EAST AYRSHIRE COUNCIL

EMERGENCY POWERS COMMITTEE –28TH AUGUST 2003

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

Report by Director of Community Services

1. PURPOSE OF REPORT

1.1 The purpose of this report is to advise Members of the main provisions of a consultation document issued by the Scottish Executive on their proposed strategy for tackling anti-social behaviour and to seek approval for a suggested response to the points raised in the consultation document.

2. BACKGROUND

2.1 Tackling anti-social behaviour is one of the key objectives of the Scottish Executive and the proposed Anti-Social Behaviour Bill forms a major part of the 2003/04 legislative programme. On 26th June, the Executive published a Consultation Paper: "Putting our Communities First".

2.2 Replies are sought on the Consultation Paper by 11th September 2003.

2.3 The Consultation Paper highlights a wide range of measures designed to tackle anti-social behaviour and these have implications for a wide range of Council services including Housing, Social Work, Education and Environmental Health.

3. MAIN PROPOSALS

3.1 The main proposals contained within the Consultation Paper fall within four principle categories. These categories and the proposed actions can be summarised as follows:-

Protecting and Empowering Communities

- strengthen the duty of local agencies to involve communities in drawing up anti-social behaviour strategies
- encourage local authorities to set up pro-active anti-social behaviour units
- introduce Community Reparation Orders
- commit to improve protection of witnesses of anti-social behaviour

Preventing Anti-Social Behaviour : Children and Families

- encourage wider use of Acceptable Behaviour Contracts for children and their parents
- extend Anti-Social Behaviour Orders to 12 to 15 year olds
- strengthen the range of options available to Children's Hearings for dealing with anti-social behaviour
- introduce Parenting Orders that may require parents to undertake guidance or counselling as well as taking a more active role in supervising their children
- extend the availability of electronic tagging to under 16 year olds

Building Safe, Secure and Attractive Communities

- give Community Wardens powers to issue fixed penalty notices
- strengthen penalties for litter, fly-tipping, graffiti and abandoned cars
- ban the sale of spray paint to under 16s
- introduce stronger powers for local authorities to combat noise nuisance
- encourage rewards for good tenants
- strengthen local authorities powers to deal with landlords who do not tackle anti-social behaviour by their tenants
- pilot "good neighbour" declarations setting out the respective responsibilities of landlords, tenants and agencies

Effective Enforcement

- consider introducing fixed penalty notices for some anti-social activities
- consider giving police an explicit power to disperse groups where there is anti-social behaviour
- make Anti-Social Behaviour Orders more effective for all age groups by allowing courts more flexibility to impose them and introducing a power of arrest if they are breached
- give police powers to close premises where drug dealing and other anti-social behaviour takes place
- intend giving the police tougher powers to enter and close licensed premises

4. DISCUSSION

4.1 Anti-social behaviour is defined within the Consultation Paper as "conduct which causes, or is likely to cause, alarm or distress to one or more persons not of the same household". This is a very broad definition and covers a wide range of behaviour which affects us all in different ways.

There is little doubt that anti-social behaviour is high on the public agenda. The proposals by the Scottish Executive are therefore welcomed and in general terms are to be supported. It is however evident that this is a long term strategy which will require many changes to existing legislation as well as some new legislation. The fact that this is a long term strategy should not diminish the importance of dealing with anti-social behaviour since undoubtedly it is affecting the quality of life of residents of East Ayrshire.

4.2 A detailed response to the sixty-one questions contained in the Consultation Document has been developed by officers from all departments in the Council. A copy of the suggested response is attached as Appendix 1.

4.3 In addition to these comments it is felt that the Executive should be reminded that it is important that they make the resources available to implement the strategy when it is finally approved. There is little or no point in developing strategies if resources are not available. If this is the case, failure is almost guaranteed and the objectives of the Council and the Executive will not be met. In practice, the Executive cannot deliver this strategy without local authorities and community planning partners.

4.4 There must also be some criticism of the Scottish Executive on the timing of the consultation which is an eight week period over the summer recess.

5. FINANCIAL IMPLICATIONS

5.1 The financial implications of implementing the new strategy can not be quantified at this time.

6. LEGAL IMPLICATIONS

6.1 Following the Consultation, a full strategy will be developed. This will involve developing new legislation and modifying existing legislation in due course.

7. POLICY IMPLICATIONS

7.1 Existing Council policies will have to be reviewed in due course to take account of the new Strategy for Tackling Anti-Social Behaviour but many of the proposals are in line with existing Council policy and practices.

8. CONCLUSION

8.1 The proposals contained within the Consultation Document are welcomed and bring a degree of cohesion to policies and strategies for dealing with low level crime and anti-social behaviour. The role of local government cannot be underestimated in delivering these proposals and therefore it is important that the Executive work closely with local authorities on the implementation of the Strategy in due course. It is also important that they make adequate resources available for this purpose.

9. RECOMMENDATION

9.1 It is recommended that the Committee: -

i) consider and if acceptable approve the suggested response to the Consultation Paper;

ii) remit to the Director of Community Services to submit the response to the Scottish Executive on behalf of the Council; and

iii) otherwise note the content of this report.

William Stafford
Director of Community Services

WS/CAM

25th August 2003

LIST OF BACKGROUND PAPERS

1. Putting our Communities First: A Strategy for tackling Anti-social Behaviour – 26th June 2003

Any person wishing to inspect the background paper above should telephone 01563 576023 and ask for William Stafford, Director of Community Services.

Implementation Officer – william.stafford@east-ayrshire.gov.uk

EAST AYRSHIRE COUNCIL

Draft Response to Putting our Communities First: A Strategy for Tackling Anti-Social Behaviour

Anti-Social Behaviour Strategies

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

Response to Question 1

The Executive's view that our Communities are in the front line in the fight against anti-social behaviour and that they must be fully involved in finding solutions to the problem is totally correct. The social history of Scotland clearly demonstrates that when Communities are not actively involved in the development and implementation of strategies designed to tackle crime and anti-social behaviour such strategies either fail or are only partially successful.

We view the legislation requiring the police and local authorities to prepare and publish local anti-social behaviour strategies to be an ideal opportunity reverse the growing trend of anti-social behaviour, which blights our Communities. However, we do believe that a strategy developed and implemented solely by a local authority and the police would not be totally successful in providing the community-planning framework necessary to achieve the objectives set by the Executive. Consequently we would support legislation, which would make it a formal duty for RSLs and other community planning partners to be involved in the preparation of anti-social behaviour strategies.

In our opinion the main thrust of any local anti-social behaviour strategy will be prevention initiatives. However, these initiatives must be supported by early and effective enforcement procedures. As a result we would also suggest that the Procurator Fiscal Service, Reporters to the Children's Panel, Magistrates and Sheriffs should also have a formal duty to be involved in the preparation of strategies.

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

Response to Question 2

The European Convention on Human Rights and the Data Protection Act 1998 are complicated pieces of legislation. Many people have difficulty in working with the legislation and fail to find the balance private rights and the need to take legitimate steps to protect the community from crime and anti-social behaviour.

These difficulties and the fear of getting it wrong very often act as constraints on the exchange of information, which could assist in combating crime and anti-social behaviour.

In order to overcome these problems we believe that the Executive should provide clear and concise guidelines on when and when not to exchange information.

We would also recommend that Section 115 of the Crime and Disorder Act 1998 be amended to permit the police to share information in relation to crime and anti-social behaviour with RSLs in order that the latter be able to effectively make applications for Anti-Social Behaviour Orders in their own right.

To overcome the problem of not knowing whether or not an applicant for housing has been or is the subject of an Anti-Social Behaviour Order we would recommend the creation of an computerised ASBO National Register, which local authority landlords and RSLs could access to obtain information about housing applicants and members of their families. The ASBO Registry could be linked to the Police National Computer and could follow the example used for recording Matrimonial Interdicts.

The legislation, which gave Registered Social Landlords the power to make applications for ASBOs in their own right has created a situation where it is now essential for RSLs and local authorities to share information regarding persons who have received warnings for acts of anti-social behaviour.
The inability to share this type of information could result in one person committing several acts of anti-social behaviour in one local authority area and receiving warning from different RSLs as well as the local authority without an application being made for an ASBO.

We believe that such a situation is unacceptable and could be easily overcome by making it a formal duty within local anti-social behaviour strategies for RSLs and local authority landlords to maintain a shared register of people formally warned regarding their anti-social behaviour. Access to the register being subject to appropriate safeguards.

Given the fact that effective community planning should promote effective information exchange to prevent anti-social behaviour, it is believed that little more can be done here.

Community Reparation Orders

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

Response to Question 3
We agree with the Executive that offenders must be made aware of the consequences of their offending behaviour in relation to the cost and distress it causes to individual victims and the community. Consequently we regard the creation of Community Reparation Orders to be an important step forward in attempting to educate offenders that the Community will not tolerate anti-social behaviour.

We have reservations about creating Community Reparation Orders, which would involve direct reparation by the offender to his/her victim. In our opinion the last thing many victims would wish is to have direct contact with the person who caused them distress they have suffered. Such direct contact may only increase the victim's fears that the offender would target them with further acts of anti-social behaviour. Given this situation it is important that the victim always be consulted to establish if they would be willing to accept direct reparation from the offender.

On the other hand we have no reservations about involving offenders in general reparation to the community as a whole. We agree that these schemes must be designed to cover a range of constructive activities involving education, the stimulation of interest to encourage constructive use of time and unpaid work. However, caution will need to be taken to ensure that the Community Reparation Order does not equate to Community Service which is legally imposed as a direct alternative to prison.

We believe that for Reparation Orders of a general nature to function properly they must be highly visible. This would demonstrate to the public that direct action is being taken against offenders and would also send a message to potential offenders that anti-social behaviour is totally unacceptable to the community. We do not regard Reparation Orders as contravening the terms of Article 4 of the Convention of Human Rights.

Activity within the confines of a Community Reparation Order would be determined by the physical and mental capacity of the individual.

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

Response to Question 4

Although the majority of Anti-Social Behaviour is committed by young people, offenders come from all age groups. As a result we take the view that Community Reparation Orders should be applicable across the age groups. Obviously it is undesirable to mix adult offenders with young offenders. However, we believe it would be possible to have separate CRO schemes for offenders within the 16 to 21 age group and for offenders over 21 years.

There is presently an anomaly in the way the law stands as compared to how it is interpreted in relation to offenders. The education system has now to treat all young people of "sufficient age and maturity", which is broadly defined as those over 12 years old as having rights that are commensurate with this status. Thus, for example, they have to be given copies of all documentation relevant to a school exclusion, including information on their right independently of their parents to appeal an exclusion. However, there does not appear to be a corresponding legal recognition of a child of "sufficient age and maturity" to have to act responsibly in their own right and be accountable for their own actions in matters related, for example to behaviour or school attendance.

Indeed we would also suggest that consideration be given to operating CRO schemes for offenders aged between 12 years and 15 years in order to make this age group realise that they will be held accountable for their actions. It is our belief that the earlier this message can be conveyed to young offenders the more successful it is likely to be. We are aware that legislation exists to control the number of hours a person of school age is permitted to work, but we see no great difficulty in designing CRO schemes to comply with this legislation.

The issue with children of school age working is not simply a matter of hours, but also relates to the nature of the work and when it can be carried out. Since many community based tasks might be classified into proscribed categories, or involve the use of machinery this could be problematic. A CRO that had the effect of interfering with a child's school attendance or their ability to complete homework would be perverse in effect. However, there is much flexibility in the school holidays.

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

Response to Question 5
We have no objection to the introduction of a statutory requirement (subject to necessary safeguards) on local authorities to consult with appropriate agencies and bodies about what form reparation might take.

As Community Reparation Orders should benefit the whole community we believe consultation should be as wide as possible. A wide consultation with appropriate agencies and bodies would demonstrate to the community that an overarching framework for tackling anti-social behaviour has been put in place and everyone has a role to play in making CROs a success.

We consider it appropriate to have formal consultation with the individual victims of anti-social behaviour, locally based Victim Support groups, community councils, the police, RSLs, business organisations, tenant and resident associations and Neighbourhood Watch Schemes as well as statutory bodies and the Fiscal service.

<u>Protection for Victims and Witnesses of Anti-Social Behaviour</u>

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

Response to Question 6
We recognise the substantial amount of work that has been undertaken by the Executive to provide support to the victims and witnesses of anti-social behaviour. Victim Support services, the Witness Service, the Vulnerable Witnesses Bill and the extended use of professional witnesses are all important measures in the fight against anti-social behaviour. However, all these measures are recognition of the fact that in today's climate the majority of people (not just victims and witnesses) feel vulnerable and live with a fear of crime and anti-social behaviour.

We welcome the legislation and funding to set up local authority Community Warden schemes and believe that these will go some way to help prevent crime and reduce the public's fear of crime. However, as the Executive has correctly stated Community Wardens are not to be regarded as a replacement for the police.

In our opinion a great deal of public confidence would be restored if uniformed police officers were seen patrolling the streets and making contact with the community they serve. This we believe would help prevent and detect low-level crime including anti-social behaviour and make people feel less vulnerable.

Earlier this year media coverage of the large number of criminal cases abandoned by the Crown may well have further eroded public confidence in the Scottish Prosecution system. We view this situation as a disincentive for the public to report incidents of anti-social behaviour and would suggest that Executive take steps to make the Scottish Prosecution Service more accountable for its actions in this area.

Another major factor which helps to increase victims and witnesses feelings of being vulnerable is the length of time taken to bring an action to court and the many legal procedures used by defence agents to delay the eventual outcome of cases. While we accept that fairness to an accused is a fundamental and essential concept in the Scottish Legal System we feel that the courts should do more to avoid inordinate delays and ensure that there is an equal balance of fairness between the accused and victims.

In legal theory any unlawful interference with witnesses is regarded as a serious and may be prosecuted under the common law crime of Attempting to Pervert the Course of Justice. However, in practice prosecution of this crime is generally restricted to the most serious incidents, whereas less serious incidents are mainly prosecuted as breaches of the peace resulting in minor penalties being imposed on guilty offenders. We believe this practice does not afford victims and witnesses the protection they deserve and would recommend that the Executive consider legislating for a statutory offence with severe penalties attached for any unlawful interference with witnesses before and after a case is heard in court.

Question 7. What are your views on the greater use of professional witnesses?

Response to Question 7

We are of the opinion that the use of 'professional witnesses' is a valuable tool in the fight against anti-social behaviour and welcome the Executive's moves to create a climate, which encourages the use of this facility.

We also recognise the potential to use Community Wardens in the role of 'professional witnesses' when the need arises. Indeed we view this as being part of the wardens' preventative role. Knowledge of this may deter potential offenders. In our opinion the majority of people would find it acceptable to use wardens as 'professional witnesses' where anti-social individuals are disrupting life in the community. There is, however, a need to be cautious in avoiding any possible substitution of professional witnesses for direct evidence provision.

Acceptable Behaviour Contracts

Question 8. Do you support wider use of ABCs?

Response to Question 8

Given the guidelines that applications for Anti-Social Behaviour Orders should only be made when all other corrective measures have been exhausted we totally support the wider use of Acceptable Behaviour Contracts.

We believe that the use of ABCs and any accompanying support provided to persons subject to contracts must be considered as relevant evidence when the contract is broken or is refused without reasonable excuse and court action follows.

As indicated in our response to Question 2 we recommend that there be a formal duty in local anti-social behaviour strategies for RSLs and local authority landlords to maintain a shared register of people formally warned regarding their anti-social behaviour, which must include those subject to ABCs. Should the police, local authority education and social work services as well as other relevant agencies have a role to play in ABCs we believe that they should also have a formal duty to maintain the shared register. Access to the register being subject to appropriate safeguards.

ABCs are viewed as a potentially effective part of a care plan but this may have resource implications for Social Work. This gives particular concern when viewed against the national shortage of Social Workers.

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

Response to Question 9

In our view early and effective action to anti-social behaviour is essential to prevent situations escalating. Therefore we consider it would be appropriate to the offer of Acceptable Behaviour Contracts on the first occasion a person commits an act of anti-social behaviour provided there is sufficient evidence available to prove this.

We have no objections to ABCs being used in the hearing system or in schools.

The concept of “Contracts” has existed in the school system for over 20 years. No system has proved workable despite many models being developed. The reason for this is that it is very difficult to write a contract in this area that is balanced and fair. Equally the concept of a contract tacitly at least implies a bargaining procedure. The Council does not accept any contract without specific legal input; why should children and parents be any different?

Significantly, most school based contracts have fallen down on the issue of default. What sanctions or penalties will be exacted if one party falls down on their part? How will this be proved? Is there an appeals mechanism? It is easy to see that an ABC will encounter similar difficulties, and will in effect merely delay a sanctions based exercise while simultaneously introducing an expensive bureaucracy.

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

Response to Question 10
We regard the opportunity ABCs as a means of providing an offender a final chance to amend his/her behaviour through appropriate support before making an application for an ASBO. We believe this should demonstrate to the court that the pursuer in an application for an ASBO has been reasonable.

Therefore we would recommend that the court must take any breach of the ABC or refusal to enter into one into consideration when hearing an application for an ASBO or Parenting Order.

The problems with ABCs are that no uniform scheme operates in Scotland. The Scottish local authorities (including East Ayrshire) currently using ABCs have adapted the basic concept in different forms. Whether the courts will be prepared to accept a variety of ABC schemes remains to be seen. In addition as far as we are aware no RSLs as yet operate ABC schemes.

As a result we could have the situation where a local authority follows an ABC scheme prior to making an application for an ASBO whereas only some or none of the RSLs in the same area do not, or vice versa. In these circumstances Sheriffs may find it difficult to grant an ASBO where an offender has not been given the opportunity to enter into an ABC.

While we understand the Executive's reluctance to legislate on ABCs, we do believe that the possible difficulties highlighted could be overcome by a recommendation that local anti-social behaviour strategies include the use of Acceptable Behaviour Contracts prior to making applications for ASBOs. Furthermore in order to have a degree of uniformity in relation to ABCs it might advantageous for the Executive to issues guidelines on a model ABC scheme.

<u>Anti-Social Behaviour Orders for under 16s</u>

Question 11. How should ASBOs be extended to under-16s?

Response to Question 11
We welcome and totally support the Executive's plans to extend ASBOs to persistently anti-social persons under 16 years of age. We believe that this move is long overdue as the disruption caused to peoples' lives and the community by the relatively small number of persistently anti-social young people is probably greater than all other sources of anti-social behaviour.

Under existing arrangements the Children's Hearing system has not had the range of disposals available to deal with juveniles who are persistently engaged in crime and anti-social behaviour. This situation often provides the persistent juvenile offender with a degree of 'status' within his peer group, which allows him to influence the behaviour of others.

We take the view that the imposition of ASBOs on persistent juvenile offenders in the circumstances described in the consultation document would greatly reduce the influence these people have on their peers as well as sending a clear message that disorderly behaviour is not going to be tolerated by the community. ASBOs may therefore be considered as appropriate strengthening of existing powers where failure to comply is persistent.

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

Response to Question 12

We support the introduction of individual support orders being linked to ASBOs granted in respect of persons under 16 years of age. We agree that support orders must require the individual to participate in activities, education and counselling tailored to the person's needs and focusing on the causes of anti-social behaviour. However, we suggest that the activities undertaken by these juveniles be carefully organised and should include some form of Community Reparation Order.

The activities for under 16 year olds should not include 'away days' to fun parks, cinemas, etc. To pursue activities along these lines would not be well received by the community and may well be seen as a reward for unacceptable behaviour.

Monitoring and supervision of such orders will have significant resource implications for local authorities.

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

Response to Question 13

In our response to Question 2 we made mention of the fact that Registered Social Landlords have no rights to the sharing of information as provided for by Section 115 of the Crime and Disorder Act 1998. The lack of this right may well impede their ability to obtain information to seek an ASBO in respect of any adult anti-social person. The safeguards in place to protect the identity of the child will make this process even more difficult. While we advocate that the rights of Section 115 being extended to RSLs in respect of adults, we have reservations about the level of safeguards in place regarding the handling of personal information in respect of children by non-government agencies. Consequently we would recommend that the power to make applications for ASBOs and the offer of ABCs in respect of persons under 16 years of age be in the hands of the local authority.

Our response to Question 13 also raises the issue of the anonymity in respect of juveniles who become the subject of ASBOs. Normally the courts impose reporting restrictions on the identity of juvenile offenders. In our experience of ASBOs granted in respect of adults is that the publicity or 'name and shame' aspect of the process greatly assists in preventing offenders breaching the orders. However, unless Sheriffs are prepared to lift reporting restrictions when an ASBO is granted in respect of juveniles the advantages of publicity will be lost.

We have contacted a number of local authorities in England to establish the position regarding this matter. These authorities inform us that in most cases Magistrates granting ASBOs in respect of juveniles lift reporting restrictions.
Given this situation we would suggest that the Executive might wish to consider this matter and if necessary provide guidance to the Scottish Courts.

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

Response to Question 14
The Youth Court pilot is currently in its infancy with full evaluation of its effectiveness not due for some considerable time. It is premature to make amendments to the model adopted which, in relation to under 16s, is designed to deal with the more serious offender aged 15 and not those of a younger age. However, if the evaluation is positive we would agree to this proposal.

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

Response to Question 15
In our response to Question 13 we recommended that the local authorities be the sole agency responsible for making ASBO applications in respect persons under 16. Local authorities already have the facilities and expertise to ensure that the full circumstances of the family be taken into account prior to making a decision whether or not to raise an action in respect of a juvenile.

Greater use of Reparation in the Children's Hearing System

Question 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?

Response to Question 16
As indicated in our responses to questions 4 and 12 we strongly advocate the greater use of restorative justice measures including reparation be used for persistent juvenile offenders. Caution would be required and account would have to be taken of both the circumstances of the victim and the offender.

Electronic Monitoring of Children in Hearing System

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

Response to Question 17

While we support the underlying principle of the Children's Hearing System, namely that of acting in the best interests of the child, it is true that over the years the limited range of disposals available to a hearing has failed to deal adequately with persistent juvenile offenders. Consequently we welcome and fully support the Executive's plans to make electronic monitoring a disposal available to the Children's Hearing in order to restrict the young offender's liberty at specific 'danger' times. However, in common with the restriction of liberty situations described in the section of the consultation dealing with 'Electronic Monitoring in the Criminal Justice System', we believe that the hearing would have to ensure that family relationships and household circumstances are able to support this restriction of liberty.

Any move to introduce electronic monitoring to the Children's Hearing system should be on a pilot basis rather than generally imposed. Such a disposal option is untested within a Scottish context for dealing with young people who offend. Pitfalls to be avoided include the potential for tagging to be seen as a 'badge of honour'.

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

Response to Question 18

Although we support the plans to introduce electronic monitoring as a disposal of the Children's Hearing we believe that monitoring alone would only be a short-term corrective measure. In our view monitoring must be linked with individual support orders involving compulsory activities, education, counselling and where necessary reparation. It is suggested that since monitoring is a high tariff disposal, its use should be restricted where possible to action to prevent the individual being sent to secure accommodation.

Electronic Monitoring in the Criminal Justice System

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

Response to Question 19

In principle we support the imposition by the courts of electronic tagging of persons under 16 being linked to Restriction of Liberty Orders. However, as the consultation document correctly points out, the punitive nature of RLOs has implications both for the offender, his/her family relationships and household circumstances.

Therefore as with Children's Hearing disposal of electronic monitoring, we would suggest that RLOs should be linked with individual support orders involving compulsory activities, education, counselling and where necessary reparation i.e. they should form part of a comprehensive care package.

We also believe that RLOs should be made flexible enough so that other innocent members of the offender's family do not suffer via the imposition of the RLO, e.g. would an RLO prevent the rest of the family having a holiday or night out, etc? In our opinion there would have to be support arrangements in place to deal with these eventualities.

Question 20. The period of restriction for an adult to a place is 12 hours per day and/or from a place for 24 hours a day for a period up to 12 months. What should be the period of restriction for an RLO for those under-16s?

Response to Question 20
We see no reason why a persistent juvenile offender subject to a Restriction of Liberty Order should not be subject to the same restrictions as those, which apply to adult offenders. Flexibility in actual application would be a requirement necessarily informed by a comprehensive assessment.

Parenting Orders

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

Response to Question 21
We welcome the Executive's Plans to introduce Parenting Orders in respect of parents who do not fulfil their parental responsibilities. In our opinion the views expressed in the consultation document are well considered and should be brought into legislation.

We agree that the local authority and the Reporter should have the power to apply to the court for a Parenting Order, as these are the agencies best placed to make a judgement as to whether an order might be appropriate. We would recommend that in the first instance the Reporter should have the power to make an application for a Parenting Order on his own initiative. However, in circumstances where the Reporter does not apply for an order, we believe that this decision should be open to scrutiny by the Hearing and if it considers that an order might be appropriate they should be able to direct the Reporter to make an application. Applications should only follow the abandonment by the parents of a detailed and intensively applied agreed care plan.

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

Response to Question 22
We believe that when circumstances are appropriate courts dealing with other proceedings in relation to the child and his/her family, should have the power to impose a Parenting Order on their own initiative. To refer the matter back to the local authority or the Reporter for consideration only to have another court hearing, delays the issue and places an addition burden on the courts.

However, the Sheriff must have all information available and appropriate reports on the suitability of making an Order. It is unlikely that Sheriffs would proceed without these.

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

Response to Question 23

We believe that the grounds described by the Executive for obtaining a Parenting Order to be entirely sound and totally agree that the welfare of the child should be grounds for an order as well as behaviour. The welfare of the child must be paramount.

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

Response to Question 24

In our experience truancy from school is a major factor in juvenile anti-social behaviour. We believe that parents have a responsibility to ensure that their children attend school and where they fail to do so without reasonable excuse the parents should be subject to a Parenting Order. From the description of Parenting Orders provided, we regard these to be more worthwhile than Attendance Orders made under the Education (Scotland) Act 1980 as they will contain counselling, guidance and focus on setting out required behaviour of the parent in relation to the child. In our opinion there should be little difficulty in adapting Attendance Orders to fit in with the requirements of a Parenting Order.

However, we would counsel caution on the issue of the design of Parenting Orders. This authority has wide experience of discussions with parents about the behaviour of their children, including non-attendance. It is very rare to encounter a parent who does not express the will to co-operate. This is very far removed from saying that they either genuinely wish to co-operate or that they have the personal resources to co-operate. Many children are admitted to be "outwith parental control". In these circumstances, a Parenting Order is unlikely to be of any value unless used when the child is at a very junior age.

If Parenting Orders are to be supported with counselling, guidance etc. there is a substantial resource implication. It is estimated that for East Ayrshire the costs associated with this scaled at one professional member of staff per learning partnership of 2,000 children would require £400,000.

Sadly, it appears to be significant that following the jailing of the mother in England for her children's non-attendance, truancy rates fell across the board. Perhaps there is a case for this sanction to be used sparingly and in extreme cases.

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

Response to Question 25
In our opinion Parenting Orders should last for 12 months and where required be capable of renewal for further periods of 12 months. There are concerns that any period less than 12 months is likely to be ineffective. Any renewal should be on the basis of a comprehensive assessment. There should be a facility for the early discharge of the Order in exceptional cases.

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

Response to Question 26
If it is decided that applications for Parenting Orders be restricted to local authorities, Reporters and Children's Hearings we foresee no difficulty in these bodies ensuring that all relevant information is taken into account. Should it be decided that the courts will have the power to impose an order on their own initiative they already have the power to require the above mentioned bodies to provide them with relevant information.

Local Authority Accountability

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

Response to Question 27
Making available the appropriate level of resources to meet the demands of supervision requirements is a pre-requisite for ensuring compliance. This is currently being demonstrated through the Fast-Track Children's Hearing Pilots.

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

Response to Question 28
Such a scenario may be appropriate in situations where having made adequate resources available in a local authority was not fulfilling the supervision requirements. In situations where it was believed by the local authority that the conditions contained within a supervision requirement were not conducive to the general well-being of the young person there should be grounds of appeal available to the local authority.

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

Response to Question 29
There is some concern with the suggestion that children's hearings or the Reporter should have a role in alerting ministers on any failing by a local authority to afford appropriate education to a young person without there being an adequate definition of what is adequate. This leaves criticism open to a subjective definition of what is adequate by panel members and fails to take account of the needs of the child and the child's behavioural or other difficulties.

The fundamental point is that it is the parent's legal responsibility to secure an efficient education for their child. It is the authority's task to ensure effective school provision in its area. The Children's Hearing has no place in this legally defined partnership between the authority and the home. The introduction of the Hearing as a third party is only likely to confuse responsibilities. Parents presently have a range of informal, formal and legal means of redress against an education authority if they believe there is a problem of provision in relation to their child.

There is no legal definition of "an appropriate education" or even the length of a school day. Such a matter is an issue of professional judgement and so the Hearing would be totally reliant on the education authority for advice on this matter. In other words the suggestion implies that the authority would seek to refer itself to the Scottish Ministers, which would be highly unlikely.

Presently, the Children's Hearings and the Reporter have a very limited responsibility in relation to educational provision. They have no professional expertise organically available to them. This area is also very complex since the authority's legal responsibilities are balanced between the needs of an individual pupil and those of that pupil's classmates and peers. The Panel will only ever be able to form a view on the individual and so by definition any referral would be fundamentally flawed from the outset.

It is also pointed out that if Hearings had a determinant influence on the nature of a child's education, one possible consequence is that there would be a rise in the number of outwith placements. We have already seen this in East Ayrshire in relation to children with community-based difficulties. Such placements are expensive at a median figure of £70,000 each. A rise could not be held within current budgets without serious detriment to resources available to other children. This would mean that either a new funding mechanism had to be found, or authorities would require substantial additional resources from the Scottish Executive.

Parents also have recourse to local authority appeal and complaints mechanisms and these would need to be exhausted prior to any such communication from the panel.

Litter, Fly Tipping and Abandoned Vehicles

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

Response to Question 30

We agree with the Executive that litter, fly tipping and the abandoning vehicles are a serious blight on Scotland and should not be tolerated. Over the past 45 years the United Kingdom Parliament has passed numerous Acts to curb this type of behaviour, but they have been largely ineffective due to a lack of enforcement.

We believe that the problem of litter, fly tipping and the abandoning vehicles can only be addressed through sustained campaigns of education and active enforcement by the police.

In respect of the depositing of litter we would recommend that the person responsible should always be given the opportunity of picking as an alternative to a legal sanction. Prior to introduction of the Environmental Pollution Act, 1990 there was a stated case in place, which required the police to give an offender the opportunity to remove the litter and a charge was only preferred on refusal. The re-introduction of this procedure would be an important educational tool in the fight against littering.

We would welcome the police having the power to issue fixed penalty fines. However, we would recommend that a registry of the details of persons issued with these fines be maintained and if they become the subject of more than two, they should be ordered by the courts to take part in a Community Reparation programme designed to clean up the environment.

We would not recommend that Community Wardens be empowered to issue fixed penalty fines at present. To be successful Wardens will have to establish support in the community and the power to issue fixed penalties may alienate this support at an early stage in the implementation of the schemes. We would suggest that the matter be reviewed once wardens are properly established in Scotland.

Although not addressed by the consultation document we would suggest to the Executive that consideration be given to schemes operated in Ireland and some other EU countries, which impose a tax on plastic carrier bags and other fast food containers. There is evidence that this form of taxation reduces the amount of litter being deposited on the streets and that the proceeds of it are used to improve the environment.

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

Response to Question 31

In theory, local authorities already have sufficient powers to clear litter. In practice, difficulties arise where having exhausted the statutory process, Councils are faced with the prospect of carrying out costly remedial work and subsequently attempting to recover the costs from the owner of the land in question. Cost recovery can be protracted and if not successful means the Council being left with (in some cases) significant costs. It may be that persistent offenders could be the subject of Community Reparation Orders.

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

Response to Question 32

Costs associated with the removal, storage and disposal of abandoned vehicles depends on local circumstances and it is difficult to quantify level of charges appropriate for all parts of Scotland.

Question 33. Is the scope of the present regulations governing the removal of vehicles causing an obstruction sufficient?

Response to Question 33
We feel that the scope of the present regulations governing the removal of vehicles causing an obstruction is sufficient.

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

Response to Question 34
We do not regard fixed penalty fines of £50 to be sufficient to deal fly tipping. We regard it as a serious offence and would recommend that the power to impose penalties remain with the courts. However, we would recommend that those convicted of fly tipping be ordered to take part in Community Reparation projects designed to clean up the environment in addition any other financial penalty.

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

Response to Question 35
It is more than 3 years since Cosla presented the Scottish Executive with a paper setting out the justification for Local Authorities having the power to examine waste transfer documents. It is understood that SEPA (already empowered) might be reluctant to see this power extended to authorised officers of Local Authorities.

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

Response to Question 36
We support raising of the fine for fly tipping to £40,000 in summary proceedings. However, it is unlikely that a sheriff would impose a fine of or near this amount, unless the offender was a company or a person of substantial financial resources and the tipping was of a particularly serious nature. It has to be recognised that the courts have to take account of the offender's ability to pay and that in reality very few fines of more than several hundred pounds have been imposed in the past.

<u>Graffiti</u>

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

Response to Question 37
We welcome the Executive's plans to stamp out graffiti and totally support its plans to make the sale of spray paint to persons under 16 years of age. However, this prohibition alone will not prevent persons under 16 years gaining access to spray paint. Enforcement may be difficult.

The Executive may have to consider the prohibition of spray paint from 'front counter' displays, etc., to prevent theft by shop-lifting and make it an offence for a person to supply spray paint to a person under 16 years.

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

Response to Question 38
We would recommend that local authorities have powers to pursue legal action when the owner of private property refuses to remove graffiti, which is racist, offensive, unsightly, etc.

Noise Nuisance

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

Response to Question 39
We support the proposal to enable local authorities to implement a night-noise nuisance EHO service with Environmental Health Officers having the power to issue Fixed Penalty Notices of £100. However, we see no need to make this a statutory requirement. While the concept of Environmental Health Officers and/or community wardens being empowered to issue Fixed Penalty Notices of £100 to curb domestic noise nuisance, there are significant Health and Safety implications and in a number of circumstances police support might be required.

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

Response to Question 40
If local authorities are empowered to provide a night-noise nuisance EHO service we see no valid reason why this should not be extended to a 24-hour service provided it can be properly resourced.

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

Response to Question 41
A number of statutory offences in Scotland already contain provisions, which enable the standard of proof to be reduced to 'one credible witness'. We would support this in relation to the issue of Fixed Penalty Notices for Noise Nuisance.

Fireworks

Although no responses are invited in the consultation document to the Executive's comments on fireworks, we welcome the Executive's support of the Private Member's Bill at Westminster on this matter.

Anti-Social Behaviour and Housing

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

Response to Question 42
Please see our response to Question 1 where reasons are provided why we consider that RSLs should be given the statutory duty to participate in the production and implementation of anti-social behaviour strategies.

Question 43. Should the Anti-social Behaviour Bill give local authorities powers to:

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

Response to Question 43
We welcome and support the Executive's view that private landlords should have the legal duty to control unacceptable behaviour by their tenants and that where they fail to do so they should be subject to legal sanctions.

Both options described in the consultation document have merits. However, we have reservations regarding the ability of some of the smaller local authorities to re-house or arrange for the re-housing of tenants displaced as a result of private landlords being de-registered as described in Option 1. As a result we would recommend that this provision of Option 1 be excluded from it and the remainder combined with Option 2.

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

Response to Question 44
We would support the introduction of 'good tenant' reward schemes such as financial incentives and faster repair services. However, we do not advocate the use of 'day trips' and rewards along lines similar to this as such schemes appear too paternalistic and would be extremely difficult to administer.

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

Response to Question 45
We would support the extension of Section 35(3) being extended to cover situations where an ASBO has been granted in respect of a person under 16 years of age. Careful consideration would need to be given to the circumstances of other young people within a family who are not involved in anti-social behaviour.

We welcome and are in total agreement with the Executive's comments that when formal steps have to be taken to combat anti-social behaviour, it is vital that justice is effective. Any lack of early and effective enforcement will weaken the provisions of the legislation and diminish public confidence in it.

Fixed Penalty Notices for Anti-Social Behaviour

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

Response to Question 46

In principle we would give qualified support to extending the use of Fixed Penalty Notices levied by the police to a range of low-level, anti-social and nuisance offending.

We accept that Fixed Penalty Notices are a quick and effective means of enforcing a sanction for those offences identified in the consultation as already subject to notices. However, a great deal of careful consideration will have to be given to the issue of FPNs for anti-social offences.

In our experience the majority of ant-social offences are committed when the offenders are under the influence of alcohol or drugs. In these situations offenders normally refuse to desist thus making it essential that they have to be arrested by the police. Where a person is deprived of their liberty it is a legal requirement that the circumstances of the case must be reported to the Procurator Fiscal. This requirement would rule out any possibility of the police issuing persons who have been arrested with a FPN for that offence, although the Procurator Fiscal retains the option of providing the offender with the opportunity of having the matter dealt with by means of a FPN. Given situations of this nature we would recommend that if the Executive decides to legislate to provide the police with the power to issue FPNs for a range of low-level, anti-social and nuisance offences it should provide clear guidelines as to the circumstances when it would not be appropriate to issue notices.

Another factor, which may have to be considered, is that the issue and acceptance of a Fixed Penalty Notice does not count as a criminal conviction. Consequently the issue of FPNs for anti-social behaviour and nuisance means that offenders could escape the consequences of Ground 2(b) of Part 1 to Schedule 2 of the Housing (Scotland) Act 2001 namely eviction on being convicted for an offence punishable by imprisonment.

It is true that anti-social behaviour under certain conditions remains a ground for eviction under Ground 7 of Part 1 to Schedule 2 of the Housing (Scotland) Act 2001 irrespective of whether or not there is a criminal conviction, but this is not as far reaching as Ground 2(b).

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

Response to Question 47
In principle we give qualified support the idea of persons under 16 years being subject to the issue of FPNs. In many respects the matters we have requested the Executive to consider in our response to question 46 may be less important in respect of persons under 16 years of age, than for adults. On the other hand the issue of FPNs by the police conflicts with the fundamental ethos of the Children's Hearing System which is there to consider the needs of the child and take steps to address these needs.

In many respects the imposition of penalties on under 16 year olds by the police is an easy option, which is open to abuse as it could allow situations to arise where children in need of care are not brought to the attention of the Reporter or the Procurator Fiscal.

We believe that there are good reasons for under 16 year olds to be the subject of financial penalties, but would recommend that the Children's Hearings and the Courts impose these.

It is questionable how any young people would have the means to pay a fixed penalty. Consideration would also need to be given to the penalties for failing to pay a fixed penalty and the very real danger that young people are accelerated up the tariff system and find themselves incarcerated for minor offences.

Dispersal of Groups

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

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

Response to Questions 48 and 49
We consider that the views expressed in the consultation document are well considered and developed in relation to persons under 16 years and we would welcome their introduction in the way described. We do not regard this proposal to be at odds with Article 11 of the European Convention of Rights provided the groups concerned are gathering to intimidate, harass and alarm others. The definition of 'group' requires further clarification. It may be held that existing police powers are sufficient and any extension may be viewed by the public as draconian and counter productive.

However, the consultation does not address the issue of police dispersal of groups of persons aged 16 years or over or those of a mixed age group, who can be as equally intimidating as groups of people under 16 years of age. Obviously we do not advocate that the police should have power to remove persons 16 and over, to their place of residence, however, we would recommend that the police have the power to disperse these persons in the same circumstances as described in the consultation for under 16 year olds.

Making Anti-Social Orders More Effective

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

Response to Question 50
We agree that the power to apply for ASBOs should be restricted to local authorities and registered social landlords (in consultation with the police). To extend this power to other agencies would be complex and result in confusion. We believe that the Scottish Public Services Ombudsman provides members of the public and other bodies with an adequate appeals process in the unlikely event that they have a genuine complaint regarding the failure of a local authority or RSL to make an application for an ASBO.

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

Response to Question 51
We believe that the police should have the statutory power of arrest when an ASBO is breached. This power should remove a great of uncertainty associated with the breach of an ASBO.

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

Response to Question 52
We believe that the criminal courts should have the power to make an ASBO immediately after a person has been found guilty of an appropriate criminal offence. This would be a cost effective, timely and sensible way to deal with anti-social behaviour. However, consideration may have to be given to granting District Courts the power to issue ASBOs on conviction as a great deal of criminal activity involving anti-social behaviour is dealt with by the District Courts.

Failure to address this matter will either result in the Sheriff Courts being overburdened with work presently undertaken by the District Courts or a 'lottery' situation is created in relation to Court imposed ASBOs. The latter depending on the court, which individual Procurator Fiscals deem appropriate to deal with the offence.

In our responses to Questions 2 and 8 we recommended the creation of a National ASBO register and a locally based ABC/Warning register, we believe that these two registers would enhance the operation of 'Court Imposed ASBOs'.

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

Response to Question 53
We would support the introduction of civil courts having the power to grant an ASBO in proceedings such as an eviction, where there is evidence of anti-social behaviour.

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

Response to Question 54
To avoid the possibility of displacing an individual's anti-social behaviour from one local authority area to another on the grant of an ASBO, we would welcome the prohibitions of an ASBO extending beyond a local authority area, where this is considered necessary to protect persons from further anti-social acts by the individual concerned.

Licensed Premises – Police Powers

We respectfully draw to your attention to apparent inaccuracies contained in the second paragraph of this section of the consultation paper. Section 85 of the Licensing (Scotland) Act 1976 deals only with police entry to licensed premises. Section 66 of the Act in actual fact relates to the 'Temporary Closure of Licensed Premises' and applies to all premises licensed to sell or supply alcoholic liquor including registered clubs. We believe that the text of the consultation document has been corrupted at this part of the paper and have taken the liberty of answering the questions as far as we believe was intended.

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

Response to Question 55
We would fully support an extension of police powers, which would allow them, at any time, to enter and inspect off-licences and registered clubs.

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

Response to Question 56
We agree that licence holders and the committees of registered clubs should continue to have no right to object to order issued under Section 66 of the Licensing (Scotland) Act 1976 (not Section 85 as indicated in the question)

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

Response to Question 57
Due to the inaccuracy pointed out above this question is not applicable as the provisions of Section 66 of the 1976 Act relating to 'Temporary Closure of Licensed Premises' apply to all licensed premises and registered clubs.

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

Response to Question 58
We agree that the Executive should clarify the power of the police to close licensed premises including registered clubs where there is, or is likely to be, disorder in them or in their vicinity. When undertaking this task the Executive should provide a clear definition of the term 'vicinity'.

Closure Notices

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

Response to Question 59
We believe that there is a strong case for providing the police with additional powers to close down, at the direction of the court, following consultation with the local authority, appropriate premises, which are at the centre of illegal activity, disorder or other anti-social behaviour. However, this should only be used in exceptional circumstances.

In many cases it may be difficult to obtain sufficient evidence to establish that premises are being conducted in such a manner without a police raid on the premises. In cases where illegal drug activity is reasonably suspected of taking place on premises the police have powers to apply for a search warrant to enter and seize evidence. We would therefore recommend that where the police have reasonable suspicion that illegal activity, etc., is taking place in premises they be granted powers to apply for a search warrant in cases where this powers does not already exist.

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

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

Response to Questions 60 and 61

In our opinion the police power to close down premises should be limited to non-residential premises.

We believe local authorities and RSLs have the duty and powers under existing legislation to deal with offending tenants who conduct or permit illegal activity, disorder or other forms of anti-social behaviour from their homes. However, we realise that difficulties can and do arise when private sector landlords fail to take action to control those of their tenants involved in these forms of behaviour or when owner-occupiers use their homes as a base for the commission of such activities.

The solution to failing private sector landlords may be found in the options contained in the consultation under the heading 'Regulating the Activities of Private Sector Landlords'.

Where an owner-occupier is the offender in the circumstances under review, the solution presently rests in the law surrounding ASBOs and/or Interdicts. Clearly one must ask is this sufficient? Where a tenant continues with anti-social activities the landlord always has the sanction of eviction. The owner-occupier does not face this sanction. Perhaps the Executive may wish to consider having this option available to deal with owner-occupiers in the most serious of circumstances when all else has failed. Until the introduction of the Abolition of Feudal Tenure, Etc. (Scotland) Act 2000 the civil law contained the remedy of 'irritancy of the feu', which not only deprived the occupier of the house, but gave the superior the property free of any encumbrance. This was a drastic remedy, which was unfair to the third parties with rights in the property, such as lenders. However, it may be possible to remove the elements of unfairness to third parties and adapt this remedy to meet present day needs.