COMMUNITIES COMMITTEE

AGENDA

10th Meeting, 2003 (Session 2)

Wednesday 3 December 2003

The Committee will meet at 10am in Committee Room 1.

1. **Antisocial Behaviour etc. (Scotland) Bill:** The Committee will take oral evidence at Stage 1 from—

   *Panel 1*
   
   **Cumbernauld Police**
   Superintendent Elliot McKenzie, Cumbernauld Police Offices, Alex Love, Area Inspector Problem Solving Policing, George Smith, Head of Community Policing in Cumbernauld.

   **Glasgow Community Safety Forum**
   Karen Byrne, Chair, North Maryhill Corridor Community Safety Forum, Tony Green, Development Officer and Secretary to Forum.

   *Panel 2*
   
   **Scottish Consortium on Crime and Criminal Justice**
   Dr Sula Wolff, member of the Howard League for Penal Reform, Maggie Mellon, Head of Public Policy, NCH Scotland.

   **Victim Support Scotland**
   Barry Jackson, Policy Officer, Neil Patterson, Director of Operations.

2. **Subordinate legislation:** The Committee will consider the following negative instruments—

   - the Home Energy Efficiency Scheme Amendment (No.2) (Scotland) Regulations 2003, (SSI 2003/529)

Steve Farrell
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The following papers relate to the meeting:

**Agenda Item 1**

Note by the Clerk (private paper)  COM/S2/03/10/1
Note by the Clerk (private paper)  COM/S2/03/10/2

Written evidence from Scottish Consortium on Crime and Criminal Justice  COM/S2/03/10/3
Written evidence from Victim Support Scotland  COM/S2/03/10/4

**Agenda Item 2**

Note by the Clerk  COM/S2/03/10/5
Note by the Clerk  COM/S2/03/10/6
COMMUNITIES COMMITTEE
3 December 2003

WRITTEN EVIDENCE FROM SCOTTISH CONSORTIUM ON CRIME & CRIMINAL JUSTICE

The Scottish Consortium on Crime & Criminal Justice (SCC&CJ) aims to reduce the incidence and alleviate the impact of crime in society by whatever morally acceptable means can be shown to be most effective. Consortium members include the Howard League for Penal Reform in Scotland, APEX, NCH, SACRO and the Scottish Human Rights Centre. Associate members include a wide range of other organisations and academics. Maggie Mellon, NCH and Dr Sula Woolf, the Howard League will be representing the Consortium in giving evidence to the Communities Committee.

The Consortium’s Member Organisations have submitted written evidence responding to the Scottish Executive’s Consultation Document ‘Putting Our Communities First’. Copies of the evidence submitted by NCH and the Howard League are attached at Annexes 1 & 2 respectively. In giving oral evidence the Consortium representatives wish to concentrate on issues relating to antisocial behaviour in children and young people and on problems with some of the specific provisions of the Antisocial Behaviour etc (Scotland) Bill.

Antisocial Behaviour in Children and Young People

The Consortium wishes to draw the Committee’s attention to six main points:

- Antisocial behaviour in children and young people has been intensively studied and a large body of firm knowledge exists about the causes of antisocial conduct in the young and about how best to prevent and remedy it. The Executive could greatly contribute towards a better understanding by the general public of the known causes of juvenile crime and how this can most effectively be reduced.

- Any new arrangements for dealing with young offenders should be of proven effectiveness, so that communities are indeed protected. Moreover, any new measures should do no harm or make matters worse. Some of the proposals in the Bill would clearly add to the burdens on already deprived, marginally adjusted, and often ill and handicapped children and their families, and the increasing use of penal sanctions for under-16s would have the effect of increasing their antisocial behaviour and its duration.

- In Scotland we are fortunate to have a system in place for dealing with the young that has worked, is humane, and has not increased the rates of offending. It was based on the most expert and careful consideration of delinquency and childhood neglect by the Kilbrandon Committee and has stood the test of time. Recent research (see Waterhouse et al, 2003) has recently confirmed that, as the Kilbrandon Committee contended,
there is much overlap between children in need of care and children who have offended. Most children referred to the Children’s Hearings more than once had been referred both on the grounds of being in need of care and protection (usually at a younger age) and of having committed an offence (when older). Almost all the children had had experiences of being in care; over half came from families on state benefit and almost half from single parent households – symptomatic of their deprivation.

- The recent NCH Kilbrandon Inquiry into the future of the Children’s Hearings has been considering a range of evidence about the original intentions of the Kilbrandon Committee and whether the Hearings have reached their full potential and in what direction they might best be developed. The Panel, chaired by Richard Holloway, intend to produce their report by the end of this year to inform discussion about how best to work with children and young people who are both troubled and troublesome in a way that enhances their opportunities and allows them to make the best contribution that they can to society.

- While some of the proposals, especially those relating to restorative justice and community service, are in the spirit of the discretionary, welfare oriented principles underlying the Children’ Hearings, others would inevitably contribute to a dismantling of this system by seeking solutions that would increasingly involve criminal justice procedures.

- Increased recourse to police action, courts, and coercive neighbourhood and housing authority interventions is not only likely to evoke hostility from the people targeted but has financial implications too, especially as increasingly the legal profession would be involved in appeal procedures. Finance and effort are better spent on improving the recruitment of social workers for children and families, increasing the special resources needed in schools and improving the amenities, especially for children and young people in deprived neighbourhoods.

**Specific comments on the Anti-Social Behaviour etc. (Scotland) Bill**

Some aspects of the Bill should be welcomed, especially the provisions for ‘community reparation orders’ (s. 89), so long as care is taken to guard against these being used in place of less intrusive sanctions: they should ideally be used instead of custodial sentences, and as a specific form of ‘Community Punishment Order’. The Consortium would like to draw the Committee’s attention, however, to two aspects of the Bill that are open to serious criticism.

**Antisocial Behaviour Orders (Part 2)**

In principle the Consortium remains against ASBOs. The worrying features of ASBOs, however, should induce great caution in extending their reach –

- that they are not predicated on proof beyond reasonable doubt (in accordance with the normal rules of criminal trials) of the commission of an offence;
that they can involve the imposition of extremely onerous and restrictive ‘prohibitions’, without even any explicit requirement that they be proportionate to the seriousness of the antisocial behaviour in response to which they are made;

that ‘antisocial behaviour’ is defined very broadly (s. 110), without even any requirement that the ‘alarm or distress’ that is caused or is likely to be caused is caused reasonably by the behaviour in question;

that the sentence for breach of an ASBO can be very severe.

This is not to deny that antisocial behaviour by young people, including people as young as 12, can create very serious problems, and we welcome the provisions in the Bill that seek to ensure that ASBOs are a last resort for young people. We also suggest, however, that these are not an appropriate way of trying to induce respect for others in misbehaving juveniles. Two other kinds of provision seem more appropriate. These are:

- **Acceptable Behaviour Contracts** which focus on the unacceptable behaviour (rather than prohibiting behaviour that is not in itself unacceptable, as ASBOs can do), and which can also be used to structure a genuine two-way contract with the juvenile; and

- **Formal Warning Notices** on the model of those provided for excessive noise (in Part 5 of the Bill): these would again focus only on the antisocial behaviour, and would serve to put the person on formal notice that this behaviour is unacceptable.

We urge the Committee to consider such other, more constructive and inclusive, ways of trying to induce young people to behave with the kind of minimal consideration for others that is required.

**Dispersal of Groups (Part 3)**

The conditions that can justify the authorisation of the exercise of the powers specified in s. 18 are (as with ASBOs) very broadly defined: in particular, the ‘alarm or distress’ that must be caused need not be shown to be reasonable. As the Bill stands, if people of a suspicious or nervous disposition are unreasonably alarmed by the presence of groups of youths (who may be doing nothing more than hanging round sociably with each other), that could in theory be sufficient to trigger an authorisation of the exercise of the s. 18 powers. It might be said that we can and should trust the police to be more sensible than that: but it would surely be better to make the requirement for such good sense explicit in the legislation, by requiring that the alarm or distress be reasonable.

It is also unfortunate that the only remedy specified in the Bill for the admitted problems caused by disruptive or alarming groups of people take this exclusionary, apparently punitive form (exclusionary in that it excludes the people who are ordered to disperse from enjoying the public space in which they were gathered); that the Bill does not, for instance, require the senior police officer who is to authorise the exercise of the s. 18 powers to check whether the local authority has made adequate provision of social space and facilities that those who are to be dispersed could use. One might hope of course that the ‘antisocial behaviour strategies’ dealt with in **Part 1** would
include matters like this: but the provisions in **Part 3** would be less disturbing if there was an explicit requirement of this kind, since it would then be clear that the people (typically young people) who are liable to be dispersed if they alarm or distress others have a proper claim as citizens to the use and enjoyment of public space.

**Reference**

ANNEX 1

NCH Scotland response to the consultation ‘Putting our communities first’

We do not support the proposals for new legislation and arrangements for dealing with ‘anti-social behaviour’ that are proposed in this consultation document.

New law is not necessary, but rather effective application of existing law. New processes for dealing with children and young people are not necessary, but rather the implementation and proper resourcing of existing processes.

It is our view that the term ‘anti-social behaviour’ as used in the document to describe both criminal and non-criminal behaviour and the measures proposed would unnecessarily draw more young people into criminal justice processes and will not add to our ability to effectively change behaviour that is dangerous to the young people and/or to others.

We also believe that the proposals are not in accord with the UN Convention on the Rights of the Child or with existing domestic law on children. They also contradict established child protection policies and guidance and are opposed in spirit to the drive for social justice and social inclusion which the Executive has previously championed.

Our basis for comment

This response is based on a consultation with managers and staff of our projects throughout Scotland, which work successfully on a daily basis with children young people and families on the basis of respect for individual dignity and worth. Our services successfully promote change and opportunity for children and young people and their families in some of the most deprived areas of Scotland. These include many young people in trouble for offending. We also run the Dundee Families Project with Dundee Council which pioneered a combined welfare and housing management strategy for successfully rehabilitating families evicted or threatened with eviction for anti-social behaviour.

We provide services on the basis of known best practice and of innovation. All services are subject to annual review and future planning based on evaluation of outcomes and of the costs and benefits of the work. All are in partnership with local councils.

Kilbrandon Inquiry

We are conducting an Inquiry into the future of the Children’s Hearing System in Scotland. This is chaired by Richard Holloway who, with fellow panel members Ruth Wishart, Tom Devine and Kaliani Lyle, has been considering a range of evidence about the original intentions of the Kilbrandon Committee.
and whether the Hearings have reached their full potential and in what direction they might best be developed. The panel intend to produce their report by the end of this year we hope that their recommendations will inform the discussion about how we can best work with children and young people who are both troubled and troublesome in a way that enhances their opportunities and allows them to make the best contribution that they can to society.

**Relevant legislation**

All legislation and decisions about children must be in accord with the provisions of the UN Convention and with existing legislation and good practice. In responding to the proposals under consideration we have had regard to the following legislation.

**UN Convention on the Rights of the Child**

A child is any person under 18 years of age, unless under the law applicable to the child, majority is attained earlier.

Article 3: ‘in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.’

Article 18. 2 ‘parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.’

Article 19 ‘protection from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation including sexual abuse, while in the care of parents, guardians or any other person has the care of the child. Should include effective procedures for the establishment of social programmes to provide necessary support for the child and those with care....’

(20 November 1989)

Article 40
Recognises the right of every child alleged as accused of, or recognised as, having infringed the penal law, to be treated in a manner consistent with the promotion of the child’s sense of dignity and worth, which reinforces the child’s respect for the human rights and fundamental freedoms of others and which takes into account the child’s age and the desirability of promoting the child’s reintegration and the child’s assuming a constructive role in society.
Social Work Scotland Act 1968

Establishing the children’s hearing system:
- Civil proceedings
- Separation between adjudication and disposal in relation to cases involving children under-16 years.
- Deals with both care and protection and offence grounds
- Welfare principle – the child’s need for care and/or education is the guiding principle in relation to decisions

Children Scotland Act 1995

‘Section 16’ Principles:

‘…in any matter with respect of a child, the welfare of that child throughout his childhood should be the …paramount consideration

‘No requirement or order shall be made with respect to a child unless it would be better for the child than the requirement or order be made than that none should be made at all’

‘A hearing or tribunal should so far as is practicable give the child the opportunity to express his or her views and….. have regard to such views.’

Consultation Questions

We are mainly concerned with proposals that affect children and families but do also comment on the wider range of proposals, particularly those relating to housing management.

Anti social Behaviour Strategies

1. We believe that community planning is the context for all major agencies to put together their strategies for promoting community welfare and children and family support. We are not convinced that separate anti-social behaviour strategies can in any way replace existing social inclusion, community development and safety, environmental, housing and policing strategies.

2. Anti-social behaviour as described in the consultation document is the product of more than one cause or problem. Tackling the underlying causes of social disorder is much more important than tackling its consequences in isolation.

Community Reparation Orders

3. We support the restorative justice strategy that has already been adopted by the Executive and which is in process of being put in place in all local authority areas. There is strong evidence that restorative
justice, and mediation can be used effectively to keep young people out of the system and unnecessary criminalisation.

4. If there are to be CROs we believe that they should not be imposed on children under 16 but that there is no reason for there to be an upper age limit. All reparation orders should be constructive and should have due regard to the need for individual dignity and respect for both perpetrators and victims.

5. Organisations to be consulted should include VSS and also other agencies representing communities of interest such as the elderly, people with disabilities and crucially also those representing young people and children who are the most common victims of crime in this society.

Protection for victims and witnesses

6. We must be careful to ensure that support extended to those making allegations of anti-social behaviour does not encourage malicious and time wasting complaints about minority groups, or about young people behaving in perfectly normal ways for their age. This is one of the dangers of the extending the law to cover behaviour which is not criminal and which is defined by very subjective tests.

7. We believe that professional witnesses are appropriate in relation to cases brought under existing criminal and civil law. However we can’t see their use in relation to non-criminal behaviour, which is defined as any behaviour that causes alarm or distress to anyone.

Acceptable Behaviour Contracts

8. We believe that the current use of ABCs in some authorities should be properly evaluated before being extended. Evaluation should include outcomes for individual young people and families, and also in relation to their impact on the agencies most involved. There is evidence from England that what is effective about ABCs is that they offer young people a source of support and supervision from an adult with a broad regard for their welfare and future.

9. The use of the term ‘Contract’ implies a two way agreement. However, as proposed they seem to be merely a one way agreement by a young person to desist from certain behaviour on pain of possible legal action. We believe that ABCs if adopted should be based on a proper assessment of a child’s circumstances and needs and should bind the agency to certain courses of action as well as the young person. The option of Voluntary Supervision is already open to the Reporter but is used in only 6% of cases. This option should be promoted and good practice built around the use of two-way agreements between individuals/families and agencies. It is important that ABCs are multidisciplinary reflecting the need for greater communication and integration of services for children.

10. We do not support any relationship being made between voluntary ABCs and ASBOs or Parenting Orders. We oppose the proposed use of court based orders for children under 16 years and believe that all
cases of offence or of being beyond parental control or other relevant grounds should be referred to the Reporter as now for proper consideration. However, we would agree that a refusal to take part in a genuine two way agreement for behaviour that is already recognised as a ground for referral to the Reporter should be considered by the Reporter as evidence that compulsory measures may be necessary.

**Anti Social Behaviour Orders for under 16s**

11. Courts should not have the power to impose ASBOs on under-16s. As our answer to question 10 states, we believe that all children under-16 years should be dealt with under the existing provisions of the Children’s Hearing System. This allows decisions to take into account maturity, circumstances, health, ability, and all the other circumstances of a child’s life. Hearings have the power to impose any condition that they see fit on a supervision order and to remove a child from home on a residential supervision order. There is no reason to believe that courts, even youth courts, are better equipped than hearings to deal with children and in fact much evidence to the contrary.

12. As above. We believe that supervision orders should be the basis of any prohibition or injunction in respect of a child’s behaviour. We of course believe that that child and their family should be properly supported to comply with and benefit from any order and any condition made.

13. We oppose any route for dealing with a child’s behaviour that is not through the existing child protection and children’s hearing systems. All agencies and indeed individuals can make referral to either system and have their concerns and complaints investigated and action taken. Parallel processes should not be developed which would enable landlords and others to process concerns about children’s behaviour through the courts on any grounds other than the welfare of the child.

14. No, the Youth Court model is not appropriate for children under 16 years of age. This is particularly so in relation to behaviour which is not even in breach of criminal or civil law. There is considerable evidence to show that involving children in justice systems at an early age and on very low thresholds is detrimental, and actually increases the probability of offending and of anti-authority attitudes. Children should be kept out of the courts. There is also no evaluation at the moment of whether the youth court pilots are useful in dealing with over 16s and some anecdotal evidence that they are proving a very lengthy and expensive process compared to Hearings.

15. The only way to ensure that the child’s full circumstances are taken in to account is by using our current child protection and hearing systems as the basis for any referral. These systems have been developed on the basis of considerable evidence and it would be invidious and dangerous to undermine them by allowing processes which are not informed by any evidence to take their place.
Greater use of reparation in children's hearings

16. We fully support an increased emphasis on restorative justice in the children’s hearings. We believe that restorative justice approaches can be used on a voluntary basis and avoid the need for a hearing. However, we caution against drawing in new layers of children to formal processes, as there is evidence that this increases the likelihood of further offending rather than reducing it. Where compulsory measures are necessary, it would be very appropriate for restoration to be made one of the conditions of any order. However, it should be remembered that children who are involved in persistent and serious offending have usually suffered a variety of adversities and victimisations themselves and that they may need some reparation themselves. Responsibilities go with rights, and we must make sure that these children experience respect for their own rights to safety and protection.

Electronic Monitoring of under-16s

17. We see no place for this as a disposal by the hearing. Children need parents and carers who exert 24/7 care and supervision. Electronic or technical control is the opposite of the engaged and caring parenting that society should be offering. In any case, children who are beyond control of their parents and/or offending are mostly characterised by impulsivity, and have no real recognition of cause and effect in relation to their behaviour. Many such immature children would regard a ‘tag’ as a badge of honour, and also one that afforded them the opportunity to attract attention and annoy the authorities by consistently triggering the alarm by breaching the hours monitored by the tag. Many of these children have developed the annoying and dangerous behaviours that they have by realising that this gains them adult attention that they are not getting. This association between badness and attention needs to be broken if they are to develop better behaviours. Tagging would reinforce this. The consultation paper states that these proposals are mainly concerned with approximately 800 young people who persistently offend. NCH works successfully in the community with young people who fall into this category and can demonstrate very good reductions in their offending within relatively short periods. This is achieved by engagement, intensive supervision and rehabilitation through education, and training. Secure accommodation should only be authorised where a child is a danger to themselves or others. If that is the case there is no justification for substituting proper care and supervision in a secure environment for the inadequate control of a tag. If they are a danger to themselves or to others a tag will not remove this danger. The proposal that secure care should be used as a sanction for breach of tag would be that almost inevitably more children than currently will be removed from their homes at enormous social and financial costs. It should be remembered that our care services are over stretched and under-resourced already, and that staff are under-trained and difficult
to recruit. There are very bad outcomes for most children removed from home and it would be completely wrong to embark on a course of action that would increase their number. In England and Wales the consequence of this kind of ‘net-widening’, unnecessarily drawing children into criminal systems, has been an overall 100% rise in under-18s in custody over a 10 year period and an 800% rise in the number of 12-14 year olds who are locked up in detention centres. We do not believe that Scotland should be going down this road at all.

18. We do not believe that electronic monitoring has any place in the care and management of children.

**Extending Restriction of Liberty Orders to under 16s**

19. Children under 16 should not be dealt with in the courts other than the determination of fact. The reason for separating adjudication from decision making in relation to children is because courts are unable to take into account all of the relevant circumstances including the child’s need for protection. The Hearings currently have the powers to make supervision orders with conditions. This would allow them to make stipulations about the child’s whereabouts and hours when he might not be outside. Many children and young people are at risk in their own homes and it is important that decisions to confine them to their homes are made in the full knowledge of their circumstances and that of any siblings.

20. It follows from the above that we do not support the extension of RLOs through the courts. Children’s Hearings orders with conditions as to the child’s movements would be subject to statutory review periods and to the child and parents right to appeal and to review.

**Parenting Orders**

21. We believe that parenting orders with criminal penalties have no place in our child welfare or family support systems. Parents can currently be charged with a variety of offences in relation to the care of their children. These include failure to get them to attend school, neglect, cruelty, abandonment, being drunk in charge of a child etc.. Our work with parents is based on agreement with them and other relevant persons and agencies about the key areas of change needed and how what each party needs to do. Most parents want to keep the care of their children, some need a lot of help to do so safely. That help should be forthcoming on a voluntary basis. Where parents can not be engaged and persist in their neglect or abuse of a child, the hearing has the option of removing the child from home or to another relative. There may however be a case for hearings being able to impose conditions on orders which are for the parent and not the child to fulfil. This is currently not the case.

22. Criminal courts should not in any case take decisions about the care and welfare of children.

23. and 24. There are existing laws governing parents’ care of their children. There is no need to add a civil order with a criminal penalty to
an already overburdened and under-resourced system. Parents seeking help from health and social work services are often placed in long waiting lists for help. Parents of teenagers have very few sources of advice and support. Until such time as all parents are able to access the support and advice that they need without stigma or fear we can not contemplate supporting any orders. Our family support services are very under-resourced compared to many other European countries as are our leisure and out of school care services for teenagers. Resources would be far better spent on remedying these lacks than on courts and lawyers.

25. and 26. As above. We do not support parenting orders.

Local Authority Accountability

27. Given our position that the children's hearings should remain the place where decisions are taken about the care and welfare of children we do agree that it is vital that local authorities are accountable for carrying out supervision requirements. We also agree that requirements and any conditions should be very explicitly set out and that the child and the parent should be guaranteed the service that is described and have a clear knowledge of what are the expected outcomes of any intervention or services. We also agree that it is unacceptable for a local authority to fail to provide education for a child. However, it is not only for local authorities to take responsibility for this. Many local authorities spend over the suggested amount of GAE on their child and family services. It is important that the Executive expects to meet the costs of good child and family services. These include the urgent need for a review of the pay and conditions of child and family social workers, which has fallen far behind comparable professions while their responsibilities and duties have increased.

28. Hearings do need more powers if they are to be able to ensure that their orders are carried out. Panel members are demoralised by their lack of ability to enforce decisions. We therefore support this in principle. However we would warn against the likely consequence that unnecessary compulsory orders will be made in order to guarantee a service to a child or parent. Orders should only be made where compulsion is necessary and voluntary arrangements are not accepted. It is important that voluntary support and services are available in order to avoid breaching the Children Act(Scotland) 1995 ‘no order’ principle.

29. Yes, the hearings and Reporter should have a role in alerting Scottish Ministers to failure by a council to ensure a child before them receives appropriate education.

Anti Social Behaviour and Housing

30. RSLs should be included in any duties imposed.

31. It seems very reasonable to regulate private landlords and the best agency to do so would be the local authority. However, why should
private households escape any regulation of behaviour that is to be imposed on tenants?

32. Rewards for good tenants sound very patronising, and liable to cause a lot of dispute and difficulty.
33. No, we do not support ASBOs for under-16s and we do not believe that they should be linked to any action on tenancy. Our work in Dundee Families demonstrates that there is not a need to extend this to under-16s. Courts should not determine disposals relating to under-16s. We risk having hearings decisions being undermined by requirements on under-16s that the courts have imposed in ignorance of the true or whole circumstances of a case.

Fixed Penalty Notices

34. No we do not support the extension of fixed penalty notices.
35. No, such penalties should in no circumstance be imposed on under-16s.

Dispersal of Groups

36. We believe that the police have sufficient powers already and understand that that is also the view of the police. Police action needs to be supported by a range of social services. Public spaces need to be properly cleaned and maintained and supervised by civilian staff. The power of the criminal law should only be used in the case of breaches of the law and not to impose certain codes of behaviour. Europe provides us with plenty of examples of good practice in relation to creating home zones in residential areas which allow young and old people space to socialise and enjoy each others company. Additionally, community meetings and community mediation processes which allow people to hear each other’s point of view and arrive at solutions or compromises that suit everyone are a much better way forward than trying to use the police force as an alternative to social arbitration.

37. Police already have sufficient powers in relation to all age groups including under-16s. Breach of the peace and behaviour liable to cause a breach of the peace are both charges available to the police, as is obstruction of the highway. Drunkenness, violence and threatening behaviour are crimes. Young people should not be criminalised for gathering together peaceably in public spaces. There are clear dangers in forcing young people off the streets into dark and unpatrolled areas. Resources should be concentrated on providing young people with activities and safe places to have fun and socialise. This is what young people consistently ask for when asked what would prevent them drinking and getting into trouble. This proposal potentially criminalises the state of childhood and adolescence and would not be tolerated if it was made in relation to any other group e.g. ethnic minorities, white men, university students, or older people. We would be concerned that the powers would be used particularly
oppressively against young people from ethnic minorities and also young people in the areas with the least amenities and opportunities.

Making ASBOs more effective

38. We believe that ASBOs are not a constructive way forward in relation to regulating behaviour. In any case, we would want to see one single authority with the power to apply for an ASBO and that that should only be after seeking information and advice from all other agencies and from medical and other professionals. Additionally the person or persons concerned should also be consulted and given the opportunity to either refute the allegations, or to justify their conduct or desist from continuing.

39. No, ASBOs can be made on the basis of behaviour that is not in itself criminal and we understand that they can also be granted in ex-parte hearings where the person to be subject to the order is not notified or present and has no opportunity to be represented. It is wrong to apply the power of arrest in such a situation. Where an order is necessary in order to secure another person’s safety from violent attack or intimidation, the proper course is to seek an interdict or injunction. We support the power of arrest being attached to such orders, which are made on the basis of real proof of danger or threat.

40. Courts set punishments whose limits are specified in statutory guidance on sentencing. The review of sentencing which is currently underway should be asked to consider extending the range of community supervision. We do not support the use of ASBOs to replace proper sentences and proper resourcing of community supervision.

41. and 54. We do not support any extension of the powers of ASBOs as argued above.

September 2003
ANNEX 2

The Howard League for Penal Reform In Scotland response to the consultation ‘Putting our communities first’

General Remarks

1. The document attempts to grapple with many different issues, some of which are extremely serious, such as persistent juvenile delinquency the responses to which affect the future lives and development of children and families, while others although important in their own right are relatively trivial, eg dog fouling, and rubbish dumping, and yet others, such as organised crime and fly-tipping, are clearly within the remit of the criminal justice system. Yet all these very different problems are dealt with in a rather similar manner as if they were of equal weight and required similar responses.

2. Some of the underlying assumptions implied by the document are questionable. These seem to be that antisocial behaviour is wilful and can be curbed if only the right deterrents and sanctions are in place; and that organisations can improve their services if they are penalised for inadequate performance. In fact, coercion is often counterproductive, evoking hostility and withdrawal. Deterrence is not effective as a remedy for persistent and serious youth offending, or as a means of enabling inadequate parents to cope better. Positive help, for example, in facilitating the performance of children with developmental and behavioural difficulties in school, and for inadequate (frequently depressed or substance abusing) parents is more likely to be effective. Moreover, legal penalties will not ease the burden on understaffed social work departments which cannot fulfill their obligations. The Report gives little emphasis to improving environmental amenities for children, young people and their families who live in underprivileged housing estates, which would help to raise morale and avoid frustration, a common antecedent of antisocial conduct.

3. The document, rightly, points to the advances already made by the Scottish Executive, for example, in instituting Sure Start, Community Regeneration Programmes, the increasing development of Community Service Orders and Drug Courts. The emphasis on Restorative Justice (for which there is now evidence of effectiveness) is also welcome. But the moralistic stance taken (whereby families are classified as ‘good’ and ‘bad’) and the emphasis on “rights”, on coercion and on the increasing use of the criminal justice system reveals a simplistic approach to the issues. Most crime is decreasing; it is the public perception and fear of crime that has increased, perhaps as a result of media activity. The Scottish Executive could helpfully take steps to counteract this.
Do we really wish to live in a society which becomes ever more punitive and restrictive, where ever more scarce resources (both human and financial) are expended on court procedures, and in which increasing numbers of people are criminalised? The emphasis should rather be on the responsibilities of the majority of the population who cope well, in part for the sake of their own safety and wellbeing, to provide the help and facilities for that minority of young people and families who are less capable, underprivileged, and hence often very troublesome.

This alternative stance is exemplified by Scotland’s unique way of dealing with its overlapping populations of deprived and delinquent young people through the Children’s Hearing System. Delinquency rates have not gone up disproportionately despite the decriminalization of the young (see Duff and Hutton, 1999). The Executive should do all it can to preserve this system and its underlying philosophy which has been shown to work (Lockyer and Stone, 1998), and to strengthen the back-up services which have to some extent been eroded (see below).

4. Much greater emphasis should be placed on positive improvements: (i) good architectural planning with pleasant neighbourhoods for supported housing and with play areas, sports fields and swimming baths widely available; (ii) more youth workers (and not the police) to help take rowdy adolescents off the streets with (iii) out-of-school clubs and sporting facilities to prevent boredom, the main trigger for noisy gang activities; and, within our education system, (iv) for children with special educational needs to be much better provided for.

5. **A historical reminder**

The 1980s and ‘90s saw a marked reduction in certain specialist services for disturbed children and young people including the closure for economic reasons of child psychiatric in-patient units, especially those for adolescents. Children with the severest behaviour disorders and/or learning difficulties from dysfunctional families, who might previously have been treated in child psychiatric units, now had to stay within their own families, schools and neighbourhoods, often creating chaos there, or be taken into care. While in the 1970s all children unable to cope in big classes were accommodated in classes geared to their capacities, in the ‘80s and ‘90s attendance declined, truancy rose and disturbed children were often left to wander the streets and cause trouble.

The other change over the years has been the lack of recruitment and retention of social workers for children and families. It seems the emphasis on child protection work and the public pillorying of social workers in high profile child abuse cases has made this work too hazardous to be generally attractive. The priority should be the support, recruitment and training of social workers, especially for work with the Children’s Hearings, rather than imposing yet more
work and legal expenses in terms of sanctions and penalties on local authorities when in default.

If the Children’s Hearing System is failing to meet expectations for the control of anti-social behaviour in the young it seems likely that this is due to a reduction in the resources now available, rather than to a failure of the system itself.

6. **Understanding Antisocial Behaviour in Children and Adolescents**

It is now recognised that there are **two types of antisocial behaviour in the young:** life- course persistent and adolescence limited (Moffitt and Capsi, 2001; Moffitt et al, 2001), with different causes and calling for different remedies.

The first, *life-course persistent*, affects about 5% of antisocial children, starts very early in life and tends to persist into adulthood. It is associated with inadequate parenting, family disruption and poverty, but also with constitutional, genetically based, problems: neurocognitive disorders such as developmental delays, learning disabilities and reading retardation, an undercontrolled temperament and hyperactivity. Affected children need to be identified in early life so that they can get special help both within their families and at school.

The more common, *adolescent-limited*, antisocial conduct is not related to these factors. It is temporary, part of adolescent rule-breaking, associated with the normal maturation process. It is exacerbated by anxiety and by growing up among delinquent peers. It exposes boys and girls to many hazards: early school leaving without qualifications, becoming a teen-aged parent, developing drug, alcohol and tobacco dependency and, most important, a criminal record which is known to reinforce antisocial behaviour. All these hazards compromise the young person’s ability to establish a satisfactory working and family life. Such youngsters need to be protected from the criminal justice system at all costs to ensure that they outgrow their transient antisocial phase. They require diversionary activities, education and removal from delinquent peers.

**Comments on the Document Section by Section**

**Introduction**

Page 10: omits to mention (i) among the *family problems*: physical disability, psychiatric disorder, and poor intellectual functioning of parents as well as poverty, large family size and single parenthood. (ii) among *school and educational problems*: constitutional, inborn factors such as poor ability, developmental learning difficulties, impulsivity and hyperactivity, which if not catered for lead to poor attainment, lack of motivation and truancy. The important role of the school in identifying antisocial behaviour in young people, in its prevention and remediation, is not emphasised.
Section One, page 17: The community based teams, neighbourhood intervention and supervision, and acceptable behaviour contracts appear likely to have an overlap with other statutory and professional services. This is clearly undesirable as leading to confused responsibilities and intervention pulling in different directions. In dealing with children and young people the Children’s Hearings should decide upon all such intervention. Unless professionally run and supervised with the explicit remit “to help” the families concerned, as for example in the English “Home Start” or “Befriending” schemes for young mothers, such schemes could be explosive. The Executive’s objective should be to strengthen existing services rather than to complicate and duplicate them.

Local initiatives by untrained and unsupervised people for dealing with “anti-social behaviour”, so often a sign of serious underlying disturbance, will tackle symptoms not causes and, especially if the police too are involved, may simply exacerbate the problems. Children, in particular, would suffer if their parents were shamed and pilloried within their local community.

Mediation and arbitration between neighbours is a different matter entirely, and the League would favour this as well as support for victims and witnesses.

The League has no view to offer on the whether the RSLs should formally be included or on information interchange.

Page 18 The point about Community Service Orders is that they have been shown to work. If they are also well received by the public, that is a bonus.

Page 19 If individual victims are involved in a case, then a Community Reparation Order should only be made with the victim’s and the offender’s agreement. In the case of young people, the Children’s Hearings should be able to make such an order, and the children’s panel, social work departments, schools, but not the police should be involved in its implementation. The courts should not impose such orders on young persons unless they have first referred the case to a children’s hearing for its advice. Subject to this the League believes such orders could be helpful in dealing with vandalism and graffiti. The League sees no need to limit the use of this disposal to under 21s.

Page 21 The League welcomes measures to support victims and witnesses of anti-social behaviour. It believes greater use should be made of compensation orders. These have been available to the courts for over 20 years but are infrequently employed. To extend their use prosecutors should be required to explore in all relevant cases whether the victim would wish compensation or some other form of reparation and lay this information before the court following conviction. Where reparation appears practical Courts should be encouraged to defer sentence to allow it to be made.
The League does not object to greater use of professional witnesses provided that their evidence is properly tested in court and the need for corroboration is maintained.

**Section Two**

**Page 24:** *Acceptable Behaviour Contracts* can be useful adjuncts, once other remediable causes of malfunctioning (for example, parental depression or addiction and in children unmet special educational needs) have been excluded, within relationships children already have with their teachers, social workers or other helping professionals. Within such relationships and in private, they can also work for adults. They would be quite inappropriate for poorly functioning parents who cannot control their children, especially if used by the police or housing agencies. They would be unlikely to work, would reduce the parents’ self-esteem even further, increase the stress on vulnerable people, and would belittle parents in the eyes of their children.

**Pages 25-27:** The League is totally opposed to extending court imposed *Anti-Social Behaviour Orders* to children under 16 or even 17. The idea that, especially for the “small number of persistently anti-social young people” for whom current measures available to the Children's Hearings have not worked, ABOs can help is misplaced. (We are unaware of any evidence that they have worked in England) These children are the most disturbed and impaired (see 6. above) and they need intensive, long-term treatment and educational help if they are to improve. Effort should go into improving the services, educational, social work and psychiatric, for this small number of persistent offenders. We need to strengthen the staffing and expertise of social work departments and of our child and adolescent services so that they are once more readily available for work with the Children’s Hearings.

The fact that breach of such an order would be a criminal offence, would also be counterproductive. The most seriously disturbed young people would enter the criminal justice system with a likely future of repeated imprisonment, welfare dependency and the transmission of delinquency to the next generation. This would in the long run be as, or even more, expensive than providing early and really good therapeutic care and education for such children who can be identified early in life. Removing the young person to an environment in which he can do no harm protects not only him but also the community. Often children can improve only when some distance is introduced between them and their own dysfunctional families and they get “auxiliary parenting” away from their often delinquent neighbourhoods.

*Residential Social Landlords (RSLs)* should have no powers over children and young people except through the Children’s Hearing System.
The Youth Court Model should NOT include people under 16. We do not believe ever more agencies and people should become involved in dealing with the same child and family. Much professional time, legal expense and waiting for final decisions can be avoided if young people are dealt with expertly and swiftly by the Children’s Hearings. Money is better spent improving the resources available to this system.

Page 29: The League fully supports the greater use of Reparation within the Children’s Hearing System, but does not see it as an alternative to therapeutic care for the most seriously disturbed. Where this involves a residential school it need not be seen as “depriving the young person of liberty” but rather as a haven designed to help him improve his development and behaviour.

The League fully supports the greater use of Restorative Justice as a condition of a supervision requirement.

Pages 30-34: We can see that there may be a place for electronic monitoring with the agreement of child and family as a condition of a supervision requirement, to help youngsters, especially those with “adolescent limited delinquency”, or who compulsively engage in joy riding, to exert more self-control. It would be helpful to know how effective it has been found in England.

Electronic monitoring should not, however, be seen as an alternative to secure accommodation or other residential schooling for very seriously disturbed youngsters with “early onset persistent delinquency” from seriously dysfunctional families. These youngsters are unlikely to be able to comply. They need to get away from the environment that contributes to their disorders and they need very expert care and education. Nor would we want to see secure accommodation viewed as a penal sanction for breach of an order that is unlikely to be complied with but rather as a helpful intervention for youngsters with very serious problems. Therefore the behaviour or circumstances which led to a decision by a Hearing to use electronic monitoring should provide the justification for secure accommodation in the event of breach rather than the breach itself. A Hearing should of course be able to consider whether the circumstances of the breach further support the use of secure accommodation.

The League is not in favour of extending the use of the criminal courts for dealing with youthful offenders. Criminalising the young is known to be counterproductive. It recognises that there are a very few extremely serious cases where the courts presently have to deal with a child. Because the welfare of the child should still be paramount the League considers that the courts should always be required to obtain the advice of a children’s hearing on the best form of disposal for the child and that only in such circumstances and where recommended by the hearing should the court be empowered to use a Restriction of Liberty Order.
Pages 34-40: The tone of the section on Parenting Orders is, at best, unfortunate. It is simplistic and panders to populist opinion to divide parents into “good“ and “bad”. Parents do not “deliberately or recklessly fail their children”. In any case, the assumption that all parents want to be good parents but that some need extra help to succeed, is more likely to pay off. In this spirit, parenting orders could contribute by requiring parents to accept the help they need for themselves and their children.

It is the League’s view, that parenting orders should only be applied for by a Reporter where it has been recommended by a Children’s Hearing, at which all circumstances can be considered. Local authorities or courts should refer any case in which this is to be considered to a Children’s Hearing. Reporters should not be able to apply directly for an order but they should be able to ask a hearing to consider making a recommendation for an order.

Since the Hearing should have considered all the relevant circumstances a Sheriff should normally grant an application for an order unless satisfied that the Hearing has failed to consider some relevant facts and circumstances and that in consequence granting the order would not be in the best interests of the child.

The grounds suggested for such an order are very acceptable, especially the emphasis on welfare grounds. Duplicating powers of intervention, as in cases of truancy where other powers already exist should be avoided.

In our view, breaches of a parenting order should not be a criminal offence. Criminalisation of inadequate parents should be avoided while fines or imprisonment would only increase the hardships of the parents and hence of their children too. Instead breaches of the order should be contempt of court which could be followed by a care order for the children under the Children (Scotland) Act, 1995, as referred to on page 39.

Pages 40-41 Local authority accountability: We believe that Local Authorities may not always be taking seriously enough the decisions of Children’s Hearings and that it may be appropriate to provide some mechanism so that authorities give the decisons of the Hearings the priority they deserve. However in many cases Local authorities are unable to meet their obligations because of a shortage of child and family social workers. To use the coercive actions suggested would increase the workload and financial expenditure of local authority departments and would mean that services to other families will suffer at the expense of those families where court orders enforce the provision of services. Compliance order should therefore be a measure of last resort. What is also needed is improved recruitment of staff, which in turn requires that LA departments and their staff are protected from excessive criticism when, rarely but inevitably, the system fails.
As for LA educational services, providing that the Reporter or Hearing can raise the matter with Scottish Ministers where a child is not being provided with education appears pointless since provision of a service to the individual child is not a Ministerial responsibility and there is nothing preventing a Hearing writing to Scottish Ministers at present. Hearings do not have facilities to pursue administrative action other than through Reporters and a general provision enabling Hearings to direct Reporters (or their staff) to raise issues with relevant authorities might be helpful. It might also be helpful to provide that the Hearing can require attendance by an education official where it is not satisfied that appropriate action has been taken. However coercive action cannot be a substitute for remedying the deficiency of the necessary resources and Scottish Ministers should hold urgent discussions with the education authorities.

**Section Three**

The League does not wish to offer views in relation to litter and tipping beyond remarking that it approves of proposals, such as requiring offenders to clean up graffiti, which may strengthen the role of reparation in the Community.

**Pages 50-55 Housing:** Similarly the League does not wish to offer views on proposals to extend regulation in the private landlord sector but it observes that the proposed characterisation of tenants as good and bad appears misconceived. Increasing “sanctions” and “punishments” in terms of financial deprivations, delays in repairs, and diminishing the security of tenancies, would only reduce the chances inadequate tenants have of coping better and would lead to even more deprivation and misery for the children involved. It is a highly paternalistic and punitive stance.

Existing provisions on housing and homelessness should not be linked to ASBOs and these should not be extended to the under-16s. Secure and pleasant housing can in itself enable families to function better. The emphasis should be on better planning of housing. Ghettos of deprived LA housing should be phased out in favour of mixed developments of public and private housing. These would have the advantage also of ensuring a school intake of children of mixed abilities and social background which would improve children’s attainments and behaviour and ease the pressures on teachers.

**Section Four Effective Enforcement**

**Page 58 Fixed Penalty Notices** for relatively minor offences, litter and dog fouling are acceptable, but they should only be extended to other offences of a strictly similar nature and they should not apply to children.

**Pages 59-60** A general power for the police to disperse groups of young people as described is not in our view, acceptable. It might well make youngsters more inclined to provoke police responses. We believe the police already have
sufficient powers in this area and that if further powers are created and used it will undermine police community relations. Members of the public may feel harassed or intimidated, alarmed or distressed by a group even though that group presents no threat nor intends any harm. Any power to disperse should be strictly limited to situations where other offending by one or more members of the group has already occurred. This could of course include threatening a member of the public but the important point would be that a clear intention to behave in this way had been shown. Youngsters tend to hang about because they are bored and have nowhere to go. Youth workers should be employed instead, to divert groups of young people. In deprived areas affordable recreational facilities (clubs and sporting facilities) need to be enhanced, with the active involvement of the youngsters themselves. (The Report mentions “Youth Shelters” without indicating what these are.) The police should not be involved in Restorative Justice. This should be the responsibility of youth workers under the aegis of social work departments. The aim should be to avoid any hint of criminalising behaviour that is in fact not criminal and of stigmatising young people living in areas of deprivation. (The Executive seem to be aware of this danger, indicating as it does in the Report that it does not want to create a “them and us” environment.)

Pages 61-63 Making Anti-social Behaviour Orders more effective: The League does not object to the proposals to extend these but, as noted previously, considers that they should not be used for the under-16s.

Pages 63-65: Licensed Premises: Excessive drinking is a powerful and ubiquitous cause of anti-social conduct, including domestic violence and inadequate parenting and is hazardous for young people. While the Report does not mention the effect of advertising it supports the proposals made on page 64. It also broadly supports the proposals relating to organised crime on pages 64-65, but the powers proposed are wide and some restrictions appear necessary to prevent them being applicable to premises where say, drug dealing was of a minor nature. The court should therefore have to be satisfied that there was evidence of continuing illegal activity and that closure was necessary for the protection of the community. Where the premises were residential it should be satisfied that closure was not detrimental to the best interests of any children present.

Concluding Remarks Relating to Antisocial Behaviour in Children and Young People

1. This topic has been intensively studied for many years and we now have a large body of firm knowledge about the causes of antisocial conduct in the young and about how best to prevent and remedy it (see for example Farrington, 1996; Moffitt et al, 2001). The Scottish Executive could greatly contribute towards a better understanding by the general public of the known causes of juvenile crime and how this can most effectively be reduced.
2. It must be axiomatic that any new arrangements for dealing with young offenders should work, that is they should be of proven effectiveness, so that communities are indeed protected. It is also axiomatic that any new measures should do no harm or make matters worse. Some of the proposals in this document would clearly add to the burdens on already deprived, marginally adjusted, and often ill and handicapped children and their families, and the increasing use of penal sanctions for under-16s would have the effect of increasing their antisocial behaviour and its duration.

3. We in Scotland are fortunate in having a system in place for dealing with the young that has worked, is humane, and has not increased the rates of offending. It was based on the most expert and careful consideration of delinquency and childhood neglect by the Kilbrandon Committee (1964) and has stood the test of time (see Duff and Hutton, 1999; Lockyer and Stone, 1998). Waterhouse et al (2003) have recently confirmed that, as the Kilbrandon Committee contended, there is much overlap between children in need of care and children who have offended. Most children referred to the Children’s Hearings more than once had been referred both on the grounds of being in need of care and protection (usually at a younger age) and of having committed an offence (when older). Almost all the children had had experiences of being in care, over half came from families on state benefit and almost half from single parent households – symptomatic of their deprivation.

4. While some of the proposals in this document, especially relating to restorative justice and community service, are in the spirit of the discretionary, welfare oriented principles underlying the Children’ Hearings, others would inevitably contribute to a dismantling of this system by seeking solutions that would increasingly involve criminal justice procedures.

5. If the Children’s’ Hearings are failing, this is due to an erosion of available back-up resources, not to the system itself. There is a shortage of social workers, so that families do not get the professional help ordered by the Hearings; psychiatric assessments of seriously disturbed children and families are less readily available; and educational resources for children with special needs have declined, in particular, residential special schools.

6. The suggested increase recourse to police action, courts, and coercive neighbourhood and housing authority interventions is not only likely to evoke hostility from the people targeted but has financial implications too, especially as increasingly the legal profession would be involved in appeal procedures. Finance and effort are better spent on improving the recruitment of social workers for children and families, increasing the special resources needed in schools and improving the amenities, especially for children and young people, in deprived neighbourhoods.
HLS 4th September 2003

References

Annex 3

Apex Scotland response to the consultation ‘Putting our communities first’

Introduction

Apex Scotland welcomes the opportunity to contribute to the Scottish Executive’s strategy for tackling anti-social behaviour and would like to be involved in the programme of meetings with key stakeholders during the consultation period.

Apex Scotland is a national voluntary organisation that aims to reduce (re)offending by working with (ex) offenders and young people at risk to address their employability needs and to progress them to a positive outcome. In doing so, we act as a bridge between the criminal justice and employment fields.

We also provide training to a wide range of employers to promote equality of access for our clients and fair recruitment policies and procedures.

A total of 6591 referrals were received across all services in 2002-2003, an increase of 39% on the previous year, from which 4204 started work with Apex and 2280 completed, with over a third (36.5%) achieving positive outcomes.

Apex is also the only voluntary organisation in Scotland that has begun to routinely measure the impact of its work on re-offending, by negotiating a process with SCRO for carrying out recidivism checks on clients. Results from the initial data set supplied to SCRO are very encouraging and have been widely disseminated.

An analysis of the employment history profile of Apex clients starting services in 2002-2003 highlights that 95.8% described themselves as unemployed and 36% reported as having been unemployed for more than 2 years (data is based on 3080 clients and excludes those in prison).

General Comments

We agree with the assertion in the report that anti-social behaviour leads to a downward spiral where more serious crime takes hold and where the regeneration of whole communities is held back or reversed (P7). We also agree that tackling it requires a collective effort by a range of agencies and local people themselves.

We would question whether new legislation is necessary to strengthen and empower communities and address anti-social behaviour. We believe that the outcomes desired could be achieved within existing frameworks and will expand on this point as we address specific questions in the document.

The Executive is to be commended for its major investment and commitment to addressing all levels of youth crime over the last 2 years, with a £25 million investment
over a 4 year period to establish youth justice teams and a range of services to address offending behaviour in every local authority in Scotland.

The role of Youth Justice Strategy Teams in dealing with anti-social behaviour needs to be clarified: it is unclear whether these teams should adopt an holistic approach to dealing with the whole spectrum of young people’s behaviour and needs, or whether their remit is simply more effective management and co-ordination of specialist services for a small group of persistent, hard-core offenders.

The quality of life issues of concern to local communities are clearly distinct from the concerns of those charged with implementing local youth justice strategies at all levels: strategic, middle management and practitioner level.

Direction on the role of Youth Justice Strategy Teams is also necessary to ensure consistency of membership as well as remit.

**Community Reparation Orders**

We welcome the proposals to improve the range and quality of sentences available to the courts, with the proviso that clear distinctions are made between the intended target groups for supervised attendance orders, community reparation orders and community service orders.

These represent responses to a hierarchy of behaviours and community reparation orders are intended to be lower tariff than community service orders and shorter in length.

Given that community reparation orders will be an extension of supervised attendance orders (SAO’s) and that Apex Scotland has extensive experience of delivering SAO’s on behalf of local authorities, we would welcome the opportunity to contribute to the formal consultation about the nature of reparative work to be undertaken.

Apex currently delivers supervised attendance orders in partnership with 8 local authorities as an alternative to fine default. As highlighted in the consultation document, there are 3 components to the order, each of which is designed to provide education and training. The first is a core 10-hour module focusing on offending related issues such as debt and lack of employment. This is followed by needs related education and training and then by a placement that reflects the clients interests and skills.

Between April 2002 to March 2003, a total of 912 referrals for supervised attendance orders were received, from which 786 clients started work with Apex and 595 successfully completed the order in that period.

The order is not explicitly aimed at progressing clients into positive outcomes or reducing their offending behaviour. However, we know that 162 clients who completed the order within the above period achieved the following positive outcomes:
Full-time Employment  70
Part-time employment  17
Further training     17
Further education   15
Voluntary work      39
ILM                  4

(ILM refers to Intermediate Labour Market Placement).

In addition, a recidivism survey was carried out in February 2003 with the assistance of the Scottish Criminal Records Office on a sample of 275 SAO clients, all of whom registered for their first appointment between 18 September 2001 and 17 March 2002.

The average age of clients in the sample was 26 years old, with the youngest aged 16 and the oldest aged 57. The majority were long term unemployed and many had never worked, although 6% reported that they were in employment when they started work with Apex.

Forty per cent of the sample had less than 10 convictions, while 535 had between 10 to 50 convictions and 7% had over 50. SCRO were unable to provide recidivism data on 13,5% of the data set, leaving a sample of 238 clients.

The results demonstrated a 51% reduction in offences between the 6 month period prior to starting work with Apex and the 6 month period after completing the order.

Acceptable Behaviour Contracts

An Acceptable Behaviour Contract could be introduced as a condition of a Supervision Requirement, which would allow for review in the event of a breach of the Supervision Requirement and a possible tariff escalation.

Anti-Social Behaviour Orders for under 16’s

Anti-social behaviour could also be addressed within the Children’s Hearings System through a condition attached to a Supervision Requirement. A strength of the Hearings System is that decisions in the best interests of children are taken by a panel of volunteers from within the local community.

The definition of anti-social behaviour is very wide and depends on the perceptions of the wider community. It could prove difficult to differentiate between the normal behaviour of young people and what is perceived as anti-social by others.

The proposed Anti-Social Behaviour Order, in requiring parents to act in the best interests of their children, is not a tool for addressing anti-social behaviour.
Electronic Monitoring of under 16’s

We would question the suitability of tagging as an alternative to secure accommodation. Tagging a young person to their home may increase risk as the behaviour of the child which is causing concern is not being addressed but merely contained. Those children who are placed in secure accommodation because of a likelihood of absconding are unlikely to co-operate with the tag and will probably end up being placed in secure accommodation because they have breached the tag.

Parenting Orders

Whilst these would only be available as a last resort, we would be concerned that they may result in a family unit being split up, with other children who have done nothing wrong being placed in care. Given that 58% of lone parents are in employment, it is also possible that a single working parent might have to give up work to supervise a child to ensure that there is no breach of the order.

Parents who breached the order would be fined in the first instance and would only end up in prison if they consistently refused to pay the fine and then failed to comply with a supervised attendance order. It must be borne in mind that there will be costs associated with this lengthy process.
ANNEX 4

SACRO response to the consultation ‘Putting our communities first’

General Comments

SACRO is a national community safety organisation with over 30 years experience of working in the criminal justice and youth justice systems and in the field of community conflict and dispute resolution. We provide services in 28 Scottish local authority areas. We are the foremost organisation in Scotland in the development of Restorative Justice and Community Mediation, and are funded by the Scottish Executive to provide national consultancy and training services in both these areas of work.

In dealing with anti-social behaviour, SACRO considers it essential to focus on providing a range of interventions able to target problems effectively and in a way that is proportional to the nature of the behaviour. It is crucial that we distinguish between low-level nuisance and activities that are criminal in their intent, as the appropriate remedies for one will frequently be ineffective or counter-productive for the other.

There is no doubt that some communities experience levels of behaviour by a minority of residents that are highly destructive – such behaviour should not be tolerated. The examples given in “Putting Our Communities First”, however - harassment and intimidating behaviour, behaviour that creates alarm or fear, noisy neighbours, drunken and abusive behaviour, vandalism, graffiti and deliberate damage, parking and abandonment of vehicles, and dumping rubbish and litter (p8) - are already able to be dealt with by the police through existing criminal law. If strategic priorities or resourcing issues hinder efficient use of existing powers, how confident can we be that new powers are either necessary or able to be implemented more effectively?

The consultation document’s recognition of the necessity of community involvement is to be welcomed. Most Scottish communities have a relatively low incidence of serious anti-social behaviour, and it is important that policies are not driven exclusively by the urgent needs of the minority of communities experiencing severe difficulties. We believe that positive action is necessary to ensure that communities which are relatively free of serious problems remain so: there is a crucial role here for preventative measures such as Community Mediation and Restorative Justice. The proposed increased emphasis upon punitive measures for generally low-level offending may lead to responses which are disproportionate and may have knock-on effects elsewhere.

Measures for under 16’s should be kept within the Children’s Hearing System as a continuum of interventions that can assist children and families to cooperate with service providers and effect change in behaviour. Panel members will use their own judgement and be flexible in the use of these sanctions – perhaps more so than in court. The “whole picture” may be
assessed more fully through a Hearing. In the proposals there is considerable focus upon punishment and enforcement with too little attention paid to the resources needed to provide appropriate support for effecting change – again, a reason for going through a Hearing to enquire why a measure has failed.

**Anti-social Behaviour Strategies**

We welcome the recognition that anti-social behaviour is an issue that can only be addressed adequately through a co-ordinated response by a number of different agencies. The requirement, under the Criminal Justice (Scotland) Act for local authorities and chief constables to publish joint strategies is a significant step in the right direction.

The consultation document raises the issue of whether Registered Social Landlords and other relevant agencies should also have a formal duty to participate in such strategies – we consider this to be essential. The measures proposed in “Putting Our Communities First” will potentially have a significant impact on Social Work Departments, Civil and Criminal Courts, Procurators Fiscal, Childrens’ Panels, Environmental Service Departments, and Community Safety Departments, as well as the Police and Social Landlords. The success or otherwise of several of the proposed measures will turn on efficient co-ordination of response, and it is therefore essential that joint strategies are built upon jointly-agreed and realistic roles for a wide range of agencies. We would like to see clear proposals of how this can be achieved.

**Community Reparation Orders (CROs)**

These are currently being used in England without evidence of very much success, as there is apparently an element of resentment at being ‘ordered’ to make amends. Reparation is an excellent way of dealing with some offences but our experience tells us that more positive outcomes are achieved for victims and for offenders if the young person does this willingly and voluntarily agrees to make amends.

The tasks available to be carried out as part of a Reparation Order may be extremely limited and may not therefore address the perceived public desire for visible retribution. Tasks such as removing graffiti require specialised equipment and specialised training to operate that equipment. Many of the chemicals used by the specialist operators are corrosive and highly dangerous. The tasks when used as part of a restorative process are symbolic rather than retributive. The young person recognises the harm they have caused and completes a task to signify this recognition and begin their reintegration. Care must be taken to ensure that the tasks do not stigmatise the young person and increase the likelihood of social exclusion. The aim is to reduce re-offending but young people who have no investment in themselves, their future or their community as a consequence of their difficulties compounded by social exclusion are more likely to continue to offend. Using reparative tasks in the wrong way and/or in the wrong place may have the opposite effect to that desired by the Executive.
SACRO would suggest an alternative approach linked to a more inclusive focus on ‘Community Improvement’ and based on community development principles. We suggest that a campaign and resources are made available to encourage and enable youth organisations to develop voluntary initiatives, aimed at involving young people in creating and improving community facilities and the local environment, including damage caused by crime and vandalism. Such initiatives should also provide opportunities for young people who have themselves committed crime to become involved on the basis of voluntary reparation agreements. We would suggest that the fullest possible range of representative youth organisations should be consulted about proposals and prospects for developing community reparation within such a wider community improvement model. We have already discussed this idea with the Chief Executive of YouthLink who has expressed the view that this concept is helpful in offering relevant open opportunities for young people which benefit the community and which can involve young people from within the criminal justice system with minimal risk of stigmatisation, and that it accords with the principles of the National Youth Work Strategy proposed in the Scottish Executive Partnership Agreement.

SACRO has considerable experience in working with young people who have offended and who have agreed voluntarily to participate in such tasks, as an alternative to measures based on orders and we have found this approach successful in the vast majority of cases. Such an approach has a number of advantages; it provides for greater ‘ownership’ of local facilities by young people; it minimises ‘labelling’ of young people who offend and promotes social inclusion; it will be more effective in promoting positive attitude change amongst young people and in achieving practical community benefits.

**Protection for Victims and Witnesses of Anti-social Behaviour**

It is very important that witnesses are protected in the way described and are supported through the justice process. It would be better if in the first instance this happened through a restorative rather than an adversarial process, (though it is recognised that the court may need to become involved where those allegedly causing the problem are resistant to mediation).

Use of wardens as professional witnesses may compromise their role within communities and could negate other positive work being carried out. However, consideration should be given to where failure to include a warden as a professional witness could contribute to a greater harm being caused.

**Acceptable Behaviour Contracts (ABCs)**

A contract is a voluntary agreement made between two or more persons. Seen in these terms the use of Acceptable Behaviour Contracts is a useful concept. Used in a restorative manner, (resembling the agreements/contracts already made in SACRO’s mediation/youth justice services) as a means of resolving conflict and addressing offending behaviour, they provide a written agreement, understood and committed to by all parties. Since all parties negotiate the terms of the contract each has an investment in funding a
workable solution to which all can commit. Timeframes can be set to review and renegotiate the terms as progress is made. This creates the potential to build success for the young person, to acknowledge this success and the progress they have made at each review and to include reward for positive behaviour. Rewarding positive behaviour has been evidenced to be more effective than over sanctioning failure. It is also important to consider where the contribution of others sits within the contract, as it is likely to be a false assumption that only the young person’s behaviour needs to change to ensure a successful outcome.

Where a young person has recognised that their behaviour causes difficulties to others and has agreed to voluntarily engage with others in the negotiation of a contract, repeated or serious breaches would suggest the need to provide additional resources to support the young person in their desire to comply.

The danger of linking ABCs with ASBOs is that young people, who are impulsive and may have difficulty controlling their behaviour without support, could quickly find themselves with a criminal conviction which could affect future employment prospects which could in turn lead to future offending into adulthood.

The voluntary nature of these contracts would also prelude their use as a condition of a supervision requirement.

**Anti-social Behaviour Orders (ASBOs) for Under-16s**

The paper seems to put a lot of faith in these, despite their small volume and inconsistent use by only some councils since their introduction – as acknowledged on page 60. It is questionable whether the threat of an ASBO would act as a deterrent for the most chaotic persistent young offenders. Young people with experience of the hearings system are aware that secure accommodation can be used as an option by the Children’s Panel, yet continue to offend.

Of equal concern to the use of Courts for such orders, is the lack of clarity on how we are to establish the ‘guilt’ of the young person accused of pursuing “a course of conduct that has caused or is likely to cause harm” *(page 25, para 4, line 4)*. Any Court would surely need to establish that there was sufficient evidence to meet the criminal standard of proof prior to proceedings being taken. The application for the order should not only describe the nature of the anti-social behaviour, but evidence the same.

It is very unclear as to when it is intended ASBO’s would be applied for from court. Minor offences that may receive this high tariff can potentially escalate if the young person is not equipped to effect a change in their behaviour. Should an ASBO be made in relation to a person aged under 16, it would be vitally important to ensure that appropriate resources are also put in place to provide the required levels of support to ensure compliance with the order, including elements designed to identify and address contributory factors to the behaviour. For this reason we would suggest that the imposition of an ASBO
should also result in the young person being referred to the Children’s Reporter for consideration of what measures are required to assist with compliance. This would allow the Panel to assess the ability of a young person to meet the requirement specified in the ASBO and to ensure that appropriate support is made available to the young person and their family. A Breach should also be referred to the Reporter for a Hearing to consider why the Breach has occurred, who was at fault and what, if anything, can be done to meet the ASBO requirement to avoid unnecessary escalation in court disposals.

We would strongly urge that particular attention be given to ensure that guidelines in relation to existing ASBO’s, to the effect that the court should ensure that all other measures, especially mediation, have been explored before issuing an ASBO are made similarly applicable in respect of ASBO’s for under 16’s. Equally important is that the Executive ensure that resources and services are in place to ensure that mediation services can be adequately provided. SACRO has considerable experience of providing community mediation services in cases relating to anti-social behaviour, including at ‘pre-ASBO’ stages, and from that experience, it is our conviction that such services provide one of the most useful means of resolving such cases. Estimates require to be made of the anticipated numbers of ASBO’s for under-16’s which are likely to be applied for in all parts of Scotland and the necessary action taken to ensure that suitable and sufficient mediation services are available in all areas to deal with all cases. We would suggest that mediation should be attempted in all cases as implied in existing ASBO guidelines.

**Greater use of Reparation in the Children’s Hearings System**

While it is understood that Hearings have the power to attach any type of condition to a supervision order, including participation in Restorative Justice schemes, there are potential pitfalls in RJ being made a condition of a supervision requirement, which would require adequate safeguards to avoid.

At its most successful, Restorative Justice requires direct contact between the victim and offender. A great deal of preparation is done to ensure that a) the victim’s needs can be addressed by the young person, b) the young person is remorseful for his or her actions, c) the young person recognises that harm can be done to others and wishes to make amends for what has happened. A young person cannot be compelled to demonstrate genuine remorse if they do not feel this, and in cases such as this, it is necessary to deal with the young person’s attitudes to their offending and the reasons for these, before any effective RJ intervention can be achieved.

A full assessment of the suitability of a restorative intervention would therefore be required, preferably prior to a condition being made. Alternatively, the ‘condition’ should be that the case is assessed for suitability for Restorative Justice. In the event of non-participation by the victim, any community based reparation should a) be a worthwhile task leading to a sense of achievement for the young person on completion, b) provide a learning opportunity for the
young person, c) be relevant to the offence committed and/or d) enable the young person to link the reparation work with the opportunity to move on.

SACRO already provides effective reparation services in many areas of Scotland for young people referred by the Children’s Reporter as a diversion from a Hearing. These operate on a voluntary basis and, if successful, the young person should not appear before a Hearing on offence grounds. In so doing, no conviction is incurred. This is likely to be the most effective and beneficial use of reparation for most children and we would suggest that the main emphasis should be on extending the options available for reparation rather than to bring reparative conditions into the Hearing System.

Electronic Monitoring of Under-16s

Electronic Monitoring is a form of restricting liberty. It may act as a deterrent for some young people as one effective deterrent is the likelihood of being caught. The use of electronic monitoring as a response to anti-social behaviour, however, may well be excessive (and therefore counterproductive), especially where it is triggered by Breach of earlier measures.

Electronic Monitoring will not meet the needs of the young person and will often set them up to fail. It is an abrogation of responsibility by the local authority and the young person’s carers. Those going to secure accommodation often go there for their own safety or for that of others. They need intensive support and supervision in addition to containment. It is unlikely that many young people requiring secure accommodation would be able to adhere to the requirements laid out in the Restriction of Liberty Order.

A breach of electronic monitoring should not be grounds for a secure placement as the needs of the young person will be quite different. If electronic monitoring is to be brought in it should operate through the Children’s Hearing with clear guidance on its use. Breaches should be assessed with respect to the cause of the Breach and the identification of responsibility for that breach.

There is evidence (Tackling The Tag : The Electronic Monitoring of Offenders, Dick Whitfield, Waterside Press, 1997) that the breach rate is likely to be high if the order is for anything other than a very short period. So, if sanction for breach is to be secure accommodation, then it will need to be used very sparingly indeed. That is difficult to ensure. Also, they should not be made without the support order mentioned.

There is a danger of young people being 'labelled' and the issues regarding their behaviour not being addressed. This may result in alienating some young people even more. We also believe that there is a risk that some young people who exhibit the most anti-social attitudes and behaviours may see a tag as a badge of honour.

Tagging alone will not change the way the young person thinks about offending. Resources would be required to ensure that cognitive behavioural-
Based programmes are available and delivered to support the young person in their transition.

**Extending Restriction of Liberty Orders (RLOs) to Under-16s**

Again, resources would be required to ensure appropriate support programmes were in place to challenge the young person’s thought processes.

On periods of restriction for RLO’s we must take into account the very different perceptions young people have with regard to time. 12 months feels like a lifetime for most young people.

There is the added potential breach of the European Convention on the rights of the child.

**Parenting Orders**

SACRO’s Restorative Justice Services currently require the participation of the parent when addressing the offending behaviour of a child. Indeed, in many cases a Restorative Justice Conference will include questions from the victim to the parent on what measures the parent has taken or intends to take to lessen the likelihood of the child committing a similar offence in the future.

Parenting Orders must be used with great caution and with the provision of appropriate support. Parents should rightly be held to account for what they do or do not do in relation to their parental responsibilities. We do not believe, however, that they should be held to account for the actions of their children. There is a real danger that parents will perceive that responsibility for the child’s action has been transferred to themselves, rather than highlighting responsibility for their own actions. This, in turn, may cause tension in the family and potentially increase child protection concerns. It may undermine the position of the child at home and increase the number of accommodated children. Full consideration must be given to the needs of the child and to the circumstances of the family, including the supports being offered and levels of co-operation.

Prior to any parenting order being made, an assessment should be carried out to establish the level of support required by the parent. The recognition of the need to act to address the child’s behaviour may well lead to voluntary participation in counselling or guidance sessions to receive help and support – with a greater chance of success. Resources would be required to ensure such pre-Parenting Order assessments were carried out. Parents should not need to wait until a Parenting Order is made before being given the opportunity to access support and guidance. If a Parenting Order is felt necessary, local authorities need to be resourced to an extent that they are able to deliver the Services demanded by the order.

Parenting Orders should only be considered where voluntary measures have failed, and the only grounds for such orders should be the welfare of the child.
– as such, they should go through the Children’s Hearing. Compulsion should be made through a Hearing as a decision to direct the Reporter to make an application to court. No other mechanism for Parenting Orders should be permitted. Breach of a Parenting Order should, in the first instance, come back to a Hearing. Only if the Hearing is satisfied that the Breach was intentional and avoidable, should the Breach be referred to the Sheriff.

The welfare of the child should remain paramount in all cases and parents must not become detached from the Hearing System through external court impositions that have not been agreed before a Panel. A new Ground for Referral to a Hearing could be introduced – to consider the need for a Parenting Order in the best interest of a child. However, Parenting Orders should emerge from a child’s progress through the Hearing System and new grounds may not be necessary.

Children learn from the adults that are closest to them i.e. parents, carers, older siblings, and if the parenting skills are not there it is difficult for them to understand what they are doing wrong. Some parents may not think there is a problem with the way they are raising their family and this could prevent them from changing. Good citizenship and parenting would be more effective if introduced in the very early years and primary education could be a starting point for a lot of children. This we understand would put a lot more pressure on the education system but if it was introduced along with other learning i.e reading, writing etc it would have a more positive effect on children.

Local Authority Accountability

Audit Scotland reported an estimated number of children for which supervision requirements had not been implemented. There is (or should be) a need for Local Authorities to provide information on National Youth Justice Standards and Time Intervals. Where a supervision requirement has not been implemented it is likely to be a reflection of resources available at that time. Insisting on implementation is likely to “rob Peter to pay Paul” and will not necessarily address the underlying cause of non-implementation. Local Authorities are accountable. The issue is whether a Hearing can insist that a supervision requirement is implemented as the Court can insist on a prison sentence,– this effectively allows the Hearing to override the local authority in prioritising an individual case above others. Only in exceptional circumstances should this be necessary and clear guidance should be provided to panel members. The Sheriff will have discretion in his decision as to whether any conditions attached to the supervision requirement were reasonable.

Graffiti

There is evidence that there was a reduction in the use of glue as a solvent to sniff when the sale of this was restricted to those over the age of 16. However the restriction of the sale of spray paint to those over the age of sixteen may not be as effective. Stores actually took glue off the shelves and substituted them with cards which were taken and exchanged for goods at the checkout. Will the same solution be available in the case of paint? It is likely to be
problematic as the range of colours and types is much more extensive than those of the glues.

Do we know how much paint is bought by those under 16? Are we sure that it is those under the age of 16 who do most spraypainted graffiti? Was the reduction in glue sniffing due to the removal of this substance from the shelves or was it because cannabis became more available or other solvents more popular? Were those who were sniffing glue buying it or stealing it and was it the removal from open view, which was effective rather than its restriction of sale? Again is this achievable with spray paint?

**Noise Nuisance**

Recent surveys have highlighted the contribution of reduced noise insulation in houses to the increase in noise nuisance. We would suggest that building regulations should require far better insulation.

**Anti-social Behaviour and Housing**

Children's behaviour should not be used as grounds for eviction. Failure in Parenting Orders could be used but it should be made clear that this is a consequence of the Parents’ actions (or inactions) rather than those of their children.

**Fixed Penalty Notices for Anti-social Behaviour**

Fixed penalty notices should not be applied to anyone under the age of 16.

The proposals to extend the use of fixed penalty notices, particularly in relation to noise nuisance are unlikely to be effective. There are existing police powers both specifically to seize noise-producing equipment and generally to deal with disturbances. The proposal to give Environmental Health officers and/or Community Wardens powers to issue notices is unlikely to result in more efficient noise control, as in many cases a police escort would in any case be required to be in attendance.

There is a further problem with extending the use of fixed penalty notices. These are currently predominantly used for motoring offences, where in the main there is little argument over whether an offence has been committed. This is unlikely to be the case with more subjective areas such as nuisance and noise, and it can be anticipated that a considerable number of appeals would arise from the issue of notices. Unless standards of proof are to be lowered considerably, in itself a cause for concern, there is likely to be significantly greater strain placed on an already overburdened Civil Court system.

**Dispersal of Groups**

We are concerned that the proposals’ definition seems to include "groups of young people hanging around"... this is what young people do, is normal and
should be acceptable and not demonised or criminalised. So, pages 59 –60 need close attention. It is not hanging around that is wrong, it is intimidation, harassment, etc. Young people should not be unnecessarily alienated by actions designed to allay unfounded fears of the older generation. Therefore, police should use existing powers to disperse troublesome groups, responding to specific complaints about specific groups...not criterion (b) on page 60, which seems to say that if you are young and in a group in an area where there is an ASB problem, you can be told to shift. That would be infringing civil liberties.

This proposed measure is ill conceived and likely to breach the Convention on Human Rights. Alarm or distress due to the presence of two young people in any locality is no reason for police moving those young people on. This is far too subjective and may reflect people's own perceptions, with no misconduct or anti-social behaviour by young people themselves. The moving on of all young people from areas where a minority may cause persistent or significant problems is completely unjustified. The police have sufficient powers already.

Mediation between the young people and those who are being affected is a more positive way forward. SACRO has considerable positive experience of this approach. The young people may not be aware of the distress they are causing and may be prepared to engage in alternative leisure activities or make reassurances of their intentions if concerns are raised in a reasonable manner. This does not detract from Article 15 of UNCRC which gives them the right of association and is dependent upon alternative resources being available to young people to allow them to do what young people do. Young people have the right to be young people.

It seems important to note in this respect the likely impact of the loss of parks, playing fields and other public recreational space over recent years. It is estimated for example that nearly 50% of open grass football pitches in Edinburgh have disappeared over the past 30 years. It could be argued that this policy has contributed to lifestyle clashes between young people and adults as much as or more than an increase in anti-social behaviour by young people.

We also note and agree with the views expressed in the Scottish Executive’s recently published report on community well-being, “Building Community Well-Being: An Exploration of Themes and Issues” (Scottish Executive, April 2003) that:

“The well-being of young people was considered by project participants to be pivotal to communities’ capacity to thrive. Specific difficulties to overcome include the following:

- the association in people’s minds between young people and anti-social or criminal behaviour. Young people can respond to this by fulfilling worst expectations
• the lack of a focal point in communities for interaction, leads some young people to ‘hang around’ in public areas, reinforcing associations with trouble making". (p5, Summary Report).

Making Anti-social Behaviour Orders More Effective

For children under 16, ASBO’s should be dealt with through the Hearing System – as discussed above. There is contradiction in this Section regarding the role of Hearings and the Reporter in the use of ASBO’s for young people.

Licensed Premises – Police Powers

Police should have consistent powers across licensed premises, off-licenses and registered clubs. This will enable an increased focus on under-aged drinking.

Closure Notices

Properties from which drug dealing and other criminal activity is known to take place could be closed down but transactions are likely to move elsewhere. This may not address the problem but simply treat the symptom and move the problem elsewhere.
COMMUNITIES COMMITTEE

3 December 2003

WRITTEN EVIDENCE FROM VICTIM SUPPORT SCOTLAND

Re: Antisocial Behaviour etc. (Scotland) Bill at Stage 1

With reference to providing oral evidence at the meeting of the Communities Committee on the 3rd December as part of the Committee’s consideration of the above Bill: as an organisation which campaigns to ensure that the needs, views and concerns of those affected by crime in Scotland are considered, we will be pleased to provide evidence on the following victim issues:

- Antisocial behaviour is a widespread issue in Scotland affecting communities and creating individual victims.
- In communities experiencing antisocial behaviour it is possible that three quarters of crime can go unreported to the police.
- Antisocial behaviour can have significant impact both on victims and on communities as a whole.
- Antisocial behaviour is intrinsically linked to crime and criminal behaviour, and must be addressed centrally from within a criminal justice perspective
- The provision of effective emotional and practical support is essential to the well being of individuals and communities experiencing antisocial behaviour.

Barry Jackson
Policy and Information Officer
Victim Support Scotland
26 November 2003
COMMUNITIES COMMITTEE

3 December 2003

SUBORDINATE LEGISLATION

The Home Energy Efficiency Scheme Amendment (No.2) (Scotland) Regulations 2003, (SSI 2003/529)

1. This negative instrument was previously circulated to Committee members on 18 November 2003. An Executive Note accompanies the instrument. No motions to annul this instrument have been lodged.

2. The Home Energy Efficiency Scheme Amendment (No.2) (Scotland) Regulations 2003, (SSI 2003/529) (the ‘2003 Regulations’) were laid on 7 November 2003, and are subject to negative procedure. That is, the instrument comes into force on 16 December 2003 and will remain in force unless it is annulled by the Parliament within 40 days of being laid before the Parliament.

3. The 2003 Regulations propose to amend the Home Energy Efficiency Scheme Regulations 1997 (S.I. 1997/790) to extend the list of eligibility for persons on a low income or the elderly who can receive a grant to improve the energy efficiency in their home. It is proposed in the 2003 Regulations that eligibility for grants be extended to any person who is in receipt of state pension credit which was introduced in October 2003. It is also proposed that reference to ‘disabled persons’ tax credit’ be deleted in the 1997 Regulations as this ceased to exist in April 2003.

4. Members may recall that the Committee previously considered the Home Energy Efficiency Scheme Amendment (Scotland) Regulations 2003 (SSI 2003/284) at its meeting of 10 September 2003 and agreed that they had no recommendations to make on that instrument.

5. The Subordinate Legislation Committee considered the instrument at its meeting on 18 November 2003 and agreed that no points arose on this instrument.

6. The Committee is required to report by 8 December 2003.
COMMUNITIES COMMITTEE

3 December 2003

SUBORDINATE LEGISLATION

The Housing (Scotland) Act 2001 (Transfer of Scottish Homes Property and Liabilities) Order 2003, (SSI 2003/532)

1. This negative instrument was previously circulated to Committee members on 18 November 2003. An Executive Note accompanies the instrument. No motions to annul this instrument have been lodged.

2. The Housing (Scotland) Act 2001 (Transfer of Scottish Homes Property and Liabilities) Order 2003, (SSI 2003/532) was laid on 7 November 2003, and is subject to negative procedure. That is, it comes into force on 16 December 2003 and will remain in force unless it is annulled by the Parliament within 40 days of being laid before the Parliament.

3. This Order proposes to transfer property from Scottish Homes to the Scottish Ministers, for use by Communities Scotland. The Order provides for the transfer of heritable property and other rights and interests and liabilities in relation to grants, loans, securities and agreements. An initial Order which transferred heritable property and rights in heritage in this way was considered by the Committee’s predecessor, the Social Justice Committee, on 28 Nov 2001. The Social Justice Committee had nothing to report on this 2001 Order. The Executive states that some property will remain with Scottish Homes as the property is required for its housing management functions. The functions of Scottish Homes will be completely transferred to Communities Scotland in 2005 and the Executive have indicated that there may be a third and final property Order at that time to transfer any remaining property and liabilities to Scottish Ministers.

4. The Subordinate Legislation Committee considered the instrument at its meeting on 18 November 2003 and agreed that no points arose on this instrument.

5. The Committee is required to report by 8 December 2003.