

Policy Briefing

Antisocial Behaviour etc. (Scotland) Bill

Introduction

The Scottish Executive introduced the Antisocial Behaviour etc. (Scotland) Bill to the Scottish Parliament on 29th October 2003 following their consultation document *Putting Our Communities First: A Strategy for Tackling Anti-social Behaviour*. This briefing is designed to inform Children in Scotland members of the main points of the Bill in relation to children and young people and to highlight key concerns informed by the views of members about the Scottish Executive's consultation document.

Headline issues

A number of concerns were raised during consultation carried out by Children in Scotland and the wider Scottish Executive consultation. While some of these have been reflected in the Bill there remain a number of key issues:

1. Provision is insufficiently strong to ensure that communities are fully engaged in developing **Antisocial Behaviour Strategies**.
2. The Bill does not place adequate conditions on granting **Antisocial Behaviour Orders** against those under 16 years of age.
3. Provision to extend police powers of **dispersal** are unnecessary.
4. **Community Reparation Orders** are restricted to those aged 21 and under despite rejection of this by the large majority of respondents to the Scottish Executive's consultation exercise.
5. The Bill proposes to extend **Restriction of Liberty Orders** to under 16s with no accompanying support.
6. The grounds on which a local authority can apply for a **Parenting Order** does not include the welfare of the child. Also provision for children to express their views in proceedings relating to Parenting Orders are welcome but should be strengthened.
7. The Bill does not make reference to or include the "**no order principle**" applied to children's panels and courts under the Children (Scotland) Act 1995.
8. Provisions in the Bill for **closure of premises** may have a negative impact on the already insufficient provision of facilities for young people.
9. The **strengthening of duties on local authorities to provide services** in relation to a supervision requirement is welcome but safeguards must be put in place to ensure that this does not result in supervision requirements being used as a route to securing services.
10. The Bill does not address the issue of behaviour which falls within the definition of 'antisocial' but which arises as a direct effect of a **disability**.

MAJOR PROPOSALS OF THE BILL

- **The 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* (section 110/1)
- **Antisocial Behaviour Strategies** – a duty on each local authority to work jointly with the relevant chief constable to prepare, publish, and keep under review, a strategy for tackling antisocial behaviour in the authority area.
- **Antisocial Behaviour Orders (ASBOs)** – local authorities and registered social landlords to be able to apply to the sheriff to have an ASBO granted against those aged 12 and above (currently can only be applied to those aged 16 and above). In the case of a child the sheriff will have ‘regard to any views expressed by the Principle Reporter’. Where the sheriff makes an ASBO in respect of a child, the sheriff may require the Principle Reporter to refer the child’s case to a children’s hearing.
- **Dispersal of groups** – contrary to the proposals in the Executive’s consultation document this measure does not apply exclusively to those under 16. The proposals give senior police officers the power to authorise police officers to disperse groups of two or more people in a specified area, at specified times and for a specified period (not exceeding 3 months).
- **Closure of premises** – a power for senior police officers to authorise the closure of premises where there is reasonable grounds for believing that (i) ‘at any time during the immediately preceding 3 months a person has engaged in antisocial behaviour on the premises; and (ii) the use of that premises is associated with the occurrence of relevant harm’. The senior police officer will be obliged to consult with the relevant local authority and take reasonable steps to identify the person who lives on, has control of, has responsibility for or has an interest in the premises. Closure notices can be appealed against by anyone with an interest in the closed premises.
- **Parenting Orders (POs)** – the court may grant an application for a PO from a local authority where a child has engaged in antisocial behaviour or criminal conduct. A PO may be granted on request of the Principle Reporter under the same conditions and/or where ‘the making of the order is desirable in the interests of improving the welfare of the relevant child’. Before making a PO the court is obliged to hear the views of the relevant child (‘having regard to the age and maturity of the relevant child, so far as is practicable’) and those of the parent. Breach of a PO will constitute an offence and the parent will be liable for a fine – the welfare of the child will be considered by the court in making this decision.
- **Community Reparation Orders (CROs)** – where someone is convicted of an offence involving antisocial behaviour and was between the age of 12 and 21 when this was committed then the court may impose a CRO in place of a sentence. This will require the offender to carry out activities designed to enable reparation to be made to those affected by their actions or to reduce the likelihood of the person engaging in such behaviour again.
- **Restriction of Liberty Orders (RLOs)** – these can currently be applied to those aged 16 and over – the Bill proposes to repeal this age limit.
- **Supervision requirements** – the Children (Scotland) Act 1995 to be amended to enable supervision requirements imposed by a children’s hearing to include restricting a child’s movements and requiring the child to comply with arrangements for monitoring their compliance with such a restrictions. Devices that may be used for the purpose of monitoring are to be specified in regulations. The Bill also strengthens duties on local authorities to provide services required to make a supervision requirement effective and strengthens local authority accountability in respect of the provision of education for excluded pupils.

FURTHER DISCUSSION OF HEADLINE ISSUES

1. Provision is insufficiently strong to ensure that communities are fully engaged in developing **Antisocial Behaviour Strategies** – although the legislation (section 6/1) places an obligation on local authorities to ‘consult such community bodies and other persons’ as they consider appropriate, this will not adequately ensure the full involvement of communities – an essential factor in tackling antisocial behaviour effectively. Detail is required on how Antisocial Behaviour Strategies will be linked with the Community Planning Process.
2. The Bill does not place adequate conditions on granting **Antisocial Behaviour Orders** against those under 16 years of age – a large minority of respondents to the Scottish Executive’s consultation process rejected this proposal and those who supported it did so on the condition that it would be ‘used as a last resort after all other measures had failed, adequate support packages being implemented, and careful consideration given to the processes and implications of any breaches.’ The Bill does not address any of these caveats – conditions for granting an ASBO do not include other measures having been exhausted, there are no reciprocal duties on local authorities to provide support to accompany an ASBO, and while the Bill specifies the consequences for those aged 16 and over who breach an ASBO it does not do so for children.
3. Provision to extend police powers of **dispersal** are unnecessary – the majority of respondents to the Scottish Executive’s consultation (including the Association of Chief Police Officers) believed that the police already had sufficient powers of dispersal and raised concern that this provision may undermine relationships between the police and communities, particularly young people.
4. **Community Reparation Orders** are restricted to those aged 21 and under despite rejection of this by the large majority (over three quarters) of respondents to the Scottish Executive’s consultation exercise.
5. The Bill proposes to extend **Restriction of Liberty Orders** to under 16s with no accompanying support – the Scottish Executive’s consultation found ‘near unanimous agreement that RLOs applied to under 16s would require additional support arrangements’. However, unlike in the case of supervision requirements, such provision is not included in the Bill.
6. The grounds on which a local authority can apply for a **Parenting Order** (PO) does not include the welfare of the child. Also provision for children to express their views in proceedings relating to POs are welcome but should be strengthened – the welfare of the child is grounds for application for a PO only where this is applied for by the Principle Reporter and not by a local authority – the reason for this is unclear. It is positive that the Bill gives children the right to express their views in proceedings relating to a PO but this should be strengthened by obliging courts not only to hear a child’s view but to take account of this view. If provision for children to give their views is to be meaningful it is also vital that legislation or guidance states that this should be done in a ‘child friendly’ manner and that views will not be disclosed to parents without the consent of the child. The Bill states that in decisions relating to breach of a PO the court will consider the welfare of the child – this should be strengthened in line with the Children (Scotland) Act 1995 so that the child’s welfare is ‘paramount’ in such decisions.
7. The Bill does not make reference to or include the “**no order principle**” applied to children’s panels and courts under the Children (Scotland) Act 1995 – this principle dictates that no order should be applied in relation to a child unless it is considered that this would be better for the child than if no order were made. The Bill does not make reference to this but it is vital that this applies to decisions made under the legislation – for example in a sheriff’s decision to grant an ASBO against a child.
8. Provisions in the Bill for **closure of premises** may have a negative impact on the already insufficient provision of facilities for young people – with young people consistently citing lack of facilities as a key issue in their communities and the main reason for ‘hanging around on the

streets', it is concerning that facilities could potentially be subject to closure under the legislation as a result of antisocial behaviour among a minority of those using such facilities.

9. The **strengthening of duties on local authority to provide services** in relation to a supervision requirement is welcome but safeguards must be put in place to ensure that this does not result in supervision requirements being used as a route to securing services.
10. The Bill does not address the issue of behaviour which falls within the definition of 'antisocial' but which arises as a direct effect of a **disability** – that some disabilities have a direct effect on an individual's behaviour is already recognised in legislation, for example in relation to school exclusions (see Disability Discrimination Act Code of Practice for Schools). To impose a sanction in response to behaviour arising as a direct result of a disability may constitute less favourable treatment for a reason that relates to a disability and it is essential that legislation safeguards against this. Where antisocial behaviour is as a result of a disability it is unlikely in any case that any of the measures in the Bill would prove effective as they assume the individual is able to modify their behaviour and this may not be the case.

Wider concerns

Children in Scotland has a number of wider concerns in relation to the Scottish Executive's proposals;

1. It is not clear that the Bill is based on evidence of approaches that are effective in tackling antisocial behaviour or that it will be accompanied by a strategic approach to rolling out such approaches across Scotland.
2. It is vital that early intervention is in place to prevent antisocial behaviour reaching the stage where provisions such as those in this Bill are needed.
3. There is a need to ensure that any action to tackle antisocial behaviour is firmly linked to other areas of Scottish Executive activity such as that in relation to social inclusion, health, and education.
4. It is essential that the right to be a child is not overlooked in the drive to tackle antisocial behaviour. Many of the Bill's proposals involve extending existing measures to those under the age of 16 and as young as 12. Many of the young people who participated in the consultation process were concerned that children under 16 may be too young to fully comprehend these measures and their implications. Young people, among others, also suggested that proposals such as increased powers of dispersal unfairly victimised young people for engaging in the normal, social behaviour of 'hanging out with friends'.