative.



Draw up prohibitions

The police or local authority involved in the case may draw up the prohibitions they believe are necessary to protect other persons from further acts by the perpetrator. These must include prohibitions around the individual entering licensed premises for the court's consideration and may include other prohibitions.



Mandatory requirement to consider DBO

The court must consider making a DBO on conviction in criminal proceedings where there is evidence that the offender was under the influence of alcohol when committing the offence. If the court decides not to make a DBO then it must give its reasons in open court.



Criminal hearing

This is to establish guilt of criminal charge **only**.

Verdict

If found guilty the offender is convicted or given a conditional discharge.



Post verdict – hearing for DBO on conviction

If the offender is aged 16 or over and is convicted of an offence that he or she committed while under the influence of alcohol the court must consider a DBO. It will be imposed if the court believes it is necessary for the purpose of protecting other persons or property from criminal or disorderly conduct by the subject while he or she is under the influence of alcohol.

The hearing for the DBO post conviction is civil.

The police or local authority may be asked or may offer to submit additional evidence relating to the need for a DBO and the need for additional prohibitions – additional to those that the court must consider regarding the subject entering premises that sell alcohol by retail and premises that supply alcohol to members or guests.



Immediate post DBO procedure

If the offender is given a custodial sentence the requirements of the order will come into effect when he or she is released from custody.

Where a DBO is granted it is preferable for a copy of the order to be served on the defendant in person when they are in Court. If it is not possible, personal service should be arranged as soon as possible thereafter. In the case of a juvenile the DBO should also be served on the parent, guardian or appropriate adult. In all cases service should be recorded.

If the original application is made by the local authority then they should ensure a copy of the DBO is forwarded immediately to the police or vice versa. Copies of the DBO should also be given to any other relevant agency and Community Support Partnerships. Licensed premises should also be informed, where it is practical to do so, of those that have been prohibited from entering those licensed premises

A DBO granted on conviction comes into effect on the day on which it is made or, where the person is in custody that day, on the day on which he is released from custody.



Other matters

The subject of a DBO, the Director of Public Prosecutions, or a relevant authority can apply to vary or discharge a DBO following a conviction. An application to vary or discharge the DBO may be made to the court which granted the DBO and, if that court is a magistrates' court, to any magistrates' court acting for the local justice area in which the subject normally resides. Where a DBO has been granted on conviction by a magistrates' court, an appeal may be made to the Crown Court. Breach of the DBO will go to the magistrates' court.

Annex C



Serial Number

Violent Crime Reduction Act 2006 – Courses for Drinking Banning Orders

Certificate of Completion

This certificate is issued under section 13 of the Violent Crime Reduction Act 2006

Details of Recipient of DBO

Name

Date of Birth

Address

Sex (✓)

M

F

Postcode

Details of Supervising Court

Name of Court

Address

Postcode

Case Number

Details of Approved Course

Date on which order was made

Name of course provider

Contact telephone number

Certification

The Person named above has successfully completed the approved course

Signed by, or on behalf of, course provider

Date

DB01



Serial Number

Violent Crime Reduction Act 2006 – Courses for Drinking Banning Orders

Notice of Non-Completion

This certificate is issued under section 13 of the Violent Crime Reduction Act 2006

Details of Recipient of DBO	
Name	<input type="text"/>
Date of Birth	<input type="text"/>
Address	<input type="text"/>
Sex (✓)	M <input type="checkbox"/> F <input type="checkbox"/>
	<input type="text"/> Postcode

Details of Supervising Court	
Name of Court	<input type="text"/>
Address	<input type="text"/>
	<input type="text"/> Postcode
Case Number	<input type="text"/>

Details of Approved Course	
Date on which order was made	<input type="text"/>
Name of course provider	<input type="text"/>
Contact telephone number	<input type="text"/>

I am unable to issue a Certificate of Completion for the following reasons (✓)

Participant failed to make due payment of the fees

Participant failed to attend the course as instructed by the course provider

Participant failed to comply with any other reasonable requirements of the course provider

Detailed statement of reasons:

Certification

Signed by, or on behalf of, course provider

Date

If you disagree with the course provider’s decision not to issue a Certificate of Completion then you may apply to the supervising court for a declaration that the provider was wrong not to issue the certificate. You must do this within 14 days of the date of receipt of this notice (if it is given to you in person) or (if posted to you) within 14 days starting on the second working day after the notice is posted.

Annex D

Application form for drinking banning order

These are the forms referred to in the Magistrates Court Rules included at Annex E

Application by complaint for Drinking Banning Order (Violent Crime Reduction Act 2006, s. 3(1))

Magistrates' Court (Code)

Date:

Defendant:

Address:

.....

.....

Applicant Authority:

Relevant authorities consulted:

And it is alleged

- (a) that the defendant (aged 16 or over) has engaged (after commencement of these Rules) on..... [date(s)] at [place(s)] in criminal or disorderly conduct while under the influence of alcohol; and
- (b) that such an order is necessary to protect other persons (including the protection of their property from unlawful loss or damage) from further conduct by him of that kind while he is under the influence of alcohol.

Short description of conduct:

.....

The complaint of:

Name of Applicant Authority:

Address of Applicant Authority:

.....

.....

Who states that the defendant was responsible for the conduct of which particulars are given above, in respect of which this complaint is made.

Taken before me

Justice of the Peace

[By order of the clerk of the court]

Application form for interim drinking banning order

Application by complaint for interim drinking banning order (Violent Crime Reduction Act 2006, s.9)

Magistrates' Court (Code)

Date:

Defendant:

Address:

.....

.....

Applicant Authority:

Relevant authorities consulted:

Reasons for applying for an interim order:

.....

.....

Do you wish this application to be heard:

without notice being given to the defendant

with notice being given to the defendant

If you wish the application to be heard without notice state reasons:

.....

.....

.....

The complaint of:

Address of Applicant Authority:

.....

.....

Who states that the information given is correct.

Taken before me

Justice of the Peace

[By order of the clerk of the court]

NOTE: This application must be accompanied by an application for a drinking banning order under the Violent Crime Reduction Act 2006, s.3 (1).

Annex E

Statutory Instruments

2009 No. 2937 (L. 28)

MAGISTRATES' COURTS, ENGLAND AND WALES

The Magistrates' Courts (Drinking Banning Orders) Rules 2009

Made 2nd November 2009

Laid before Parliament 4th November 2009

Coming into force 30th November 2009

The Lord Chief Justice makes the following Rules in exercise of the powers conferred by section 144 of the Magistrates' Courts Act 1980(1) and section 13(6) of the Violent Crime Reduction Act 2006(2).

In accordance with section 144 of the Magistrates' Courts Act 1980 he has consulted the rule committee appointed under that section and makes these Rules with the concurrence of the Lord Chancellor.

Citation, commencement and interpretation

1.—(1) These Rules may be cited as the Magistrates' Courts (Drinking Banning Orders) Rules 2009 and shall come into force on 30th November 2009.

(2) In these Rules—

“the 2006 Act” means the Violent Crime Reduction Act 2006;

any reference to a “form” includes a form to like effect; and

“working day” means any day other than a Saturday or Sunday or a day which is a bank holiday or public holiday in England and Wales.

Forms

2.—(1) An application for a drinking banning order under section 3 of the 2006 Act (orders on an application to magistrates' court) shall be in the form set out in Schedule 1.

(2) An application for an interim drinking banning order under section 9 of the 2006 Act (interim orders) shall be in the form set out in Schedule 2.

Interim Orders

3.—(1) An application for an interim order under section 9 of the 2006 Act may, with leave of the justices' clerk, be made without notice being given to the individual against whom the interim order is to be made.

(2) The justices' clerk shall only grant leave under paragraph (1) of this rule if he is satisfied that—

(a) it is necessary for the application to be made without notice being given to the individual in question; and

(b) it is not necessary for the application to be heard in the presence of the individual.

(3) If an application made under paragraph (1) is granted then the interim order and the application for a drinking banning order under section 3 of the 2006 Act (together with a summons giving a date for the individual to attend court) shall be served on the individual in person as soon as practicable after the making of the interim order.

(4) An interim order which is made at the hearing of an application without notice shall not take effect until it has been served on the individual.

(5) If such an interim order made without notice is not served on the individual within seven days of being made then it shall cease to have effect.

(6) An interim order shall specify the period for which it has effect and that period shall not be more than four weeks.

(7) An interim order may be renewed on one or more occasions for a period of not more than four weeks from the end of the period when it would otherwise cease to have effect.

(8) An interim order shall cease to have effect on the determination of an application under section 3 of the 2006 Act.

(9) Where the court refuses to make an interim order without notice being given to the individual it may direct that the application be made on notice.

(10) If an interim order is made without notice being given to the individual and the individual subsequently applies to the court for the order to be discharged or varied his application shall not be dismissed without the opportunity for him to make oral representations to the court.

Application for variation or discharge

4.—(1) This rule applies to the making of an application for the variation or discharge of an order made under section 3 or, subject to rule 3(10), section 9 of the 2006 Act.

(2) An application to which this rule applies shall be made by way of complaint to the magistrates' court which made the order or to any magistrates' court acting for the local justice area in which the subject of the order normally resides and shall specify the reason why the applicant for variation or discharge believes the court should vary or discharge the order, as the case may be.

(3) Subject to rule 3(10), where the court considers that there are no grounds upon which it might conclude that the order should be varied or discharged it may determine the application without hearing representations from the applicant for variation or discharge or from any other person.

(4) Where the court considers that there are grounds upon which it might conclude that the order should be varied or discharged then, unless the application is withdrawn, a summons shall be issued to the subject of the order or the relevant authority on whose application the order was made, as appropriate, giving not less than fourteen days' notice in writing of the date, time and place appointed for the hearing.

(5) The designated officer shall send with the summons under paragraph (4) a copy of the application for variation or discharge of the drinking banning order.

Service

5.—(1) Subject to rule 3(3), any summons, copy of an order or application required to be sent under these Rules to an individual who is the subject of that summons, order or application shall be either given to that individual in person or sent by post to the last known address of that individual, and if so given or sent, shall be deemed to have been received by that individual unless proved otherwise.

(2) Any summons, copy of an order or application required to be sent under these Rules to an individual who is the subject of that summons, order or application shall also be sent by the designated officer to the authority which made the application and to any relevant authority whom the applicant is required by section 3 of the 2006 Act to have consulted before making the application and, where appropriate, shall invite them to make observations and advise them of their right to be heard at the hearing.

Approved Courses: Declarations

6.—(1) An application for a declaration under section 13(6) of the 2006 Act shall be made—

- (a) to the court which made the order under section 3 of that Act; or
- (b) where the court which made the order is not a relevant local court, to either the court which made the order or a relevant local court.

(2) An application under sub-paragraph (1) shall be made within—

- (a) 14 working days beginning on the day on which the notice under section 13(4) of the 2006 Act is given in respect of the subject of the drinking banning order making the application; or, where a notice under section 13(4) has not been given; or
- (b) 28 working days beginning on the day on which the subject of a drinking banning order makes a request under section 13(5) of the 2006 Act.

Certification

7. A justices' clerk may certify a copy of an original drinking banning order or interim drinking banning order for the purposes of section 11(6) of the 2006 Act (certification to evidence breach of drinking banning order).

I concur

Judge C.J.

2nd November 2009

Bridget Prentice
Parliamentary Under Secretary of State
Ministry of Justice

Annex F

Drinking Banning Order – Supplementary Information Form for DBOs on Conviction

Magistrates Court (code).....

Date.....

Defendant

Address.....

.....

Authority (Police/Local Authority/BTP

The defendant having been convicted of an offence, and at the time he committed the offence he was under the influence of alcohol, the Court may make a Drinking Banning Order (DBO) against him, if it is satisfied that the conditions set out in s3(2) of the Violent Crime Reduction Act have been met. These conditions are;

- (a) that the individual has, after the commencement of this section, engaged in criminal or disorderly conduct while under the influence of alcohol; and
- (b) that such an order is necessary to protect other persons from further conduct by him of that kind while he is under the influence of alcohol.

If the court is so minded to make a DBO against the individual, the authority would ask the court to take into account the following evidence that was not presented at the criminal hearing;

.....
.....
.....
.....

The authority would seek the following prohibitions to be applied to the DBO;

.....
.....
.....
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.....
.....
.....

