

REPORT

To: SOCIAL WORK COMMITTEE HOUSING COMMITTEE		Subject: CRIME AND DISORDER BILL - SCOTTISH OFFICE CONSULTATION PAPER ON ANTI-SOCIAL BEHAVIOUR ORDERS
From: DIRECTOR OF ADMINISTRATION		
Date: 13 November, 1997	Ref: CA/SW/1 LD/EH	

A Consultation Paper was recently received from the Scottish Office on Anti-Social Behaviour Orders which set out the Government's proposals for tackling the problem of threatening and anti-social neighbours.

The Scottish Office sought comments on the proposals from the police, local authorities and criminal justice agencies on the introduction of a new Anti-Social Behaviour Order by 9 October 1997 to enable the provisions to be drafted for inclusion in the forthcoming Crime and Disorder Bill which is likely to be introduced later this year.

In order to meet the timescale for consultation, observations were prepared following consultation with the Directors of Social Work, Housing and Environmental Services for submission to the Scottish Office and this is attached as Appendix 1.

The Government have moved quickly since the consultation and have now issued a response which is attached as Appendix 2.

Recommendation

The Committee is asked to endorse the response set out in Appendix 1 to this report as the Council's formal response to the consultation on Anti-Social Behaviour Orders and to note the response from the Scottish Office.


Director of Administration

ANTI-SOCIAL BEHAVIOUR ORDERS

OBSERVATIONS BY NORTH LANARKSHIRE COUNCIL ON
THE SCOTTISH OFFICE HOME DEPARTMENT CONSULTATION PAPER

North Lanarkshire Council recognises that the way in which anti-social behaviour manifests itself in society is extremely varied and is aware of the distress which can be caused to individuals, families and whole communities through the aggressive or uncaring behaviour of others. The Council therefore supports the principle of introducing an Order which seeks to provide support to communities to make those communities more safe and able to provide the quality of environment which everyone should enjoy.

The Council has concerns, however, about the detail of the proposals outlined, and the following comments are intended to provide a constructive contribution to the development of such controls.

The Council is concerned at the inconsistency of approach being developed in the past year in relation to those who pose a threat to others. This concern relates to the role of the local authority in situations where longer term surveillance of individuals is an issue. Relevant situations include:-

- Measures contained in the Crime and Punishment Act 1997, but not yet in force which extend the supervision of those sex offenders released from prison on statutory orders to ten years.
- Measures contained in the Sex Offender Act 1997, implemented in September 1997, to establish a register of sex offenders, administered by the Police.

The measures above highlight the need for greater debate and clarity of thinking about the proper roles of the agencies who deal with those who pose a risk to others. The first measure introduces to Social Work a function of longer term surveillance, beyond the period of intervention which would seek to change the behaviour of the individual. The second places responsibility for longer term surveillance properly with the Police, the agency best equipped and able to exercise the tasks associated with such extended control. While it is accepted that the activities of the local authority should be underpinned by the priority of safety for individuals and communities, the social work task should be to seek to effect change over a defined period while exercising a degree of control, e.g. in relation to probation orders and the protection of children, rather than to exercise long term surveillance over individuals. The establishment of longer term surveillance of sex offenders, through establishment and maintenance of a register, seems an appropriate comparison to the surveillance needed for those who cause difficulties within communities.

The proposals contained in the Consultation Paper suggest that the local authority should exercise prime responsibility in relation to Anti-Social Behaviour Orders, and suggests that it would be unprecedented for the Police to apply for a civil order. It may be unprecedented, but the view of the Council is that the Anti-Social Behaviour Order, as proposed, is an Order which concerns the maintenance of public order and the exercise of control, without intervention which might alter the behaviour of the parties held responsible for the difficulty. On this basis, the Council is of the view that while such Orders are necessary as an extension of control within society, the agency most suited to investigate initial complaints, compile evidence and investigate breaches of an Order is the Police, rather than the local authority.

The proposal that responsibility rest with the Police does not, however suggest that the local authority should not have involvement in the exercise. Clearly information will come to the local authority which will require discussion with the Police over action to be taken. As in the arrangements currently being explored by the local authority with the Police, in relation to the Sex Offender Act, multi-disciplinary co-operation is essential to making the legislation effective. It is the belief of the Council that multi-disciplinary structures, with the Police holding prime responsibility would be the most efficient and effective mechanism with regard to the establishment of Anti-Social Behaviour Orders.

With regard to dealing with the anti-social behaviour of tenants and owner-occupiers, the Council is concerned that the introduction of an Anti-Social Behaviour Order would be regarded by the Courts as a pre-requisite to the granting of a decree of eviction for anti-social behaviour in terms of the Housing (Scotland) Act 1987. The Council should have the discretion to consider which form of court action is appropriate in the circumstances.

It is recognised that the measures currently available to the local authority when dealing with anti-social behaviour do not provide the complete answer and require to be augmented by additional powers. As it is proposed that the Anti-Social Behaviour Order would be supported by criminal sanctions for each breach, it follows that such an Order would be more effective than existing measures.

One of the existing problems facing the local authority in dealing with a complaint about anti-social tenant(s) is the requirement that the person making the complaint give evidence in relation to the anti-social behaviour in Court. This is often seen as a deterrent to the complainant and often, for that reason, the authority is unable to proceed with an action against the anti-social tenant.

Although it is proposed that evidence that an Order would protect the community from further action could be led by professional witnesses such as the Police or local authority staff, it appears that there would still be a requirement for evidence of past behaviour because of the need to establish facts and prove that the conduct had been carried out by the individual. This requirement could reduce the effectiveness of the Order procedure.

The following comments and proposals are made:-

- As discussed above, prime responsibility for applications and oversight of Orders should rest with the Police.
- Formal structures should be established to ensure effective multi-disciplinary practice between local authority and the Police.
- Consideration should be given to the inclusion of conditions in Orders which would engage the responsible individual in exercises which address the nature of the problem, e.g.:-
 - Programmes designed to deal with personal anti-social behaviour including methods of dealing with personal anger.
 - Mediation arrangements.
 - Such programmes might be delivered by the local authority, which already has considerable experience in this area of activity, as a component part of multi-disciplinary working.
- It would seem appropriate in relation to Section 11 of the Consultation Paper that, in relevant criminal cases, the prosecutor should consider applying for an Anti-Social Behaviour Order as an outcome of the case. If the case merits such an outcome in addition to any criminal justice disposal, there seems little point in pursuing a separate process. To delay would be unhelpful to communities, and wasteful of the resources of the courts and agencies involved.
- The Council is not persuaded by the comments in Sections 20 and 21 of the Paper that the costs of this additional activity will largely be offset by the time already spent dealing with complaints of anti-social behaviour. The volume of situations which might be reported and which will require a response could be significant, while activity required in relation to enforcing compliance is an unknown quantity. Additional resources will be required by the agencies which will be involved in activity in this area of work, whether it concerns investigation, enforcement or intervention.
- The Council supports the views expressed in the Consultation Paper which concern the avoidance of discriminatory practice.

Director of Administration
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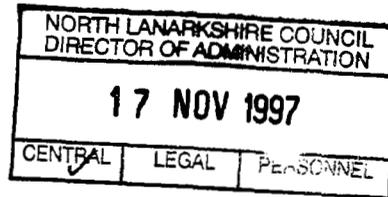
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To all consultees



13 November 1997

ANTI-SOCIAL BEHAVIOUR ORDERS: RESULTS OF CONSULTATION EXERCISE

I am writing to inform you of the decisions taken by Mr McLeish, the Minister of State for Home Affairs and Devolution, following his consideration of the responses to the consultation paper on Anti-Social Behaviour Orders which was issued on 12 September.

A total of 56 responses was received. The Minister was most grateful for the contributions made to the debate and considered the points raised very carefully.

There was general support for the introduction of such an Order in principle (nearly 80% of those who expressed a view), although many had reservations about the detail. The Minister would hope to be able to address the majority of these concerns (for, example about the need to ensure consistency and fairness) by producing detailed guidance on the circumstances in which Orders should be considered and the way in which this should be done, once the basic legislative provisions are in place.

All were content that the Order should be made by the Sheriff, who should have discretion over its terms and duration.

The majority (55%) of those who considered the issue would like the police as well as the local authority to have the power to apply for Orders, as is to happen for England and Wales. The police themselves, however, are firmly against the idea considering that they should have no role in what are in essence civil disputes between individuals. It would also be unprecedented for the police to apply direct to the civil courts in Scotland. The Minister therefore proposes that only local authorities should be able to apply for Orders in Scotland.

The paper canvassed the idea that the prosecutor might be empowered to apply for an Order as part of a criminal prosecution. There was considerable support for this, with over 70% of

those who addressed the issue being in favour. There are, however, technical difficulties in attempting to mix civil and criminal procedure in this way, and the Minister has decided that it should therefore be for the local authority to apply for an Order as normal following criminal proceedings if they consider this necessary to protect the community from future harm.

Because of the distinctive nature of the children's justice system in Scotland, the paper proposed that Orders should not apply to those under 16. Nearly 70% of those who addressed this issue would have liked under 16s to be covered. Nevertheless, for the reasons set out in the paper the Minister does not propose to extend the coverage of the new Order to children.

The paper proposed that applications for Orders would be by way of the normal summary application procedure. There was some concern (from about 20% of respondees) that the court process would not be sufficiently speedy to meet the expectations of local communities. It is possible, however, for the applicant to make representations to the Sheriff to justify an early diet being fixed for the hearing where there is particular urgency. (Such cases should be relatively rare since conduct which is clearly criminal will be addressed by other means.) The Minister proposes to rest on this arrangement and not seek a "fast track" procedure, which would have the effect of skewing civil business unnecessarily in the majority of cases.

There was also concern, particularly from local authorities, about the cost involved in seeking, making and monitoring Orders. The Minister is satisfied, however, that the additional costs involved are not likely to be so great as to justify extra resources.

It is hoped that provisions on Anti-Social Behaviour Orders will be included in the Crime and Disorder Bill which is to be introduced into Parliament shortly.

Yours sincerely

Liz Lewis

MRS E LEWIS