The Committee will meet at 2.00 pm in the Chamber, Assembly Hall, The Mound, Edinburgh.

1. **Antisocial Behaviour etc. (Scotland) Bill:** The Committee will consider its approach to the bill.

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

   - The Civil Legal Aid (Scotland) Amendment (No.2) Regulations 2003 (SSI 2003/486);
   - The Scottish Legal Aid Board (Employment of Solicitors to Provide Criminal Legal Assistance) Amendment Regulations 2003 (SSI 2003/511).

3. **Proposed youth justice inquiry:** The Committee will consider a paper.

4. **Vulnerable Witnesses (Scotland) Bill (in private):** The Committee will consider a draft Stage 1 report.

Gillian Baxendine / Lynn Tullis
Clerks to the Committee, Tel 85054
The following papers are enclosed for this meeting:

**Item 1 – Anti-Social Behaviour Bill**

Note by the Clerk J2/S2/03/14/1

Selected responses to Scottish Executive consultation, Putting our Communities First:
- APEX
- Association of Police Officers in Scotland
- Children First
- Law Society of Scotland
- SACRO
- Scottish Child Law Centre
- Scottish Children’s Reporter Administration
- Scottish Police Federation

J2/S2/03/14/2

Copies of the bill, the explanatory notes and the policy memorandum are available from document supply.

The following SPICe briefings are relevant to the Bill and available from document supply:
- SB 03-73 Anti-Social Behaviour - England and Wales
- SB 03-72 Anti-Social Behaviour - Key Issues and Debates
- SB 03-71 Anti-Social Behaviour: Putting our Communities First
- SB 03-70 Anti-Social Behaviour: An Overview

**Item 2 – Subordinate legislation**

Note by the Clerk (SSI 486 attached) J2/S2/03/14/3

Note by the Clerk (SSI 511 attached) J2/S2/03/14/4

**Item 3 – Youth Justice Inquiry**

Note by the Clerk J2/S2/03/14/5

**Item 4 - Vulnerable Witnesses (Scotland) Bill**

Draft Stage 1 Report (PRIVATE PAPER) J2/S2/03/14/6

All written submissions to the Vulnerable Witnesses (Scotland) Bill are available online at: [http://www.scottish.parliament.uk/justice2/call/j203-evidence-01.htm](http://www.scottish.parliament.uk/justice2/call/j203-evidence-01.htm).

**Forthcoming Meetings:**
Tuesday 25 November – Justice 2 Committee meeting (afternoon)
Tuesday 2 December - Justice 2 Committee meeting (afternoon)
Tuesday 9 December - Justice 2 Committee meeting (afternoon)
Tuesday 16 December - Justice 2 Committee meeting (afternoon)
Introduction
1. This note sets out possible approaches to the Committee’s Stage 1 consideration of the Antisocial Behaviour etc. (Scotland) Bill which was introduced on 29 October.

2. The Justice 2 Committee has been named as a secondary committee, reporting to the Communities Committee as lead committee. The Local Government and Transport Committee is also a secondary committee on this Bill.

3. This note invites the Committee to consider its approach to Stage 1 consideration. In doing so, the Committee should note that this is an unusual bill in that it is long (over 100 sections), very diverse in scope and of its 13 parts, at least 7 have a central or significant justice interest. The Committee would therefore seem under obligation to undertake a fairly full Stage 1 inquiry.

4. A range of background briefings on the Bill prepared by SPICe are noted on the agenda and available from document supply.

Areas for examination
5. The following parts of the Bill are probably the key ones for justice scrutiny:

- Part 2 - Antisocial behaviour orders
- Part 3 - Dispersal of groups
- Part 4 - Closure of premises
- Part 9 - Parenting orders
- Part 10 - Further criminal measures
- Part 11 - Fixed penalties
- Part 12 - Children's hearings

Annexe 2, prepared by SPICe, sets out in more detail some of the key justice issues in the Bill.

Are there any other parts which the Committee considers should be central to its scrutiny of the Bill?
Possible witnesses
6. It is clearly desirable for the three committees considering the Bill to avoid duplication in taking evidence. The proposals below should avoid overlap with the Communities and Local Government and Transport Committees.

7. The focus for the Justice 2 Committee’s scrutiny might be:

- the need for, and likely effectiveness of, the new enforcement powers and sanctions created by the Bill;
- the extent to which these are likely to be complementary to and consistent with existing powers and initiatives in the criminal justice area;
- the implications of the proposals in the Bill for the courts, procurator fiscal service, children’s hearings system and police.

8. A wide range of possible witnesses could be called and this will need to be tailored to take account of the number of evidence sessions available (or else additional meetings scheduled). Annexe 2 includes a list of suggested witnesses drawn up by SPICe. The clerks have also circulated the responses to the Executive’s consultation from the relevant organisations.

Which witnesses does the Committee wish to call to give oral evidence?

9. The Communities Committee will be taking evidence from the Communities Minister who leads on this Bill. However, the Justice Minister has been closely involved in its development and has lead responsibility for a number of the policy areas.

Does the Justice 2 Committee therefore consider that it needs to take evidence from the Justice Minister?

Timetable
10. The Parliament has yet to agree a completion date for Stage 1. I understand that the Executive are proposing that Stage 1 should be completed by 11 March 2004. Because the Communities Committee need the Justice 2 Committee’s report before they consider their own Stage 1 report, a Stage 1 debate by 11 March would require this Committee to report to the Communities Committee by 5 February 2004.

11. Implications of this timetable for the Committee are:

- the Committee would have to take oral evidence before receiving written evidence. This is significant as the actual terms of the Bill can raise issues which were not obvious from the consultation responses (as in our recent experience with the Faculty of Advocates on the Vulnerable Witnesses Bill). The Committee could request written evidence from potential witnesses within a very short timescale but this will certainly cause problems to organisations such as the Law Society who operate through a committee system.
This timetable would only allow for 3 oral evidence sessions. This may not be enough. SPICe have a suggested list of witnesses which includes 10 organisations (not including the Minister). More than three sets of witnesses per meeting tends to make it difficult to explore the issues fully with each one.

I have agreed with the clerks that adequate time is needed to prepare a draft report – this means allowing a fortnight between the last evidence session and the meeting at which the first draft report is considered.

Options open to the Committee

12. Broadly there are three options open to the Committee.

- Option 1: We can accept the timetable suggested by the Executive, with the implications set out above. Alternatively, the Committee could decide to take oral evidence without requesting written submissions.

- Option 2: We could seek additional time for consideration at Stage 1. Timetabling the Stage 1 debate for 25 March (an additional 2 weeks) would allow organisations to submit written evidence (albeit to a tight timetable) before the Committee begins taking oral evidence in January. This would also allow the Committee an additional oral evidence session or more time to consider the draft report.

- Option 3: The final option open to us is to report directly to Parliament on the same timetable as the Communities Committee. This would give an extra month for consideration but would potentially cause difficulties for the Communities Committee as they may then feel obliged to duplicate the work of the Justice Committee to inform their report. This approach is procedurally unusual, although not outwith standing orders.

The detailed timetable for each of the three options is outlined in annexe 1.

At this stage we need to take a view on our approach to the Bill. I have requested an opportunity to present our position to the Business Bureau, should this be necessary, at its meeting at 2.30pm on 11 November.

Convener, Justice 2 Committee 6 November 2003
## ANNEXE 1: TIMETABLING OPTIONS

### Option 1: Report to Communities Committee by 5 February

<table>
<thead>
<tr>
<th>Date</th>
<th>Event Description</th>
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<tbody>
<tr>
<td>06/11</td>
<td>Communities Committee issue joint call for written evidence</td>
</tr>
<tr>
<td>11/11</td>
<td>Agree approach/witnesses</td>
</tr>
<tr>
<td>12/11</td>
<td>Justice Committee issue invitations for oral evidence</td>
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<tr>
<td>16/12</td>
<td>1&lt;sup&gt;st&lt;/sup&gt; oral evidence session</td>
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<tr>
<td>18/12</td>
<td>Deadline for written evidence</td>
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<td>from Justice witnesses</td>
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<td></td>
<td><strong>CHRISTMAS RECESS</strong></td>
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<tr>
<td>06/01</td>
<td>2&lt;sup&gt;nd&lt;/sup&gt; oral evidence session</td>
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<tr>
<td>09/01</td>
<td>Communities Committee deadline for written evidence</td>
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<tr>
<td>13/01</td>
<td>3&lt;sup&gt;rd&lt;/sup&gt; oral evidence session</td>
</tr>
<tr>
<td>20/01</td>
<td>Consideration of other written evidence [while report in preparation]</td>
</tr>
<tr>
<td>27/01</td>
<td>Consider draft report</td>
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<tr>
<td>03/02</td>
<td>Agree final report</td>
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<tr>
<td>05/02</td>
<td>Send report to Communities Committee</td>
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<tr>
<td></td>
<td><strong>16-20 FEBRUARY RECESS</strong></td>
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<tr>
<td>05/03</td>
<td>Communities Committee publish report</td>
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<tr>
<td>11/03</td>
<td>Stage 1 Debate</td>
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### Option 2: Report to Communities Committee by 25 February

<table>
<thead>
<tr>
<th>Date</th>
<th>Event Description</th>
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<tbody>
<tr>
<td>06/11</td>
<td>Communities Committee issue joint call for written evidence</td>
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<td>16/12</td>
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<td>18/12</td>
<td>Deadline for written evidence</td>
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<td>from Justice witnesses</td>
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<td><strong>CHRISTMAS RECESS</strong></td>
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<tr>
<td>06/01</td>
<td>1&lt;sup&gt;st&lt;/sup&gt; oral evidence session</td>
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<tr>
<td>09/01</td>
<td>Communities Committee deadline for written evidence</td>
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<td>13/01</td>
<td>2&lt;sup&gt;nd&lt;/sup&gt; oral evidence session</td>
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<tr>
<td>20/01</td>
<td>3&lt;sup&gt;rd&lt;/sup&gt; oral evidence session</td>
</tr>
<tr>
<td>27/01</td>
<td>4&lt;sup&gt;th&lt;/sup&gt; oral evidence session + consideration of other written evidence</td>
</tr>
<tr>
<td>03/02</td>
<td>[Report in preparation]</td>
</tr>
<tr>
<td>05/02</td>
<td>Consider draft report</td>
</tr>
<tr>
<td></td>
<td><strong>16-20 FEBRUARY RECESS</strong></td>
</tr>
<tr>
<td>05/03</td>
<td>Communities Committee publish report</td>
</tr>
<tr>
<td>23/02</td>
<td>Agree final report &amp; send to Communities Committee</td>
</tr>
<tr>
<td>20/03</td>
<td>Communities Committee publish report</td>
</tr>
<tr>
<td>11/03</td>
<td>Stage 1 Debate</td>
</tr>
<tr>
<td>26/03</td>
<td>Stage 1 Debate</td>
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</tbody>
</table>
Option 3: Publish separate Report by 5 March for debate 11 March

06/11 Communities Committee issue call for written evidence

11/11 Agree approach/witnesses

12/11 Justice Committee issue invitations for written evidence

18/12 Deadline for written evidence from Justice witnesses

CHRISTMAS RECESS

06/01 1st oral evidence session

13/01 2nd oral evidence session

20/01 3rd oral evidence session

27/01 4th oral evidence session

03/02 Consideration of other written evidence

10/02 Consider 1st draft report

16-20 FEBRUARY RECESS

23/02 Consider 2nd draft report

02/03 Agree final report

05/03 Publish report

11/03 Stage 1 Debate
ANNEXE 2: SPICe BRIEFING PAPER

Proposals for Stage 1 of Antisocial Behaviour etc (Scotland) Bill

Purpose of Report

1. The purpose of this report is to identify possible witnesses to give oral evidence in respect of the Antisocial Behaviour etc. (Scotland) Bill.

Background


3. The Executive contends that, whilst overall recorded crime has decreased between 1991 and 2002, recorded offences associated with anti-social behaviour (ASB) have increased. The Executive is also concerned that deprived communities are subjected to ASB to a greater extent than other areas. (Scottish Executive Press Release, 22 May 2003).

4. The June 2003 consultation paper noted a number of issues in relation to dealing with ASB that may be of particular interest to the Justice 2 Committee. These are set out for members in the next section of the paper.

Anti-social Behaviour Orders for under 16s

5. The Executive is proposing to extend the use of ASBOs so that they could apply to those aged 12 to 15 as well as to those aged 16 and over. At present local authorities or RSLs who apply for an order must consult the police beforehand. However, the Executive intends that, in the case of young people under 16, local authorities and RSLs would be required also to consult the children’s Reporter.

Dispersal of Groups

6. The Executive is proposing to give the police power to disperse groups of 2 or more people where their presence or behaviour has resulted, or is likely to result, in a member of the public being alarmed or distressed and where there is a significant and persistent problem in the area.

Electronic Monitoring of under 16s

7. The Executive is proposing to extend the scope of ‘Restriction of Liberty Orders’ (monitored by electronic tagging) to under 16s.
Parenting Orders

8. The Executive is proposing a new type of civil order called a ‘Parenting Order’. Parenting Orders would be concerned with the behaviour of the parent/guardian in relation to the behaviour of their child and would only be applied for after the parent has been offered appropriate services to assist with the process but has not engaged with those services. The PO will require parents/guardians to undertake actions that will reduce the level of anti-social behaviour being exhibited by their child or to improve the welfare of the child. The Executive is therefore proposing that a PO could be granted without a child having committed an offence.

9. The Executive believes that local authorities would be best placed to make the application for a PO, as they have responsibilities to promote the interests of children in their areas, under Part II of the Children (Scotland) Act 1995, and also because of their duty in the provision of education, social work and services for looked-after children. The Executive is also considering what the relationship would be between POs and existing Attendance Orders, which are granted in cases where the parent is not ensuring their child’s attendance at school.

Greater use of reparation in the Children’s Hearing System

10. The Executive wishes to encourage the greater use of restorative justice measures, including reparation to the community, in the Children’s Hearings System. It proposes to develop specific information and training for panel members on reparation as a condition of a ‘supervision requirement’. A supervision requirement can be made by children’s hearings and requires the child in question to reside in a certain place or places or to comply with a condition contained in the requirement.

Community Reparation Orders

11. The Executive proposes to introduce Community Reparation Orders (CROs) to be used as a disposal of first instance for ASB offences, where an activity will be undertaken by an offender that is shown to be visible reparation to the community. There will be a statutory requirement on local authorities to consult with appropriate agencies and bodies, such as local victims’ organisations, community councils and the police about what form this reparation should take.

Fixed Penalty Notices

12. The Executive is proposing to extend the use of Fixed Penalty Notices to a range of low-level, anti-social and nuisance offending.

Closure Notices

13. The Executive is considering whether there should be a new power for the police, under the direction of the court and following consultation with the local
authority, to close down premises which are the centre of illegal activity, disorder or other anti-social behaviour.

Proposed Witnesses

14. It is proposed that oral evidence should be taken from the following witnesses:

<table>
<thead>
<tr>
<th>Witness</th>
<th>Reason</th>
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<tbody>
<tr>
<td><strong>Law Society of Scotland</strong></td>
<td>The Law Society of Scotland is likely to comment generally on the workability of the measures contained in the Bill.</td>
</tr>
<tr>
<td><strong>Sheriffs Association</strong></td>
<td>The Sheriffs Association declined the opportunity to comment on the consultation paper. However, if they agree to give oral evidence, they are likely to comment on the practical implications of the proposals for the court system.</td>
</tr>
<tr>
<td><strong>Scottish Children’s Reporter Administration</strong></td>
<td>The Scottish Children’s Reporter Administration provided a full response to the Executive’s consultation covering a range of topics, including ASBOs for under 16s. In relation to resources they state: “there is an urgent need to consider extending demand-led funding to address major service delivery problems, affecting both prevention and intervention, that are currently impeding the Hearings System”.</td>
</tr>
<tr>
<td><strong>Scottish Human Rights Centre</strong></td>
<td>Although they haven’t submitted a formal response to the Executive’s consultation, they have a keen interest in the Bill. Issues they may wish to raise include 1) the youth focus of the Bill; 2) breach of various civil orders amounting to a criminal offence; 3) age limits associated with ASBOs and community reparation orders.</td>
</tr>
<tr>
<td><strong>SACRO</strong></td>
<td>SACRO is a national community safety organisation with experience of working in the criminal justice and youth justice systems and in the field of community conflict and dispute resolution. They are the foremost organisation in Scotland in the development of restorative justice and community mediation and are funded by the Executive to provide national consultancy and training services in both these areas of work. SACRO provided a detailed response to the Executive’s consultation. Issues covered include 1) the adequacy of the existing framework of legislation to tackle ASB 2) the need for legislation to be sufficiently resourced 3) the prevalence of ASB in Scotland and how this should affect policy 4) measures for under 16s – the appropriate balance between punishment and support. SACRO also make interesting points in relation to community reparation orders, ASBOs, electronic tagging and parenting orders.</td>
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<tr>
<td>Organisation</td>
<td>Description</td>
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<tr>
<td>APEX</td>
<td>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. Apex currently delivers supervised attendance orders (for fine defaulters) in partnership with 8 local authorities. Community Reparation Orders (s 89 of the Bill) for 12-21 year olds will involve education/training element. However, the Policy Memorandum states that the obligation to undertake unpaid work will dominate. It may be interesting to hear Apex’s views on the merits of the education/training element and the balance to be struck between the 2 components of the new order.</td>
</tr>
<tr>
<td>Association of Police Officers in Scotland</td>
<td>The membership of the Association of Chief Police Officers in Scotland is made up of all Chief Constables, Deputy Chief Constables and Assistant Chief Constables in Scotland. In their response to the Executive’s consultation they consider a number of aspects of the Bill including: 1) the role of intervention/diversionary projects as compared to enforcement; 2) the effectiveness of the powers in relation to closure of premises and dispersal of groups 3) resource issues.</td>
</tr>
<tr>
<td>Scottish Police Federation</td>
<td>The Scottish Police Federation is a Staff Association representing 98% of police officers in Scotland. The main issues covered in their consultation response include: 1) fixed penalty notices for anti-social behaviour 2) dispersal of groups.</td>
</tr>
<tr>
<td>Scottish Child Law Centre</td>
<td>The Scottish Child Law Centre is a Scottish Charity which aims to promote the welfare of children and young persons under eighteen years of age through inter alia providing information, advice and representation and considering, commenting and advising on legal issues. It provided a detailed response to the Executive’s consultation. It stated in this response that it was “disappointed and concerned” at the approach taken in the consultation document to children and young people.</td>
</tr>
<tr>
<td>Children First</td>
<td>Children First is one of Scotland’s leading childcare charities. It provided a detailed response to the Executive’s consultation. Issues covered included: 1) statistics relating to offending behaviour by children and young people; 2) resources; 3) power to disperse groups; 4) comparative information on electronic tagging.</td>
</tr>
</tbody>
</table>
Dr Lesley McAra and Professor David Smith, Centre for Law and Society, University of Edinburgh (Panel)

Professor David Smith is a criminologist whose interests include crime trends, crime prevention and transition to crime. Given the Scottish Executive's reliance on crime trends in relation to their policy on anti-social behaviour his input might be particularly helpful in this regard.

Dr Lesley McAra is also a criminologist whose interests include juvenile justice and the interface between social work and justice both topics of relevance to the Bill.

Dr McAra and Professor David Smith are also co-Directors of the Edinburgh Study on Youth Transitions and Crime. This is a large scale study of 4,300 young people in the City of Edinburgh who started secondary school in August 1998, with the aim of explaining why some, among all those with criminal inclinations, become offenders, and why some stop offending much sooner than others. They have already published their preliminary findings.

Recommendation

15. The Committee is invited to consider and approve or amend the proposed list of witnesses.

Sarah Dewar
SPICE
October 2003
JUSTICE 2 COMMITTEE

14th Meeting 2003 (Session 2)

Tuesday 11th November 2003

Antisocial Behaviour etc. (Scotland) Bill
Selected responses to Scottish Executive consultation,
Putting our Communities First

APEX
Association of Police Officers in Scotland
Children First
Law Society of Scotland
SACRO
Scottish Child Law Centre
Scottish Children’s Reporter Administration
Scottish Police Federation
“Putting our Communities First: A Strategy for tackling Anti-social Behaviour”.
Response from Apex Scotland

Background

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).

Introduction

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. We believe that
direction on the role of Youth Justice Strategy Teams is necessary to ensure consistency of membership as well as remit.

The document outlines new legislation to strengthen and empower communities and enforcement measures to address anti-social behaviour, particularly amongst the young. It asserts 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. Also, that tackling it requires a collective effort by a range of agencies and local people themselves.

The document adopts a broad definition of anti-social behaviour that depends on the perceptions of the wider community. It may prove difficult in practice to differentiate between what is the normal behaviour of young people, who find protection and safety in groups when they are out and about and that which is perceived as anti-social by others.

The measures proposed, particularly extending police powers to disperse groups of young people, could contribute to a climate where young people are feared rather than valued as members of their own community. We consider it important that young people are involved in the development of strong, safe communities, rather than excluded, as they themselves can often be the victims of crime and harassment.

The proposed measures may be focussed on those in the poorest communities, which lack accessible and affordable amenities and facilities for young people. They may also serve to increase rather decrease the fear of crime that pervades many neighbourhoods.

We welcome the Executive’s commitment to improving the range and quality of sentences available to the courts. Clear distinctions need to be made, however, between the criteria for supervised attendance orders, community reparation orders and community service orders, so that these are seen to represent responses to a hierarchy of behaviours and do not become blurred in practice.

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.

We believe that some of the desired outcomes of the measures proposed in the document could be achieved within existing frameworks: One 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.

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 could also be addressed within the Children's Hearings System through a condition attached to a Supervision Requirement.

The use of electronic tagging to allow children who might otherwise be in secure accommodation to remain in the community is designed to form part of a package of measures for the Children's Hearings System, rather than a punishment. However, it is important to bear in mind that the criteria for secure accommodation are: Firstly, that the child has a history of absconding from a residential establishment and is likely to do so again in which it's likely that his or her physical, mental or moral welfare will be put at risk or, secondly, that the child is likely to injure either himself/ herself or some other person unless kept in secure accommodation.
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. Tagging a young person to their home may increase risk if the behaviour that is causing concern is simply contained rather than addressed.

Although Parenting Orders are intended to be available only as a last resort, it is possible that they would 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. There will also be costs associated with the lengthy process for dealing with breaches of the order, initially by a fine, followed by a supervised attendance order and ultimately prison in the event of non-compliance.

Apex Scotland would be happy to provide further information or clarification on any of the points made in this response.

11 September 2003
Dear Sir/Madam

PUTTING OUR COMMUNITIES FIRST – A STRATEGY FOR TACKLING ANTI-SOCIAL BEHAVIOUR

I refer to your correspondence dated 27 June 2003 in relation to the above subject, which has been considered by members of the General Policing Standing Committee, and can now offer the following by way of comment.

Members welcome the wide legislative powers outlined in the document to tackle the continuing problem of anti-social behaviour, however concern was expressed in relation to the emphasis being placed on enforcement. Members stress the importance of linking reactive measures with proactive early intervention, and the role of planners and developers, thus creating a more holistic approach. Furthermore, it is important to ensure that intervention/diversionary projects are highlighted as being, at the very least, equal to enforcement, acknowledging the achievements of such projects across the country. Likewise, recognition of the positive impact that planners and developers can have at the initial stages of any development to design out opportunities for crime and anti-social behaviour is essential. Members agree that this approach is likely to present a more positive image, and have a more sustainable effect, than relying solely on Anti-Social Behaviour Orders and other punitive measures, important though they may be in certain circumstances.

Members anticipate that some aspects of the proposed legislative changes, including powers in relation to the closure of premises and dispersal of ‘groups’, may have differing degrees of effectiveness across the country. Members also stressed the importance of looking beyond implementation to ensure that consideration is given to what will be provided thereafter. If this is not addressed as a priority, the issues will be displaced not resolved.
Substantial links already exist between partners in the area of intervention/diversionary work, providing a sound base upon which to build. Members agree that it is important to ensure that the issues are viewed as community issues, not just legislative issues which may be deemed as a further area of police responsibility adding to already stretched resources.

In relation to the specific questions raised within the document, the following views were expressed:-

ANTI-SOCIAL BEHAVIOUR STRATEGIES

The effective exchange of information to prevent anti-social behaviour is generally accommodated by inter agency protocols. Evidence suggests, however, that fear of contravening data protection legislation may impede rapid intervention to address anti-social behaviour. The ultimate responsibility for security of data within police forces rests with Chief Constables, however routine exchanges between forces and Local Authorities in relation to addressing persistent offenders perhaps ought not to be at that level. Several recent high profile enquiries into the deaths of children in Scotland suggest that information exchanges between agencies, and particularly between different Local Authorities, could be improved. Therefore a review of partnership interaction may be considered worthwhile.

Members agree that, in light of the continuing major stock transfer, the duty to participate in such strategies should be extended to Registered Social Landlords (RSLs).

COMMUNITY REPARATION ORDERS (CROs)

Whilst members agree that individuals should benefit from CROs, this would require to be carefully handled to ensure that repeat victimisation does not occur. It may also be appropriate not to impose an age limit therefore allowing Courts the option of considering CROs in certain cases. It is further suggested that, in addition to the Police, Victim Support, Locality Managers and Communities, through Community Councils and Neighbourhood Watch, are consulted formally about the nature of the work to be undertaken.

PROTECTION FOR VICTIMS AND WITNESSES

The vulnerability of victims and witnesses to anti-social behaviour should not be underestimated, and there is a need to ensure that victim and witness support services are able to deliver an accessible and effective service. Several Local Authorities in Scotland have already used professional witnesses successfully, and their increased use would be beneficial, especially within communities where fear is prevalent and people are apprehensive about becoming involved. The use of dedicated specialist staff to gather evidence, provide support to witnesses and assist at criminal proceedings in court is proving valuable in racist crime, and child abuse investigations. Members agree that the same methodology would be beneficial when dealing with anti-social behaviour, and a number of Local Authorities have already established Anti-Social Behaviour Units. Whilst Community Wardens perform a visibility and reassurance function, they remain a community safety resource and as such should become involved as witnesses, and as a means of producing proactive intelligence.
ACCEPTABLE BEHAVIOUR CONTRACTS (ABCs)

The wider use of ABCs is supported by members although it should be emphasised that there is no real sanction available when the contract is breached. ABCs have been used successfully in South Edinburgh and it is felt they could evolve as a useful precursor for ASBOs. In addition, their use should be extended to include schools. The relationship between ABCs and other legal options are complementary and it is crucial that a strong interdependence must exist between them.

ASBOs FOR UNDER 16s

The majority of members agree that extending the issue of ASBOs to under 16's should be an option available to Local Authorities, although, as indicated within the document, not before other options have been considered. They could provide an additional sanction for persistent young offenders who blight communities through a course of behaviour. The applicant can ensure that they take the full circumstances into account through effective engagement with all stakeholders to determine the level of support from the family and the likelihood of a successful outcome. Consideration should, however, be given to the additional measures and resources required in response to any breaches. Furthermore, the Youth Court was established to deal with serious persistent offenders aged 16/17, and exceptionally 15 year olds. If extended to deal with minor offences committed by younger children, the system may become overwhelmed, thus limiting its ability to deliver on its original objectives.

GREATER USE OF REPARATION IN THE CHILDREN'S HEARING SYSTEM

Children's Hearings were first introduced in Scotland in 1968, although youth crime today bears little resemblance to that featured in 1968, and society in general operates to different standards and norms. The absence of reparation in most supervision requirements made by a Hearing means that the victim of the crime is distant from the offender. One recurrent feature of youth crime is that it is impulsive, with little thought for the consequences. There is evidence from studies in restorative justice which points towards the fact that reparation at an early stage has a marked impact on future offending, which in itself lends weight to supporting greater use of reparation as advocated within the report.

ELECTRONIC MONITORING OF UNDER 16s

Whilst there is merit in Electronic Monitoring being available as a disposal for Children's Hearings, it should be viewed as only one of a number of options, each of which are related and can be introduced incrementally to reflect emerging behavioural trends. Members expressed caution that, depending on its effectiveness, the community may view it as a 'soft option' particularly if the young person sees it as a 'badge of honour'.

EXTENDING RESTRICTION OF LIBERTY ORDERS (RLOs) TO UNDER 16s

RLOs for under 16's require the support, not only of the family, but agencies such as the Social Work and Education Services. There may also be implications for the Police Service who are called upon to deal with any breaches. Members agree that the period of restriction should be the same as that of an adult, however, any RLO imposed on a child should be subject to regular review.
PARENTING ORDERS

Members expressed support for the introduction of Parenting Orders, subsequent to parental contracts or agreements, to encourage increased responsibility of parents, and agreed that the Children’s Reporter should have the option to apply for a Parenting Order without the need to go through the Hearing System. Reporters will have access to the necessary information that allows them to make this decision in consultation with the Social Work Service. However, members highlighted that this is an area which could prove contentious. Whilst the grounds are sound, many children to whom these Orders will apply exist on a day-to-day basis, far removed from the childhood experiences of many adults in Scotland today, and therefore the view amongst some enclaves of society may fail to perceive the marginal existence experienced by some families. It remains to be seen, given the factors prevailing upon disadvantaged groups, what weight they will place on complying with such a Parental Order. As a short-term measure, such an Order might provide an effective warning to some parents, and may fill a void between warnings delivered by the police and the more formal approach, such as a multi agency child protection case conference. It may also serve to remind some parents that abandoning care of the ‘unruly’ teenager is not an option while the child is under the age of 16 years.

LOCAL AUTHORITY ACCOUNTABILITY

It is desirable that Local Authorities are required to comply with supervision requirements. If such a requirement were not complied with, it would be necessary for the Reporter to require a Sheriff to make an order to enforce implementation of the supervision requirement.

LITTER, FLY-TIPPING AND ABANDONED VEHICLES

Members expressed concern in relation to extending the powers of Community Wardens which may jeopardise their primary function to act as a deterrent, and will inevitably place them in conflict with the Community in certain cases. There would also be potential resourcing implications for the police if Wardens were given this power and were subsequently met with resistance. Members agree that the power to issue Fixed Penalty Notices for litter offences should be given to the police, which would streamline existing reporting procedures that are unnecessarily complicated for what is a relatively straightforward offence. Fast track removal schemes for abandoned vehicles should be facilitated and powers introduced to make this more achievable. However there is a resourcing issue and Local Authorities should be supported to implement fast track schemes. A simplified means of penalising fly-tipping, for example by the issue of fixed penalty notices, would depend on the nature and extent of the individual case.

GRAFFITI

The proposal to ban the sale of spray paint to under 16s is welcomed by members, and considered to be easily enforceable if limited to offences associated with supply.

NOISE NUISANCE

Members agree that Local Authorities should be able to implement a 24-hour noise nuisance service, with Fixed Penalty Notices to curb domestic noise nuisance being issued by Environmental Health Officers. Members do not consider it appropriate for Community Wardens to issue such notices.
ANTI-SOCIAL BEHAVIOUR AND HOUSING

Given that RSLs will increase in number and already have substantial housing stock, it is essential that a statutory duty is placed on them to participate in the production and implementation of anti-social behaviour strategies. Such a duty has effectively been placed on Local Authority landlords through community planning in the Local Government in Scotland Act, and it would be illogical to exclude RSLs. For the proposed Anti-social Behaviour Bill to be effective it is essential that it extends to landlords in the private sector. Therefore the proposals to allow Local Authorities to regulate landlords to ensure compliance, and the use of court sanctions are welcomed by members. Members agree that consideration should be given to the introduction of ‘Behaviour Strategies’ providing guidance on acceptable/unacceptable behaviour, and methods of rewarding/punishing tenants. Rewards for tenants could be based on the duration of tenancy, rent arrears, conduct and maintenance of property. Members also agree that the existing provisions on ASBOs involving housing and homelessness should apply to under 16s.

FIXED PENALTY NOTICES FOR ANTI-SOCIAL BEHAVIOUR

Members welcome the proposal to extend the use of Fixed Penalty Notices by the police to cover low level anti-social nuisance offences. Whether such penalties could be imposed on under 16s is a matter of law in terms of issue, and the process of recovery in the event of non-payment. The delivery of an ASBO on a juvenile will have little or no impact if he/she is still living in an environment where the family tolerate and condone his/her behaviour. If this is the case then the ASBO should be issued along with a parenting order. Issues could also arise in terms of the financial ability of under 16s to pay such fines. Notwithstanding this, it is worthy to note that in the Angus Council area the police and EHOs have been issuing Fixed Penalty Notices to under 16’s for litter offences. This approach was subject to evaluation and was considered to be very positive. There is obviously a need for effective warning and marketing of this approach if it is to be introduced.

DISPERAL OF GROUPS

Members consider the extension of police powers in relation to the dispersal of groups unnecessary as sufficient powers already exist, both at common and in statute law to deal with disorderly groups. Anti-Social Behaviour in the Crime and Disorder Act 1998 is defined as ‘acting in a manner likely to cause alarm and distress’. Whilst the traditional stereotype of teenage youths loitering in groups around shopping centres during the evenings might be considered anti-social, particularly to elderly or vulnerable persons, the Procurator Fiscal could find proving, to a criminal standard, that this causes alarm and distress difficult. There is already a danger of all such gatherings of young people being labelled as problematic, and the introduction of this power could lead to unnecessary conflict and further alienate the police from today’s youth.

Mob behaviour is an entirely different matter, and common law mobbing and rioting permits action to be taken before damage to property or injury to persons has been occasioned. However, as the report suggests, there is merit in focusing on areas where young persons persistently gather, intimidate or harass others, and sensible use of the National Intelligence Model to identify ‘hot spots’ such as these should give clear direction to police managers in addressing the issue, and preclude the requirement for new statutory legislation.
MAKING ANTI-SOCIAL BEHAVIOUR ORDERS MORE EFFECTIVE

Members agree that the power to apply for ASBOs should be limited to Local Authorities and RSLs in close consultation with the police. A statutory power of arrest for breach of an ASBO would considerably strengthen the police response to anti-social behaviour, and would be welcomed by members. It is also agreed that both civil and criminal courts should be able to grant an ASBO on conviction, or in related civil proceedings such as eviction. Again this would streamline current procedures in terms of administrative arrangements. Whilst it makes sense that ASBOs should be able to extend beyond one Local Authority area, the concept of Scotland wide ASBOs may raise issues surrounding proportionality with regards to the Human Rights Act.

LICENSED PREMISES – POLICE POWERS

It is essential that the police are provided with similar powers of entry to Off Licences and Registered Clubs as they have to other licensed premises. A number of forces have recently experienced several instances of traditional registered clubs being run as public houses in order to avert financial difficulties, and a consistent power of entry would be beneficial.

The power under Section 85 is important and supplements common law powers of closure. Natural justice and the Human Rights Act would dictate that the licence holder should have a right of appeal, however allowing such an appeal may delay the power afforded by Section 85 which would normally only be applied in urgent circumstances. Members therefore agree that the powers contained in Section 85 should apply to all licensed premises including registered clubs. In addition, it would be beneficial if the Scottish Executive clarified the powers of the police to close licensed premises in relation to disorder within, or in the vicinity of the premises. This should include both common law and statutory powers.

CLOSURE NOTICES

Members agree that the concept of a power to close down premises which are the centre of illegal activity, disorder or other anti-social behaviour has merit. This could provide a strong and effective solution to such problems although displacement could also be a consequence. Such a power should be given to the Local Authority, as opposed to the police, who should act under the direction of the court. For the proposed power to be effective it would be necessary for it to apply to all premises, including occupied residential accommodation. In terms of limits on the power, consideration should be given to allowing it to be invoked only following the granting, and subsequent breach, of an ASBO. Powers which are too wide ranging and without appropriate limits may be deemed to be ultra vires, or lacking proportionality in terms of the Human Rights Act.

CONCLUSION

One key area which must be highlighted is the need to include communities, not only in the consultation process prior to the introduction of any new legislation, but also by way of keeping them informed of subsequent progress. Many members of our communities feel that nothing is being done to address the problems in their particular area, and they do not see any of the benefits of the good work already ongoing. A strategy to address the fear of crime and anti-social behaviour, which includes marketing examples of good work, as well as putting incidents into some context when they do occur, is important.
Members welcome the positive opportunities contained within the proposals to address the issue of anti-social behaviour, however they stress that such measures should be seen as part of a wider more holistic agenda.

I trust that the foregoing is of assistance to you.

Yours faithfully

[Signature]

Chief Constable
(Hon. Secretary)
"Putting Our Communities First: A Strategy for Tackling Anti-Social Behaviour"

Response from CHILDREN 1st

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Response from CHILDREN 1st

For over 100 years CHILDREN 1ST, The Royal Scottish Society for Prevention of Cruelty to Children, has been working to give every child in Scotland a safe and secure childhood. We support families under stress, protect children from harm and neglect, help them recover from abuse and promote children's rights and interests. We provide 30 services in 17 local authorities as well as 3 national services including ParentLine Scotland which is the free, national telephone helpline for parents and carers.

Throughout Scotland our staff and volunteers use their skills to help children overcome the difficulties in their lives and rebuild trust and confidence. For more information about how we work to keep children safe in Scotland, visit www.children1st.org.uk

1. Introduction

CHILDREN 1ST believes that everyone has the right to live in mutual peace and tolerance. That applies to children, young people, adults and elderly people. In particular we recognise the principles and the details of the European Convention on Human Rights (ECHR) and the UN Convention on the Rights of the Child (UNCRC) e.g. the common theme of respecting the inherent dignity of people of all ages. In our experience of working with children and families, treating people with dignity and respect yield positive results which are sustainable.

CHILDREN 1ST believes that individuals and families have the right to respect for their private and family life, their home and correspondence (Article 8 ECHR) so they should not be disturbed by riotous behaviour at 11pm. However children too have the right to be protected from all forms of violence, to be kept safe from harm and given proper care by those who look after them (Article 19 UNCRC) and that includes not being on the streets at 11pm at night. Yes children must have boundaries but those boundaries do not need to be harsh to be effective.

CHILDREN 1ST is very aware that children and young people are more harmed against than offend. For example figures from the Scottish Children's Reporter Administration reveal that referrals of children in 2001 – 02 show an increase of 247% in lack of parental care cases. CHILDREN 1ST is also very conscious that many children and young people face problems which are complex and require a range of responses from different public sector agencies. Indeed there are a number of research projects currently underway which will be instructive. For example new research sponsored by the Economic & Social Research Council and undertaken by Edinburgh University has revealed that programmes aiming to change young offenders and those that support victims need to be re-thought because they are often the same people. (See Appendix 1)

It is important to get the public policy balance right. 'Protecting and Empowering Communities' makes the clear connection that "the way parents bring up their children is a crucial factor in the way they behave later on". (Page 2) However CHILDREN 1ST has been concerned that the Scottish Parliament chose to ignore the strong and repeated recommendations of the UN Committee on the Rights of the Child, in October 2002, to ban the physical punishment of children when it had the opportunity to do so under Section 43 of the Criminal Justice (Scotland) Bill. The evidence is clear that if adults hit children then children are more likely to hit other children and display aggressive behaviour in adulthood e.g. hitting partners. (See page 35 of 'Putting our Communities First').
CHILDREN 1ST is, therefore very concerned that children and young people are being increasingly demonised and punished rather than supported and their rights respected. Scotland must retain its focus on the welfare and rights of children while addressing their behaviour. It is in everyone’s interests to make sure that children grow into responsible adults. Scotland must extend its child and family centred approach if we are to deliver real and sustained results for all of Scotland’s communities.

Putting Our Communities First Consultation

"Putting our Communities First: a strategy for tackling anti-social behaviour" is designed to "put Ministers firmly on the side of communities and on the side of every ordinary, decent, law-abiding person in Scotland, young and old." (First Minister, SE News Release SEc272/2003) Encouragingly, the First Minister’s announcement placed equal emphasis on the need to tackle the causes of anti-social behaviour as well as firmly deal with the results. CHILDREN 1ST believes that you must understand the causes before you can deliver effective strategies.

The Consultation document is described as covering all people who are perceived to be anti-social. Margaret Curran, Minister for Communities stated “Our strategy recognises that anti-social behaviour is caused by all age groups, not only the young and not only in deprived communities.” (Ibid) She specifically mentions “individuals, families or businesses and other bodies” in the Consultation. However the extensive section on “Preventing Anti-social Behaviour” focuses on “Children and Families” pages 23 - 40.
2. Project Delivery Not Punitive Laws

CHILDREN 1ST recognises that to make a real difference in the lives of children and families who are struggling, it is important to deliver a range of services tailored to their differing needs. In keeping with the Scottish tradition we believe that support rather than punishment is the most effective long-term solution to often very complicated social and personal difficulties.

CHILDREN 1ST has, therefore, worked with the Scottish Executive in developing project work which will make a real difference to the lives of children and families. Importantly, CHILDREN 1ST is working with those children and families who are most socially excluded and who would be perceived to be a key target group of this consultation. As the Scottish Executive has recognised the value of this approach by agreeing to finance it, with monetary support from CHILDREN 1ST too, it is important that this strategy of project delivery is closely monitored, evaluated and extended. That will help the children, their families and the wider community.

CHILDREN 1ST is very conscious of the policy development and investment in services for children and families across Scotland since 1997. The introduction of a free part-time place for three and four year olds in nurseries, the establishment of Childcare Partnerships, the introduction of Sure Start Scotland and publication of the Scottish Executive’s Childcare Strategy Statement are just some of the initiatives which will collectively make a difference in the lives of children and families in Scotland. More needs to be done and the focus should be on the services which work for the target group. The voluntary sector is a willing partner in helping to deliver the projects and services which work.

It is important to have a period of policy and service stability as well as co-ordination. Improving the cohesion and signposting of parenting support is a key priority for the Children and Young People’s Group within the Education Department of the Scottish Executive. A series of meetings has been convened over the summer with parents, service providers and policy makers to take account of their views. In addition, a leaflet on positive parenting will be forthcoming from the Justice Department to coincide with introduction of Section 51 of the Criminal Justice (Scotland) Act.

Instead of adopting extensive and draconian measures, we would urge the Scottish Executive to continue its current policies of supporting and helping children and families as the policy is both appropriate and effective. We cite, as an illustration, information on our projects.

Project - Directions

The Scottish Executive is providing significant funding through the Youth Crime Prevention Fund for four projects, three of which provide highly individualised work undertaken with children and families (the Directions Projects) and the fourth is a family group conferencing project. The CHILDREN 1ST Directions projects aim to identify children at risk of offending and prevent offending or re-offending by working with the whole child in his/her environment whether this be in school, in the community or at home. There will be an emphasis on parenting. This may be in groups or on an individual basis.

The focus will be on achieving a change in a range of issues such as increasing school attendance to improve the child’s educational attainment as well as reduce opportunities to be involved in anti-social behaviour and offending. How those changes will be achieved clearly requires a range of sustained activities and skills.
Users of "Directions" will have been identified as problematic and CHILDREN 1ST, from experience, will devise an individual package of support to accommodate any or all of the identified problem behaviours associated with an increased risk of offending:

A high degree of impulsiveness and hyperactivity
Low school attainment
School attendance issues
Poor parental supervision but harsh and erratic discipline
Parental Conflict

We will work to reduce these risk factors and enhance the protective/resilience factors which we believe will protect young people from involvement in offending by:

Drawing up an agreement with referring agencies outlining CHILDREN 1ST's role with the families and children they refer.

Working with families in seeking solutions to their own difficulties, building upon a family's strengths and what it is doing well. This will include a mixture of individual and group work with role play, group discussion, counselling, advocacy etc.

Work with each child and young person focusing on offending issues and delivering counselling, use of rewards, problem solving and the use of individualised learning packs.

Post assessment a working agreement will be drawn up with the family and there is likely to be regular intensive contact.

Project staff will be prepared to address any problems which are uncovered that had not previously been detected by other agencies who had less frequent contact with the family.

Work with schools to improve the child's school experience and improve their attendance.

Health promotion work for all the family.

Interventions aimed at improving parenting skills and help parents improve communication between themselves and their children.

Behaviour management for both parents and children.

Establishing routines in the home.

Helping parents improve communication between school and parents.

Help children and families build social support networks in the community.

We will make use of the family group conferencing approach.

The contracts which CHILDREN 1ST operate are based not on punishment but on rewards. Also the focus is on delivering support to achieve those rewards. Clearly this strategy requires a multi-agency approach and CHILDREN 1st is committed to working with all agencies to deliver what is in the best interests of the child, their family and more broadly the
best interests of the community. This individual but broad and sustained approach will be more effective in delivering the safe communities which we all want - safe for children, young people as well as adults. The Scottish Executive should focus on extending such projects across Scotland to deliver an unmet need.

**Project – ParentLine Scotland**

From its practical work with children and families on a daily basis, CHILDREN 1st decided to set up ParentLine Scotland which is the free national telephone helpline for anyone caring for a child in Scotland. Serviced mostly by volunteers, ParentLine offers a quality, non-judgemental service particularly to parents who seek help and support in the task of caring for children. ParentLine works to help improve the lives of families and through this contributes to the best outcomes for children.

CHILDREN 1st currently contributes £185,940 of its voluntary income to enable ParentLine Scotland to operate at its current level. Since 1999, ParentLine has received over 40,000 calls from parents and carers across Scotland. ParentLine is able to answer approximately 60% of all calls at switchboard although the proportion of callers who are actually able to speak with helpline staff is only 35%. A significant number of calls to the helpline relate to discipline and behaviour issues – 26%.

ParentLine's service is an invaluable resource to some of Scotland's most vulnerable families. An application for money to extend the service to meet demand has been made to the Scottish Executive.

**Project – COZ**

The Chill Out Zone (COZ!) in Bathgate has been funded through Lottery "New Opportunities Fund" and is managed by CHILDREN 1st. The West Lothian Council and NHS Trust are also partners in this new venture. COZ has been set up to serve the West Lothian area. We opened the doors on 23rd June and demand for this unique service has been high with 1,470 young people through so far.

As well as providing a safe place for young people to drop in and enjoy themselves the project is tackling the following issues:

- Sexual health, contraception, pregnancy advice, sexual activity, and sexuality
- Drugs and alcohol use and abuse
- Smoking and related issues
- Mental health issues e.g. emotional and relationship issues, depression, self harm and suicidal thoughts
- Healthy eating/Lifestyles
- Leisure and sporting activities
- Chronic health issues e.g. asthma, epilepsy
- Dental health
- Employment, education, financial and legal issues
- And more .........

There is a clear need to offer children something to do and a safe place to go. Once there, a number of key messages and supports can be accessed. Such a facility helps to keep children and communities safe.
Project - Child Protection Through Sport
This project has been developed in conjunction with sportscotland to assist and support the 72 governing bodies of sport in Scotland to establish policies, procedures and programmes which promote the protection of children and vulnerable adults through good practice.

CHILDREN 1st recognises the range of benefits to children from being involved in sport including better concentration, team working skills, improved hand and eye co-ordination and healthier lifestyle. We also recognise that it is an important diversion from 'anti-social behaviour'. In communities it is important to provide children and young people with more opportunities to involve themselves in social behaviour than in anti-social behaviour.

However electronic monitoring for under 16s has been shown to be counter-productive. "Electronically monitored curfew for 10- to 15-year-olds – report of the pilot" is a Home Office Occasional Paper published in 2000. Interviews revealed some negative results of electronic monitoring in relation to sport:

"I played basketball... but when I had a tag on I didn't really play sport because of it, because when I run it was banging on my ankle and it really hurt." (15 year old)

"He was ashamed of it and he hid it. He pulled his sock through it and over it so no-one could see it. He stopped playing football and anything else which might affect it." (Grandmother of a 15 year old)
3. Policy Based on Practice

CHILDREN 1st has a commitment to develop policy based on practice. We want to focus on delivering effective services and supporting realistic and pragmatic strategies. That requires input from staff, volunteers and users so that our policy reflects the needs of children and their families. After research, meetings and discussion, CHILDREN 1st wishes to make the following comments and has identified different mechanisms for delivering the Scottish Executive’s stated objectives including action to “change the behaviour of the anti-social minority”.

Defining Anti-Social Behaviour

In the 'Introduction' and in Section 2 “A Strategy for Tackling Anti-Social Behaviour”, some indication is given as to the kinds of behaviour which will be considered as unacceptable including intimidating residents, truanting, making graffiti or causing noise disturbance. Truanting would appear to be the only behaviour confined to children and young people of school age. The reasons for truanting can of course be various e.g. bullying and calls to ChildLine Scotland demonstrate that the problem is significant amounting to one in three calls.

Causing noise disturbance can also be problematic with the minimum levels of sound insulation in properties perhaps being out of date for current audio technology. Noise disturbance can also be symptomatic of a more significant problem e.g. domestic violence.

Some children need support to even begin to define what is acceptable behaviour and what is not. Those messages also need to be reinforced with some families. So the projects delivered by CHILDREN 1st focus on this key area of definitions. Clearly there is no point in anyone being issued with an Anti-social Behaviour Order or an Acceptable Behaviour Contract if there is no real awareness that certain kinds of behaviour are a problem. Once that has been agreed it is possible to move on to working with the parents and families but that external support must be available.

Youth crime, youth disorder and anti social behaviour

Many young people do not participate in this – it is as much a problem for them. Half of the young people surveyed for the Scottish Crime Survey 2000 had been the victim of at least one unpleasant incident or crime since the beginning of the previous summer holidays. (Scottish Executive publication May 2000) It is understood that there are around 1 million children under 16 in Scotland today. Only 1.4% are referred to the Reporter on offence grounds. While 0.3% (2,700) have committed more than 3 offences only 0.1% (785) have committed more than 10 offences and are persistent young offenders. (See Appendix 1)

There has been much media and political interest in perceived levels of youth crime. The proposed strategy which focuses on punishment conflicts with the ethos of the Children’s Hearing System which is to uphold the welfare and the rights of children while addressing their behaviour. This approach is matched with a focus on the child and family based on the needs of individual children.

Location of Anti-Social Behaviour

Anti-social behaviour is not isolated to deprived areas. There are common themes running through the lives of children and young people wherever they live which can lead to unacceptable and dangerous behaviour. A range of factors will determine how a child responds to for example peer pressure, problems with education (education failure can be a
pre-cursor to delinquency) availability of drugs and alcohol in the local area (a crime driver if abused) as well as difficult family relationships.

Very often youth disorder and (petty) youth crime are symptoms of wider problems in the life of a child. An inter-agency approach, which upholds the welfare and rights of children is required. So an agency approach which deals with the symptoms rather than the problems is inappropriate e.g. a housing response results in anti-social behaviour orders.

Of course public and voluntary agencies need resources to implement the often intensive and staged work needed. There is a need for money to be channelled into what's going well and that requires work with whole family e.g. supporting parents with their responsibilities.

Lack of Resources
CHILDREN 1st is aware of the shortage of qualified and experienced social work staff across Scotland although there are acute problems in certain local authority areas. Realistically, any proposals which impose additional burdens on already over-stretched staff will fail to deliver. Until that problem is addressed within the existing systems, then it is difficult to seriously consider further change.

This problem has been well-documented including the Scottish Executive commissioned research "Home Supervision" Social Research Findings 04/2002. (See Appendix 2)

Power to Disperse.
All Bills brought before the Scottish Parliament must be compatible with the European Convention on Human Rights (ECHR). In addition there are a number of policies and Conventions to which the Government should refer e.g. the Scottish Executive’s Childcare Strategy Statement makes the clear connection between the development of public policy and the UN Convention on the Rights of the Child (UNCRC). CHILDREN 1st firmly believes that any Bill must be compatible with both the UNCRC and the ECHR and some of the proposals contained in this consultation fail to respect the rights and dignity of children and young people in Scotland.

For example we believe that the Scottish Executive should not give the police any powers to disperse groups where there is an allegation of 'anti-social behaviour'. Article 11 of the European Convention on Human Rights (Incorporated into domestic law by the Human Rights Act 1998) relates to Freedom of Association. Article 11.1 states that: “Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.” (See Appendix 3)

Tagging
Initially there was a very strong feeling that tagging was an expensive gimmick with no positive support. For example although the monitoring company would know where a child is, there would be no obligation or information on their status e.g. being abused/assaulted in the home, involved in prostitution or under the influence of drink or drugs.

CHILDREN 1st has examined "Electronically monitored curfew for 10- to 15-year-olds – report of the pilot" which is a Home Office Occasional Paper published in 2000. (See Appendix 4) The document raises a number of issues and it would be helpful to have further information on any proposed electronic monitoring in Scotland:

1) Cost and how it delivers 'best value'.
2) The effect on the family - the tag effectively punishes the family too, could build up resentment towards the offending child and work against the stated objectives. "It hits the whole family. If you want to go out as a family, you can't. We all stay in. We're not that kind of family to go out and leave him. You watch your time more and have to be back." (Father of a 15 year old)

Acceptable Behaviour Contracts (ABC)
The Scottish Executive proposes to encourage wider use of 'Acceptable Behaviour Contracts' for children and their families. The contract sets out the behaviour that a person has agreed to stop and can set out the support which individuals can expect to receive in order to change their behaviour (Page 24)

CHILDREN 1ST believes that such a contract will only be acceptable after a range of interventions and support has failed to deliver results. They should not be routinely used or used in the 'first instance'. An individual's/family's right to receive the promised support must be an enforceable right.

It is suggested that "breach of an ABC or a refusal to enter into a contract without a reasonable excuse should be considered relevant evidence for an application for an ASBO or a Parenting Order depending on the circumstances." (Ibid.) It would be unjust if that were permitted given the number of reasonable circumstances when a contract may not be appropriate or deliverable e.g. lack of social work assistance.

Case 1
Single mum who lives in fear of threats from her violent ex partner. She has been issued with an ABC which covers all of her children— the eldest being 10. One of the children has a short attention span and is hyper active. The parent is finding it difficult to set limits and helping him learn self-control. The ABC was concluded prior to support being put in place.

Anti-Social Behaviour Orders (ASBOs)
This is a housing led initiative and there is a real concern about their current use. The best approach is explanation through example:

Case 1
A family is the subject of an ASBO. The housing department sought the ASBO in the first instance. Preventive, voluntary measures through social work were not possible as all resources are taken up by statutory work. Not enough other agencies operate locally to deliver family support work.

Once the tenant has been issued with ASBO then the whole family is required to sign an ABC even although there has been no involvement from support agencies at an early stage. The ABC applies to all the children even to a child aged seven. It is important to note that the ASBO is a civil matter and the age of criminal capacity is currently 8. If there is a breach of the ASBO, it becomes a criminal matter.

Case 2
A single parent has been issued with an ASBO. The resulting ABC clearly puts the onus on the children as they are told that if they misbehave, they will cause the family to lose the house. This is a huge burden for young children to face especially if there is no support available to them and they 'do not fit into the street'.

11
As the censuré is eviction, there is a danger that families will blame the child to ensure that the tenancy continues. They may choose to argue that the child would be better taken into care in order to save the tenancy for the family as a whole and everything that goes with it e.g. attendance at the local school.
4. Conclusion

CHILDREN 1ST believes that early intervention and support works best for children and their families. The vast majority of parents want the best for their children however misguided others consider the detail of that to be.

Support for parents has to be non-judgemental and it has to be sustained e.g. through parenting classes which build up strengths, focus on consistency and liability, works on establishing and maintaining boundaries and accepts the person without-condoning the deed.

There is clearly a drive to get action on anti-social behaviour but CHILDREN 1ST believes that drive is already underway with the new projects which the Scottish Executive is funding both on a local level and across Scotland. It is important to evaluate their progress before moving on to a new strategy. It is also important to affirm a strong commitment to Scotland’s unique system of dealing with juvenile justice - a child and family centred approach based on the needs of individual children.

However CHILDREN 1ST would propose that the following would add value to the current services for children and families:

Children’s Hearing System
Enable Parenting Orders to be made through the Children’s Hearing to ensure it can deliver more for children.

Crisis Intervention Team
The teams that exist to focus on mental health issues set an instructive example and best practice can be drawn from their operation.

26% of calls to ParentLine Scotland refer to behaviour issues with parents just not knowing what to do. They want to set boundaries and they have tried various methods including physical punishment but they just know it does not work. For the more extreme cases, parents do need immediate help and it would be useful to have a properly resourced, dedicated crisis support unit for parents including dedicated police officers. Staff would require specialist training. There would also have to be local diversionary facilities so that alternative behaviour strategies can be implemented e.g. sport.
The Scottish Executive has posed a number of specific questions and after consulting with project staff and senior managers in CHILDREN 1st, we would submit the following responses:

**Anti-social Behaviour Strategies**
1. Should the formal duty to participate in the preparation of anti-social behaviour strategies be extended to Registered Social Landlords (RSLs), particularly where major stock transfer has taken place? Should there be a formal duty on other community planning partners to be involved? Or is it sufficient that involvement of other community planning partners be referred to in guidance only?
   A. All community planning partners such as social work, health and education must be formally involved in the preparation of such strategies. The partnership approach is key to the success of the strategy.
2. What more should be done to promote effective information exchange to prevent anti-social behaviour?
   A. More resources to ensure it is recognised as an essential operational task.

**Community Reparation Orders (CROs)**
3. Should there be programmes for individuals as well as groups? Does this raise particular issues for victims?
   A. There is no need to provide the courts with a new reparation order. CSOs and the new SAOs are entirely adequate.
4. Should we impose an upper age limit so that CROs are targeted at young people, i.e. those up to 21 years of age?
   A. See answer to question 3
5. Which organisations/agencies should be consulted formally about the nature of reparative work to be undertaken?
   A. See answer to question 3

**Protection for Victims and Witnesses of Anti-social Behaviour**
6. What more could be done to support victims and witnesses of anti-social behaviour?
   A. Victims and witnesses will be children too! We support the establishment of a dedicated child witness support service.
7. What are your views on the greater use of professional witnesses?
   A. We welcome the introduction of the Vulnerable Witnesses (Scotland) Bill and recognise that a range of measures are necessary to ensure victims can give their best evidence at court.

**Acceptable Behaviour Contracts (ABCs)**
8. Do you support wider use of ABCs?
   A. Not as proposed. The focus should be on offering support and ensuring opportunities for social activities.
9. What are your views on the range of situations where ABCs would be appropriate? For example, do you support use of ABCs in the hearings system? In schools?
   A. See above
10. What are your views on the relationship between ABCs and legal options such as ASBOs and Parenting Orders? For example, should the court be required to consider the failure or refusal to participate in an ABC or a Parental Contract when considering an application for a Parenting Order?
A. It is inappropriate to direct such cases to court.

Anti-social Behaviour Orders (ASBOs) for Under-16s
11. How should ASBOs be extended to under-16s?
A. No, we do not wish to see them extended. There must be a commitment to resourcing the Children’s Hearing System effectively.

12. Do you support the introduction of individual support orders linked to ASBOs for under-16s?
A. See above

13. Are there any implications of extending ASBOs to under-16s in relation to the power of RSLs to apply for ASBOs?
A. See answer to Q. 11

14. Do you agree that the Youth Court model, where this operates, should be amended to include young people under-16 years of age who are referred to the criminal justice system by the Procurator Fiscal for breach of an ASBO?
A. No and see answer to Q. 11

15. How should the applicant ensure that they take the full circumstances of the family into account?
A. It is not possible so ASBOs are inappropriate.

Greater use of Reparation in the Children’s Hearings System
16. What are your views on our proposals to consider increasing the emphasis on reparation both as action that may be taken by the Reporter and as a condition of a supervision requirement made by the Children’s Hearing?
A. Yes we believe reparation is valuable as a tool to enable young people to understand the implications of their actions on others.

Electronic Monitoring of Under-16s
17. What are your views on the making electronic monitoring a disposal for the Children’s Hearings system?
A. We believe electronic monitoring of under 16s is expensive and fails to ensure that children are safe e.g. as acknowledged in the consultation, home could be the least safe place to be if the carer is abusing dink or drugs.

18. Do you think that the option of electronic monitoring should be available alongside disposals other than secure accommodation?
A. No. In practice what may happen is that people who would never have been sent to secure accommodation are routinely tagged as an ‘extra’ punishment. We are aware that there is a shortage of secure accommodation but if that is the disposal which a child needs then it is in his/her interests, and that of the community, to be sent to secure accommodation.

Extending Restriction of Liberty Orders (RLOs) to Under-16s
19. Do RLOs for the under-16s in court require any additional support arrangements?
A. We do not believe the restriction of liberty order to be effective and believe that access to projects and services are proven effective measures focusing on individual needs.

20. The period of restriction for an adult to a place is 12 hours per day and/or from a place for 24 hours a day for a period up to 12 months. What should be the period of restriction for an RLO for those under-16s?
A. See answer to question 19.
Parenting Orders
21. Do you agree that local authorities and the Reporter should be given the power to apply to the court for a Parenting Order? Should the Reporter be able to make an application at his own initiative or at the direction of the hearing?
A. Support must be offered to parents and families as a first step. It is not in the parent’s or the child’s interests to have a potentially punitive Parenting Order imposed; breach of the order is a criminal offence and the penalty is a fine not exceeding £1,000. For poor families the process and the punishment may be intolerable.

Organisations working with children often enter into voluntary agreements with parents and children which seek to specify what needs to be done and what support is necessary from all parties. Such voluntary contracts have proven to be successful. However the services are not available to all who need them.

22. Should courts be able to impose a Parenting Order at their own initiative when dealing with other proceedings in relation to a child and their family?
A. No

23. Are the grounds we describe sound? Should the welfare of the child be grounds for a Parenting Order as well as behaviour?

24. Should the failure to ensure attendance at school be grounds for a Parenting Order? How should this work alongside existing powers to make attendance orders?
A. No

25. How long should a Parenting Order normally last for? Should it be capable of renewal?
A. See answer to question 21.

26. How should applicants for Parenting Orders ensure that all relevant information about a parent is first taken into account?
A. See answer to question 21. That information should already have been gathered if there has been a joined up approach to helping the parent and child.

Local Authority Accountability
27. Do you agree it would be desirable to require local authorities to comply with supervision requirements?
A. Yes. The local authority may work with voluntary organisations to meet obligations under the supervision requirement.

28. Do you agree that at the hearing’s direction a Reporter request a Sheriff to make an order to enforce implementation of the supervision requirement?
A. It is certainly desirable but it may not be practicable. We are very aware that however committed a local authority may be, a shortage of staff makes fulfillment of obligations, even legal ones, impossible. That is a management reason which is of little comfort to children for whom a supervision requirement has been made. There is a real danger that such matters will be routinely referred to court at some expense in terms of time and money.

29. Should the hearings and Reporter have a role in alerting Scottish Ministers to failure by a council to ensure a child before them receives appropriate education?
A. Yes only after the Reporter has raised the issue with the relevant authority and required remedial action within a specified time. The objective has to be that the child’s right to education is respected.

Litter, Fly-tipping and Abandoned Vehicles
30. Should the power to award Fixed Penalty Fines be given to community wardens, and/or to the police?
A. No
31. Do local authority and other bodies have sufficient powers to clear litter?
A. Yes, but they do need to use them. Scheduled services must take account of changing patterns in society and amend collections accordingly e.g. uplifting litter in the evenings.

32. What level of charges would cover local authorities’ present costs for removing, storing and disposing of abandoned vehicles?
A. This area is not within our competence.

33. Is the scope of the present regulations governing the removal of vehicles causing an obstruction sufficient?
A. This area is not within our competence

34. Would simplified means of penalising fly-tipping, similar to those existing for litter, be appropriate, and if so, what form should these take?
A. This area is not within our competence as we understand it applies mainly to adult offenders.

35. Should local authorities have the power to examine waste transfer documents?
A. This area is not within our competence.

36. Should the fine for fly-tipping which may be imposed on summary proceedings be doubled to £40,000?
A. This area is not within our competence as we understand it applies mainly to adult offenders.

Graffiti
37. Do you agree with our proposal to ban the sale of spray paint to under-16s?
A. While we appreciate the sentiment, we believe this approach to be ineffective – would shops really be confident to challenge a 15 year old? What about children seeking to decorate their room or participate in an art project for school?

38. Do local authorities require further powers to deal with graffiti?
A. No

Noise Nuisance
39. Should we require or enable local authorities to implement a night-time noise nuisance service and implement additional powers to enable local authority Environmental Health Officers and/or community wardens to issue Fixed Penalty Notices of £100 to curb domestic noise nuisance? If so, what is the best approach?
A. We believe the current standards of sound insulation in homes need to be revised.

40. Should we extend the service from a night-time (11.00 pm to 07.00 am) service to a 24-hour service?
A. There is a need to tackle noise disturbances in the streets which can be equally intimidating to children and adults.

41. Should the standard of proof for a statutory noise nuisance be changed to allow a more flexible approach in this area? If so, what might such an approach involve?
A. See answer to question 39

Anti-social Behaviour and Housing
42. Should RSLs be given a statutory duty to participate in the production and implementation of anti-social behaviour strategies?
A. Housing should be represented on the community planning partnership and the input would be appropriate at that forum.

43. Should the Anti-social Behaviour Bill give local authorities powers to:
Regulate landlords in an area so that they control anti-social behaviour?
Apply to the court for sanctions against the private landlords with individual properties where there is anti-social behaviour?
Use a combination of these approaches?
A. This area is not within our competence as we understand it applies mainly to adults.

44. Do you think measures to reward good tenants are appropriate? If so, what more needs to be done to encourage greater use of such measures?
A. Any rewards to tenants should recognise the children in the home too!

45. Do you agree that existing provisions in legislation on housing and homelessness linked to ASBOs should apply to ASBOs involving under-16s?
A. See answer to question 11.

Fixed Penalty Notices for Anti-social Behaviour
46. Do you support extending the use of Fixed Penalty Notices levied by the police to a range of low-level, anti-social and nuisance offending?
A. No
47. Should such penalties be imposed on under-16s?
A. No

Dispersal of Groups
48. How can we strengthen the powers of the police to tackle disorderly behaviour amongst groups?
A. Give children and young people a variety of safe places to go!

49. Do you agree that it would be useful to extend police powers in respect of groups of young people in the way proposed?
A. No

Making Anti-social Behaviour Orders More Effective
50. Do you agree that the power to apply for ASBOs should be limited to local authorities and registered social landlords (in consultation with the police)?
A. We accept that the power now exists in relation to local authorities and to RSLs. We believe the power should only be used as a last resort so it should not be sought until all relevant agencies have been involved in the case e.g. those working with children. It should only be applied for with the approval of key agencies such as social work and health and after all other measures have failed. RSLs must follow this process as well as local authorities.

51. Do you agree there should be a statutory power of arrest for breach of an ASBO?
A. See our answer to number 11.

52. Do you agree that the court should have the power to impose an ASBO on conviction for a criminal offence, where there is evidence of persistent anti-social behaviour?
A. See our answer to number 11.

53. Do you think the court should have the power to grant an ASBO in related civil proceedings, such as an eviction hearing, where there is evidence of anti-social conduct?
A. See our answer to number 11.

54. Do you agree that the prohibitions in an ASBO should be able to extend beyond a local authority area, where this is necessary to protect persons from further anti-social acts by the individual concerned?
A. See our answer to number 11.

Licensed Premises - Police Powers
55. Do you agree that the police should have the same right of entry to off-licences and registered clubs serving alcohol as they have to licensed premises?
A. We believe it is important to work with children and young people so that they do not abuse alcohol.
56. Do you agree that there should continue to be no right to object for a licence-holder against an order issued by the licensing board under Section 85 of the Licensing (Scotland) Act 1976?
A. This area is not within our competence.

57. Do you agree that the procedure for a closure order under Section 85 should apply to all licensed premises and to registered clubs?
A. This area is not within our competence.

58. Do you agree that we should clarify the powers of the police to close licensed premises where there is, or is likely to be, disorder in them or in their vicinity?
A. This area is not within our competence.

Closure Notices
59. Do you agree that there should be a new power for the police, under the direction of a court and following consultation with the local authority, to close down premises which are the centre of illegal activity, disorder or other anti-social behaviour?
A. We have not formed a view on this matter.

60. Should the power be limited to non-residential premises and houses in which no one is formally residing or should it apply to all such premises, including occupied residential accommodation?
A. We have not formed a view on this matter.

61. Should there be any limits on the power and how otherwise should it work?
A. We have not formed a view on this matter.

11th September 2003
Appendix 1 - Determining the Nature and Size of Anti-Social Behaviour
There is a danger that important decisions are made without access to relevant information. For example we welcome a number of research projects commissioned by the Scottish Executive which will help to better understand the many issues around, as well as the levels of youth crime:

Measurement of the Extent of Youth Crime in Scotland
The Scottish Executive has contracted DTZ Pieda Consultancy to undertake research which should be published in October 2003:
"Research attempting to provide a clear understanding of the extent of youth crime and the fear of youth crime in Scotland. It will provide an accurate picture of the crimes committed by juvenile criminals and the numbers involved, and estimate the fear of youth crime." (Source: Scottish Executive)

Survey Of The Development And Well-Being Of Children And Adolescents Looked After By Local Authorities In Scotland
The Scottish Executive has contracted ONS to undertake research which should be published in January 2004:
"This study examines the prevalence of mental health problems of children aged 5-15 who are being looked after by local authorities in Scotland. It focuses primarily on the impact and/or burden of these mental health problems in terms of social impairment and disruption to others." (Source: Scottish Executive)

Evaluation of Secure Care Outcomes
The Scottish Executive has contracted Glasgow University, Stirling University and Strathclyde University to undertake research which should be published in October 2005.
"This study will investigate the effectiveness of secure care in meeting the needs of young people, their families and communities. The study will look at how young people reach secure care, the interventions they receive and the early outcomes after leaving secure care. It will inform decision making about the most effective use of secure accommodation in Scotland." (Source: Scottish Executive)

Evaluation of the Fast-Track Hearings in Scotland
The Scottish Executive has contracted Glasgow University, Stirling University and Strathclyde University to undertake research which should be published in January 2005.
"This project evaluates the setting up, operation and effectiveness of fast-track children's hearings, currently being piloted in three geographical areas of Scotland. It will provide an overview of the cost-effectiveness of fast track hearings and the associated programmes/interventions in delivering successful outcomes compared with conventional hearings." (Source: Scottish Executive)

NCH Inquiry
Furthermore NCH Scotland's Inquiry into Kilbrandon is not expected to report until early in 2004. NCH is currently undertaking an inquiry into the operation of the Children's Hearing System in Scotland and is asking further key questions including:
• Who are the young people who offend and what are their circumstances?
• Who is responsible for youth crime? How much is it the young people themselves? How much their parents? The communities they come from? How much do we all share responsibility?
• What do young people think causes crime and what is the best way to tackle it?
• How can we improve our systems and practices and raise public confidence?
NCH Scotland has taken evidence from a wide range of interests across Scotland and beyond, including young people themselves.

There is also a danger that insufficient focus is given to addressing misinformation and tackling people’s very real misconceptions about the incidence of crime in Scotland. “The British Crime Survey (BCS) 2001 found that older men and women aged 65 plus had the lowest rate of victimisation (0.7%) compared to the 16-24 age groups which accounted for 20.1% (men) and 8.8% (women). It also found that more men aged over 60 (16%) than women (11%) said that they thought they were likely to fall victim of robbery or mugging in 2002. On average older women (17%) are more likely to be worried about crime compared to men (9%).

However, the average percentage of older people aged 60 plus worried about crime is significantly lower than for young people aged 16 – 29. Approximately 3% of older women and 1% of older men aged 60 plus felt unsafe alone in their home at night. 33% of older women and 9% of older men aged 60 plus felt unsafe when out walking alone after dark. Older people are not more at risk, in fact crimes against this age group are rare. But since they tend to live alone, and may have a lower income and fewer sources of social support from family members and friends, it could therefore take them longer to recover if they are a victim. Many older people do not have any insurance and even if they have, some items because of their sentimental value may be precious and irreplaceable.”
(Source: Age Concern Fact sheet “Crime Prevention for Older People” published in November 2002)


- 38.6% of men and 36.5% of women over 60 worry about either themselves or someone they live with becoming a victim of crime.

- 42.7% of men and 46.1% of women over 60 believe there is more crime in their area than 2 years ago.

- Figures show that 1.5% of men and 2.7% of women over 60 have experienced housebreaking during 1999.

- 3.8% of men and 2.9% of women over 60 have experienced vandalism.

- 0.6% of men and 0.4% of women over 60 have experienced violent crime in 1999 – in comparison 14.9% of men between 16-24 experienced violent crimes.
Appendix 2 – Resource Problems
Lack of resources has been well-documented including the Scottish Executive commissioned research "Home Supervision” Social Research Findings 04/2002.

If a Children's Hearing is satisfied that compulsory measures of supervision are necessary, it may make a supervision requirement under s70(i) Children (Scotland) Act 1995. Home supervision is the non-legal term given to the supervision requirement when the child remains at home. Over 6,000 children were on home supervision with their parent or guardian in 2001. The overall aim of the study was to examine the effectiveness of home supervision in promoting beneficial changes in the life of the child.

In the three month period at the beginning of the year preceding the annual review (for 112 of the 189 cases for which data was available), there were 659 face to face contacts with the child/family concerned, or one visit per fortnight on average. There were, however, 77 cases which were either unallocated for part or all of this time and/or for which no case notes were available which indicated the frequency of contact. If these cases were included the average number of visits would be lower.

Panel members, teachers, reporters and social workers all identified the need for more social work time as the single most important factor which would improve home supervision. A sizable number of cases, 42 (22%), were identified as having no social worker attached to the family for a period of months in the year prior to annual review. These cases are colloquially known as 'unallocated' although some were allocated but extended periods of sick leave meant that no direct social work input was, in fact, being provided. There is a tension inherent in the system over the availability of social work resources. While no doubt panel members reach decisions about home supervision with awareness of the local resource context, their primary task, in accordance with legal requirements, is to reach decisions in the best interests of each individual child coming before a hearing. This in turn can pose demands on a service required to operate within a cash-limited budget and the result can be that the system fails the children and their family.
Appendix 3 – Freedom of Association

When first examining the nature of the freedom of association right in 1977, the European Commission on Human Rights described the right as, “a guarantee of the freedom of natural persons and legal entities to collaborate on a voluntary basis within an organisational context without governmental intervention, in order to realise a mutual goal.”

This right is limited by s11(2) where 1) that limitation is prescribed by law, and 2) it is necessary in a democratic society in the interests of national safety, territorial integrity, public safety, interests of third parties, the prevention of riots and offences, and the protection of health and public decency. CHILDREN 1st believes the power to disperse contradicts the European Convention so such a section can be included in a Scottish Bill. The power is designed to prevent any remote risk of minor disorder. But that constitutes an unnecessary intrusion on the liberty of the individual. The law cannot allow a constable to give orders to someone where there is no threat of crime or danger to safety!

Human Rights are a balancing act: you have the right to do something until the exercise of that right infringes the rights of others. So Article 8 of the ECHR (which accords the right to respect for private and family life, home and correspondence) may appear to support measures against anti-social behaviour but in fact it demonstrates the importance of respecting the rights of children and families too. For example tagging a child limits the ability of the whole family to get on with their lives.

An Anti-Social Behaviour Bill for England and Wales is currently into its second reading in the Commons. The Bill includes a number of proposals which have been mirrored by the Scottish Executive’s proposals in the consultation document. One of these is the power to disperse groups. The English Bill gives police and “community support officers” the power to disperse groups of under-16’s in areas where anti-social behaviour is a significant and persistent problem. In analysing the impact on Scotland of a similar section, CHILDREN 1st would make the following points:

1. The English legislation gives police superintendents the ability to assume extra powers according to the areas in which they serve. Should police powers not be consistent across geographic boundaries so that people of all ages know what they can and cannot do?

The police already have the power to arrest disruptive people where their behaviour constitutes a breach of the peace – why is this extra category necessary? Will it not be perceived by young people as an attempt by ‘adults’ to interfere and regulate everyday behaviour?

2. The power could be used in areas where there are insufficient facilities and services for children and young people. For example the Baseline Survey commissioned by Drumchapel Social Inclusion Partnership in 1999, revealed that 57% of residents thought that the social activities for young people were “very unsatisfactory” (DTZ Pieda Consulting with System Three Social Research) For some young people the place where they feel least safe is in the home especially if parents are abusing drink, drugs and are violent. Enabling children to stand together in a public place, for reassurance and security, is critical to the welfare and well-being of the child.

3. The Public Order Act 1984 permits the police to intervene only where a public meeting or march which presents an imminent threat to public safety and security. This legislation is
much different – it allows the dispersal of groups where they are not acting in a criminal or threatening manner. As such does the legislation not constitute a possible breach of Article 11 of the ECHR?

4. There is a real danger that the relationship between the police and the community will be strained: dissatisfaction by some adults if the power is not used and dissatisfaction among children and young people if the power is used. The police need the help of the community to prevent and detect crime. As children and young people are more offended against than are offenders, it is essential that the police are trusted so that young people have the confidence to report crimes to them as well as act as witnesses to offences/crimes conducted by their peers as well as adults.

5. The English Bill states that individuals ordered to disperse must leave the area immediately and not return to it for a full 24 hours. Breach of an order to disperse is an offence subject to a maximum of 3 months in prison. This is hugely draconian and will result in more people being sent to jail. There is no public benefit in sending yet more people to prison.

6. There is a danger in making this such a highly discretionary police power. It is possible that this provision could be disproportionately used against individuals that some regard as ‘naturally troublesome’ e.g. Travellers?
Appendix 4 – Electronic Monitoring

Examination was made of "Electronically monitored curfew for 10- to 15-year-olds – report of the pilot" which is a Home Office Occasional Paper published in 2000. Section 43 of the Crime (Sentences) Act 1997 amended the Criminal Justice Act 1991 to extend the use of electronically monitored curfew orders to young offenders aged under 16 in England and Wales. In practice, because the age of criminal responsibility in England is ten, this extends curfew powers to 10- to 15-year-olds. The report summarised the findings of Home Office research to evaluate the impact of the new measure in two pilot areas, Greater Manchester and Norfolk.

Take-up was relatively low with 155 orders made between March 1998 and February 2000. Although more orders were made in Greater Manchester, a higher proportion of 10 to 15-year-olds were tagged in Norfolk:

- 4 offenders were curfewed for one month or less;
- 38 for between one and two months;
- 105 for between two and three months which is the legal maximum; and
- 7 orders were longer than the legal maximum.

The Report contains very useful comments from people affected by the tagging:

"It hits the whole family. If you want to go out as a family, you can't. We all stay in. We're not that kind of family to go out and leave him. You watch your time more and have to be back."
(Father of a 15 year old)

"They all want one. People was actually going out trying to get into trouble to get a tag." (15 year old)

The Report also highlighted why so few orders were granted. It is acknowledged that this type of order will be effective for the small percentage of offenders who have a sufficiently stable home life. Also the tags were often confusing as children did not understand what the tag could do. Some thought that the tagging company knew their every movement, some complained that they were only given a leaflet and that the system and technology were not explained to them.
Anti-Social Behaviour Team  
(consultation)  
Scottish Executive  
Area 1-F (Bridge)  
Victoria Quay  
Edinburgh  
EH6 6QQ  

2 September 2003  

Dear Sirs  

PUTTING OUR COMMUNITIES FIRST: A STRATEGY FOR TACKLING ANTI-SOCIAL BEHAVIOUR  

Further to my e-mail of 28 August 2003, please find attached a paper copy of SACRO’s comments on the above consultation document.  

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Yours faithfully  

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PUTTING OUR COMMUNITIES FIRST – CONSULTATION RESPONSE

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 co-operate 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, Children’s 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 preclude 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’ (para 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 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.
Scottish Child Law Centre
Response to Scottish Executive Consultation Paper:
"Putting Our Communities First"
September 2003

Significant failings of the paper’s approach
The Scottish Child Law Centre is disappointed and concerned at the approach taken by this paper to children and young people. Whether intentionally or not, the paper’s effect is to put forward what the Centre believes amounts to an anti-youth strategy. There are three main reasons for this. First, the paper approaches the issue of anti-social behaviour in an unhelpful way, by failing to discuss the situations of the children and young people involved in such behaviour. Second, the paper discussion of what amounts to anti-social behaviour is undermined by a failure adequately to define the type of behaviour involved. Third, the paper’s discussion of measures that are claimed to be “tackling the problem” is misleading and fails to acknowledge the complexity of the problems and potential solutions.

The paper begins by setting out the reasons for the Executive’s making tackling of anti-social behaviour a priority. This involves stating that people in the community feel powerless and that their concerns are ignored (p6). The paper does not acknowledge that children and young people are among the most powerless and most ignored of society’s groups. They have no political influence and their needs are often far down policy-makers list of priorities. This was one of the reasons that the Scottish Parliament supported the creation of the office of Children and Young People’s Commissioner. The paper makes reference to the causes of anti-social behaviour (p10) but the discussion of a complex issue is extremely limited. It does not acknowledge that many children and young people are victims of abuse and neglect and live in deprived and chaotic circumstances and that support and preventative work is often not offered to their families. The result of the concentration on adult victims of anti-social behaviour is that the discussion of the response to children and young people involved in offending behaviour is almost entirely negative and punitive. There is no mention of the children and young people’s welfare and the importance of the reintegration of these young people into society and their families. This is in stark and worrying contrast to the discussion of what are often the same young people, in the Child Protection Review.

The discussion of the definition of anti-social behaviour is particularly unhelpful. Having identified different types of behaviour that may meet the Crime and Disorder Act 1998 definition (p7), the paper then notes that the 2000 Scottish Crime Survey found that 40% of respondents identified “groups of young people hanging around” as a neighbourhood problem. The paper adopts this approach and refers to “young people hanging around” as a neighbourhood problem, as anti-social behaviour. “Hanging around” is not criminal or anti-social behaviour. It is a natural response by young people to the lack of facilities and amenities in their areas. Nowhere does the paper discuss young people’s concerns, their feelings of isolation and exclusion from society.

The paper claims that the Action Plan on Youth Crime, including pilot youth courts, “fast track” children’s hearings and restorative cautions are actions to tackle “the problem” of anti-social behaviour (p11). This is misguided and misleading. Research on youth courts throughout Europe, and the evidence from England that led to the Crime and Disorder Act 1998, strongly indicated that courts concentrating on punishment failed to tackle offending behaviour and simply drew young people into a cycle of criminal activity. Criminal courts, by their nature, are unable to encourage behavioural change or address deprived and abusive circumstances. They will simply give young people the message that they have been condemned by, and excluded from, society. “Fast track” children’s hearings are simply an acknowledgement that a system that is supposed to consider children’s welfare and respond to offending behaviour by providing support, supervision and guidance for young people has failed to deliver in many cases. There is no difference between a “fast track” hearing and any
other hearing, except that the measures to help the young person may be provided more quickly.

**Principles that should underlie the paper and any proposed reforms**

In discussions about child protection, child pornography, child prostitution and other policy matters affecting children and young people, the principles of the UN Convention on the Rights of the Child (UNCROC), ratified by the UK Government in 1997, are acknowledged as relevant. Article 3.1 requires that 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. In the Centre's view, the paper and the proposals it makes fail to address the best interests of the child in any significant way. Article 12.1 of UNCROC requires that children capable of forming views should have the right to express those views freely and to have them taken into account in all matters affecting them. There proposals would, if implemented, fundamentally affect children and young people in Scotland. They have no influence on the political process through voting. The Executive must ensure that there is a mechanism for ascertaining and taking account of children and young people's views on anti-social behaviour.

UNCROC contains principles for the administration of juvenile justice. Article 40.1 requires that every child alleged as having infringed the penal law should have the right to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which takes account of the child's age and the desirability of promoting the child's reintegration and assuming a constructive role in society. Fundamental to children and young people's reintegration and assumption of a constructive role will be a sense of inclusion. Several measures in the paper would target and stigmatise young people and, in the Centre's view, make the achievement of the Article 40 goal more unlikely. Article 40.4 of UNCROC requires that a variety of disposals should ensure that children and deal with in a manner appropriate to their well-being and proportionate both to their circumstances and to the offence. The Centre believes that the paper's proposals ignore the issue of children's well-being and their circumstances entirely.

**Response to the paper's proposals**

It will be clear from the above paragraphs that the Centre does not agree with the approach taken by the paper or with many of its proposals. The reasons for disagreeing with specific proposals are set out below.

**ANTI-SOCIAL BEHAVIOUR STRATEGIES**

The Criminal Justice (Scotland) Act 2003 requires local authorities and Chief Constables to produce anti-social behaviour strategies. The paper concentrates on the importance of information exchange between these agencies and asks what more could be done to promote this (p17). In the Centre's view, this is not the most important issue. The anti-social behaviour strategies should deal, in detail, with the exercise of the agencies functions. In the Centre's experience, police practice can make young people feel alienated and excluded from society. This can happen when police constantly move young people on from certain areas, and when they detain and question young people in intimidating ways, without allowing a supportive adult to be present. Aggressive and insensitive policing that does not value children and young people as part of the community may encourage, rather than prevent, anti-social behaviour. The Centre is also concerned that local authority policy in housing matters often ignores young people's welfare. Housing departments may respond to adult residents' concerns by warning or threatening to prosecute young people, with no attempt being made to consider the young person's difficult circumstances and to offer support.
Agencies should be required to consult with children and young people in relation to anti-social behaviour strategies and to carry out a review of their practice, to ensure that they are not making children's and young people's situations more difficult.

COMMUNITY REPARATION ORDERS

Discussion of this topic opens with the statement that a "central tenet of the criminal justice system is that offenders must be held to account for their actions" (p18). This should not, however, be the starting point for policy makers when dealing with children and young people involved in offending behaviour. As noted above, UNCR0C requires that they be dealt with in a manner consistent with promotion of their dignity and worth. The purpose of Community Reparation Orders is to punish and this is in direct conflict with the aims of juvenile justice as required by UNCR0C and the approach taken by the children's hearing system. Community Reparation Orders should not be "targeted at young people", as suggested by the paper (p19). The message given to children and young people by such a move would be that society has no interest in their circumstances, whether they have suffered abuse, neglect or other difficulties, and that the system will not take account of the disaffection that may have led to the behaviour.

ACCEPTABLE BEHAVIOUR CONTRACTS

The Centre does not support the use of these contracts, and certainly does not support their wider use. The focus on a child's behaviour entirely fails to take account of abuse, racism, lack of parenting and other pressures that may have led to the behaviour. Such contracts should not be used with young people. Intensive work with children and young people to tackle their offending behaviour and their sense of alienation has been shown to work - this was acknowledged in the Youth Crime Review and the Executive's response to it. Signing a piece of paper will not change behaviour and the contracts are unable to deal with any of the real issues involved. The same is true of contracts for parents who, as the paper puts it, "do not take action to prevent their children acting anti-socially" (p24). The belief that the contracts might work is based on the erroneous assumption that all that the parent requires is an incentive to act. Many of the parents whose children are causing concern will be unable to act appropriately. They will not have the parenting skills, the resources and the understanding to change their own or their children's behaviour. It is this fact that led to the children's hearing approach, of involving the child's family in discussions and providing social work support to the family. A much more useful approach than acceptable behaviour contracts would be consideration of extending the resources available to children's hearings to work with families and to support them. In the Centre's view, the paper should also consider the use that could be made of community centres and education centres, and of youth work, as resources for young people to help them undertake more constructive activities.

ANTI-SOCIAL BEHAVIOUR ORDERS (ASBOs) FOR UNDER-16S

ASBOs should not be extended to under 16s. In the Centre's view, this would be a breach of the UNCR0C Articles 3 and 40 and would devalue and undermine the children's hearing system. The discussion of ASBOs is based on a premise that is, the Centre believes, incorrect. That premise is that only a court, not a children's hearing, can tackle persistent anti-social behaviour (p25). As stated already, research and experience indicates that court appearances and orders rarely change children and young people's behaviour. Only intense work, addressing the behaviour and its causes, can do that. ASBOs cannot and do not attempt to do this. They are merely intended to "look tough" (the paper itself says "to make it clear that persistent disorderly behaviour will not be tolerated").

The paper talks about the possibility of the children's hearing system being by-passed completely, "where the behaviour of the child is so immediately difficult" (p26). There is
provision for a child to be prosecuted in a criminal court where this is deemed to be necessary in the public interest. The Centre sees no reason why children whose behaviour is "immediately difficult" should be taken out of the hearing system. The behaviour is an indication of severe problems for the child that require urgent action. A court order will not be able to take that action. If the executive believes that the hearing system is unable to cope with such children they should explain why they believe this to be the case. If the remedies are not sufficiently flexible, they should be made so. The paper proposes increasing the emphasis on reparation in children's hearings (p29), but does not explain why if this does not work within the hearing system, it is believed that it will work in a court setting.

The Centre is not opposed to the use of reparation in children's hearings, but is extremely concerned at the suggestion that some children will simply be removed from the hearing system to the courts.

ELECTRONIC MONITORING OF UNDER 16S

The paper refers to the availability of electronic monitoring of 10-15 year olds in England and states that "there is now potential to use electronic monitoring more in Scotland" (p29). It is astonishing and deeply worrying that the paper does not even attempt to explain in what ways electronic monitoring would be "more effective" than other remedies. Monitoring cannot tackle the children or young person's circumstances and cannot help them address the reasons for their offending behaviour.

The paper states that "no-one wants to restrict a young person's liberty lightly. It is a serious matter to consider such an intervention and would only be used to tackle serious issues" (p30). There is nothing in the paper to suggest that monitoring could tackle serious issues. In the Centre's view, the result of the use of monitoring would be to further alienate and stigmatise already vulnerable and chaotic young people. There is no clearer way to indicate to a young person that society has marked them as unacceptable and wishes to exclude them, than to monitor them electronically. The Executive should be looking at the chronic lack of adequate secure placements and places in projects to tackle offending behaviour, and concentrate resources on these placements, rather than on stigmatising young people further.

The Centre's view is that electronic monitoring should not be made a disposal for children's hearings. The Centre challenges the Executive to conduct research with young people who have been monitored in England, to ascertain how young people see the system, and to put resources into projects that tackle offending behaviour and that have been shown to be effective. The Centre also points out the Executive that the use of electronic monitoring is a restriction of liberty and its use is likely to be a breach of the ECHR, Articles 5 and 8. ECHR Article 5.1(d) allows the detention of a minor for the purposes of educational supervision, but monitoring would not be educational, it would be purely punitive. A child or young person's privacy would be entirely removed by the use of the monitoring and in the Centre's view, could not be justified.

RESTRICTION OF LIBERTY ORDERS (RLOs) FOR UNDER 16S

In the Centre's view, extension of RLOs to under 16s would be a breach of ECHR Article 5, and of Article 40.4 of UNCROC, which requires disposals for young people who offend, that take account of their well-being and their circumstances. RLOs would not be educational in nature and would not take any note of children and young people's circumstances. The paper itself admits that RLOs are "primarily punitive in nature and not directly addressing offending behaviour" (p33). Again, they are a remedy designed to look tough, that will not change children's behaviour or support them or their families.

RLOs should not be used with under 16s.
PARENTING ORDERS

The Centre notes that, in contrast to the discussion on anti-social behaviour orders, electronic monitoring of children and restriction of liberty orders, the paper does attempt to present some evidence, although it is very limited, of research from England that indicated that a pilot parenting order scheme worked. The claim that "it worked" is suspect, since it relies on the low number of breach proceedings (which could simply indicate resignation to failure) and does not explain the "positive effects" that were observed.

The Centre does not believe the case for parenting orders has been made, particularly given the number of cases where, from information emerging from the Centre's advice line service, children are referred to children's hearings and then no support or adequate supervision appears to follow. A study of home supervision by Murray et al.1 found that participants in the hearing system identified the need for more social work time as the single most important factor that would improve home supervision; 22% of children's cases had no social worker attached to the family for several months. The Centre urges the Executive to listen to the messages from its own research and make a commitment to ensuring that the existing system Resources would be more appropriately targeted at social work services available to families, rather than stigmatising parents. The Centre suggests that where a parenting order works, that is likely to be because the parent has agreed to work with social workers to change his or her parenting approach. That would happen as effectively through a children's hearing. The Kilbrandon Report that led to the setting up of the children's hearing system saw one of the most important aims of the hearing system would be to provide early preventive measures, including support for parents and help in parenting. There was an assumption that comprehensive family support services would be available to the child and the family, it made to work for children and families, rather than undermining that system by turning to the courts.

The Centre urges the Executive, therefore, to develop a strategic approach to family support services. A study by Henderson2 mapped available services to support parenting skills. The study found that there were over 800 separate initiatives located in statutory and voluntary agencies and that there was no strategic service development or evaluation.

The Centre does not agree that local authorities and the Reporter should be given the power to apply to the court for a parenting order.

LOCAL AUTHORITY ACCOUNTABILITY

The Centre is extremely concerned that many vulnerable children and young people are referred to the hearing system and then do not receive the support services that they need. The Centre agrees that it is desirable to require local authorities to comply with supervision requirements and that a Reporter should be able to request that a sheriff make a compliance order. Where local authorities fail to allocate social workers or to provide support, the law should specifically provide for compensation for this breach of duty to the children and young person. It should also be possible for children and young people themselves to apply to the sheriff for an order to force implementation.

The Centre points out that while it is important for their to be a sanction to support local authorities' duties to children and their families, there is a potential for decisions to be resource driven. There may be danger that the paper's proposal would increase the number of

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supervision requirements made by children's hearings, rather than leading to prioritisation of preventive work with families.

The Centre welcomes the Executive's acknowledgement of the problem of children who do not receive education. The Centre does believe that the hearing and the Reporter should have a role in alerting Scottish Ministers to the failure of local authorities to provide appropriate education. Again, the Executive could usefully consider targeting resources to educational projects and educational support staff that could then be named in supervision requirements made by children's hearings.
11th September 2003

Ms Margaret Curran
Minister for Communities
St. Andrew's House
Regent Road
EDINBURGH
EH1 3DG

Dear Minister

"Putting Our Communities First: A Strategy for Tackling Anti-Social Behaviour"
Response by Scottish Children’s Reporter Administration

I am pleased to enclose SCRA’s full response to your important consultation paper on tackling anti-social behaviour.

As you know from our previous discussions, we share both the seriousness with which the Executive views anti-social behaviour and the intent to address it effectively. Our response offers detailed and constructive comment on how to achieve this within the Hearings System and in relation to the questions you have posed.

Alan Miller and I would be happy to engage with you in any further discussion that would help you and us to take these issues forward for the benefits of Scotland’s children, families and communities.

Yours sincerely

Douglas Bulloch
Chair
Executive Summary

The Scottish Children's Reporter Administration's response to the Scottish Executive's consultation 'Putting Our Communities First: A Strategy for Tackling Anti-Social Behaviour' comprises:

- This executive summary
- An introduction covering the existing powers of the Children's Hearings' System to address anti-social behaviour by children and young people, and the key issues facing the Hearings System.
- Our detailed responses to the questions posed in the consultation paper that relate to children, young people and families.

Key points

- The Children's Hearings System remains the best means of addressing the anti-social behaviour of children and young people because it is integrated, wide-ranging, flexible and community based.

- The Children's Hearings System, as a community based system, already has the remit and many of the powers to address anti-social behaviour by children and young people, and poor parenting.

- Virtually all new measures that the Scottish Executive is seeking to address anti-social behaviour by children and young people can be achieved through the Children's Hearings System - as long as service delivery is improved so that existing powers can be used more creatively and fully.
Summary of response

Introductory Comments

- Anti-social behaviour by children and young people is a serious problem that has multiple causes and that requires joined-up solutions.
- The Hearings System has wide powers and an integrated and flexible approach, aimed at challenging unacceptable behaviour and delivering good outcomes for children, families and communities.
- Any new measures to address anti-social behaviour must also be integrated, flexible and able to differentiate between those requiring low-level input and those requiring intensive intervention.
- There is an urgent need to consider extending demand-lead funding to address the social service delivery problems affecting both prevention and intervention that are currently impacting the Hearings System.
- The Scottish Executive's forthcoming review of the Children's Hearings System provides the appropriate opportunity to clarify purposes and outcomes of the System, and to clarify roles and powers of its key actors.

Acceptable Behaviour Contracts

- ABC’s should be used in the Children's Hearings System and elsewhere to specify both the expectations of children and their families, and the supports they will receive.

ASBO’s for under 16s

- Most children engaging in anti-social behaviour should still be dealt with through the Hearings System.
- Legislation and guidance should clarify that ASBO’s are aimed at the high end of the spectrum of anti-social behaviour.
- Sheriffs should have the power to remit cases to Hearings if a more comprehensive package of challenge and support is required.
- There is no need to empower the courts to grant support orders.

Electronic Monitoring

- The limited positive evidence about the use of monitoring for under 16's has to be balanced against significant concerns about its effectiveness and consequences.
- The current secure accommodation criteria are appropriate and sufficient; any extension could carry major human rights implications.
- Any use of monitoring must be as part of a package of measures and very carefully assessed for risks and for the child's capacity.
Parenting Orders

- Children’s Hearings already engage with and state clear expectations of parents.
- The key requirement is to provide improved services for struggling parents.
- The power to apply for Parenting Orders should lie with local authorities, with the Reporter’s role considered in the context of the Scottish Executive’s planned review of the Children’s Hearings System.
- Parenting Orders should be piloted in the first instance to assess what value they add to existing provisions.

Local Authority Accountability

- Service difficulties are the key challenge facing the Hearings System and require a committee and sustained approach.
- The meaning of “supervision” and of the duty to give effect to supervision requirements should be spelled out in law.
- Legislation should also spell out more clearly a process by which authorities account to the Hearing and to Ministers for any failure to give effect to a supervision requirement.
- Authorities’ performance on giving effect to supervision should become a key performance indicator for local government.
- Authorities should receive demand-led funding for these services.
- SCRA’s influencing role will be strengthened through this clarification of expectations and accountability.
- A major objective of the Executive’s forthcoming Review of the Hearings System should be to strengthen the position and authority of the Hearings themselves.

Douglas Bulloch
Chairman, SCRA

11 September 2003
Introductory Comments

The Scottish Children’s Reporter Administration welcomes the opportunity to respond to the Scottish Executive’s consultation paper “Putting Our Communities First: A Strategy for Tackling Anti-Social Behaviour”. The Children’s Hearings System has since 1971 been the central formal system in Scotland for challenging and changing both criminal and anti-social behaviour by children and young people, and inadequate care and control by parents. We welcome the attention the Executive is bringing to this issue and will continue to develop joined-up and effective strategies and responses to improve the lives of Scotland’s children and young people, families and communities.

Anti-social behaviour is undoubtedly a serious problem in Scotland today. We know from our experience that it often affects disproportionately those communities already characterised by multiple social exclusion and major problems for children and young people. Addressing crime and delinquency is about both working for the best interests of the child or young person and achieving better outcomes for his or her family and community. Care and justice for children promotes social justice for communities.

The Children’s Hearings System itself is currently in a period of change and development. Over the last 3 years, we have worked closely with the Executive and other partners to deliver more effective responses to youth offending, and to persistent offending in particular. The early reports from the new Fast-track pilots indicate real success in changing behaviour, reducing offending and stabilising lives amongst a difficult and challenging group of young people. Child protection services are also undergoing review and improvement. More remains to be done on issues such as child health and mental health, drug and alcohol misuse.

The Scottish Children’s Reporter Administration welcomed the broader influencing role that the Executive invited us to undertake following our PFMR review in 2002. Through that role, we are determined to work with the Executive and other partners to achieve our revised mission: world-class care and justice for Scotland’s children. We are clear that part of that role lies in promoting the effective implementation within the Children’s Hearings System of improved responses to anti-social behaviour.

The Children’s Hearings System and Anti-Social Behaviour

While the Hearings System is continuing to develop and improve, it is nevertheless built on key elements that we know from our experience must be part of any effective response to the behaviour of children and young people. The Hearings System is

- Integrated – we deal with both the behaviour and the family and care issues from which it often springs, all in one process; we both challenge unacceptable behaviour and support the strenuous work of personal change; we deliver care and justice

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• Wide-ranging – the grounds for referral cover a wide range of behaviours including offending, being beyond parental control, bad associations, drug or alcohol misuse, and truancy

• Efficient – average costs and timescales in the Hearings system are significantly better than in the criminal justice system or in existing ASBO processes

• Involving – children and parents do not get the option of escaping close involvement in the process, so that their commitment to change can be tested and developed

• Graduated – outcomes range from informal action for those whose behaviour is transient to secure accommodation for those whose behaviour most threatens their own or others’ safety

• Flexible – based on an understanding of the whole picture, a supervision requirement can include conditions covering the child’s behaviour, contacts, residence or compliance with interventions

• Persistent – supervision requirements must be reviewed to check on progress or further problems, and to consider what further measures may be needed.

• Community-based – to a unique degree, members of local communities are involved at the heart of the System; it is they, not professionals, who take the key decisions.

From these features and based on over 30 years’ experience we are convinced that measures to address anti-social behaviour must

• Deal with both causes and effects together – which often means addressing child offending and child protection at the same time

• Confront unacceptable behaviour but at the same time offer motivation and real support to change

• Address these issues face-to-face

• Have the flexibility to come up with tailored packages and to cover a wide range of appropriate outcomes

• Differentiate clearly between those who require minimal “steering” and those who create the greatest risk to themselves or others

• Track people through the process of change – there are few if any “quick-fix” solutions in any system for those at the serious end of the range

• Wherever possible, promote improved community relations and mutual responsibility and respect. For instance, there is huge potential to develop informal street-work mediation approaches as developed in Denmark, thus building community solidarity and reducing fear and mistrust. Just as importantly, such approaches can free up formal systems and services to focus more intensively on those who require more intensive supervision and challenge. Without the opportunity for such focussing it is difficult to
foresee front-line agencies providing the quality of challenge and intervention that the Executive is seeking.

The Children's Hearings System: Key Issues

By far the greatest challenge facing the Hearings System today is not a system issue as such but concerns the difficulties experienced by service providers in matching staffing to demand and thus in prioritising and dealing with cases and issues effectively. This is far from being a universal difficulty but it is a major problem in several of the larger local authority areas in particular. It affects both the provision of preventive support to avoid risk and the provision of intervention to address it. Similar problems are likely to affect any new anti-social behaviour measures that require input of support measures by key agencies.

However, the underlying difficulty is about more than staff recruitment and retention. It is also about the absence of anything more than a broad shared awareness of the System's objectives, the outcomes it is seeking to achieve, and the standards of practice needed to achieve these outcomes.

There are also a number of specific issues about roles, powers and procedures that need to be updated to allow the Children's Hearings System to address anti-social behaviour more effectively. For instance, just as there is a clear case for giving Sheriffs the power to issue interim ASBO's, there is an equally clear case for giving Hearings wider and more flexible interim powers than they currently possess. There is also a good case for clarifying Reporters' investigative powers, and for being much clearer about what Supervision actually means and how it is effected. The Scottish Executive's forthcoming Review of the Children's Hearings System offers an opportunity to put these issues right.

At the same time as considering the introduction of new powers and processes, we expect the Executive will wish to take the opportunity to revitalise existing measures. We therefore recommend that immediate consideration be given to

- Examining the feasibility of adopting a demand-led resourcing regime (such as the 100% funding regime for criminal justice social work services) for services dealing with children and young people who offend and behave anti-socially
- Building into the remit for the Review of the Hearings System a requirement to establish clear and over-arching outcomes, objectives and standards for all agencies in the System, and clear and effective processes for services to be held accountable for delivery
- Clarifying beyond doubt what is meant by supervision and the requirements for implementing supervision requirements, and for service accountability (see further our response below to questions 27 - 29 in the consultation paper).
Our comments that follow focus on the questions in the consultation paper that relate to children, young people and families. We have throughout taken care to answer the questions as they are posed, offering wider comment where specifically requested. We have also identified ways in which the Hearings System can and does address some of the concerns underlying the consultation proposals.
Responses to Consultation Questions

Anti-Social Behaviour Strategies

1. Should the formal duty to participate in the preparation of anti-social behaviour strategies be extended to Registered Social Landlords (RSL’s), particularly where major stock transfer has taken place? Should there be a formal duty on other community planning partners to be involved? Or is it sufficient that involvement of other community planning partners be referred to in guidance only?

Yes. Given the proposal to extend to RSL’s enforcement powers such as applying for an ASBO, it is essential that they become fully engaged at strategic level with all other key partners.

2. What more should be done to promote effective information exchange to prevent anti-social behaviour?

The framework provided by data protection legislation makes sense in many contexts, but has also created very real difficulties over the use of sensitive personal data where cross-sector partnerships of agencies are working together to address issues such as youth offending or child protection. We appreciate that data protection is a reserved issue but would welcome national-level attention to these issues and how to overcome them. A dedicated framework of guidance would undoubtedly assist.
Acceptable Behaviour Contracts (ABC’s)

Action in the Hearings System

There is considerable experience in the Children’s Hearings System of approaches along the lines of ABC’s. The majority of cases are dealt with by diversion for informal action (NB not “no action”).

Firstly, decisions by Reporters to refer children for voluntary intervention can involve clear agreements with the child and/or parents. Intervention measures such as victim/offender mediation may also produce such agreements.

Secondly, Children’s Hearings can and do include conditions in supervision requirements to make clear their expectations about the child’s behaviour. More specific agreements can be attached to the supervision requirement to give them legal status and enforceability.

Our experience suggests that it is important for such agreements to specify the action that will be taken both by the child/parents and by the agencies working with them. This helps to achieve “buy-in” from the child and parents, to make a clear link between problems and solutions and to re-enforce the focus on positive change.

Further action: the effectiveness of ABC’s and of diversionary measures generally in the Hearings System would be enhanced by

- Clarification of the legal duty on local authorities to service voluntary intervention referrals from the Reporter
- The application of national standards about effective case assessment and intervention planning to these cases
- A requirement in national standards for local authorities to report back to the Reporter on the implementation of voluntary supervision plans and on their effectiveness.

8. Do you support wider use of ABC’s?

We do support the wider use of ABC’s and believe that the setting of clear expectations with regard to those types of behaviour that are and are not acceptable is a crucial aspect of addressing such behaviour.

We also believe, however, that in order to be effective ABC’s should outline not only the responsibilities which fall on children and young people to change their behaviours, but also the support and guidance which they can expect to receive. This element of reciprocity helps ensure that the agreement promotes action to tackle the underlying causes of the behaviour as well as the symptoms.
9. What are your views on the range of situations where ABC's would be appropriate? For example, do you support use of ABC's in the hearings system? In schools?

As stated above, ABC's or equivalent approaches already play a valuable role in the Hearings System, both at the stage where a Reporter is making a decision on a child or young person, and in relation to those young people whose cases are being considered by a Children's Hearing.

Whilst we acknowledge that a key feature of ABC's are that they are undertaken on a voluntary basis, we do not regard them as incompatible with compulsory measures of supervision (i.e. an ABC agreed outwith the Hearing is endorsed by the Hearing and treated as one element in an overall package of supervision). Where an ABC is linked to a supervision requirement by means of a condition, failure to fulfil the terms of the arrangement would thus prompt a review of the child's supervision requirement as a whole; allowing possible alternative measures to be considered.

10. What are your views on the relationship between ABC's and legal options such as ASBO's and Parenting Orders? For example, should the court be required to consider the failure or refusal to participate in an ABC or a Parental Contract when considering an application for a Parenting Order?

A key element of the flexibility inherent in the Hearings System is that Hearings can take account of the full background in each case. The success or failure of any previous voluntary interventions is clearly relevant to the Hearing's decision about the need for compulsory measures, and is therefore sought as part of the information to put before the Hearing.

Given that the test for granting either an ASBO or a parenting Order should be that it is "necessary", the courts will likewise require to consider the effectiveness of past interventions or agreements. The court is entitled to expect that the applicant will place all the relevant information before it. In such circumstances, it is difficult to see the need for a specific requirement to consider those matters specified.
**Action in the Hearings System**

Reporters and Children's Hearings have a wealth of experience in addressing anti-social behaviour by children and young people. The grounds on which children and young people can be and are referred to a Children's Hearing include:

- Being outwith parental control
- Falling into bad associations or moral danger
- Committing an offence
- Misusing alcohol, drugs or solvents
- Requiring special measures

Most instances of anti-social behaviour will in fact constitute an offence such as vandalism or breach of the peace.

Apart from offences, all grounds for referral can be established on the civil standard of evidence. Reporters can and do combine different grounds to present an accurate picture to Hearings, and are skilled at bringing together different sources of information to identify overall patterns of behaviour or risks.

Once the formal grounds for referral are accepted or established, Hearings can look at the whole situation without having to take further evidence. Hearings challenge young people about their behaviour and challenge parents about their responsibilities.

When a Hearing makes a supervision requirement, they can specify both the level of intervention and any conditions on the child that they think are appropriate. For instance, these may cover the child's behaviour, contacts, residence or compliance with interventions. The child is legally obliged to comply with the conditions, and the local authority is legally obliged to bring the case back for review if the conditions are breached. Hearings also do not flinch from making clear to parents their responsibilities and the consequences if they fail to do so.

Over the last 2 - 3 years enormous progress has been made in the effectiveness of services (often project-based) to challenge offending and anti-social behaviour by young people and to enable them to change. The Fast-Track pilots are demonstrating what the System can do when resourced and focused. However, there are still significant problems in mainstream services that require strategic actions such as those set out in our introductory comments.

**Further action:** in order to improve the effectiveness of action in the Hearings System to address anti-social behaviour by young people, we
propose that
- The opportunity should be taken in the Executive's forthcoming Review of the Hearings System to consider (1) whether the current range of grounds for referral covers all necessary issues to allow effective action and (2) the potential benefits and implications of extending the civil standard of evidence to the offence ground for referral
- Hearings should be given more effective interim powers (just as the courts now have the power to grant an interim ASBO)
- The meaning of compulsory supervision and the importance of the legal duty to implement should be spelled out both in statute and in guidance.

11. How should ASBO's be extended to under-16s?

In answering this consultation question we have focussed our response on mechanisms for the implementation of ASBO's.

We believe that any extension of ASBO's to under-16s must be based on the understanding that the Children's Hearing System continues to offer the best means of addressing anti-social behaviour by children and young people whilst also meeting their needs for guidance, treatment or protection. As long as effective services are available to implement the decisions made by Reporters or Hearings, the Hearings System can positively engage with the vast majority of young people involved in anti-social behaviour.

Consequently, we anticipate that the number of children and young people who will require to be made subject to an ASBO – in many instances in addition to an existing supervision requirement – should be relatively small. In particular, we note that the test for granting an ASBO is that the order is 'necessary' (Crime & Disorder Act 1998, Section 19(1)(b)) and that in most cases the pre-existence of a supervision requirement will have to be considered in determining whether a further order is required.

In practice there will thus be considerable overlap between the Courts and the Hearings, with many young people involved in parallel proceedings. Additionally, it may become clear during one set of proceedings that the young person would better be dealt with in the other setting. For instance, a Sheriff hearing an ASBO application may discover a history of serious parental neglect or behaviour that is inextricably linked with the young person's behaviour.

To ensure that anti-social behaviour is addressed in a coherent and effective way, it will be vital, firstly, to clarify in both legislation and guidance that ASBO's are intended for situations where anti-social behaviour is unusually serious or persistent; and, secondly, to put good links in place between parallel processes. Such links already exist between criminal courts and Children's Hearings and these ensure that cases can be transferred swiftly without the core facts having
to be established all over again. In addition to the suggestion that the Reporter should be consulted prior to the application for an ASBO, we therefore propose that

- S.54 of the Children (Scotland) Act 1995 (power of the Court to refer to the Principal Reporter) should be extended to include ASBO and Parenting Order applications
- The Sheriff should be empowered to seek advice from the Reporter or Children's Hearing on any child subject to an ASBO application, and required to seek a Hearing's advice if the child is subject to a current supervision requirement
- Subsequently, the Sheriff should also have the power to remit the child's case to the Children's Hearing for disposal.

12. Do you support the introduction of individual support orders linked to ASBOs for under-16s?

No. It is undoubtedly the case that many young people who engage in anti-social behaviour also have a range of needs that also have to be addressed if changes in their behaviour are to take root for the long-term. We believe that these are precisely the cases where it would be more appropriate for Sheriffs to be able to remit to a Hearing than to have to try to ascertain support needs themselves. Any power to include support conditions in an ASBO would also have to take account of

- The wider range of information Sheriffs would require in order to make such decisions and what duties would need to be applied to which services in order to ensure this information was provided (RSL's in particular will not have direct access to much of this information)
- The need to prescribe responsibility for the provision of these support services
- The need to differentiate the consequences of breach of a support condition rather than a prescriptive condition – for instance, would the power of arrest still apply?

13. Are there any implications of extending ASBO's to under-16s in relation to the power of RSL's to apply for ASBO's?

Yes. RSL's by their very nature are primarily concerned with housing provision and housing management issues. Whilst staff working in RSL's may have wider information about a young person and/or their family, this will not generally cover the full circumstances of the child/family that may be relevant to addressing anti-social behaviour. For this reason, we propose that RSL's should be required to consult with both the Reporter and the relevant Local Authority prior to any application for an ASBO on a person under the age of 16, and to make their responses available to the court.
Behind the issue of information-sharing is a wider issue about the capacity of RSL’s to make sense of this wider information and to work collaboratively with other agencies who are seeking to address a young person’s behaviour and needs. We look for guidance to emphasise the need for all agencies (including RSL’s) involved in the local strategies referred to earlier to commit to joined-up solutions. (See also the answer to question 1 above.)

14. Do you agree that the Youth Court model, where this operates, should be amended to include young people under 16 years of age who are referred to the criminal justice system by the Procurator Fiscal for breach of an ASBO?

No. It would be premature at this stage to make such a specific amendment to the current pilot model for the Youth Court until (1) the Youth Court pilot has been evaluated and (2) an assessment can be made of the use being made of the extended ASBO powers and the extent of breach of ASBO’s by under 16’s.

15. How should the applicant ensure that they take the full circumstances of the family into account?

We agree that it is imperative, when considering whether to apply for an ASBO, that the applicant does take the full circumstances of the child and family into account. Such consideration is necessary in order to ensure that the most appropriate measures are used in each case, be they an ASBO, a supervision requirement or a change of service approach. We believe that the measures proposed in response to questions 11 and 13 above would help achieve this purpose, and could be supplemented by guidance on a requirement for the Local Authority to consider convening a multi-agency case discussion where either it or an RSL is proposing to make such an application.

However, it should be recognised that once an application is made the focus of the ASBO proceedings will properly be on narrower issues of behaviour alone; by definition, the purpose of an ASBO is to ban the subject of the order from behaving in certain specified ways. The role that wider information (such as the views of the Reporter or local authority, or advice from a Hearing) will play will be to enable the Sheriff to determine whether it is most appropriate for the court to deal with the case, and if so whether an ASBO is the most effective outcome.

Greater use of Reparation in the Children’s Hearings System

16. What are your views on our proposals to consider increasing the emphasis on reparation both as action that may be taken by the Reporter and as a condition of a supervision requirement made by the Children’s Hearing?

We welcome the increasing emphasis on reparation as an integral feature of the Children’s Hearing System. We see restorative justice approaches as entirely
consonant with the purposes of the Hearings System and also as a vital way of addressing the needs and concerns of victims of youth crime. A number of schemes which use reparative and restorative approaches to address young people’s anti-social behaviour have already been established with the support and active involvement of SCRA staff.

To date, the use of reparation has focussed primarily on the Reporter’s decision-making options but we believe that such approaches can also form a valuable aspect of a supervision requirement made by a Children’s Hearing. In this regard, some care is required to integrate what is an essentially voluntary arrangement into an overall framework of compulsory measures, but we are confident that this can be achieved through the framing of suitable conditions depending on the circumstances of the case. We believe that Children’s Panel Members would welcome the opportunity for further training in relation to the use of such reparative measures.
Electronic Monitoring of Under-16s

17. What are your views on making electronic monitoring a disposal for the Children’s Hearings System?

We recognise and understand the concerns behind the suggestion that Hearings should be empowered to order electronic monitoring. We share the desire for outcomes from Hearings to be increasingly effective in addressing youth crime and its causes. But we caution that the limited positive evidence about the use of monitoring has to be balanced against significant concerns about its effectiveness and consequences in relation to:

- Foreseeable risks associated with its use for children and young people
- The use of secure accommodation
- The legal framework for Children’s Hearings.

Evidence
Existing evaluations of the use of electronic monitoring for children and young people are mostly drawn from England and Wales, where the context is a court-based youth justice system with a focus on punishment. It is in that context that some families of offenders and offenders themselves have seen monitoring as a viable alternative to a custodial sentence. Evaluations have also drawn attention to the cost of monitoring, to the reality that monitoring of itself does not address the offending behaviour or its causes, and to the high rates of breach of monitoring by younger children in particular.

Given the suggestion to focus the use of monitoring on children and young people at risk of secure accommodation, it is also important to review what is known about these young people. The SWSI’s review of secure accommodation identified that 81% of boys and almost all girls in secure accommodation were a risk to themselves, with 67% of the boys also being a risk to others. Relationships with family were a major problem for 71%, as was running away for 73%. The circumstances in which children run away from home or care have subsequently been further explored in the guidance on Vulnerable Children and Young People recently published by the Executive.


Risks
This evidence demonstrates two things. Firstly, children at risk of secure accommodation typically present a complex intermingling of both offending risks and welfare risks. Secondly, the level of disturbance and unpredictability of these children is such that the risks of self-harm, harm to others or both are very acute.

In addition, electronic monitoring places very specific responsibility on the child or young person being monitored to control and regulate their own behaviour. But it also places responsibility on the adult or adults responsible for the child's welfare. To an extent, "tagging" a child means tagging their main carer as well.

Taken together, these issues about the life circumstances of children at risk of secure accommodation and about the family implications of monitoring raise real question marks about the risks involved in requiring a child to remain in a particular place (typically, their home). These risks relate to

- The safety of the home environment for the child/young person, given the prevalence of serious family problems in this group of children
- The safety of a monitoring arrangement for other members of the child/young person's family
- The ready availability of services and supports to help contain and address these risks – the purpose of secure accommodation is not simply to contain but to do so in order to support behaviour change in a safe environment.

Use of Secure Accommodation
Secure accommodation is a finite and high-cost resource. The Executive's current plans will increase the number of places by about 30% but it will remain a high-intensity intervention. Separately from this consultation process, there remains a clear need to establish a more rational basis for prioritisation of the allocation of secure resources.

The focus of secure accommodation to date has been on challenging the behaviour and meeting the needs of a particularly difficult group of children and young people. The accommodation requires to be secure because that is the only safe basis on which the welfare of these children, and thus their impact on the wider community, can be addressed.

The criteria for use of secure care are of a piece with this approach. They focus attention on the very risk factors (to self or others) that explain why the use of security is needed in order to address behaviour and needs.

The proposal to authorise the use of security as a response to breach of a monitoring requirement breaks this essential link between risk and outcome. Children whose offending is persistent and dangerous, such as repeat joyriders, almost certainly meet the existing secure criteria. But it is likely that many children would breach monitoring requirements in circumstances that indicated little or no risk to others, whether through inability to maintain self-control or through testing out the system.
One implication of adding a new criterion for secure accommodation would thus be a considerable increase in demand for places, with many children joining the queue whose levels of risk and need would fall short of the level that would justify use of a highly specialised and expensive resource.

Legal Framework
The potential use of electronic monitoring, and the use of secure accommodation as a direct consequence from breach of a monitoring order, also require very careful consideration in relation to the legal framework for Children's Hearings. In the human rights test case of S v Miller3 the Court of Session confirmed that Children's Hearings do not "determine a criminal charge" in terms of Article 6 of the European Convention as they do not punish children for their acts per se; instead, they seek to address children's behaviour and the circumstances which may have led to it by engaging children and their families with service provision which will meet their needs and address their behaviour. The Court recognised that even when secure accommodation is used, the basis and purpose of that outcome is welfare-focused.4

Looking at the Court's analysis of Article 6, the availability of secure accommodation as a consequence of breach of a monitoring order appears much more akin to a punitive outcome rather than a welfare-based one, as the nexus between risk and outcome is broken. In these circumstances there is a real prospect of a future court taking the view that a Hearing which authorised secure accommodation on that basis would now be determining a criminal charge.

The same risk may arise in relation to the use of monitoring itself. Taken on its own, monitoring is clearly intended to restrict movement and does not directly address offending or underlying needs.

If this point appears rather abstruse, it is anything but that. If some (but not all) Hearings are determining criminal charges then very specific procedural guarantees apply in these cases, including the full availability of legal aid. Under these circumstances it becomes very difficult to see how the integrated jurisdiction of the Hearings, covering both care and offending issues, could survive in any meaningful form.

Conclusions
(1) The current secure criteria are appropriate and sufficiently wide-ranging to address the concerns raised in the consultation paper. We urge the Executive not to add any additional criteria unless they are explicitly based on risk factors that inherently require the use of secure provision to address them

(2) If after consideration it is considered necessary to give Hearings a power to require electronic monitoring as a condition of a supervision requirement, this

3 2001 SLT 531
4 Lord President (Rodger) at p.547
must be done in the context of a requirement that the Hearing should first obtain
- Confirmation that the monitoring will form an integral part of an overall package of measures of supervision
- A risk assessment covering the risk factors mentioned above, and
- Confirmation that the child/young person understands the proposed monitoring arrangements and the implications of their breach, and has the capacity to adhere to them.

(3) Although not addressed directly here, there remains a clear need to promote the further development of services that are now working on an extended-hours basis with high-risk young people at the places and times when they are most at risk, such as out on the street on Friday or Saturday evenings.

18. Do you think that the option of electronic monitoring should be available alongside disposals other than secure accommodation?

As stated above, we doubt that electronic monitoring could be targeted for use as a direct alternative to secure accommodation, given the very acute and challenging needs of children and young people who meet the secure criteria. If electronic monitoring is introduced, it is thus an inevitableity that it will be used on a somewhat wider basis.

The conclusions stated above in response to question 18 also apply to this question.

Extending Restriction of Liberty Orders (RLO's) to Under-16s

19. Do RLO's for the under-16s in court require any additional support arrangements?

Yes. The small number of children whose offending is serious enough to require prosecution in the criminal justice system are very likely to have significant educational, medical and social needs which impact on their offending behaviour. Consideration of making an RLO on a child should therefore be informed by a full background report, which should also stipulate how the child's needs will be met.

As the positive experiences of RLO's with adults is primarily due to their use as an alternative to a custodial sentence, we assume that they will only be used for children who are found guilty of an offence that would ordinarily result in a custodial sentence.

20. The period of restriction for an adult to a place is 12 hours per day and/or from a place for 24 hours a day for a period up to 12 months. What should be the period of restriction for an RLO for those under-16s?
When formulating the maximum period of restriction for children and young people subject to an RLO there are some additional considerations that are specific to this age group.

i) the impact the RLO will have on parents/carers and other children

ii) the age of the child and their level of maturity

iii) compliance with regulations around permitted working hours of children where relevant

As a general rule we would expect that the maximum period of restriction for children would be substantially less than for adults.
Parenting Orders

Action in the Hearings System

From our experience in the Hearings System, we acknowledge that parents are a critically important influence in children’s lives and that the environment they provide for children is crucial in exacerbating or preventing anti-social behaviour. We also recognise that parents may need support with their parenting from time to time, and some need to be challenged to fulfil their responsibilities properly.

Many children come into the Hearings System precisely because of concern about the actions of their parents. In 2001-2002, 22% of all referrals to Reporters were about allegations of lack of parental care. Parental care issues are also central to many referrals about abuse or neglect and other concerns. It is also notable that 24% of all children referred for offending were, in the same year, also referred for non-offence reasons.

Even where concerns about parental responsibility do not feature directly in the original grounds, the background information collated on the child will include an examination of parental care and should identify issues that need to be addressed.

Many diversionary disposals are expressly predicated on parental action or parental co-operation with voluntary interventions. Any non-co-operation will be taken into account if the child is referred again.

Parents are required by law to attend any Hearing arranged about their child, and Panel members expect them to play a full and honest part in discussion about what is going wrong and what needs to be done to put it right.

Although a Hearing cannot directly place legal requirements on parents, the assessment of parental responsibility and parental action will be central to the decision about the child. The Hearing will also make the parents aware of any specific expectations on them and that their actions will be scrutinised and taken into account when a future Hearing reviews the supervision requirement.

Further action:
- the key gap is in the provision of supportive services to parents. Executive strategies have significantly increased support during the pre-school phase, but too many parents of older children are not prioritised for help until a crisis hits the family. This issue needs to be addressed in the context of wider workforce and service planning strategies across the care sector.
21. Do you agree that local authorities and the Reporter should be given the power to apply to the court for a Parenting Order? Should the Reporter be able to make an application at his own initiative or at the direction of the hearing?

The available evidence on Parenting Orders is drawn entirely from England and Wales, which lacks any integrated system such as the Children’s Hearings. It is therefore hard to draw any conclusions from English experience about the need for Parenting Orders in Scotland.

In Scotland, children can already be dealt with in the Hearings System because of poor parenting, and parents may be prosecuted in the criminal justice system if their behaviour amounts to wilful neglect or exposure of their children. In addition the Children (Scotland) Act 1995 also gives local authorities power to seek other relevant orders such as a child assessment order, an exclusion order and a parental responsibility order.

We therefore suggest that legislative provision for Parenting Orders in Scotland should be piloted in the 1st instance so that an evaluation can be made of the extent to which they add to existing powers and procedures. It will also be essential to assess the consequential demands on all services working with these parents and how they should best be met within the context of children’s services planning.

Given the existing powers of local authorities as stated above, we consider they would be best placed to apply for a Parenting Order. We welcome the recognition given here to the role of the Reporter and suggest that this should be explored further in the Executive’s forthcoming Review of the Children’s Hearings System so that all aspects of what would amount to a significant development in role can be considered.

As with ASBO’s for children, it will be essential to ensure that new and existing processes can work together effectively to address parenting issues. We therefore suggest that

- S.54 of the Children (Scotland) Act 1995 (power of the Court to refer to the Principal Reporter) should be extended to include Parenting Order applications
- The Sheriff should be empowered to seek advice from the Reporter or Children’s Hearing on any child whose parent is subject to a Parenting Order application, and required to seek a Hearing’s advice if the child is subject to a current supervision requirement
• Subsequently, the Sheriff should also have the power to remit the child’s case to the Children’s Hearing for disposal.

22. **Should courts be able to impose a Parenting Order at their own initiative when dealing with other proceedings in relation to a child and their family?**

Yes. However this power should be subject to a requirement to obtain a report from the local authority and to the requirements proposed above about seeking advice from or remitting the case to a Children’s Hearing.

23. **Are the grounds we describe sound? Should the welfare of the child be grounds for a Parenting Order as well as behaviour?**

Over-specification of the grounds for any legal order tends to create more legal argument and less focus on the central issue. Whether the presenting problem is the child’s welfare or the child’s behaviour, the central concern in both cases is whether the parent is addressing his or her responsibilities toward the child’s interests. A second requirement for the grounds for a parenting order should be to ensure that a compulsory order is only granted if voluntary measures, or measures through other processes such as the Children’s Hearings System, have already been tried and rejected.

We therefore suggest the tests for granting an order should be that:
1. The parent has persistently failed to co-operate with measures in the interests of the child, and
2. The order is necessary in the interests of the child.

24. **Should the failure to ensure attendance at school be grounds for a Parenting Order? How should this work alongside existing powers to make attendance orders?**

No – the central issue would be sufficiently captured by our suggestion above. The specific issue of poor school attendance can be and is already addressed through the Hearings System.

25. **How long should a Parenting Order normally last for? Should it be capable of renewal?**

As the consequences of any failure to comply may include prosecution and conviction it is important that Parenting Orders should have a defined period. An appropriate analogy can be taken from the provisions in the Children (Scotland) Act 1995 for exclusion orders sought by local authorities, where breach may also result in prosecution. Section 79 specifies that an order shall last no more than 6 months. This could be extended to 12 months for Parenting Orders given their
focus on active intervention. Any need extending beyond that period could be dealt with by a further application. However, by that stage it is likely that other measures will need to be taken in respect of the child under other, pre-existing, powers.

26. How should applicants for Parenting Orders ensure that all relevant information about a parent is first taken into account?

By ensuring that the application for Parenting Orders is restricted to local authorities applying to the court, the full information should be available. In carrying out this function we expect local authorities would wish to consult with key partners such as the Police and the Reporter. In that regard please see also our comments on question 2.
Local Authority Accountability

27. Do you agree it would be desirable to require local authorities to comply with supervision requirements?

The single change that would transform the effectiveness of the Children's Hearings System today in addressing crime and anti-social behaviour would be the guarantee that decisions by Reporters and Hearings would be implemented. There are in fact areas of Scotland in which local authorities are able to implement all Hearing decisions, but there are still too many that fall short of this standard. We recognise the serious consequences of this position for public confidence as much as for service effectiveness.

However, this situation has not arisen overnight and has been influenced by a wide range of factors. We believe that every local authority is aware of the existing legal duty to implement supervision requirements. Compliance is already required and desired: the challenge is how to make it happen.

We believe this will require a comprehensive and committed approach. There is no simple solution; if there were, it would already have been identified and acted on. The strategy to be developed and delivered must learn lessons from service areas marked by greater consistency and confidence, such as the impact of national standards on criminal justice social work services. It must also build on the strengths of the System and enable key partners to act pro-actively and strategically together in a committed and focussed way. Finally, it must happen in a joined-up way. Implementation of a supervision requirement should encompass addressing educational and health needs as a matter of course.

In our view, the key elements of this strategy are

1. a clear statement of the overall outcomes the Hearings system is to deliver should be agreed, along with core objectives and standards. This work could be developed from the existing youth justice standards together with current work on child protection standards. Clarifying the overall focus of the System and the essential performance requirements of its constituent bodies is fundamental as the starting point for all the following steps.

2. The meaning of "supervision" and of the duty to give effect to both compulsory supervision requirements and voluntary arrangements instituted by the Reporter should be spelled out in law, backed up by guidance. This needs to be done with sufficient clarity so that there is no doubt what supervision is to deliver, but without being unduly mechanistic or process-driven (as is the case with some aspects of the National Objectives and Standards for Criminal Justice Social Work). The definition should encompass health and educational requirements.

3. Legislation should also spell out more clearly a process by which authorities account to the Hearing itself for any failure to give effect to a supervision requirement; this is vital to ensure that the position of Hearings
is enhanced and not bypassed. This process should cover failure of any provision required for the child, including educational provision.

4. **Authorities' performance on giving effect to supervision should become a key performance indicator for local government**, thus clarifying the line of accountability (for overall service performance) to Ministers and to the public and ensuring that poor performance can be swiftly addressed by the Accounts Commission and the appropriate Inspectorate or Inspectorates.

5. **Authorities should receive demand-led funding for these services.** While we appreciate there may be difficulties in defining which services would be funded in this way, the starting point has to be the recognition of the relative strength of criminal justice social work services under a regime of national standards backed up by demand-led funding.

6. **A major objective of the Executive’s forthcoming Review of the Hearings System should be to strengthen the position and authority of the Hearings themselves.** The decision-making tribunal must have the authority invested in it to specify what services are required, and to ensure that its decisions are carried out. While all of the above steps will help achieve that position, the Review offers the opportunity to look at this issue in terms of the structure of the System and of the key roles within it.

Within this clearer and more performance-focused framework, Ministers would rightly expect SCRA to continue to develop its influencing role to help ensure the System as a whole deals effectively with problematic children, young people and families and to inform Ministers and the public about its effectiveness.

28. **Do you agree that at the Hearing’s direction a Reporter request a Sheriff to make an order to enforce implementation of the supervision requirement?**

Recourse to the Sheriff Court would already be possible through an action of Specific Implement. Any court proceedings would, however, inevitably focus on the specific circumstances of one case, or a small number of cases.

The possibility should not be discounted that such action may be effective in certain circumstances. Nevertheless, it is hard to see how recourse to the courts would address the wider issues that have contributed to the current situation (or, indeed, how such action would avoid getting bogged down in legal argument about the impact of these issues). The impact on influencing relationships and inter-agency strategies to improve services also need to be weighed up carefully.

We would welcome further discussion of this question in the context of a wider discussion about our proposals above.
29. Should the Hearings and Reporter have a role in alerting Scottish Ministers to failure by a council to ensure a child before them receives appropriate education?

We believe that, supported by our enhanced data systems, SCRA can increasingly provide strategic information and data to Scottish Ministers and service partners. As a starting point, however, specific cases generally require to be resolved at local level through the relevant management structures.

We see no reason to differentiate between Councils’ duties towards children under education legislation from their duties under other legislation. The strategy set out in response to question 27 offers an integrated approach to all these issues.
Anti-social Behaviour and Housing

42. Should RSL's be given a statutory duty to participate in the production and implementation of anti-social behaviour strategies?

Yes, we believe that RSL's should be engaged at a strategic level to ensure the development of appropriate responses regarding anti-social behaviour. See also our response to question 1.

45. Do you agree that existing provisions in legislation on housing and homelessness linked to ASBO's should apply to ASBO's involving under-16s?

We would seek to avoid the possibility of a situation where a child's anti-social behaviour is a deciding factor in the reduction of the security of their parents'/carers' tenancy. Significant powers already exist or are proposed elsewhere in the consultation paper that would allow the family's position to be addressed in its own right. Action taken on the basis suggested would have potentially serious implications for other children in the family.

Fixed Penalty Notices for Anti-social Behaviour

47. Should such penalties (Fixed Penalty Notices) be imposed on under-16s?

No We are unaware of evidence demonstrating the effectiveness of this measure particularly with children. Children, by definition, have no means of their own to pay these penalties and therefore should not be treated in the same way as adults. Parents/carers may end up paying these fines these fines on the child's behalf.

Dispersal of Groups

48. How can we strengthen the powers of the police to tackle disorderly behaviour amongst groups?

We do receive Police reports on incidents of group breach of the peace, and we are also aware that the Police deal with many potential incidents on a preventive basis. The Police themselves will be best placed to respond to this question but we have no evidence to indicate that change is required.

49. Do you agree that it would be useful to extend police powers in respect of groups of young people in the way proposed?

We believe that existing powers available to the police are adequate and support the continuing development of positive relationships between police and children and young people in the community. We see this positive engagement as central
to efforts to prevent and deter children from carrying out anti-social behaviour. Police officers and youth workers have a vitally important role to play in reducing the mistrust between children and young people on the one hand, and the wider community on the other.

Where there is no evidence that a particular group of children and young people are causing intimidation or harassment, it is difficult to see firstly on what basis action could be taken against them, and secondly how this will contribute to the process of building trust between different members of the community.

As stated in our introductory comments, the issue is better viewed as one of strategy than as a question of powers. We consider that the experience of street-based mediation approaches as developed in many Danish communities offers a positive and inclusive approach for working with the great majority of young people who are willing and able to learn respect for others in their community.

**Making Anti-social Behaviour Orders More Effective**

50. Do you agree that the power to apply for ASBO’s should be limited to local authorities and registered social landlords (in consultation with the police)?

Yes. In addition, as stated above, there should be a requirement to consult the Reporter before applying for an ASBO in respect of a child.

51. Do you agree there should be a statutory power of arrest for breach of an ASBO?

Given that most anti-social behaviour also constitutes an offence, we are not aware of the necessity to add a further power of arrest.

52. Do you agree that the court should have the power to impose an ASBO on conviction for a criminal offence, where there is evidence of persistent anti-social behaviour?

Yes, subject to the need for appropriate links with the Hearings System when the subject of the prosecution is a child (see also the response to question 11).

53. Do you think the court should have the power to grant an ASBO in related civil proceedings, such as an eviction hearing, where there is evidence of anti-social conduct?

In circumstances where a child is subject to civil proceedings we agree that an ASBO could be granted in appropriate circumstances. However we re-iterate the need for robust links with the Hearings System and the process outlined in our response to question 11.
54. Do you agree that the prohibitions in an ASBO should be able to extend beyond a local authority area, where this is necessary to protect persons from further anti-social acts by the individual concerned?

Yes. Our understanding is that an order granted by a Sheriff would in fact have validity throughout the Sheriffdom.

In this context it is notable that a supervision requirement remains valid throughout the UK and that requirements can be transferred from one area to another if or when the child moves home.

Douglas Bulloch
Chairman, SCRA

11 September 2003
Anti-Social Behaviour Team (Consultation),
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Dear Sir or Madam,

Putting Our Communities First: A Strategy for Tackling Anti-Social Behaviour.

Thank you for the opportunity to comment on the above consultation paper on behalf of the Scottish Police Federation, which is the staff association that represents 98% of all police officers in Scotland.

The Scottish Police Federation agrees that there is a need to tackle anti-social behaviour in Scotland and welcomes this opportunity to contribute to this consultation exercise. However, we are concerned by the recently reported comments of the First Minister who would appear to have some pre-conceived ideas about some of these topics. We trust that the Scottish Executive will take serious heed of advice from professionals in their respective fields and that this consultation exercise has not been carried out for ‘appearances’ only.

We have answered the questions in the consultation, which we believe have a relevance to policing.

Protection for Victims and Witnesses of Anti-social Behaviour.

6. What more could be done to support victims and witnesses of anti-social behaviour?

The Scottish Police Federation supports any steps to protect victims and witnesses which will enable them to give their evidence without fear of reprisals. A strong and visible police presence in our communities engenders a feeling of safety and security. It would reduce the numbers of victims. It would also encourage witnesses to come forward and make them feel safer in the periods leading to and after court proceedings.
7. What are your views on the greater use of professional witnesses?

We have heard of local authorities who have successfully made greater use of professional witnesses and would support this idea.

Acceptable Behaviour Contracts (ABCs).

8. Do you support wider use of ABCs?

ABCs appear to represent a potentially useful form of early intervention and this is supported.

10. What are your views on the relationship between ABCs and legal options such as ASBOs and Parenting Orders? For example, should the court be required to consider the failure or refusal to participate in an ABC or a Parental Contract when considering an application for a Parenting Order?

Clearly, each should be complimentary to the other in any cohesive strategy. We have no particular views on parenting orders but support Anti-Social Behaviour Orders in principle.

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

We have no objection to ASBOs being extended to under 16s provided that this is part of a clear strategy. There seems to be a potential in the consultation paper for the process to become rather circular. Under 16s who have been under the Children's Panel could potentially be referred back to the Children's Panel by the Procurator Fiscal as a result of his consideration of a breach of an ASBO. We are firmly of the belief that the major weakness in dealing with under 16s is a lack of sanctions which can be utilised in the case of the small number of serious young offenders who cause such a disproportionate amount of misery to others. These proposals do not seem to address this problem adequately.

Greater use of Reparation in the Children's Hearings System.

16. What are your views on our proposals to consider increasing the emphasis on reparation both as action that may be taken by the Reporter and as a condition of a supervision requirement made by the Children's Hearing?

Electronic Monitoring of Under-16s.

17. What are your views on the making electronic monitoring a disposal for the Children's Hearings system?

The Scottish Police Federation supports trials of both reparation schemes and Electronic monitoring of Under 16s. We believe these options should be available to Children's Hearings on this basis.
Litter, Fly-tipping and Abandoned Vehicles.

30. Should the power to award Fixed Penalty Fines be given to community wardens, and/or to the police?

The Scottish Police Federation has no difficulty with 'civic' wardens working for local authorities carrying out civic functions such as dealing with and reporting on faulty street lighting, pavement repairs, graffiti, abandoned vehicles and any other environmental improvements. We do, however, have concerns with the concept of them issuing Fixed Penalty Notices because of the potential to bring them into conflict situations with the public for which they are not trained.

Graffiti.

37. Do you agree with our proposal to ban the sale of spray paint to under-16s?

This proposal is supported.

39. Should we require or enable local authorities to implement a night-time noise nuisance service and implement additional powers to enable local authority Environmental Health Officers and/or community wardens to issue Fixed Penalty Notices of £100 to curb domestic noise nuisance? If so, what is the best approach?

Because of the technical nature of establishing noise nuisance we believe the problem is best left with trained Environmental Health Officers.

Fixed Penalty Notices for Anti-social Behaviour.

46. Do you support extending the use of Fixed Penalty Notices levied by the police to a range of low-level, anti-social and nuisance offending?

47. Should such penalties be imposed on under-16s?

There is as important question of perception related to the principle that the police should enforce the law and not dispense justice. In a road traffic situation, the police simply hand over the fixed penalty and while the follow up letter comes from the police force, it makes it quite clear that it is the court which is taking action against the accused person. Any Fixed Penalty for disorder offences would have to clearly indicate that it is the court that is applying the penalty. Even then there is likely to be a perception that it is the police who are fining people and this would be unhelpful.

In absolute offences such as statutory Road Traffic offences it is a simple matter to issue a fixed penalty notice because there is little or no discretion involved in deciding whether an offence has been committed or not. In the case of anti-social and nuisance offences there are...
larger areas of discretion and consistency would be difficult to achieve. Firm guidelines would be required.

While there would likely be a clear reduction in court workload, and that would benefit everyone involved in the criminal justice system, it is less certain that much police time would be saved.

At the time of the offence, despite accepting a Fixed Penalty, there will be the possibility that the accused will not pay. We understand that in these circumstances, it is being proposed that this in itself will become the offence and a higher fine will be imposed. We also understand that from that point, there will be no possibility of the details of the original offence being tested in court at some future date. On that basis, we are assuming that there will be no requirement on the reporting officer to gather full statements from all witnesses where this was not possible at the time of the offence, lodge any productions as they would be now, and attend to all of the other details currently required by the court.

If that understanding of the proposals for non-payment is correct, then these particular circumstances will not in themselves cause the police additional work in relation to producing a full police report to the court.

Our concern is that in the eventual system agreed upon, there could be a significant delay between the time of the offence and the requirement to gather the necessary evidence and report the offence. If an officer knows he or she has to report a case to court from the outset, then he or she gets on with it either at the time or very shortly after the offence. The report is easier to compile with the events fresh in the officer’s mind - time adversely affects memory. There may also be delay in passing the report to the Procurator Fiscal and the consequent potential implications for court time limits.

There is also the possibility that the introduction of Fixed Penalties for disorder offences might significantly increase the number of people drawn into the criminal justice process. Currently, a police officer on duty in a city or town centre on a busy night, has to prioritise what has to be done. If unruly behaviour is the target for the evening, then the officer will have to use his or her discretion as to how to deal with offences, ranging from friendly advice through verbal warnings to arrest and reports to the court. In an eight hour tour of duty, the final sanction of arrest and report to the court can only be used so often because of the time it takes to process someone arrested. If the fixed penalty system proves to be much quicker, then it would be possible to increase the numbers of people dealt with in a formal fashion.

We also have a number of questions about the proposals? Would the Fixed Penalty be a conviction or would it be quotable in future proceedings? How many Fixed Penalties could a person receive for similar offences before the option was withdrawn?

We have also said that we should not rely on results of pilot schemes in England and Wales. If it is decided that Fixed Penalties for disorder offences should be introduced in Scotland then it should be piloted and evaluated in Scotland.
There should be no suggestion that Fixed Penalties for disorder offences could be issued by wardens. This would fundamentally change their role and how they are perceived by the public. It would also greatly increase the risk of them facing violence.

It is also the view of the Scottish Police Federation that the best way to deal with disorder is to ensure there are enough police officers on the street so that potential offenders are prevented from causing a nuisance, and serious offenders are detected and put before the courts. The certainty of being caught and punished is the only real deterrent.

Issuing fixed penalty notices to under 16s poses a number of problems. It is important that parents become involved in any wrong doing by under 16s and issuing an FPN will not ensure that they are even made aware of the circumstances. It is not clear in the consultation how under 16s are expected to pay a fixed penalty or what will happen if they fail to pay.

**Dispersal of Groups.**

48. How can we strengthen the powers of the police to tackle disorderly behaviour amongst groups?

49. Do you agree that it would be useful to extend police powers in respect of groups of young people in the way proposed?

We have consulted widely among our members who have an operational role, which requires them to deal with youths congregating. They are certain that additional powers to disperse groups are not required, and almost all of them said the answer to unruly behaviour in our communities is more police officers on the street.

It is only a few months ago, just before the Scottish Parliament elections, that in a System 3 poll carried out for the BBC, when the public were asked to rank what they wanted politicians to do, clear at the top of the list by a long way, was “Put more police on the streets.” Qualitative research supporting the HMIC report, “Narrowing the Gap” indicated a clear public desire for visible police patrol and little support for the concept of non-police uniformed patrols (wardens).

The police do not need a new power to disperse groups of youths. Sufficient powers already exist and if we had enough police officers out there to use them the problem would be better dealt with. We already have the Civic Government (Scotland) Act 1982 which contains a number of offences and powers for the police and under common law the offences of ‘Breach of the Peace, Disorderly Conduct, Conduct likely to provoke a breach of the peace and even mobbing noting already exist. We do not need more powers, we need more police officers to use what we have already got. The Scottish Police Federation has told the Government this on many occasions in the past.

A new power to disperse would make little or no discernible difference. It would raise public expectations that the police could always deal with unruly crowds when the fact is that we simply do not have enough resources to do so. There would be increased complaints about
A statutory power of arrest for a breach of an ASBO would certainly strengthen the police response to incidents involving anti-social behaviour.

52. Do you agree that the court should have the power to impose an ASBO on conviction for a criminal offence, where there is evidence of persistent anti-social behaviour?

This seems a consistent proposal which will add to the cohesiveness of the proposals.

**Licensed Premises - Police Powers.**

Most Licensed Clubs are properly run and pose no problem to the police. However, there are a minority of clubs which abuse their status under the licensing legislation and it is probably time that the difference in lawful access by the police to Licensed Clubs was brought into line with other licensed premises.

**Closure Notices.**

59. Do you agree that there should be a new power for the police, under the direction of a court and following consultation with the local authority, to close down premises which are the centre of illegal activity, disorder or other anti-social behaviour?

60. Should the power be limited to non-residential premises and houses in which no one is formally residing or should it apply to all such premises, including occupied residential accommodation?

61. Should there be any limits on the power and how otherwise should it work?

We have found it difficult to unearth examples of when such powers would be useful and the majority of our members have expressed the view that existing powers are sufficient, certainly in relation to licensed premises and local authority housing.

Concern has been expressed about the workload involved in gathering evidence and processing applications through the court.

Yours sincerely,

Douglas J. Keil, QPM,
**General Secretary.**
The Criminal Law Committee of the Law Society of Scotland (“the Committee”) welcomes the opportunity to comment on the consultation document, “Putting our Communities First: A Strategy for Tackling Anti-Social Behaviour” and of contributing to the debate on effective ways of tackling such behaviour.

The Context

In framing a strategy to address the causes and effects of anti-social behaviour, consideration should be given to inspiring people to better citizenship, instilling a desire at community level to take pride in the local environment, providing support for those who are victims of crime and establishing better inter-agency co-operation to deliver effective solutions to prevent re-offending.

Before consideration is given to developing new schemes to tackle anti-social behaviour, research should be conducted to assess the effectiveness of current initiatives, identifying any weaknesses and ascertaining whether improvements can be made on the present system. It may be that additional resourcing in some areas would address the problems identified, without the necessity of introducing completely new structures and schemes.
Anti-Social Behaviour Strategies

**Question 1:** Should the formal duty to participate in the preparation of anti-social behaviour strategies be extended to Registered Social Landlords (RSLs) particularly where major stock transfer has taken place? Should there be a formal duty on other community planning partners to be involved? Or is it sufficient that involvement of other community planning partners be referred to in guidance only?

The Committee believes that other organisations can more appropriately comment on these issues.

**Question 2:** What more should be done to promote effective information exchange to prevent anti-social behaviour?

Whilst the Committee accepts that the effect of the exchange of information will assist in detecting anti-social behaviour, it is not satisfied that information exchange in itself will prevent the occurrence of anti-social behaviour. The information obtained could however be usefully analysed to consider ways in which the causes of the anti-social behaviour can be effectively addressed. Greater focus could then be placed on potential solutions to the problems facing local communities.

However, a balance must be struck between an individual’s right to privacy in terms of Article 8 of the European Convention on Human Rights (“ECHR”) and the need to take legitimate steps to prevent crime and disorder and protect the rights and freedoms of others. The extent of the information which will be disclosed about individuals to local authorities and RSLs should therefore be clearly prescribed. The police are privy to a great deal of information about individuals, ranging from intelligence, allegations of criminal conduct or criminal association to details of a person’s previous convictions. The extent to which information should be made available to other organisations and the weight which would be placed on different categories of information should be closely analysed to ensure that this balance is struck.
Confirmation would also be welcomed that an individual will be entitled to apply for a subject access request in terms of the Data Protection Act 1988 and under the freedom of information regime.

**Community Reparation Orders (CROs)**

*Question 3: Should there be programmes for individuals as well as groups? Does this raise particular issues for victims?*

The Committee agrees with the ethos behind Community Reparation Orders (“CROs”) and believes that the courts should have a disposal available to them which would focus on making reparation in response to anti-social behaviour. The Committee would question whether it is necessary to create a new disposal in the form of the CRO and whether the Supervised Attendance Order (“SAO”) could be adapted to serve the same purpose. The principal agencies within the criminal justice system are familiar with the concept and operation of SAOs and the existing framework could be adapted. If such orders were to be available, then they should be available for individuals as well as groups.

Local authorities should be required to consult with appropriate agencies and bodies such as local victims organisations and the police in determining what form the reparation might take. Sufficient resources should also be allocated to the agencies involved if these orders are to be effective. The Committee would also recommend that efforts are made to ensure that the period between alleged commission of the crime and disposal of the case is kept to a minimum, mirroring the approach taken in the Hamilton Youth Court Project.

*Question 4: Should we impose an upper age limit so that CROs are targeted at young people, i.e. those up to 21 years of age?*

No, the Committee would not favour this approach. The court should have available to it a wide range of disposals to ensure that the most appropriate disposal is tailored to the offender in question. Whilst young people may
benefit from such orders, it would appear arbitrary to set an age limit at which this disposal would be unavailable.

**Question 5: Which organisations/agencies should be consulted formally about the nature of reparative work to be undertaken?**

The consultation document acknowledges the importance of involving local victims organisations, community councils and the police in determining the nature of reparative work to be undertaken. The Committee would agree with this assessment and believes that community involvement is essential to ensure that local problems are being addressed effectively.

**Protection for Victims and Witness of Anti-Social Behaviour**

**Question 6: What more can be done to support victims and witnesses of anti-social behaviour?**

The Committee welcomes the ongoing programme of work which seeks to improve the position of victims and witnesses in the justice system. Victim Support Scotland, the Witness Service and the Victim Information and Advice Service (“VIA”) all provide invaluable support to witnesses.

The introduction of the Vulnerable Witnesses (Scotland) Bill is designed to enable vulnerable witnesses give better evidence and participate more effectively in the justice system. It introduces for the first time a mechanism by which parties and the court are required to consider and address issues of vulnerability in advance of court hearings. It is hoped that the introduction of the special measures referred to in the Bill will ensure that the needs of such witnesses are properly addressed and the best evidence delivered.

The views of victims and witnesses involved in anti-social behaviour cases should also be canvassed to ascertain where improvements can be made and greater support given.
**Question 7: What are your views on the greater use of professional witnesses?**

The Committee would question what is envisaged by the term “professional witness”. It is assumed that there are no proposals to alter the rules of admissibility of evidence. If the proposals are designed to allow use to be made of hearsay evidence, then the admissibility of such evidence will depend on the nature of the proceedings. The Civil Evidence (Scotland) Act 1988 already allows for the introduction of hearsay evidence in civil proceedings.

**Acceptable Behaviour Contracts (ABCs)**

**Question 8: Do you support wider use of ABCs?**

**Question 9: What are your views on the range of situations where ABCs would be appropriate? For example, do you support use of ABCs in the hearings system? In schools?**

**Question 10: What are your views on the relationship between ABCs and legal options such as ASBOs and Parenting Orders? For example, should the court be required to consider the failure or refusal to participate in an ABC or a Parental Contract when considering an application for a Parenting Order?**

The Committee notes that ABCs are currently being piloted in various areas throughout Scotland. Before extending their use further, it would be helpful to consider the results of research, designed to assess their effectiveness, in preventing further anti-social behaviour and consider the situations in which they have been most successful.

The Committee can see the merit in the use of ABCs provided that the contract focuses on the cause of the anti-social behaviour. The individual involved should be at the centre of any proposed intervention, with the action
plan drafted specifically to address his or her needs and difficulties. The contract should also be drafted on a multi-agency basis, if it is to operate effectively.

The Committee has concerns, however, about the degree of compulsion which would exist in the proposed system of ABCs. Although the contracts are voluntary, the consultation document indicates that “legal action may follow” on breach of contract. What is envisaged by this reference to “legal action”? Will provision be made to ensure that a person is informed of his or her rights to obtain legal advice at all stages of the process? If breach of an ABC could have legal consequences for the individual, would there be a reciprocal duty placed on local authorities to ensure that sufficient resources are allocated to enable that individual to comply with the duties contained in a contract?

The Committee would rather favour a system whereby the use of ABCs is truly voluntary and is seen as a means of inspiring an individual to better citizenship rather than threatening the use of further legal sanctions.

Clarification would also be welcomed as to how the system of ABCs will interface with the operation of the Scottish Children’s Reporter Administration.

**Question 11:** Should ASBOs be extended to under 16s?

**Question 12:** Do you support the introduction of individual support orders linked to ASBOs for under 16s?

**Question 13:** Are there any implications of extending ASBOs to under 16s in relation to the power of RSLs to apply for ASBOs?

**Question 14:** do you agree that the Youth Court model, where this operates, should be amended to include young people under 16 years of age who are referred to the criminal justice system by the Procurator Fiscal for breach of an ASBO?
Question 15: How should the applicant ensure that they take the full circumstances of the family into account?

The Committee is not satisfied that ASBOs should be extended to those under 16. The Committee believes that the proper forum in which to address the anti-social behaviour of those under 16 is a well resourced Children’s hearing system.

In 2000, the Report of the Advisory Group on Youth Crime indicated that youth crime and repeat offending can only effectively be addressed if the emphasis is placed on education, prevention and early intervention. Central to this process is the early identification of particular problems or vulnerability, which may ultimately lead to anti-social or offending behaviour. Schools, youth groups and others who have direct contact with young people should be trained to identify these problems and take action where appropriate. It may be that action at this stage will be enough to prevent the young person from embarking on a course of criminal conduct or anti-social behaviour.

Where early intervention has not been possible or effective and the behaviour continues, then the Scottish Children’s Reporter Administration has a role, both in considering the welfare issues for that child and in seeking to address the offending behaviour. If the intervention of the Children’s Panel is not successful in assisting the young person address the offending conduct, then criminal proceedings may be raised.

In seeking to extend the use of ASBOs to those under 16, the consultation document indicates that there are a small number of persistently anti-social young people for whom no existing measures provide sufficient deterrent and who should be dealt with by the court. It is difficult to ascertain what greater deterrent effect the use of an ASBO could have over the application of the criminal law. The consultation document indicates that a local authority or RSL could apply for an order if the person has acted or pursued a course of conduct that has caused or is likely to cause alarm or distress. Conduct such
as this would be capable of being prosecuted as a breach of the peace in the criminal courts if there was sufficient evidence.

If the policy intention is to divert young persons away from the criminal justice system and as an alternative to impose these civil orders, then it should not be forgotten that breach of an order in itself is a criminal offence. Those under 16 who breach an ASBO could therefore inadvertently be brought into the criminal justice system and find themselves with a criminal record before they reach the age of 16. In some cases, a criminal conviction may result from conduct, which when first complained of, was not criminal in character.

If the use of ASBOs is extended to those under 16, then the Committee would recommend that provision is made to ensure that the young person is represented before an ASBO is granted. This will then ensure that the full circumstances of the family can be taken into account.

The Committee would welcome guidance as to how the use of these orders will interface with the operation of the Scottish Children’s Reporter Administration.

Greater Use of Reparation in the Children’s Hearings System

Question 16: What are your views on our proposals to consider increasingly the emphasis on reparation both as action that may be taken by the Reporter and as a condition of a supervision requirement made by the Children’s Hearing?

The Committee supports proposals which seek to increase the emphasis on restorative justice projects such as reparation and mediation. If young offenders have some appreciation of the impact of their actions on other, then this ought to give them a greater understanding of the consequences of their actions and may reduce repeat offending. To be effective, however, such

1 The Committee would caution against the use of Financial Reparation Orders in these cases.
projects should be properly resourced and uniformly available throughout Scotland.

**Electronic Monitoring of Under 16s**

**Question 17:** What are your views on the making electronic monitoring a disposal for the Children’s Hearings system?

**Question 18:** Do you think that the option of electronic monitoring should be available alongside disposals other than secure accommodation?

Some members of the Committee would not favour an extension of the use of electronic monitoring as a disposal for the Children’s Hearing System.

The use of such orders would appear to be contrary to the whole ethos of the Scottish Children’s Reporter Administration which places the welfare and interests of the child at the forefront of deliberations.

Electronic monitoring could be perceived as an alternative to secure accommodation. However, secure accommodation places some focus on the education of the child and seeks to ensure that welfare issues are addressed, whereas electronic monitoring will deal only with containment.

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

**Question 19:** Do RLOs for the under 16s in court require any additional support arrangements?

**Question 20:** The period of restriction for an adult to a place is 12 hours per day and/or from a place for 24 hours a day for a period of up to 12 months. What should be the period of restriction for an RLO for those under 16s?
In August 1998, RLOs with electronic monitoring were introduced as a new community sentence and made available on an experimental basis to the Sheriff courts in Aberdeen, Hamilton and Peterhead. The imposition of the orders provided an alternative to custody or to other community sentences. An evaluation was conducted from the start of the period until early in 2000 and the results of research published by the Scottish Executive. The report produced indicated that younger offenders were less likely to complete their orders and that factors such as family tensions, unsettled accommodation and chaotic and erratic lifestyles indicate unsuitability for such a disposal.

The results of research on the pilot of electronic monitoring for those aged 10 to 15 in England and Wales is also interesting. There was a low rate of use of the curfew order for this group of offenders, principally because only a small number were thought to be suitable. Many young offenders did not have a stable home life, which is a prerequisite for a curfew order.

The report also highlights concerns about the potential effect of tagging on young offenders. One concern was that the tag would be seen as a stigma. Although it is desirable for people to accept responsibility for their actions, another concern was that if a person is labelled “offender” and accepts the label, they will live up to it. Interviews with young offenders and their families provided evidence of both reactions.

Against this background, consideration should be given to whether the extension of RLOs to those under 16 is an appropriate and effective policy initiative. The Executive would also require to be satisfied that such proposals are compatible with ECHR and in particular Article 8 (the right to privacy and a family life).

**Parenting Orders**

*Questions 21. Do you agree that local authorities and the Reporter should be given the power to apply to the court for a Parenting Order?*
Should the Reporter be able to make an application at his own initiative or at the direction of the hearing?

Question 22. Should courts be able to impose a Parenting Order at their own initiative when dealing with other proceedings in relation to a child and their family?

Question 23. Are the grounds we describe sound? Should the welfare of the child be grounds for a Parenting Order as well as behaviour?

Question 24. Should the failure to ensure attendance at school be grounds for a Parenting Order? How should this work alongside existing powers to make attendance orders?

Question 25. How long should a Parenting Order normally last for? Should it be capable of renewal?

Question 26. How should applicants for Parenting Orders ensure that all relevant information about a parent is first taken into account?

The Committee is not convinced of the efficacy of parenting orders. It is difficult to envisage what these orders would achieve over the powers, which already exist in the current law. The Scottish Children’s Reporter Administration is designed to look both at the welfare of the child as well as his or her offending behaviour and as such is privy to information about the family as a whole. In addressing these issues the Panel can make recommendations where appropriate for supervision and design disposals, which will assist the family as a whole. The Committee would endorse this approach, rather than shifting the emphasis towards punishment of the parent.

The consultation document makes it clear that parenting orders require a parent to exercise control over the child’s behaviour and to ensure that the child, for example, avoids contact with disruptive or older children. Whilst the
parent may do their best to ensure compliance, there could be situations in which the parent is unable to control the actions of the child or is simply unaware that the child is in fact engaging in the prohibited behaviour. Breach of a parenting order is nevertheless a criminal offence.

The Committee is concerned that in practice, these proposals seek to extend the doctrine of vicarious liability in the criminal law. The concept that one person will be criminally responsible for the actions of another, although not novel in Scots law, has traditionally been restricted to specific offences, such as those involving the supply, or the sale of goods under the Licensing Acts. Parenting Orders would extend responsibility for the acts or omissions of the child to the parent, even in circumstances when there was nothing further that a reasonable parent could have done to prevent the child acting in that way.

The Committee also believes that greater consideration requires to be given to the operation of these orders from an equality perspective. The unmarried father of a child who has not declared his parental rights in terms of the Children (Sc) Act 1995 would be able to avoid responsibility for these orders whereas the mother of the child would not. In what way therefore do these provisions ensure equality of treatment for the parents of the child and compliance with the sex discrimination legislation?

The Committee is concerned that use of parenting orders would contribute to a possible breakdown in the parent/child relationship and interfere with the right to family life in terms of Article 8 of the ECHR. The Committee would suggest that the focus should be on supporting and educating parents rather than on punishing them. Good social development policy is the best criminal policy.

Local Authority Accountability

Question 27. Do you agree it would be desirable to require local authorities to comply with supervision requirements?
Question 28. Do you agree that at the hearing’s direction a Reporter request a Sheriff to make an order to enforce implementation of the supervision requirement?

Yes. The Committee agrees that it would be desirable to ensure that local authorities comply with supervision requirements. However, before any requirements are imposed on local authorities, the Committee would recommend that research is conducted to look at the reasons supervision was not implemented in the cases identified by Audit Scotland to ascertain whether there are any other external contributing factors.

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

The Committee would agree with this recommendation.

Litter, Fly-tipping and Abandoned Vehicles

Question 30. Should the power to award Fixed Penalty Fines be given to community wardens, and/or to the police?

The use of fixed penalty fines is one of the issues under consideration by Sheriff Principal McInnes’ Committee on the Review of Summary Justice. The Committee would therefore suggest that this issue is considered in the context of the recommendations which will result from the review.

Question 31. Do local authority and other bodies have sufficient powers to clear litter?

Question 32. What level of charges would cover local authorities’ present costs for removing, storing and disposing of abandoned vehicles?

Question 33. Is the scope of the present regulations governing the removal of vehicles causing an obstruction sufficient?
The Committee believes that other organisations can more appropriately comment on these particular issues.

**Question 34.** Would simplified means of penalising fly-tipping, similar to those existing for litter, be appropriate, and if so, what form should these take?

**Question 35.** Should local authorities have the power to examine waste transfer documents?

**Question 36.** Should the fine for fly-tipping which may be imposed on summary proceedings be doubled to £40,000?

The Committee has no comment to offer in respect of these matters.

**Graffiti**

**Question 37.** Do you agree with our proposal to ban the sale of spray paint to under-16s?

**Question 38.** Do local authorities require further powers to deal with graffiti?

The Committee is not satisfied that simply banning the selling of spray paint to those under 16 would necessarily prevent graffiti. Consideration should therefore be given to alternative means of dealing with such issues of vandalism and it may be that greater emphasis being placed on restorative justice projects and educational opportunities would assist in addressing the offending behaviour of those involved.

**Noise Nuisance**

**Question 39.** Should we require or enable local authorities to implement a night-time noise nuisance service and implement additional powers to enable local authority Environmental Health Officers and/or community
wardens to issue Fixed Penalty Notices of £100 to curb domestic noise nuisance? If so, what is the best approach?

Question 40. Should we extend the service from a night-time (11.00 pm to 07.00 am) service to a 24-hour service?

Question 41. Should the standard of proof for a statutory noise nuisance be changed to allow a more flexible approach in this area? If so, what might such an approach involve?

The Committee believes that the emphasis in this area should be placed on the promotion of considerate behaviour and the use of community mediation services where appropriate. The Committee believes that there is more likelihood that a neighbourhood dispute will be resolved informally through the use of mediation services than through the adoption of a fixed penalty system.

In the Scottish Executive publication, “The Role of Mediation in Tackling Neighbourhood Disputes and Anti-social Behaviour”, consideration is given to the effectiveness and costs of mediation in resolving neighbourhood disputes. In the mediation cases examined, the main presenting issue was noise. In 61% of cases, the outcome recorded by the mediation service was either full or partial agreement or some improvement in the situation. In just under half of these cases, the mediation service recorded an agreement on all presenting issues. Mediators themselves also suggested that there are likely to be positive outcomes in terms of changed awareness even in “unsuccessful” cases. The study also suggested that the use of mediation was cost effective and concluded that there is considerable scope to extend mediation in the area of neighbourhood disputes.

Anti-social Behaviour and Housing

Question 42. Should RSLs be given a statutory duty to participate in the production and implementation of anti-social behaviour strategies?
Question 43. Should the Anti-social Behaviour Bill give local authorities powers to:

- Regulate landlords in an area so that they control anti-social behaviour?
- Apply to the court for sanctions against the private landlords with individual properties where there is anti-social behaviour?
- Use a combination of these approaches?

The Committee would suggest that other organisations may be able to comment more appropriately on these issues.

Question 44. Do you think measures to reward good tenants are appropriate? If so, what more needs to be done to encourage greater use of such measures?

The Committee has some concerns that measures designed to reward good tenants may in the long term prove to be divisive and unworkable within the community. It is unclear what kind of rewards would be appropriate and how these would be administered.

Question 45. Do you agree that existing provisions in legislation on housing and homelessness linked to ASBOs should apply to ASBOs involving under-16s?

The Committee does not favour the extension of ASBOs to those under 16.

Fixed Penalty Notices for Anti-social Behaviour

Question 46. Do you support extending the use of Fixed Penalty Notices levied by the police to a range of low-level, anti-social and nuisance offending?
As has been indicated above, the McInnes Committee is considering the use of fixed penalties as part of its review of the summary criminal justice system. The Committee would therefore suggest that the use of fixed penalties in this context should be considered in the light of recommendations to be proposed by the McInnes Committee, rather than considered in isolation.

**Question 47. Should such penalties be imposed on under-16s?**

No.

**Dispersal of Groups**

**Question 48. How can we strengthen the powers of the police to tackle disorderly behaviour amongst groups?**

**Question 49. Do you agree that it would be useful to extend police powers in respect of groups of young people in the way proposed?**

The Committee notes that the police consider that they already have sufficient powers to deal with such groups.

Part IV of the Civic Government (Scotland) Act 1982 deals specifically with the powers of constables to deal with annoying, offensive, obstructive or dangerous behaviour. Section 50 makes provision for dealing with those who are drunk and incapable in a public place. Section 53 creates the offence of obstruction and provides for a situation in which individuals in a group obstruct the "lawful passage" of others and who refuse to move along when asked to do so. Section 54 deals with noise nuisance.

In addition, the police have powers to intervene in the situations described in these questions and detain or arrest those involved in criminal behaviour.
If police powers are to be extended, consideration should be given to compliance with Article 11 of the ECHR (freedom of assembly and association).

Making Anti-social Behaviour Orders More Effective

Question 50. Do you agree that the power to apply for ASBOs should be limited to local authorities and registered social landlords (in consultation with the police)?

Yes.

Question 51. Do you agree there should be a statutory power of arrest for breach of an ASBO?

No. In circumstances where breach of an ASBO could result in imprisonment, there is already a common law power of arrest.

Question 52. Do you agree that the court should have the power to impose an ASBO on conviction for a criminal offence, where there is evidence of persistent anti-social behaviour?

No, the imposition of an ASBO is a civil procedure and should therefore remain distinct from criminal proceedings.

Question 53. Do you think the court should have the power to grant an ASBO in related civil proceedings, such as an eviction hearing, where there is evidence of anti-social conduct?

Yes, given that the nature of the proceedings is of a civil character, the Committee would favour this proposal.

Question 54. Do you agree that the prohibitions in an ASBO should be able to extend beyond a local authority area, where this is necessary to
**protect persons from further anti-social acts by the individual concerned?**

The Committee understands that other civil orders can extend beyond the sheriffdom in which the order is granted and accordingly, would agree that an ASBO should be able to extend beyond a local authority area.

**Licensed Premises – Police Powers**

*Question 55. Do you agree that the police should have the same right of entry to off-licences and registered clubs serving alcohol as they have to licensed premises?*

*Question 56. Do you agree that there should continue to be no right to object for a licence-holder against an order issued by the licensing board under Section 85 of the Licensing (Scotland) Act 1976?*

*Question 57. Do you agree that the procedure for a closure order under Section 85 should apply to all licensed premises and to registered clubs?*

*Question 58. Do you agree that we should clarify the powers of the police to close licensed premises where there is, or is likely to be, disorder in them or in their vicinity?*

Sheriff Nicholson has recently published his report on the review of licensing law in Scotland and this is the subject of consultation. The Society’s Licensing Committee is presently considering the recommendations and preparing a response to this consultation. The Committee therefore believes that any proposed changes should be dealt with in the context of the review of that area of law as a whole.

**Closure Notices**
Question 59. Do you agree that there should be a new power for the police, under the direction of a court and following consultation with the local authority, to close down premises which are the centre of illegal activity, disorder or other anti-social behaviour?

Question 60. Should the power be limited to non-residential premises and houses in which no one is formally residing or should it apply to all such premises, including occupied residential accommodation?

Question 61. Should there be any limits on the power and how otherwise should it work?

These proposals similarly should be dealt with in the context of the Nicolson report.
The Civil Legal Aid (Scotland) Amendment (No.2) Regulations 2003  
SSI 2003/486  

Note by the Clerk

Background

These Regulations amend the Civil Legal Aid (Scotland) Regulations 2002. They place a duty on applicants for civil legal aid, assisted persons, solicitors and counsel to inform the Scottish Legal Aid Board of any circumstances which may effect the Board's decision to award civil legal aid. The duty on solicitors and counsel to advise the Board of any change in circumstances overrides any privilege between counsel/solicitor and client.

These regulations form part of the wider reforms announced by the Scottish Executive in February which are intended to streamline the legal aid system, improve access to justice, ensure quality service for the client, increase the fees paid for legal aid work and deliver more efficient administration. A new application and reporting system was proposed that will allow closer monitoring and control of cases as they proceed. These regulations are intended to aid this system.

Procedure

The Justice 2 Committee has been designated lead Committee and is required to report to Parliament by 24 November 2003.

The Subordinate Legislation Committee considered the instrument at its meeting on 28 October 2003 and sought clarification on what is understood by: "so far as known to that applicant or assisted person" as there is a situation in which the change in circumstances in question can be known to the counsel or solicitor, but not to the assisted person or applicant. The relevant extract from the Subordinate Legislation Committee report is attached.

The instrument was laid on 3 October 2003. Under Rule 10.4, the instrument is subject to negative resolution procedure - which means that the Order remains in force unless the Parliament passes a resolution, not later than 40 days after the instrument is laid, calling for its annulment. Any MSP may lodge a motion seeking to annul such an instrument and, if such a motion is lodged, there must be a debate on the instrument at a meeting of the Committee.

Clerk to the Committee 6 November 2003
Extract from the Subordinate Legislation Committee 10th Report 2003

**Background**
1. The Committee asked the Executive for clarification of one point on the Regulations. It seemed unclear, in the light of the amendment made by regulation 3 of the Regulations to the “full out” in regulation 23(1) of the principal Regulations, whether sub-paragraph (b) of new regulation 23(1) only covers information known to the assisted person or applicant or whether it is intended also to cover information that may not be known to the assisted person or applicant but is known to his or her counsel or solicitor.

**Response**
2. The Executive confirms that the effect of inserted regulation 23(1)(b) is that, where there is a third party jointly concerned with an applicant or assisted person whose circumstances, financial or otherwise, change, the applicant or assisted person is under a duty to inform the Board if he or she is aware of the change. The applicant or assisted person’s solicitor or counsel will be under a duty to inform the Board of the change if they are aware of it and if their client knows that there has been a change of the third party’s circumstances.

3. The Executive’s response is reproduced at the Appendix to this report.

**Report**
4. The Executive has supplied the clarification requested which the Committee draws to the attention of the lead committee and the Parliament.
OVERVIEW

The original framework document for the establishment of the Edinburgh PDSO set out two basic aims:

1. To set up a workable public defender project in Scotland providing criminal legal assistance to eligible clients.
2. To provide a basis for comparison of the delivery of criminal legal assistance provided by PDSO with that provided by private practice to identify ways in which the efficiency and effectiveness of the current system might be improved.

The Edinburgh pilot was established by Section 50 of the Crime and Punishment (Scotland) Act, 1997 and opened on 1 October 1998 in York Place, Edinburgh. The statute required that an independent research project would report to parliament by 2001. To facilitate this earlier research cases were to be directed to PDSO by the date of birth of the accused. This meant that persons born in January or February of any year could only obtain criminal legal aid in summary matters from the PDSO in Edinburgh.

From 1 July, 2000, the researchers having ingathered sufficient data for their purpose, a number of changes were introduced. The most important of these was that the system of direction was abolished. It was agreed that PDSO would attract cases through returning business, word of mouth and a share of the summary duty scheme in Edinburgh. The “duty scheme” provides a solicitor being available for people appearing from custody who do not have a solicitor of their own. Thus from 1 July 2000 the only people to use PDSO have been people that have chosen its service. There has been no compulsion upon anyone since that date.
STAFFING OF THE EDINBURGH PDSO

Initially, the PDSO opened with a full complement of 6 legal staff together with supporting secretarial staff. It was anticipated that direction of clients would produce a large number of cases very quickly and so it was necessary to have a fully manned office from day one. In fact, the direction scheme did not produce as many cases as was expected and the PDSO operated with substantial spare capacity in the first 18 months of its existence.

Since July 2000, the PDSO has operated with a legal team of 5 solicitors (including the director) which has been an appropriate number for the level of business. This situation has remained fairly constant throughout the remainder of the first 5 years.

Each solicitor working within the PDSO handles a varied criminal caseload. Each undertakes cases in the Edinburgh courts, advising clients and appearing for them in court throughout proceedings.

The workload has remained constant in overall numbers, although the quality of caseload has improved as the office has taken on a greater number of more serious cases. As indicated above, PDSO initially had a substantial amount of spare capacity. This position has improved over the intervening time although we still carry capacity to undertake more cases than we do at present should the need arise. The public defence solicitor employed are well able to cope with current business levels.

The role of a public defence solicitor in a court case is very much the same as any other solicitor from private practice. We will accept initial instructions from a client either through his attendance at the office or by meeting the client in a custody situation. The solicitors in this office apply for criminal legal aid.

Thereafter, we undertake the investigation and representation of cases consistent with what should be expected of a private solicitor. All cases are investigated thoroughly. The PDSO is subject to audit by the Scottish Legal Aid Board for its compliance with the code of practice in the same way as any other firm.

RESEARCH ISSUES

As members of the committee will be aware, the initial PDSO research reported to Parliament in 2001. This meant that it could only cover cases which had been opened before the end of 1999. This was a very early period for research to be carried out, although the time frame was laid down by the Westminster Parliament prior to devolution. At that stage the office was
running under capacity and was less cost effective than is the case now. It was therefore not surprising the research report suggested that at that stage there was no significant difference in price or case outcome, although it did report that the PDSO had potential to be substantially cheaper.

The main financial benefits brought out by the report at that early stage were that the shorter trajectory of PDSO cases (PDSO cases involved fewer court hearings) meant that the most significant savings were to the courts and the prosecution service, estimated to be as much as 16% overall, and also in terms of a reduction in wasted witness time.

COST AND WORKLOAD OF PDSO

After the first 18 months or so business costs have fallen year on year. As members can see the PDSO now costs substantially less than at the time of the research.

**Total spend on PDSO (per SLAB annual report)**

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<tbody>
<tr>
<td>£405,000</td>
<td>£430,000</td>
<td>£390,000</td>
<td>£364,000</td>
<td>£319,000</td>
<td></td>
</tr>
</tbody>
</table>

**Number of cases handled by PDSO**

<table>
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<tbody>
<tr>
<td></td>
<td>417</td>
<td>1034 (of which 1 solemn)</td>
<td>1202 (of which 26 solemn)</td>
<td>1194 (of which 34 solemn)</td>
<td>1123 (of which 25 solemn)</td>
</tr>
</tbody>
</table>

In addition to the above PDSO caseload, the PDSO has put through a large number of cases at the custody court for other solicitors as part of our service when operating as duty lawyers.

CONCLUSION

The proposed locations of the new PDSO offices will be of assistance to the Scottish Legal Aid Board in a number of ways. Having a base in each of these places can assist in ensuring that there is access to justice throughout Scotland. Following the introduction of fixed fees in summary cases there have been instances where solicitors in private practice have been unwilling to take on cases in certain places. The ability of a Public Defence Solicitor to travel from one of the 3 proposed offices would ensure that no member of the public eligible for legal aid would be unable to obtain a solicitor. This is of course of assistance in meeting the requirements of ECHR in respect of a fixed-fee legal aid scheme.
Additionally, following the passage of the Sexual Offences (Procedure and Evidence) (Scotland) Act 2002, an accused person cannot represent himself in a sexually related case. There may be areas of the country where private solicitors will not want to undertake cases where they have been appointed by the court. As a public service office, the PDSO will undertake such appointments where necessary. Accordingly, the operation of the PDSO from the 3 proposed bases provides a degree of assurance to parliament that the provisions of the Act can be practicably implemented in any court in the country.

Additionally, operation of 3 PDSO offices ought to drive efficiency of the service. It allows direct comparison to be made between one office and another. It also increases choice to the public in terms of a provider type that they wish to use. Since direction was abolished in 2000, many clients choose to use this office because they are attracted to the public service ethos.

The repeal of the section of the regulations specifying Edinburgh as the location of the PDSO is a necessary requirement if the other offices are to be opened in implementation of the Criminal Justice (Scotland) Act 2003. A repeal of the location is the simplest method by which PDSO would have the flexibility to address any issues of unmet need in areas outwith the 2 proposed locations. It is also a way of ensuring that the Inverness office is used as a base for providing a service to the wider rural community.

Reported by:

Alistair G Watson
Director, PDSO

5 November 2003

As can be seen, the caseload throughout has remained fairly constant despite the removal of any compulsion upon the public in the middle of 2000.
Background

In 1998 the Public Defence Solicitors Office began operation in Edinburgh using solicitors directly employed by the Scottish Legal Aid board to provide criminal legal assistance.

On 20 October 2003 the Minister for Justice announced that two more Public Defence Solicitors Offices are to be opened in Glasgow and Inverness. The Executive indicated that “Extending the pilots outwith Edinburgh to bring in Glasgow and Inverness courts will enable us to make better comparisons between public defence and private solicitors in terms of cost, quality, client satisfaction and the wider impact on the criminal justice system.”

These Regulations remove from the Scottish Legal Aid Board (Employment of Solicitors to Provide Criminal Legal Assistance) Regulations 1998 the provision that restricts solicitors in the Public Defence Solicitors’ Office to being used only in the Sheriff Court district of Edinburgh.

The Public Defence Solicitors’ Office is effectively a part of the Scottish Legal Aid Board, although the solicitors operate independently. The Public Defence Solicitors’ Office was asked to provide a background paper on its operation (attached).

Procedure

The Justice 2 Committee has been designated lead Committee and is required to report to Parliament by 1 December 2003.

The Subordinate Legislation Committee considered the instrument at its meeting on 4 November 2003 and agreed to approach the Scottish Executive to establish what if any prior consultation was carried out before these Regulations were made.

The instrument was laid on 28 October 2003. Under Rule 10.4, the instrument is subject to negative resolution procedure - which means that the Order remains in force unless the Parliament passes a resolution, not later than 40 days after the instrument is laid, calling for its annulment. Any MSP may lodge a motion seeking to annul such an instrument and, if such a motion is lodged, there must be a debate on the instrument at a meeting of the Committee.

1 Scottish Executive News Release, 20/10/2003
BACKGROUND

1. The Committee has agreed to consider youth justice as its first major inquiry. Following the discussion at the Committee Away Day SPICe have prepared a briefing paper to assist the Committee in refining the scope of the inquiry. The paper sets out an overview of youth justice in Scotland and in other jurisdictions and is attached as Annex 1.

2. The purpose of this note is to assist the Committee in considering its approach to the inquiry and in defining the terms of reference.

DEFINING THE AREA OF INQUIRY

3. There are a large number of topics which could be looked at by the Committee in relation to the youth justice system in Scotland. As there is a great deal of activity in this area the Committee may wish to narrow the focus of its inquiry and concentrate on a particular issue or a particular group.

4. The Committee will want to ensure that the inquiry is appropriately focused and does not duplicate existing activity. It may therefore be helpful in defining the terms of reference to gather some initial views from people active in youth justice matters. This could be done through formal oral evidence sessions or the Committee could consider organising a seminar which could allow the Committee to hear a wide range of views, and benefit from discussion between participants, in a less formal environment than a committee meeting.

Possible seminar participants

5. There are a large number of individuals and organisations who could contribute to the framing of the Committee’s inquiry into youth justice. The list below is not exhaustive, but suggests types of participants. The precise participation and structure of the day can worked up in the light of any initial steer from the Committee at this stage since different arrangements would be required for different types of organisation.

Organisations eg:

- SACRO
- Scottish Children’s Reporters Administration
- APEX Scotland
- Barnardo’s
• Prince’s Trust
• Association of Directors of Social Work
• Scottish Prison Service
• ACPOS
• Crown Office and Procurator Fiscal Service

Researchers/academics eg
• Criminal Justice Social Work Development Centre for Scotland
• Edinburgh Study of Youth Transitions and Crime (Edinburgh University)

“Frontline” workers eg
• Community police
• Teachers
• Youth workers
• Social workers/probation officers
• Project workers eg projects providing alternatives to custody
• Prison officers (young offenders’ institutes)
• Solicitors/advocates
• Children’s panel members

Individuals eg:
• Young people (including offenders)
• Parents
• Victims

Appointment of adviser
6. The Committee may also wish to consider appointing an adviser to facilitate the seminar and assist in defining the terms of reference. (The Committee could take a decision, once the terms of reference were drawn up, on whether to appoint the same adviser for the inquiry).

Timing/funding
7. If the Committee agrees to hold a seminar it could seek approval for any funding needed from the Conveners’ Group in January with a view to holding the seminar in March following the end of the Committee’s consideration of the Anti-Social Behaviour Bill at Stage 1.

8. If the seminar took place in March the remit of the inquiry could be agreed before the Easter recess and a call for evidence issued to enable the committee to take oral evidence in June.

Options
9. The Committee is invited to:
   • discuss the background paper prepared by SPICe;
   • give a steer on the approach to the inquiry;
   • agree whether to appoint an adviser at this stage.

Clerk to the Committee 5 November 2003
CHARACTERISTICS OF CHILDREN AND YOUNG PEOPLE WHO OFFEND

The following analysis is taken from the Audit Scotland report “Youth Justice in Scotland” (June 2001).

There are about 920,000 young people aged 8 – 21 in Scotland (approximately 18% of Scotland’s total population of 5.1 million). How many of these people are offenders? A snapshot in March 2001 showed a total of over 76,000 recorded offenders under 21 (including those with pending cases) in Scotland. This equates to 8% of 8 – 21 year olds, one in 12 young people. In 1999/2000, over 14,000 children were referred to the Children’s Reporter for offences and 27,000 males and 3,000 females under the age of 21 had a charge proved against them in the courts.

A few young people commit a large number of offences. Of the people under 21 who had a charge proved in court in 1999, 8% had more than ten previous convictions. The number of young people who commit multiple offences is increasing. The Scottish Children’s Reporter Administration compared patterns of offending over the last ten years and found that the number of children dealt with for one to three offences had remained almost constant, the number who had offended on between four and nine occasions rose by over 10%, but the largest change was in those who had committed in excess of ten offences. This group of recorded prolific offenders grew by over 40% between 1990 and 2000. This picture could be affected by an actual increase in offending, or a change in reporting procedures.

Age, gender and offence types

There are over three times as many recorded male offenders as female offenders in the 8 – 21 age band and research has shown that peak offending ages vary by gender and by type of offence. In a study covering the UK, it was shown that male offending generally peaks at a later age than for females.

<table>
<thead>
<tr>
<th>Crime Type</th>
<th>Age of males</th>
<th>Age of Females</th>
</tr>
</thead>
<tbody>
<tr>
<td>Property offences</td>
<td>20</td>
<td>15</td>
</tr>
<tr>
<td>Violent offences</td>
<td>16</td>
<td>16</td>
</tr>
<tr>
<td>Expressive Offences*</td>
<td>14</td>
<td>15</td>
</tr>
<tr>
<td>Drug Offences</td>
<td>20</td>
<td>17</td>
</tr>
</tbody>
</table>

*Expressive offences include crimes such as vandalism and arson against property
Audit Scotland, 2002

Many studies have looked at levels of offending by young people. Depending on the age and crime types selected, youths have been 'credited' with between 40% and 66% of the crimes committed. Table 2 shows that some crimes tend to be committed more frequently by young people. These crimes are often high volume, for example,
in the Lothian and Borders Police area, the six crimes listed in Table 2 accounted for 37% of all crime. (Drug crime has been included in this table to show that although often publicly perceived to be a ‘young person’s crime’ this is not reflected statistically.)

Table 2 – Percentages of those under 21, proceeded against in court by crime type

<table>
<thead>
<tr>
<th>Crime Type</th>
<th>Up to age 21</th>
<th>Aged 21 or over</th>
</tr>
</thead>
<tbody>
<tr>
<td>Theft Motor Vehicle</td>
<td>66%</td>
<td>34%</td>
</tr>
<tr>
<td>Theft Opening a lock-fast place</td>
<td>56%</td>
<td>44%</td>
</tr>
<tr>
<td>Housebreaking</td>
<td>45%</td>
<td>55%</td>
</tr>
<tr>
<td>Vandalism</td>
<td>44%</td>
<td>56%</td>
</tr>
<tr>
<td>Serious Assault</td>
<td>32%</td>
<td>68%</td>
</tr>
<tr>
<td>Drugs</td>
<td>22%</td>
<td>78%</td>
</tr>
</tbody>
</table>

Audit Scotland, 2002

Factors affecting offending

A considerable amount is already known about the characteristics of young offenders and their families. Risk factors identified by many studies in this area include:

- Poor housing standards
- Drug/alcohol misuse by young persons or their families
- Low income
- Health, personality and behavioural problems
- Family breakdown
- Low educational achievement
- Socialising with offenders

The following analysis taken from the Audit Scotland Report (June 2001) illustrates these factors in a Scottish context:

Risk factors in Glasgow and crime rates - Glasgow has high levels of both risk factors and crime:

It has 12% of the Scottish population, but 30% of the Scottish homeless population.

The incidence of injecting drug abuse in Glasgow is five times the national average, with over 1,000 children dealt with in Glasgow by social work as a result of parental drug misuse. Over half the drug users take opiates and over 80% of these do so on a daily basis.

The number of families reliant upon income support is 42% as opposed to the Scottish average of 25%.

It has above average levels of deprivation, unemployment, mortality and chronic illness.
The Scottish Executive has an index of ‘family stress’ combining data relating to disadvantaged children. The index ranges in score from the council with the lowest ‘family stress’ at -111 up to +221 for Glasgow, with an average of +34. A high value indicates high levels of family stress.

These factors translate into higher crime rates. In 1999, the average number of crimes recorded per 10,000 population in Scotland was 851; for Glasgow, the figure was 1,431, almost 70% above the average.

**VICTIM, OFFENDER OR BOTH?**

A theme in many studies is that young people not only account for a large number of offenders, but a similarly large number of the victims of crime are also young and male. A recent study found that 75% of young people, who had been convicted of serious offences and assaults and held in secure care or custody, had been the victims of physical, sexual or emotional abuse. In a survey of young prisoners, 17% of males and 49% of females said they had been abused. The 1996 Scottish Crime Survey showed that 45% of 12-15 year-olds had been victims of theft, violence or harassment.

Work carried out by Lothian and Borders Police also shows that victims and offenders are not separate categories within the same age group. A comparison of the young people dealt with by domestic violence officers, sexual offence officers and juvenile offending officers found that in 75% of referrals by the police to the Reporter, there was a link to child abuse or domestic violence. This is consistent with a Scottish Executive report which found that over 47% of those referred to the Children’s Reporter for offending had come to the attention of the Reporter earlier in their lives, for other reasons, for example, care and protection issues such as parental substance abuse.

Young offenders then, often have complex needs which have to be addressed in order to improve their life chances. Equally, their ‘deeds’ – the offences they have committed – have to be dealt with in order to protect society and so that the young person learns that offending behaviour is unacceptable.

**YOUTH JUSTICE OVERVIEW**

Youth crime was, during the period covered by the first session of the Scottish Parliament, an issue of particular concern to the Scottish Executive. This was in view of the number of young people who became involved in crime and the small but increasing number of persistent young offenders who can cause substantial problems in local communities. An Advisory Group on Youth Crime was established to consider ways of reducing such crime through a combination of prevention, early intervention, and effective services and programmes. The recommendations of the Group were accepted by the Scottish Executive and are now the subject of an action programme, Scotland’s Action Programme to Reduce Youth Crime 2002.

Young offenders under the age of 16 are generally dealt with through the Children's Hearings system which is sponsored by the Scottish Executive Education Department (amongst its broad responsibilities in respect of children and young
people). Recent research on Children’s Hearings (Lobley, Smith and Stern 2002) indicated a lack of resources in terms of effective programmes and services to which young people could be referred. The Executive has stated that it is committed to increasing the range of interventions available in relation to Children’s Hearings and, more generally, to early intervention in the lives of young people who get into trouble with the law in order to reduce offending and increase community safety.

The Advisory Group on Youth crime also recognised that the point of transition between the Children’s Hearings system and the adult criminal justice system (the latter deals with most young offenders aged 16 and over) is difficult and abrupt as young offenders move away from a system focused largely on their welfare needs. The range of disposals available to the courts which are tailored to the particular needs of young offenders are limited. Issues relating to young offenders of 16 and over who are dealt with through the adult criminal justice system are part of the remit of the Justice Department.

Research commissioned by the Scottish Executive has indicated that the effectiveness of certain disposals and programmes with young people are critically affected by the lifestyles of those young people. For example, a pilot of the use of supervised attendance orders at first sentence with 16 and 17 year olds was abandoned because of the high breach rate and the limited options available on breach. However, research indicates that programmes for young offenders based on evidence of what works can be effective in reducing the rate and seriousness of re-offending, as shown, for example, in the evaluation of Barnardo’s Freagarrach programme for persistent juvenile offenders (See Lobley, Smith and Stern 2002).

In June 2002 Ministers published a 10-point Action Plan which included: proposals for a Youth Court feasibility project; Fast Track Children’s Hearings; a review of the potential for using Restriction of Liberty Orders; Anti-Social Behaviour Orders and Community Service Orders for persistent offenders; consideration of a Scotland-wide system of police warnings; and national standards for tackling youth crime (which will operate between local authorities, the criminal justice system and the Children’s Hearings system).

Fast Track Children’s Hearings were introduced as pilot schemes on 31 January 2003 in Dundee, Ayrshire, and East Lothian and Borders and will operate for two years. They are aimed at a hard core of young offenders responsible for an estimated one-third of youth crime in their communities. It is envisaged that these hearings will deal with the eight per cent of offenders under the age of 16 who commit five or more offences (mostly vandalism, breach of the peace and car-related crime).

Scotland’s first Youth Court became operational in June 2003. The court is based in Hamilton and will be the subject of a two-year pilot.

**Fast Track Children’s Hearings**

The aim of the fast track hearings is to enable the system to respond more quickly to referrals of young people under 16 who are persistently offending and to take action to reduce and/or end re-offending. The decisions of such hearings are to be based
on an assessment of need and will lead to guaranteed places on programmes to reduce offending, secure better outcomes for those referred and identify potential for future action.

The new Hearings are aimed at a hard core of offenders responsible for an estimated one-third of youth crime. It is envisaged that the Hearings will deal with the eight per cent of offenders under 16 who commit five or more offences (mostly vandalism, breach of the peace and car-related crime).

While Fast Track hearings are set within the ethos and procedures of the Children (Scotland) Act 1995 it is important to state that these specialist hearings are intended to be different to the existing hearings and are intended to offer a more effective way of dealing with persistent offenders. The application and monitoring of key performance standards will mark the specialist hearings out and maximise the potential for effective and speedier intervention. The following standards underpin the Fast Track Hearings:

- **Timescales** – cases will require to be processed faster than under the current system. From initial caution and charge to disposal a target has been set of 90 days, which is one third quicker than current arrangements (where the average time is 134 days)
- **Improving Reporting** – service standards will be introduced to ensure local authorities provide high quality and timely reports
- **Better Options for Disposal** – each report to a hearing will specify a named programme or type of intervention for the needs identified, including timescale. This must include a programme to tackle offending behaviour. The local authority must guarantee a place on the recommended programmes and ensure implementation
- **Monitoring Interventions** – Each supervision requirement should set out timescales for each intervention and show review points. Supervision requirements require to address how further additional offending or regression will be tackled
- **Panel Members** – all panel members hearing these cases should have at least one year's experience of the hearing system. In practice, it is hoped that the majority of cases will be heard by members with upwards of four years experience. Greater efforts will be made in order to maintain continuity at any subsequent or review hearing, to ensure at least one panel member from the original fast track hearing should be present

New interventions in pilot areas to support the fast track hearings include new programmes that cover road traffic offending, parenting, mentoring, social skills, anger management and mental health issues. There are also extra intensive support places, educational support places and additional residential and secure accommodation places.

**Youth Court Feasibility Project**

The Youth Court Feasibility Project Group, chaired by Sheriff John McInnes, reported to the Deputy First Minister at the end of December 2002. It concluded that the establishment of a pilot Youth Court was feasible under existing primary
legislation. The pilot will target persistent young offenders in the 16-17 year-old age group with the flexibility to deal with 15 year-olds in certain circumstances.

**Principal Features of the Youth Court**

**Referral Process**

- For the purpose of entry to the Youth Court “persistency” defined as “at least three separate incidents of offending, which have resulted in criminal charges within a six-month period”
- In order to ensure a fast track system, other than in exceptional cases, prospective Youth Court offenders to make their first appearance in court within 10 (exceptionally 14) days from the date of charge
- Wherever possible and practicable known outstanding and other charges in the system will be rolled up to be taken together
- Where the young person is co-accused with non-16 & 17 year olds, the case will normally be dealt with by the Youth Court

**Court Process**

- Sheriffs presiding in the Youth Court to have the same range and powers of sentence as any other sheriff sitting in a sheriff summary court
- A pool of sheriffs (four at any one time) to preside over the Youth Court on a rotation basis thus allowing other shrieval duties to be undertaken during the pilot
- The cycle of court business to be arranged, where practicable, so that individual Youth Court sheriffs:
  - deal with all first appearances in court
  - where possible, deal with any Intermediate diets
  - are allocated many (but not all) of the summary trials of 16 & 17 year olds identified by the fiscal as potential candidates for the Youth Court
  - retain oversight of any community supervision orders made so as to ensure the young offender will appear, wherever possible, in front of the same sheriff
- Dedicated Youth Court staff (i.e. fiscal, clerk, social work) to support and service the court
- Provision of fast track programmes

**Implementation of the Youth Court**

- Establishment of a Youth Court Advisory Forum to oversee implementation and thereafter to review regularly the working, development and operation of the Youth Court
- Appointment of a Youth Court Co-ordinator to service the Youth Court Advisory Forum and co-ordinate practice across the nine different agencies involved
- External research and evaluation of the effectiveness of the pilot’s operations and programmes
YOUTH JUSTICE IN OTHER JURISDICTIONS

The following section gives a brief outline of youth justice systems in other jurisdictions.

England and Wales

The aims of the Youth Justice System in England and Wales have been set down in law and the first principal was set in 1933 when it was provided that in dealing with a youth, the Court must have regard to his welfare. The background of the offender has therefore been an important consideration both in deciding to prosecute and in sentencing. The second principal to the system was set in 1998 when it was provided that the aim was to prevent offending. The result of this has been to re-organise the diversion systems that have been used for many years and to introduce Restorative Justice sentencing. The key to the system as it currently stands is early and effective intervention.

To support early intervention, the system of supporting youths within the criminal justice system was re-organised. Local Government, which carries the main responsibilities for child welfare, remain involved in the youth justice system however, Youth Offender Teams have been established to co-ordinate all the services which are needed when a youth begins offending. Youth Offender Teams are multi-agency groups, which include members from local government social services, health workers, education and the police. It is the Youth Offender Team that carries out the support work within the diversion system and also writes reports for the courts which are used in sentencing. The Team also supervise the various restorative, community and supervision orders which are allocated. Whilst the teams are to a large extent independent, they work closely with a national organization called the Youth Justice Board. The Youth Justice Board has responsibility to ensure that the different Youth Offender Teams offer a broadly consistent approach, they advise the Government on youth justice matters and to manage the various secure units that provide custodial sentences for youths.

Diversion

The system of diversion is operated by the police in consultation with the Youth Offender Team. Where a final warning is given (see below), the Youth Offender Team will consider whether intervention is required to prevent further offending and where necessary will implement and supervise such intervention. Advice is only sought from the Crown Prosecution Service where there are serious concerns as to whether a prosecution should be brought. Throughout the system, the police retain the right to deal with any offending informally by taking no action and advising the young person and his parents about his behaviour.

Requirements for reprimands and final warnings

If the police decide that informal advice is not appropriate, then they will consider using the formal system of reprimands and final warnings. This is a formal way of giving advice and if the youth continues to offend, the fact that he has previously
received a reprimand or final warning is cited in court. In order to consider giving either a reprimand or final warning, certain tests must be met:

- there must be sufficient evidence to provide a realistic prospect of obtaining a conviction;
- the youth must have fully admitted the offence when he was interviewed by the police – a partial admission is not enough;
- the youth must not have previously been convicted by the court;
- it is not in the public interest to prosecute.

The judgement as to whether these tests are met is made by the police. If the offence is denied by the youth, the only options open to the police are to take no further action or to prosecute.

*Restorative Justice and Sentencing*

The concept of restorative justice underlies a number of the new disposals available to the Youth Courts in England and Wales as well as the powers of diversion used by the police. Put simply, restorative justice is the process whereby the offender is made to face up to and make good the harm done. This can be achieved in a number of ways, such as a conference between the offender and the victim, reparation (e.g. paying for or repairing the damage done to the victim’s property). The aim is to reintegrate the offender into society. At the reprimand and final warning stage, the offender may be asked to take part in such a process and this will be facilitated by the Youth Offender Team.

*Canada*

Canada has recently introduced a Youth Justice Renewal Initiative which looks beyond legislation and the youth justice system to explore how society as a whole can address youth crime and related factors. The initiative is based on three key directions: (a) prevention; (b) meaningful consequences for youth crime; and (c) intensified rehabilitation and reintegration to help young offenders return safely to their communities.

The objectives of the Youth Justice Renewal Initiative are to explore ways in which minor offences committed by youths can be more effectively dealt with in the community in less formal, but equally meaningful, ways. The Initiative is designed to:

- Increase the use of measures, outside the formal court process, that are often more effective in addressing some types of youth crime
- Establish a more targeted approach to the use of custody for young people
- Improve the system’s ability to rehabilitate and reintegrate young offenders
- Increase the use of community-based sentences for non-violent youth crime
- Establish special measures for violent offenders that focus on intensive supervision and treatment
• Increase public confidence in the youth justice system

The following summarises some of the non-legislative activities which have been undertaken in Canada since 1998.

Supporting Innovative Practices

Many young people are brought into the formal justice system for minor offences that, in many cases, could be more effectively dealt with in the community in less formal but meaningful ways that focus on repairing the harm done. Through the Youth Justice Renewal Initiative, the Government of Canada is supporting the testing of a range of community-based programs and alternatives for less serious offences, while always recognizing that the formal court process must be available for more serious offences where it is clearly appropriate.

Innovative pilot projects funded to date will, for example:

• offer a job bank, recreation facilities and self-esteem programmes as alternatives for youth on the street (Projet Jeunes Squeegees Montréalais);
• promote a community support role in pre-custody, custody and reintegration of young offenders (Island Community Justice Society in Sydney, Nova Scotia);
• bring together the young offender and victim as well as family members and other key persons affected by the offence to find solutions (Mennonite Central Committee in Calgary, Alberta); and
• target youth at risk of re-offending or in need of community-based programs as part of discharge planning (Ontario Social Development Council).

Building Partnerships

A key goal of the Youth Justice Renewal Initiative is not only to strengthen the involvement of traditional groups working in the youth justice system but to also expand the nature and range of sectors involved.

Extensive discussions were held with provincial and territorial officials as the Youth Criminal Justice Act was developed and these will continue as plans are made for its implementation. Discussions will focus on how best to ensure that the Initiative is implemented effectively and in a way that addresses the unique needs of each region. Funds have been and will continue to be made available to assist provincial and territorial ministries responsible for youth justice to undertake implementation-related activities in, among other things, training and partnerships.

The Government of Canada is also working to strengthen and expand the involvement in youth justice of a wide range of organizations, associations and community groups. A series of roundtable discussions was recently held with participants from across the country working in the following sectors: education, the caring professions, arts and recreation, child advocacy, mental health and national associations active in criminal justice. The roundtables focused on how to address
the challenges for communities in dealing with youth who may be in conflict with the law.

Significant federal funding is available to all provinces and territories for the delivery of youth justice services. Offers of new five-year financial agreements have been made to the provinces and territories to support the implementation of proposed youth justice legislation and the overall policy objectives of the Youth Justice Renewal Initiative.

Sources/Bibliography

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