

## **BRIEFING: Antisocial Behaviour etc. (Scotland) Bill** **Stage 1 Debate – Thursday 11 March 2004**

Aberlour Child Care Trust, Barnardo's Scotland, Children 1st, Children in Scotland, NCH Scotland, Save the Children and Youthlink Scotland welcome the debate on the general principles of the Antisocial Behaviour etc. (Scotland) Bill. All seven organisations recognise that antisocial behaviour is a serious problem affecting many of Scotland's communities. However there are concerns that the approach currently under scrutiny will fail to address the underlying causes of such behaviour or tackle these effectively.

This briefing is designed to highlight a number of key concerns expressed by those involved in dealing with antisocial behaviour among young people and reflected in the Scottish Executive's consultation on *Putting our communities first: a strategy for tackling antisocial behaviour*. The briefing is informed by the views of Children in Scotland and Youthlink Scotland members and those working in services provided by Aberlour Childcare Trust, Barnardo's Scotland, Children 1st, NCH Scotland and Save the Children.

The Antisocial Behaviour etc. (Scotland) Bill defines antisocial behaviour as follows:

For the purposes of this Act, a person ("A") engages in antisocial behaviour if A -

- (a) acts in a manner that causes or is likely to cause alarm or distress; or
- (b) pursues a course of conduct that causes or is likely to cause alarm or distress,

to at least one person who is not of the same household as A; and "antisocial behaviour" shall be construed accordingly.

### **Key concerns**

#### **1. General comments**

- The definition of antisocial behaviour used in the Bill is broad and should be narrowed to define more specifically what type of behaviour may be considered antisocial.
- The Bill does not complement the constructive approach of many other Scottish Executive initiatives dealing with vulnerable groups, especially children. If antisocial behaviour is to be tackled effectively the link between this and wider social issues (eg poverty, poor education, and lack of opportunity) must be recognised and reflected in policy and legislative proposals. A strategy for responding to antisocial behaviour must be placed in the context of the social justice agenda and linked with other policy areas such as health, education, youth services and citizenship.
- An area which has not been addressed is that of support for young people leaving custody. Many young people currently leave custody with no statutory connection to any service, yet most require substantial support to successfully reintegrate into their communities and reduce the risk of re-offending.
- A well resourced Children's Hearings System, supported by adequate statutory services, must remain central to dealing with children under 16. This system has gained international respect for the constructive and effective approach it takes to dealing with vulnerable children.

#### **2. Antisocial behaviour strategies**

- Although the Bill provides for community involvement in the development of Antisocial Behaviour Strategies it should also include specific provision for the involvement of young people. This is essential as young people are the group most likely to be victims of antisocial behaviour.
- Antisocial Behaviour Strategies must be underpinned by well resourced youth services across Scotland. There are many examples of programmes that have been effective in preventing antisocial behaviour and crime by engaging at an early stage with those at risk of becoming involved in such behaviour. However funding for such programmes is often short term and insecure and this issue must be addressed if any impact is to be made on antisocial behaviour by children and young people.

### 3. Antisocial behaviour orders for under 16s

- Courts are not the system through which to deal with children effectively. Decisions affecting a child's future should remain within the Children's Hearings System as it has the capacity to take a holistic view of the child and their circumstances and therefore to make an informed decision.
- The Bill currently gives the court the power to require that a children's hearing be arranged after an ASBO has been granted against an under 16. The Children's Hearings System should remain central to decisions in relation to under 16s; if ASBOs are introduced for under 16s provision should be made for a hearing to be held before the decision of whether to grant an ASBO is made, in order that the panel can inform this decision. Given that it is the Scottish Executive's intention that 'the overall number [of ASBO applications for under 16s] is likely to be fairly low and an estimate of 100 per annum is higher than is likely to be required in practice' (Antisocial Behaviour etc. (Scotland) Bill Explanatory Notes) the requirement to gain advice from a children's panel before an ASBO is made should not result in unmanageable additional pressure on the Children's Hearings System.

### 4. Dispersal

- This measure was rejected by over 80 percent of respondents to the Scottish Executive's consultation (A report on the consultation responses to *Putting our communities first: a strategy for tackling antisocial behaviour*), primarily on the grounds that existing police powers are sufficient to deal with antisocial behaviour among groups.
- This measure conflicts with Article 11 of the European Convention on Human Rights (ECHR).
- Encouraging the dispersal of groups where no crime is being committed is likely to undermine relations between the police and young people. Effective action is needed in response to members of the public being 'alarmed or distressed as a result of the presence or behaviour of groups of two or more persons in public places' (Antisocial Behaviour etc. (Scotland) Bill) but this should involve tackling fear of crime and in particular working to improve relationships between generations (as recommended in *For Scotland's children* 2001).

### 5. Parenting orders

- The Explanatory Notes accompanying the Bill state that a court will take into account whether a parent has been offered and has engaged with voluntary support. However this is not explicit on the face of the Bill and (as recognised in *For Scotland's children*, 2001) levels of voluntary parenting support are currently insufficient.
- It is welcome that the Bill includes provision for children's views to be taken into account in relation to POs. However the Bill should also provide for children to be given the opportunity to express their views in an appropriate manner (ie an informal, 'child-friendly' environment) and separately from their parents where necessary.

### 6. Electronic monitoring

- Although this measure has been available for under 16s in England and Wales since 1999 there is little or no evidence that it has proven effective.
- The Policy Memorandum suggests that electronic monitoring will be accompanied by an 'intensive programme of supervision and support'. In order to address behaviour and ensure supervision the focus must be on the support package and not on electronic monitoring. It is also essential that access to support packages is not dependent on electronic monitoring.
- Children and young people who require intensive support and supervision, and therefore may be subject to electronic monitoring, are likely to have been referred to the Children's Hearings System previously on welfare grounds including care and protection concerns. In these situations confining a child or young person to their home will not address their welfare issues and may heighten existing tensions within the household.
- The Bill does not place a lower age limit on electronic monitoring and this must be addressed.
- To electronically monitor children is in breach of Article 40 of the United Nations Convention on the Rights of the Child (UNCRC) and may breach Article 8 of the ECHR.

If you would like to discuss any of the points raised in this briefing please contact Shelley Gray (Policy Officer, Children in Scotland) on 0131 222 2435 or email [sgray@childreninscotland.org.uk](mailto:sgray@childreninscotland.org.uk)