The Committee will meet at 10.00 am in Committee Room 2.

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

   Susan Matheson, Chief Executive and Keith Simpson, Head of Service Development, SACRO;
   Bernadette Monaghan, Director and Patricia Bowerbank, Service Manager, APEX;
   Helen Hunter, Assistant Director - West Region, Children 1st and Maggie Mellon, Head of Public Policy, NCH Scotland.

   Not before 2.00 pm.

   Dr Lesley McAra and Professor David Smith, the Centre for Law and Society, University of Edinburgh;
   David Strang, Chief Constable, Dumfries and Galloway Police, ACPOS;
   Douglas Keil, General Secretary, Scottish Police Federation.
The following papers are enclosed for this meeting:

Item 1 – Antisocial Behaviour (Scotland) etc Bill

SACRO response to Scottish Executive Consultation Paper   J2/S2/04/1/1
APEX response to Scottish Executive Consultation Paper   J2/S2/04/1/2
Submission from Children 1st (to follow)                  J2/S2/04/1/3
Submission from ACPO                                      J2/S2/04/1/4
Scottish Police Federation response to Scottish Executive Consultation Paper J2/S2/04/1/5

The following papers are enclosed for information:

- Antisocial Behaviour (Scotland) etc Bill – Written Evidence from the National Autistic Society
- Note of Visit to High Court, Glasgow, October 2003
- European sift document
- European and External Relations Committee, Briefing Paper - “Pre- and post-Council of the EU analysis and scrutiny”

Forthcoming Meetings:

Tuesday 13 January - Justice 2 Committee meeting (PM)
Tuesday 20 January - Justice 2 Committee meeting (PM)
Tuesday 27 January - Justice 2 Committee meeting (PM)
Tuesday 3 February - Justice 2 Committee meeting (PM)
Antisocial Behaviour etc (Scotland) Bill
SACRO response to Scottish Executive Consultation Paper

It should be noted that the attached submission is SACROs response to the Scottish Executive consultation paper, *Putting our communities first: A Strategy for tackling Anti-social Behaviour*, and not a response to the Antisocial Behaviour etc (Scotland) Bill itself.

This paper was previously circulated in paper J2/S2/03/14/2 for the 14th Meeting on Tuesday 11 November.
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.

Please do not hesitate to contact Keith Simpson, Head of Services Development on 0131 624
2664 ksimpson@national.sacro.org.uk if you require any additional information.

Yours faithfully

[Signature]
Julie Morrison
Service Development Assistant
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, 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 judgment 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, Preventors Fiscal, Children's Panels, Environmental Service Department, and Community Safety Departments, as well as the Police and Social Landlord. 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 specialist equipment and specialist 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 that recognition and begin their reintegration. Care must be taken to ensure that the tasks do not stigmatised 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 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 finding a workable solution in 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” (sec 25, para 4, line 4). Any Court would surely need to establish that there was sufficient evidence to meet the criminal standard of proof prior to proceedings being taken. The application for the order should not only describe the nature of the anti-social behaviour, but evidence the same.

It is very unclear as to when it is intended ASBO’s would be applied for from court. Minor offences that may receive this high tariff can potentially escalate if the young person is not equipped to effect a change in their behaviour. Should an ASBO be made in relation to a person aged under 16, it would be vitally important to ensure that appropriate resources are also put in place to provide the required levels of support to ensure compliance with the order, including elements designed to identify and address contributory factors to the behaviour. For this reason we would suggest that the imposition of an ASBO should also result in the young person being referred to the Children’s Reporter for consideration of what measures are required to assist with compliance. This would allow the Panel to assess the ability of a young person to meet the requirements specified in the ASBO and to ensure that appropriate support is made available to the young person and their family. A Branch 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 argue that particular attention be given to ensure that guidelines in relation to existing ASBO’s, to the extent 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 repressive 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 detention or 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 RLOs 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 the 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 support being offered and levels of cooperation.

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 set in motion the process of supporting 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 of spray paint 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 55-60 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 presence of all young people from areas where a minority can cause significant problems is not justified. 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

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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.
ANTISOCIAL BEHAVIOUR ETC (SCOTLAND) BILL
APEX RESPONSE TO SCOTTISH EXECUTIVE CONSULTATION PAPER

It should be noted that the attached submission is APEX’s response to the Scottish Executive consultation paper, *Putting our communities first: A Strategy for tackling Anti-social Behaviour*, and not a response to the Antisocial Behaviour etc (Scotland) Bill itself.

This paper was previously circulated in paper J2/S2/03/14/2 for the 14th Meeting on Tuesday 11 November.
"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 (re) 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 4294 referrals were received across all services in 2002-2003, an increase of 39% on the previous year, from which 4214 started work with Apex and 2280 completed, with over a third (34.5%) 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 56% 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 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 than 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 273 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
JUSTICE 2 COMMITTEE

1st Meeting 2004 (Session 2)

Tuesday 6 January 2004

Antisocial Behaviour etc (Scotland) Bill
ACPOS Submission
Dear Richard Hough Esq,

Justice 2 Committee
Room 3.10
Committee Chambers
George IV Bridge
EDINBURGH
EH99 1SP

Thank you for your letter of 13 November inviting me to give evidence to the Committee as part of its Stage 1 consideration of the Bill. I look forward to attending on 6 January.

As requested, I enclose a brief written submission outlining ACPOS’ position on the main measures proposed in the Bill. I shall, of course, expand on these in response to the Committee’s requests.

Please let me know if there is anything further you require.

Yours sincerely,

Chief Constable
1. The Association of Chief Police Officers in Scotland (ACPOS) welcomes the measures to tackle antisocial behaviour proposed in the Bill. ACPOS recognises the real concerns in communities as a result of antisocial behaviour. It is frequently perceived that there is a lack of effective and robust responses to antisocial behaviour, especially when committed by persistent offenders. Often what may be seen as low levels of criminal behaviour has a disproportionately high impact on communities in general and victims in particular.

2. The key to success lies in the preparation, publication and implementation of an antisocial behaviour strategy. This will be the responsibility of the local authority in collaboration with the chief constable. ACPOS welcomes this recognition that the solution to antisocial behaviour problems lies in addressing the causes and not merely dealing with the symptoms. It recognises that while enforcement has an important part to play, enforcement alone will not solve otherwise complex social problems, often involving the misuse of alcohol and drugs, and mental health problems. ACPOS would have preferred to have seen a responsibility on wider Community Planning partners than just the local authority and chief constable, but hopes that they will be involved in practice.

3. In general, ACPOS welcomes the additional measures included in the Bill and recognises the value of a variety of responses to antisocial behaviour ranging from prevention to enforcement. In particular it is possible to think of situations where antisocial behaviour orders, closure of premises notices and parenting orders would be appropriate and useful. The introduction of fixed penalty notices for a range of offences should reduce the bureaucracy associated with the completion of full Standard Prosecution Reports, thus achieving speedier and more effective justice. The prohibition on the sale of spray paint to under 16 year olds may assist in the prevention of crime.

4. However, there is one section in the Bill about which ACPOS has serious reservations. Section 21 confers a power on Scottish Ministers to give directions to police officers in the exercise of powers in Part 3 (Dispersal of Groups). It is accepted that Scottish Ministers may wish to issue guidance, and this is provided for in Section 20. Chief Constables are operationally accountable for the exercise of powers by police officers; this should not be a matter for Ministers.

5. In relation to the proposed power to disperse groups in designated areas, ACPOS considers that current police powers are adequate to deal with offences of causing alarm or distress and that the proposals would not be practical in addressing antisocial behaviour.
JUSTICE 2 COMMITTEE

1st Meeting 2004 (Session 2)

Tuesday 6 January 2004

Antisocial Behaviour etc (Scotland) Bill
Scottish Police Federation response to Scottish Executive Consultation Paper

It should be noted that the attached submission is Scottish Police Federation’s response to the Scottish Executive consultation paper, *Putting our communities first: A Strategy for tackling Anti-social Behaviour*, and not a response to the Antisocial Behaviour etc (Scotland) Bill itself.

This paper was previously circulated in paper J2/S2/03/14/2 for the 14th Meeting on Tuesday 11 November.
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 ABSOs 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 an 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 rioting 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
the police arriving late, or not arriving at all, which does happen because there are more serious matters to be dealt with.

Many of these groups are made up of people under 16 years of age. The proposal is that such a young person in an unruly group be taken home. This would be a logistical impossibility in many cases and would simply bring the police into conflict with children and their parents and create even more complaints. What would happen if their parents happened to be out for the evening?

To deal with youth crime, much of it the anti-social behaviour that concerns the public, we need to get more police officers on the street, build better and closer relationships with the public and re-establish respect for authority. Through a lack of police officers and a lack of police time to dedicate to areas where anti-social behaviour occurs, we are in danger of losing touch with the young people in some of our communities. Despite the best efforts of community beat police officers where they exist, and because of lack of police time and numbers, there is a danger of us losing the ability to engage with young people at street level. It is important that young people feel that they are included in communities and that they are not being alienated. The police can have a major role in this given an adequate level of resources.

Police action should not be confined to arrests and reports to the reporter or the court. Of course that is often necessary, but with the time and resources we could re-develop that street level contact, build relationships and trust and re-establish the respect for authority. In the communities where we do have beat police officers this is exactly what happens but all of our communities deserve this.

The vast majority of our young people are law abiding, socially responsible and a credit to themselves and their parents. Less than 3% of young people are reported for crimes and offences each year. Some of that small number can constitute ‘one person crime waves’ and early intervention, enough secure places and effective rehabilitation schemes are required. Beyond that, in many of our communities, we do have unruly and anti-social young people who can make peoples lives a misery. Their behaviour does not always amount to criminality but nevertheless it does require police attention.

Youth crime, anti-social behaviour and violent crime can all be dealt with more effectively and efficiently if we had more 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. That is clearly what the public wants and I think this should be this Government’s first priority.

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

51. **Do you agree there should be a statutory power of arrest for breach of an ASBO?**
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.*
Antisocial Behaviour etc (Scotland) Bill
National Autistic Society Submission
10th December 2003

Ms Annabel Goldie MSP
The Scottish Parliament
Edinburgh
EH99 1SP

Dear Ms Goldie MSP

Re: Response to call for evidence by the Justice 2 Committee on the Anti-social Behaviour Etc. (Scotland) Bill

The National Autistic Society Scotland is one of the leading charities for people with autistic spectrum disorders. It has a membership of over 1,000 and a network of 11 parent-run branches across Scotland. The National Autistic Society Scotland is part of a UK-wide organisation, the National Autistic Society (NAS) which has a membership of over 12,000, a network of 57 branches, and 60 partner organisations in the autism field.

The NAS has concerns about the impact the Anti-social Behaviour (Scotland) Bill may have on people with autistic spectrum disorders. Autistic spectrum disorders are a lifelong developmental disability that affects the way a person communicates and relates to people around them. People with autistic spectrum disorders experience difficulties with social interaction, social communication and imagination – known as the ‘triad of impairments’.1

Children and adults with autism are often victims of anti-social behaviour as they can often be socially naïve and may find themselves bullied and exploited. They can also sometimes display challenging as well as obsessive and ritualistic behaviours. This could include stereotyped movements, poor awareness of personal space, repetition of strange sounds and words, lack of flexibility of thought or becoming very upset because of changes in routine. Unfortunately, these behaviours could be interpreted as being anti-social and the NAS is concerned that the provisions in the Bill could lead to people with autism being wrongly criminalised.

The NAS is concerned about the definition of anti-social behaviour used in the Bill as it is extremely general and does not even require any negative consequences to have occurred. Under Section 110 of the Bill, a person is deemed to have engaged in anti-social behaviour, including speech, if he/she:

'acts in a manner that causes or is likely to cause alarm or distress; or pursues a course of conduct that causes or is likely to cause alarm or distress' (bold and italics – NAS emphasis)

Therefore, a person with an autistic spectrum disorder could display a strange behaviour which does not harm anybody and this could be interpreted as 'likely to

cause’ distress. This definition does not differentiate between intended and unintended anti-social behaviour. As a result, the NAS fears that people with autistic spectrum disorders could be caught up in the Children’s Hearings and criminal justice system because of behaviour caused directly by their disability.

For example, the NAS is concerned that measures such as extending ASBOs to 12-15 year olds will criminalise some vulnerable children and young people. This measure is intended for the small number of persistently anti-social young people for whom existing deterrence measures are not sufficient. Children with autistic spectrum disorders could fall into this category because some have difficulty in learning from their mistakes, they have a tendency to do things repetitively, and may become involved in repeat occurrences of anti-social behaviour.

For under-16s, a new duty will be introduced on local authorities and registered social landlords (RSLs) to consult the Reporter before applying for an ASBO. Notwithstanding this, the NAS is aware that there is a lack of autism awareness within the Children’s Hearings system. The NAS has provided basic autism awareness training to some Children’s Panel members in Dundee, Fife, Perth and Kinross, West Lothian and more recently, in Glasgow. The awareness training given in Glasgow was well-received and feedback from the Children’s Panel Training Unit was that they would like “more of the same”.

As a former Panel member of the Children’s Hearing system, our analysis is also based on first-hand knowledge of some of the challenges facing Panel members. The NAS believes that autism awareness training should be provided to all Children’s Panel members in order to ensure that all children with autistic spectrum disorders have a fair hearing.

Autism awareness training should also be provided to Reporters and social work staff in the criminal justice service. One criminal justice service has said there have been a number of instances arising where social work staff have experienced difficulties in supporting children with autistic spectrum disorders.

Illustrating this lack of understanding and support from social work staff is an example from a parent who contacted the NAS. The parent’s 10-year old son with autism was appearing before a Children’s Panel. Although the social work department were aware that the boy had autism, no arrangements were put in place to account for this. The boy found the whole experience very distressing, especially being in a room with lots of strange people. When asked questions by Panel members, the boy would nod. However, when his mother asked him afterwards if he understood what the Panel members were asking him, he said ‘No’.

The NAS has provided basic autism awareness training to c.4000 social work staff in 31 local authorities in Scotland as part of a 3-year project funded by the Scottish Executive. However, this figure represents only 4% of the total social service workforce in Scotland. Autism awareness training needs to be an on-going process.

The NAS’ concerns also apply to other measures in the Bill such as community reparation orders, restriction of liberty orders, and fixed penalty notices. Ultimately, children and adults with autistic spectrum disorders should not be involved with the Children’s Hearings or criminal justice system because of behaviours caused directly by their disability; putting them through these procedures will not change their behaviour.

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The policy memorandum accompanying the Bill states that public bodies such as local authorities and the police will be expected to comply with duties imposed by equality legislation, including the Disability Discrimination Act 1995. Moreover, the Executive believes that children with disabilities and special needs will have all their circumstances taken into account when deciding the best means of dealing with difficult behaviour.

Despite these assurances, as a parent-led organisation, the NAS knows that children with autistic spectrum disorders are already being caught up in the Children’s Hearings system because of the nature of this ‘hidden’ disability. In England, the parents of a child with autism received an ASBO because their son was trampolining in his own garden and was making “strange” noises which “caused distress” to neighbours. When they are in the system, often their needs are not appropriately met as the example of the 10-year old boy in front of the Children’s Panel demonstrates.

This is why merely expecting public bodies to adhere to the DDA is not robust enough to ensure people with autistic spectrum disorders are not caught up in the Children’s Hearings or criminal justice system in the first place. An amendment to the definition of ‘anti-social behaviour’ is a more effective way of achieving this.

The NAS has enclosed a copy of its briefing on the Anti-social Behaviour Etc. (Scotland) Bill for further information.

Yours sincerely

Robert McKay
National Co-ordinator – Scotland
Email: robertmckay@nas.org.uk

Enc
The National Autistic Society
Briefing on the Anti-social Behaviour Etc (Scotland) Bill

The Scottish Executive’s proposals in the Anti-social Behaviour Etc (Scotland) Bill¹ create a number of potentially serious implications for people with disabilities. The NAS has produced this briefing to outline the concerns relating to people with autistic spectrum disorders.

Anti-social behaviour and autism
Autistic spectrum disorders are a lifelong developmental disability that affects the way a person communicates and relates to people around them. People with autistic spectrum disorders experience difficulties with social interaction, social communication and imagination – known as the ‘triad of impairments’.²

Children and adults with autism are often victims of anti-social behaviour as they can often be socially naïve and may find themselves bullied and exploited. They can also sometimes display challenging as well as obsessive and ritualistic behaviours. This could include stereotyped movements, poor awareness of personal space, repetition of strange sounds and words, lack of flexibility of thought or becoming very upset because of changes in routine. Unfortunately, these behaviours could be interpreted as being anti-social and the NAS is concerned that the provisions in the Bill could lead to people with autism being wrongly criminalised.

Definition of anti-social behaviour
The NAS has serious concerns about the definition of anti-social behaviour within the Bill. The definition leaves understanding of what constitutes anti-social behaviour open to interpretation and would mean that enforcement of the Bill would be extremely inconsistent. It would also mean that those behaviours displayed by people with autistic spectrum disorders highlighted above could be interpreted as being anti-social and criminal. Discrimination against a person for a reason relating to their disability is illegal under the Disability Discrimination Act 1995.

The Bill’s definition of anti-social behaviour is extremely general and does not even require any negative consequences to have occurred as a person is deemed to have engaged in anti-social behaviour, including speech, if he/she:

‘acts in a manner that causes or is likely to cause alarm or distress’
or
‘pursues a course of conduct that causes or is likely to cause alarm or distress’
(bold and italics – NAS emphasis)

Therefore, a person with an autistic spectrum disorder could display a strange behaviour

¹ The Anti-social Behaviour Etc (Scotland) Bill can be downloaded from: http://www.scottish.parliament.uk/bills/index.html#12
which does not harm anybody and this could be interpreted as 'likely to cause' distress. This
definition does not differentiate between intended and unintended anti-social behaviour.
Consequently, the NAS would like to see the definition used in the Bill amended to reflect
intent in anti-social behaviour.

One definition of anti-social behaviour could be:

‘acts in a manner that **intends** to cause alarm or distress’
or
‘pursues a course of conduct that **intends** to cause alarm or distress’.

Another definition of anti-social behaviour could be:

‘acts in a manner that **recklessly** causes alarm or distress’
or
‘pursues a course of conduct that **recklessly** causes alarm or distress’.

An amendment proposing the term ‘reckless’ in the definition of anti-social behaviour was
moved at the Lords Committee Stage of the Anti-social Behaviour Bill going through at
Westminster. Lord Clement Jones who proposed the amendment believes that the term
‘reckless’ may help differentiate between those whose behaviour is knowingly anti-social and
those whose behaviour is directly related to their disability. It has been suggested that the
legally recognised term ‘**mens rea**’ be considered as a way of highlighting this point.

Whatever definition of anti-social behaviour is used, however, the most important issue is
that people with autistic spectrum disorders should not be caught up in the criminal justice
system because of behaviour which is directly related to their disability.

**Anti-social behaviour orders (ASBOs)**
The NAS is concerned that measures such as extending ASBOs to 12-15 year olds will
criminalise some vulnerable children and young people. This measure is intended for the
small number of persistently anti-social young people for whom existing deterrence
measures are not sufficient. Children with autistic spectrum disorders could fall into this
category because some have difficulty in learning from their mistakes, they have a tendency
to do things repetitively, and may become involved in repeat occurrences of anti-social
behaviour\(^3\).

For under-16s, a new duty will be introduced on local authorities and registered social
landlords (RSLs) to consult the Reporter before applying for an ASBO. Notwithstanding this,
the NAS is aware that there is a lack of autism awareness within the Children’s Hearings
system. While the NAS has provided basic autism awareness training to some Children’s
Panel members in Dundee, Fife, Perth and Kinross and West Lothian, autism awareness
training should be provided to all Children’s Panel members in order to ensure that all
children with autistic spectrum disorders have a fair hearing.

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Autism awareness training should also be provided to Reporters and social work staff in the criminal justice service. One criminal justice service has said there have been a number of instances arising where social work staff have experienced difficulties in supporting children with autistic spectrum disorders.

**Case Study:**
A parent who contacted the NAS said her 10-year old son Mark* was appearing before a Children’s Panel. Although the social work department was aware that Mark had autism, no arrangements were put in place to account for this. Mark found the whole experience very distressing, especially being in a room with lots of people. When asked questions by Panel members, Mark would nod. However, when his mother asked him afterwards if he understood what the Panel members were asking him, he said ‘No’.

* Not his real name

The NAS has provided basic autism awareness training to social work staff in 31 local authorities in Scotland as part of a 3-year project funded by the Scottish Executive, but this training needs to be an on-going process.

Ultimately, children and adults with autistic spectrum disorders should not be involved with the Children’s Hearings or criminal justice system because of behaviours caused directly by their disability; putting them through these procedures will not change their behaviour.

**Parenting Orders**
The NAS believes that parenting orders used in the context of education makes the assumption that truancy and behavioural problems are the sole responsibility of the pupil and their parent(s). It does not take into account the responsibility of schools or education authorities to ensure that there is a coherent behaviour policy, good classroom management, support for pupils from properly trained staff, anti-bullying strategies and numerous other systems that should be in place. We are aware of many cases in which pupils with autistic spectrum disorders have been excluded from school due to a failure on the part of the school. An NAS survey found that 21% of children with autism have been excluded from school at some time, the most common reason given being that the school was unable to cope with the child.4

It is unacceptable to criminalise the parents of a child with an autistic spectrum disorder because a school has failed to put in appropriate measures to help support them. This also applies to truanting, since a pupil with autism or Asperger syndrome may fail to attend school due to bullying or extreme anxiety.

The NAS is particularly concerned with the section in the Bill which states that local authorities can apply for parenting orders to be issued in order to prevent further displays of anti-social behaviour by the child. Although this may be entirely appropriate for some pupils,

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this may well be discriminatory for pupils with autistic spectrum disorders. It will not always be appropriate to attempt to ‘prevent’ what is perceived to be anti-social behaviour if this does not cause harm. Pupils with autistic spectrum disorders have a social and communication disorder and therefore it would be unfair to expect their behaviour to always be socially appropriate, especially if school staff have little training in understanding autism or there is not enough support provided. It is wholly egregious to punish a child for behaviour caused by their disability and to then also punish their parent(s).

Housing
The NAS has concerns with the Executive’s proposals in the policy memorandum accompanying the Bill to link ASBO’s for under-16s to provisions in the Housing (Scotland) Act 2001. This would allow a social landlord to convert the tenancy to a short Scottish secure tenancy (SSST) if an ASBO is granted to someone aged under-16 residing in that house. Under an SSST, the landlord has the power to evict a whole household on grounds either related to or unrelated to the ASBO, prior to the tenancy agreed in contract having ended. The NAS believes it is unfair to penalise a whole family by threatening their tenancy because of the behaviour of a child with autistic spectrum disorders who has an ASBO granted against them.

Disability Discrimination Act 1995
Public bodies such as local authorities and the police will be expected to comply with duties imposed by equality legislation such as the DDA. Moreover, the Executive believes that children with disabilities and special needs will have all their circumstances taken into account when deciding the best means of dealing with difficult behaviour.

Despite these assurances, as a parent-led organisation, the NAS knows that children with autistic spectrum disorders are already being caught up in the Children’s Hearings system because of the nature of this ‘hidden’ disability. When they are in the system, often their needs are not appropriately met as the case study above demonstrates. This is why merely expecting public bodies to adhere to the DDA is not robust enough to ensure people with autistic spectrum disorders are not caught up in the Children’s Hearings or criminal justice system in the first place. An amendment to the definition of ‘anti-social behaviour’ is a more effective way of achieving this.

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NAS Briefing on ASB Bill, November 2003
1. The Justice 1 Committee and the Justice 2 Committee visited the High Court in
the Glasgow on Monday 27 October 2003. Members present from Justice 1
Committee were Pauline McNeill (Convener), Marlyn Glen, Michael Matheson,
Stewart Maxwell (Deputy Convener), Margaret Mitchell and Margaret Smith.
Members present from Justice 2 Committee were Annabel Goldie (Convener),
Colin Fox and Nicola Sturgeon. Paul Burns, adviser to the Justice 1 Committee
on the Criminal Procedure (Amendment) Bill also attended.

2. This note provides a factual account of the visit to Glasgow High Court.

Introduction

3. Members were introduced to and welcomed by:

John Ewing, Chief Executive, Scottish Court Service;
Norman Dowie, Deputy Principal Clerk of Justiciary
Colin Armstrong, Court Manager, Glasgow High Court

4. Also present were Moira Ramage, Bill Team Leader, Criminal Procedure
(Amendment) (Scotland) Bill and Bill Gilchrist, Deputy Crown Agent, Crown Office
and Procurator Fiscal Service.

Tour of Court 3

5. Members were given a tour of the high security courtroom. Mr Armstrong
advised members that the corridor leading to the court room could be made more
secure by using a folding screen to reduce the size of the corridor to create a
narrow doorway. Thus making it easier for security staff to control the public’s
access to the courtroom. When considered necessary the security staff could
screen people entering the courtroom using handheld scanners or undertake pat-
down searches. Court staff gave examples of the type of cases which would be
assigned to Court 3, such as a drug importation case which involved Dutch and
Flemish speaking accused. Court 3 has three interpretation booths located
behind and above the public seating area. Interpretation services were
previously provided by the Crown, but are now provided by the Scottish Court
Service. The interpreters are heard through infra-red headphones.

6. The Court was designed specifically to deal with trials involving a large number of
accused and as such has the capability of accommodating 30 people in the dock.
There are two plasma screens where scanned documentary evidence could be
displayed. Using this facility it was possible to zoom in on the detail of the
evidence making it easier for all to see. The court was screened from the public seating by a bullet resistant glass screen. Sound capabilities had to be enhanced because of the large amount of glass used to secure the courtroom. Members were told that a vulnerable witness could give evidence behind a screen so that they were unable to see the accused. However, the accused, counsel and judge could see the witness giving their evidence on a monitor screen.

**Time limits**

7. The statutory time limits relating to prosecutions in the High Court were explained to Committee members. Where an accused is remanded in custody he/she has to be indicted by the 80th calendar day (so that 29 days notice can be given to the accused as required by law) and the trial must have started before 110 calendar days have elapsed (110 day rule). Where an accused has been released on bail trial must start within a year. Cases are indicted to High Court sittings and must be indicted for the first day of a sitting. Each sitting is 2 weeks in length. Annex A shows that 56 cases were set down for the sitting that commenced on 6 October 2003. The sittings list details the accused name, a summary of charges, the date of the trial and the time bar date. Some of the charges listed are serious assault, murder, rape, multi-accused drug charges, firearms, multi-accused fraud and case 53 – hamesucken (in-house beating). The list also provides a provisional running order and notional starting dates for trials within the sitting. Witnesses are cited according to the information provided in the sitting list. The citation advises witnesses, however, that they must be available for the full 2 weeks of the sitting.

8. At the beginning of the sitting the accused and their counsel may appear before the judge so that the judge can ascertain whether both parties are ready to proceed to trial. Annex B, Court 3, details the list of “A+C” (accused and counsel) appearances. There are a number of reasons why a trial may not proceed, for instance a plea may be agreed or defence may not be ready or key witnesses may be unavailable. After the morning session it is much clearer which cases will proceed to trial. A meeting is held at lunchtime and the business of the High Court is rescheduled accordingly. This process happens daily throughout the sitting. Members were advised that if a case does not proceed to trial then the witnesses would have to be cancelled. The police are advised and then the process of rescinding witnesses starts. It was estimated that around 50% of High Court cases “go off” (do not proceed to trial at the allocated sitting).

**Criminal Procedure (Amendment) (Scotland) Bill**

9. The Scottish Court Service advised that the provisions within the Bill, such as preliminary hearings would lessen the number of times witnesses had to be cancelled. Mr Ewing told members about the Scottish Criminal Appeal Court which had also encountered some of the same problems as the trial courts of appeals being delayed because of uncertainty as to their state of readiness. He explained that greater judicial management has meant that cases are now not allocated to the Appeal Court until they are ready.
Preliminary hearings
10. Before the preliminary hearing, members were advised that it was intended that parties should meet to discuss relevant issues. At the preliminary hearing both the prosecution and the defence would have to state how prepared they were. The Scottish Court Service said that the introduction of preliminary hearings should provide more effective case management and an opportunity for the judge to challenge the parties to argue they can proceed on the trial date.

Pleas
11. Mr Dowie informed members that mandatory first diets under solemn procedure in the Sheriff Court (Sheriff and Jury trials) provide an opportunity for an accused to plead guilty in advance of the date set for trial. This accounted for around 30% of sheriff and jury disposals. It was explained, however, that the procedures that apply in Sheriff and Jury cases could not be transposed as they stood to the High Court because of the nature and seriousness of cases. They required modification, but the principle was similar.

Judicial management
12. Members asked whether the introduction of judicial management of cases would mean more work for judges. The Scottish Court Service advised that, although for the first 2 years two additional judges would be required for the implementation phase after this period it was expected that the more efficient procedure would release judges’ time. At present judges were involved at the start of the sitting in what were effectively procedural hearings. In future, there would be two judges responsible for managing the new system of preliminary hearings, one based in Glasgow and one based in Edinburgh. Judges would be required to be prepared earlier – to assist judges with this, the Crown and defence agents will have been issued with a paper listing questions which would have to be filled in beforehand. The preliminary hearing was likened to a pleas and discretion hearing in England where witnesses can be agreed and sentence discounting can be considered.

Early disclosure
13. It was noted that, while defence agents are given a provisional list of witnesses after the accused has appeared on petition, the definitive list of witnesses and productions is attached to the indictment. This means that they have only 29 days between receipt of this and the trial diet. Members were told that additional information, in particular forensic evidence frequently becomes available after the indictment has been served and close to the trial diet. The defence agent is likely to require time to consider and investigate this additional evidence, and therefore to seek an adjournment for these purposes. The number of adjournments on a defence motion (ODM) can be seen at Annex C, page 1. Paul Burns explained that it was incumbent on the defence to look at every avenue of investigation. He suggested that the key to making the process work more efficiently was early disclosure. Members expressed concern about the need for a Bill if early disclosure could solve some of the delays happening in the present system. Moira Ramage explained that the Bill tightens up the responsibilities of the Crown and judges will therefore not find late productions as acceptable.
Sentencing powers of Sheriffs

14. There was discussion about the shifting of some High Court business to the Sheriff Courts. It was explained that the sort of cases that would be dealt with by the Sheriff Courts would be assault and robbery, robbery and drugs cases. Members thought that the public perception of this change in policy might be the downgrading of the seriousness of the offences. Mr Ewing explained that a fifth of the cases currently going to the High Court could be dealt with by a Sheriff and Jury if their sentencing powers were increased to 5 years.

Allocation of work to courts

15. The Scottish Court Service envisaged that the outcome of the proposed changes would be that one of the 6 courts would be used for preliminary hearings. It was expected that judges could preside over 5 preliminarily hearings per day. The other 5 courts could deal with trial diets and the Court Service indicated that under the new proposals it was expected that there would be around 6 cases allocated to these 5 courts by April 2005.

Closing stages of visit

16. In concluding the visit to Glasgow High Court, members were taken to the South Court to see a case in progress. The case being heard was in relation to a rape charge. Members had the opportunity to hear evidence from a police physician and an expert in blood alcohol analysis. Members then met informally with Lord Abernethy.
<table>
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<th>Committee</th>
<th>SP Ref</th>
<th>EU Ref</th>
<th>Document Title</th>
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Introduction

1 One of the core scrutiny tasks that the European and External Relations Committee conducts is the analysis of information received from the Scottish Executive on meetings of the various Council of the EU formations (formerly known as the Council of Ministers).

2 Two types of information are shared with the Committee under the agreement between the previous Committee and the Executive. First, a few weeks in advance of a Council meeting, the Committee is provided with an annotated agenda of the Council. This sets out the nature of the agenda and the Executive’s views on the items in question where it has a competence. The Executive’s views tend to be italicised so as to stand out for the reader. Members should be aware that often the agenda is a ‘best guess’ and second, the views provided are designed not to prejudice the UK’s negotiating position whilst still providing sufficient information for Members to have an understanding of the subject.

3 Second, following the meeting of the Council, within a few weeks, the Executive provides the Committee with a post-Council report, detailing attendance and the discussions that took place.

4 These two types of information give rise to the shorthand terminology of ‘pre- and post-Council scrutiny’ for this particular task of the Committee. In scrutinising the material, the Committee has a range of options:
   - note the material having placed it into the public domain for others to use
   - ask for more written information from the Executive
   - invite the relevant minister to attend the next committee meeting for further discussions

5 The nature of the scrutiny to be undertaken by Members should be focusing on two distinct areas. As a first priority, the Committee should aim to focus on the Council agenda items that make reference to early,
formative discussions (e.g. on Green Papers, White Papers, Commission Communications, orientation debates etc.) in the Council. This is an indication that the decision-making process for these agenda items in the Council is at an early stage. It is here that the Committee might best influence the minister’s thinking early on.

6 As a second priority, to be used perhaps only occasionally, the Committee may choose to focus upon agenda items nearing final decisions. The December Fisheries Council is a good example of this. It is here that the Committee may wish to have a final engagement with a minister prior to critical decisions being taken. It must be recognised that with QMV, it is not always a simply case of the UK delegation objecting to a final proposal that can prevent decisions being taken.

7 In a new development for session two of the Parliament, the relevant sectoral information is being sent directly by the relevant minister to other subject committees. This means, for example, that in addition to this Committee receiving fisheries information, the Environment and Rural Development Committee is simultaneously in receipt of the same information.

8 What this means for this Committee is that any further dialogue with the Executive is best done in co-ordination and co-operation with the dialogue that another committee may choose to undertake. Members should note that such as system does not preclude the European and External Relations Committee from engaging with all the material and information received. On occasions, it may be that an issue is pressing, but a subject committee has no time in which to deal with it and therefore this Committee may take the issue. This system requires good communication between conveners and between clerks, and close co-operation between the clerks and officials in the Executive.

This paper

9 Based on experience from session one of the Parliament, these papers are best sub-divided into two sections. Annex A contains a summary table, with the Convener’s recommendation(s) for each Council agenda/report. Annex B contains the full information provided by the Executive for each of the Councils being considered at today’s meeting.

Action requested

10 Members are requested to consider the recommendations set out in the table in Annex A in light of the information provided by the Executive, set out in Annex B.

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<table>
<thead>
<tr>
<th>Council</th>
<th>Did Executive meet deadline for sending information?</th>
<th>Notes and recommendation</th>
</tr>
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<tr>
<td>Justice and Home Affairs Council, 27-28 November</td>
<td>Yes, delivered 9 days early</td>
<td>Thank the Scottish Executive for its report, particularly the early delivery and ask whether the UK and Scotland in particular is one of the five Member States with potential problems in implementing the provisions of the European Arrest Warrant</td>
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ANNEX B

ANNOTATED AGENDAS/REPORTS


Comments by the Executive

The UK was represented by Baroness Scotland. The first day of the Council was once again dominated by Asylum and Immigration issues. The second day focussed on Judicial Co-operation and Police items. On the Procedures Directive the amendments tabled by the UK were agreed including clarification that Member States are not obliged to provide free legal aid prior to appeal. This dossier and the Qualification Directive will be passed to the Irish Presidency for completion. On judicial co-operation the Framework Decision on drug trafficking was finally agreed having previously been blocked by the Netherlands for 18 months. A general agreement was reached on the European Enforcement Order. Five Member States flagged up possible delays with the implementation of the European Arrest Warrant.

Agenda Items


This Directive is a package of EU measures aimed at establishing minimum standards in procedures for considering the granting of asylum applications in line with the Geneva Convention. The only aspect of the Directive of interest to the Executive is Article 13 which concerns legal aid, a devolved matter. The Article as currently drafted proposes the need to ensure the asylum seeker can effectively consult with a legal advisor and access, under certain circumstances, legal aid for appeal proceedings. The current draft of the Article does not appear to be incompatible with the current legal system. At Council there was discussion and agreement to the UK’s amendment clarifying that Member States are not obliged to provide free legal aid prior to appeal.

There are still 37 outstanding reservations to be resolved and these relate to issues of political difficulty and the Presidency concluded that Member States would not be able to agree the Directive by the end of 2003. The dossier was passed to the Irish Presidency with the objective to conclude by the deadline set by the Amsterdam Treaty – May 2004.


Germany could not agree the draft directive and the Presidency passed the dossier to the Irish Presidency which would aim to agree the Directive before 1 May 2004.

There was no consensus reached between Member States. The Presidency asked the Commission to consider the future handling of the Directive.

**Draft Council Conclusions on European External Borders Agency**

Mixed Committee discussion and general approach reached with the Conclusions adopted by the Council. UK wished to participate as fully as possible in the work of the agency even although the UK (and Ireland) has an opt-out from certain Schengen measures.

**Draft Framework Decision Laying Down Minimum Provisions on the Constituent Elements of Minimal Acts and Penalties in the Field of Drug Trafficking**

A general approach was finally agreed on this dossier which had stalled for 18 months. The Netherlands had difficulty with Article 4 (penalties) as they wished to apply lower penalties in cases involving small quantities of drugs. The Netherlands still has outstanding parliamentary reserves in place. The European Parliament will be reconsulted on the dossier.

**Proposal for a Regulation of the European Parliament and of the Council Creating a European Enforcement Order for Uncontested Claims**

The Presidency concluded a general approach on the text although it was impossible to reach a political agreement. Agreement of the proposal if adopted would speed up and simplify the recognition and enforcement of decisions in uncontested civil and commercial cases. The impact would be on court rules.