

**Response to  
consultation  
Shelter's written  
evidence to the  
Communities  
Committee on Stage  
One of the Anti-Social  
Behaviour (Scotland)  
Bill**

**From the Shelter policy library**

**January 2004**

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**Shelter**

Shelter is pleased to provide written evidence to the Communities Committee on the Anti-Social Behaviour (Scotland) Bill in advance of oral evidence on the 21<sup>st</sup> January. As we stated in our response to the 'Scottish Executive Strategy to Tackle Anti-Social Behaviour' launched in June 2003, we believe that the government is right to prioritise this problem. As a service provider, Shelter has first-hand experience of the impact of anti-social behaviour. We take the issue seriously because we see its impact every day through our work. We hope that this policy focus on the problem will lead to effective and sustainable solutions. Our concerns about the bill concentrate on its potential effectiveness.

## Key points:

- Shelter is very concerned at the potential for an increase in homelessness as a result of the proposal to give local authorities the power to serve anti-social behaviour orders (ASBOs) on under-16s. If a young person is served with an ASBO, a provision in the Housing (Scotland) Act 2001 gives a local authority a power to change their tenancy to a less secure one (i.e. one in which it is easier to evict from). This could result in a whole family being evicted as a result of the behaviour of a dependent child. This could undermine progressive government policies on homelessness, and implementation of the Homelessness etc. (Scotland) Act 2003. **Shelter proposes that ASBOs for under-16s are not linked to security of tenure, and are instead linked to support provision.**
- The proposal to give police the power to close premises because of anti-social behaviour raises more questions than answers. It is unclear how this section in the bill will work in practice. **We call for clarification on the application of closure orders from the Scottish ministers, which should be reflected in guidance, and for a commitment to rehouse every individual whose residential premises is served with a Closure Order.**
- The bill aims to focus on private landlords who routinely ignore the anti-social behaviour of their tenants. This is a legitimate area of concern. However, on this point, Shelter believes that, while the bill goes some way to alleviate the problem, it does not go far enough. In particular, it will not deliver its primary policy aim, which is to ensure that landlords engaged in bad practice respond to anti-social behaviour carried out by their tenants. **As an alternative, Shelter proposes the introduction of a mandatory certification scheme for the private rented sector in Scotland.**
- **Shelter calls on the Scottish Executive to detail the projects funded by Supporting People.** This is crucial if we are to judge whether the right type and amount of support is available to address behaviour problems.

- Shelter is concerned about the lack of clarity in the bill's Financial Memorandum. Shelter seeks detail from the Scottish Executive on how they intend to spend the money allocated for tackling anti-social behaviour.
- Shelter proposes a three-pronged alternative approach to tackling anti-social behaviour, which reflects our experience as a provider of support services to homeless people. This approach focuses on preventing conflict, actively working with people to change behaviour and specialist responses for the most persistent offenders.

## **The use of legal measures to tackle anti-social behaviour**

In our response to the consultation 'Putting Our Communities First: A Strategy to Tackle Anti-Social Behaviour' in June 2003, Shelter called for effective and lasting solutions to anti-social behaviour. Our concern was that making legal responses the central element of the strategy meant diverting attention from the need to develop sustainable practice-based solutions.

The uncertainty around the level of funding available for non-legal measures to tackle the problem has convinced us that the government's answer to anti-social behaviour lies solely in new laws. In our view, the government is attempting to solve a complex problem with blunt legal measures. This puts the development of a strategic approach at risk, and ignores the need to develop innovative practice-based solutions.

### **ASBOs for under-16s**

Part 2 of the bill proposes giving local authorities the power to serve ASBOs on young people over the age of twelve.

When anti-social behaviour orders were introduced under the Crime and Disorder Act 1998, Shelter supported them as a potentially constructive and effective approach to anti-social behaviour, especially if they were seen as an alternative to eviction, reducing the number of people who lose their home. An ASBO impacts directly on the behaviour of the perpetrator, and not on other members of their household. However when the Housing Bill was going through parliament in 2001, an amendment to the bill gave landlords the power to give a less secure tenancy to someone served with an ASBO. Under this less secure tenancy, the landlord can evict the family without having to prove grounds to a sheriff. This is a particular concern because it means that a family could have their tenancy converted to a SSST, whether or not the reasons for serving the ASBOs in first place were related to the tenancy. This is illustrated by the following example.

A thirteen-year-old boy is served with an ASBO for rowdy behaviour at the local shopping centre, which is half a mile away from his home. Even though that behaviour has little to do directly with the tenancy, the landlord can serve a notice on the household to convert the tenancy from a Scottish Secure Tenancy to a Short Scottish Secure Tenancy (SSST). The crucial difference with the latter is that the landlord can then evict the whole family at the end of a fixed period, without the need to show the Sheriff Court any breaches of tenancy conditions. In effect, the ASBO is a way of fast-tracking evictions.

Shelter does not support the existing link between ASBOs and security of tenure. It means some ASBOs no longer impact solely on the behaviour of the offender; when ASBOs lead to the conversion of a tenancy, they can result in the whole household being punished for the behaviour of one member. Shelter is very concerned about this provision for three reasons.

1. There is a potential to make a family homeless on the basis of bad behaviour by a young person. Shelter does not believe that a child should have to pay for the anti-social behaviour of their brother or sister with their home. This provision could increase homelessness among children in Scotland. It also makes it possible for a family to have a tenancy converted because of the behaviour of one member of the household, but actually being evicted for reasons other than anti-social behaviour. So for example, if a thirteen-year-old boy has an anti-social behaviour order served on him, the whole family could be given a less secure tenancy, and within six months be evicted for rent arrears. The impact will be that people other than the perpetrator will suffer.
2. This section of the bill signals a general change in the government's approach to dealing with homelessness. The work of the Homelessness Task Force was centred on the need to end homelessness, and end policies that cause homelessness. Until now, the government has had a commendable approach to homelessness policy. However, in its attempts to deal with the problem of anti-social behaviour, the government risks putting previous good work in jeopardy.
3. Thirdly, the link between ASBOs and tenure compounds the view in Scotland that it is social housing tenants alone who are responsible for anti-social behaviour. Misplaced assumptions about the nature and causes of anti-social behaviour damage progressive policies. It took many years to convince the Scottish Executive that the concept of the 'deserving and undeserving poor' should be removed from the homelessness legislation. A similar change in mindset is required to convince people that the occurrence of anti-social behaviour depends on the person rather than the

kind of housing tenure in which they live. If the government accepts that, then they must accept that policies to tackle anti-social behaviour should work across tenures too. A person who lives in council housing, and who is served with an anti-social behaviour order, is more likely to lose their tenancy than someone who is an owner occupier because the ASBO is linked to social tenancies under the law. The law is harsher on those who live in social housing. This is despite a quarterly report from West Lothian's Neighbourhood Response Team that shows the majority of complaints regarding noise nuisance are against owner-occupiers.

When the 2001 Act was being passed, the government responded to Shelter's concerns by justifying the link between ASBOs and tenure as a way to help families in need of support (as support is provided with the short tenancy). However, the provision is now being promoted in the government's strategy as an easy way to deal with anti-social tenants. We believe it signals to landlords that a more aggressive approach to eviction is justified.

Shelter has been contacted by members of the legal profession who are worried about evicting people without giving grounds. We are also concerned about a developing culture within some local authorities whereby ASBOs are viewed as a means to ensure an eviction, because of the link to tenure. In other words, this policy is causing homelessness.

## **An alternative approach to ASBOs for under-16s**

**Shelter opposes giving ASBOs to under-16s on the grounds that the link between security of tenure could mean the behaviour of a child resulting in the homelessness of a whole family. We would prefer that the 2001 Act be amended to decouple ASBOs from security of tenure: a compromise would be for ASBOs for under-16s to be exempt from the link to security of tenure. These ASBOs should instead be linked to the provision of support. Currently an individual only receives support with an ASBO when their tenancy has already been converted. We believe ASBOs for under-16s will be far more effective if they are automatically linked to the provision of support.**

In its 'Strategy to Tackle Anti-Social Behaviour', the government recognised the need for linking support and ASBOs, and proposed that where an ASBO is made in relation to a person under-16, the court should consider imposing a support order in conjunction with the ASBO. Shelter supported the principle of linking support and ASBOs. In the bill, a power is placed on a sheriff to refer anyone under 16 in receipt of an ASBO to the Children's Hearing System. However, Shelter believes that placing support provision on a mandatory footing is a better alternative. Linking ASBOs for under-16s with support

would ensure that the young person receives support, thereby increasing the potential effectiveness of the ASBO.

## Closure Orders

The section on Closure Orders raises more questions than it answers. The intention is to provide the police and courts with powers to seal off premises swiftly where other measures to tackle anti-social behaviour have failed. It will ensure the closure of what the Explanatory Notes on the bill calls 'crack dens'. However, Shelter is concerned that closure orders can apply to residential as well as non-residential accommodation. It could mean that an order can be served on someone's home and access to this home can be denied. Denying access to someone's home, means effectively making him or her homeless.

According to the bill's Explanatory Notes, a closure order can be authorised where there is 'reasonable grounds for believing that at any time during the immediately preceding three months a person has engaged in anti-social behaviour on the premises.' Shelter is concerned that a closure order could be applied on the basis of one act of anti-social behaviour. The bill does not mention a level of proof to be sought by the police. Shelter is concerned that closure orders could therefore be applied inappropriately.

Shelter is very concerned about the potential impact of closure orders, not least because it's unclear from the bill how these will work. We accept that the primary intention is to give police powers to shut down 'crack dens'. However, we are concerned that whatever the policy intention, the reality is that the police are being given a free hand to close access to people's homes. **Shelter therefore seeks clarification from the Scottish ministers about how, and in what circumstances, they intend closure orders to operate. This should then be reflected in guidance. A commitment is required from the Scottish Executive that any individuals whose residential premises are subject to a Closure Order will be rehoused.** In particular, the policy needs to ensure that the people who are not suspected of anti-social behaviour do not lose their home, without a clear right to be re-housed. The main intention here should be to balance the need to tackle anti-social behaviour without creating policies that could result in increased homelessness.

## Anti-social behaviour in the private sector

Shelter is worried about the provisions related to private landlords for similar reasons. The government intends this bill to provide 'a means for ensuring that landlords take reasonable steps to manage or alleviate anti-social behaviour in relation to the properties they let.' Shelter agrees with the sentiments. Private landlords should take

responsibility for the behaviour of their tenants. We believe that any law that tries to do this, however, should act as a tool to encourage a response from landlords. Shelter has raised the issue of the weak bargaining power of tenants in the private sector in the context of the work of the Housing Improvement Task Force. The government must protect private tenants to ensure that landlords do not evict them illegally.

Shelter is convinced that Part 8 of the bill (registration areas) will be ineffective. The bill will allow local authorities to designate specific areas where there are persistent problems of anti-social behaviour in private rented housing. It will therefore be a criminal offence to knowingly let an unregistered property. The policy here is absolutely correct; the intention being to create a system to hold landlords to account, to ensure that local authorities know who is letting in a particular area, and to ensure that the landlord can be contacted if required. However, we are concerned that the bill will be ineffective in ensuring that all landlords are held to account, because of the implicit assumption in the bill that patterns of anti-social behaviour exist. In reality, instances of anti-social behaviour are more unpredictable than this, so trying to decide which area merits 'designated area status' could be problematic. Introducing a system whereby local authorities, can, if they wish, assign designated status to an area, could potentially be very difficult to administer. Local authorities will have to decide the area boundaries, and implement the system themselves. The rationale for the boundaries will be difficult to articulate and therefore open to constant challenge.

**We believe that a much simpler and more effective option, both for the government and for local authorities is to introduce a mandatory certification scheme for all private landlords in Scotland.**

Under a mandatory certification scheme, landlords would be required to register in order to trade. To be on this register, they would have to meet certain minimum physical standards. This would mean that all landlords would therefore have to register their own contact details so that the local authority or police could contact them should their help be required in managing the behaviour of a tenant. Proof of registration would be by way of a certificate. Since all landlords must take part in the certification scheme in order to trade, it will hold landlords to account, but will take a huge administrative burden off local authorities. In addition, it will prevent a patchwork of varying local schemes, which is a risk associated with local authorities designating some areas and not others. If Shelter's proposals for certification were to be introduced alongside the government's proposals in Part 7 of the bill (Anti-social behaviour notices), we would ensure that all landlords will be held to account. The 'catch-all' nature of certification would ensure that we have information on all landlords, with Section 7 would giving us the powers to take legal action against landlords' poor management in dealing with anti-social behaviour.



Shelter is pleased that the Executive has announced its intention to 'explore the scope for a national registration scheme for all private landlords', and calls for the publication of a timescale for this consultation.

## The role of support

Shelter has consistently called for more recognition of the role of support in tackling anti-social behaviour. It will not address all problems but it can often tackle difficulties at root and head off other problems before they become serious. In turn, this means that authorities can focus more attention on the smaller number of people who refuse to change behaviour.

ASBOs for under-16s should be linked to support to ensure the overall effectiveness of ASBOs in responding to acts of anti-social behaviour, and preventing future instances. Unfortunately, while Supporting People has funded a number of welcome new support projects, we are still in the dark as to the current provision of support services in Scotland. The level of ambiguity around Supporting People has resulted in a general lack of knowledge about what support is available, and more importantly, what is not. **Shelter calls on the Scottish Executive to publish a profile of support projects and services. If it did this we could start to make a judgement about where gaps in support lie.**

## Implementing the bill

Shelter has concerns about how the bill will be implemented. The bill's whole response to anti-social behaviour is dependent on good implementation on the ground. However, there is a crisis in the number of social workers and support staff available. More court time is needed to ensure that local authorities can take the legal action the government wants them to. The bill's Financial Memorandum was unable to provide a total figure for the number of people on whom the bill would impact. This in turn will impact on the resources for implementation. (Our written evidence to the Finance Committee on the bill is attached as Appendix One.)

## Ways forward

Shelter proposes a three-pronged attack on anti-social behaviour.

**The first approach is to prevent conflict.** Noise nuisance is the single most common cause of complaints about anti-social behaviour. Too many houses boast paper-thin walls, and modern sound equipment puts more pressure on these poor conditions than ever before. What we need is a major programme of sound insulation to dramatically reduce the level of anti-social behaviour. Shelter has called on the government to bring



forward a standard on noise insulation, as part of new housing standards, for this purpose.

**The second approach is to actively work with people to change behaviour.** This approach is much more challenging, but Shelter's experience is that most people want to change: practitioners should be given the time, with people, to find the right kind of support. However, a shortage of support workers means too much time is spent in crisis work. The government should initiate a programme to encourage young people into careers in social work as has been done for nurses and teachers.

**The final approach is specialist effort.** If the first two policies succeed, specialist effort can be concentrated on the much smaller number of people determined to cause mayhem. The powers that are needed already exist but they are not used effectively or efficiently. Ironically, every time the government changes the law, it distracts police and housing officers away from getting on with the job. Shelter believes there is a risk that new legislation will add to these pressures for those public servants trying to deal with the problem. An increase in evictions due to measures in the bill will place increased pressure on housing officers to rehouse families.

Shelter's Families Projects, based in Edinburgh, Glasgow and South Lanarkshire work with homeless families to sustain tenancies. This can often mean working with families to change their anti-social behaviour. Support workers spend time with families to find the root causes of their behaviour. They will look together at what needs to change to prevent a family's behaviour. They also examine families' support needs and help families build confidence. According to our project workers, the answers to a lot of anti-social behaviour lie in giving people the best opportunity to be a decent neighbour and to keep their home, to prevent anti-social behaviour occurring in the first place and to take innovative and lasting approaches when it does.

Shelter's approach to anti-social behaviour is based on our experience, and that of similar organisations. It supports effective solutions and making these widely available across Scotland. Alternatives coming from government – like making it easier to evict families may have some popular appeal. But there is little evidence that they will be effective.

Some of the people being targeted by this bill will be Shelter clients; the people who threaten and intimidate, who make others live in fear in their own homes. We work with both victims and perpetrators of anti-social behaviour, because we don't believe that abandoning people from the system by eviction actually works. People who are evicted don't simply disappear; they move to another area. So while one street breathes a sigh of relief to be rid of a bad neighbour, another faces the problems that neighbour brings

with them. Neither does eviction get to the root of the problem; it fails to deal with the causes of the behaviour; to guarantee a recurrence of the behaviour. Many households evicted from the social rented sector have no option but to enter the private rented sector. However, as the government acknowledges, the private rented sector contains a number of landlords that ignore anti-social tenants. We are concerned that increased evictions from social housing will force more families into the private sector where their anti-social behaviour will never be tackled.

It is our belief that while this bill will resolve some of the problems caused by anti-social behaviour; it won't provide communities with the effective and lasting solutions they need; it will instead add to the legal powers available without necessarily ensuring that these powers will work, or whether they're appropriate for dealing with the problem.

On a positive note, the Scottish Executive and MSPs should be proud of what has been achieved in delivering laws that give everyone in Scotland the right to a home. The Scottish Executive was a recent recipient of an international Housing Rights Award for the Homelessness Act. The onus is now on MSPs to ensure their hard work is not put in jeopardy. They must listen to service providers working on the ground, and come up with lasting and effective solutions that build on existing successes.

#### **January 2004**

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# Appendix One

## Shelter Scotland's written evidence to the Finance Committee on the Anti-social Behaviour Bill

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January 2004

This written evidence to the Finance Committee sets out Shelter Scotland's concerns about the Financial Memorandum of the Anti-social Behaviour (Scotland) Bill. Shelter supports the government's starting point; that anti-social behaviour needs to be tackled for the sake of our communities. Our concern about the bill is the potential for an increase in homelessness in Scotland, and the impact on service provision on the ground.

Shelter echoes the concerns voiced by COSLA when giving oral evidence on the 9<sup>th</sup> December 2003 regarding a general lack of clarity on how £65million set aside to tackle anti-social behaviour will be allocated. The Financial Memorandum proposes that the bill will cost £35 million. It leaves a remainder of £30million for non-legal remedies, though this may already have been allocated for Community-Based Initiatives, as announced last year. If this is the case, there are no funds for taking forward other elements of the government's strategy. This would suggest that organisations like Shelter have been correct to voice our concerns that the government is only interested in legal responses to anti-social behaviour. Given that anti-social behaviour is a flagship policy for this government, Shelter is disappointed at the lack of focus by the Scottish Executive on the resource dimension of implementation.

In addition to the lack of clarity regarding levels of funding, we are also concerned that anti-social behaviour will only receive funding for the short term. Parliament should seek a commitment from the Scottish Executive that funding will continue at similar levels in future spending plans. Anything less than this would suggest that the government takes a short-term approach to the problem, rather than implementing sustainable solutions that Shelter believes is crucial to tackle anti-social behaviour. Service providers will struggle to manage legal and non-legal initiatives to tackle anti-social behaviour if there is no knowledge of funding levels beyond 2006. A lack of clarity about resources and a

sense that the government is not providing long-term solutions will have a damaging impact on implementation of the bill and the government's strategy.

This lack of clarity extends to the area of support. Many of the measures in the bill will require additional support for individuals. Shelter believes that these solutions must be sustainable, so the provision of support can often be expensive over a long period of time. Shelter has a support project in Edinburgh, Glasgow and South Lanarkshire. Each of our projects is working to capacity; such is the level of need for tenancy sustainment support in Scotland. The current ambiguities around the level of funding being spent by each local authority on Supporting People hampers any attempts to gauge whether sufficient support is available in Scotland. Insufficient support will put implementation of the bill at risk. Shelter hopes that the Finance Committee will request information that clarifies current funding levels under Supporting People.

Shelter has concerns regarding the potential of the bill to increase levels of homelessness in Scotland. The bill proposes the extension of ASBOs to under-16s. However, the Housing (Scotland) Act 2001, established a link between ASBOs and security of tenure. Any individual who is served with an ASBO will in turn have their tenancy demoted to a less secure tenancy called the Short Scottish Secure Tenancy. Under this tenancy, a landlord can evict a tenant without proving grounds to a sheriff. Members of the legal profession have contacted Shelter on this issue. They are concerned at the potential for local authorities to serve ASBOs more readily because it is easier to secure an eviction. This is a serious concern, as any rise in evictions in Scotland will lead to increased homelessness. This will in turn place greater financial demands on local authorities and other service providers. The potential for increased homelessness is not recognised in the Financial Memorandum of the bill. Shelter's experience is that it is much more cost-effective to sustain families in housing than to cause homelessness.

The bill will impact significantly on service provision across Scotland. The provisions in the bill will result in a greater demand for advice, information and advocacy from service providers, including local authority housing offices. Resources to match this demand are not set out in the Financial Memorandum.

Finally it is unclear how some figures in the financial memorandum were calculated. For example, in paragraph 248, there is no indication of how the estimated figure of 50 applications for ASBOs for under-16s was arrived at. Similarly, it is not clear from the Financial Memorandum how the government determines that 20 landlords will not heed the threat of sanctions under Part 7 of the act. Shelter is very concerned at the level of 'guesstimation' in the Financial Memorandum. It is impossible to tell from the Financial

Memorandum how many people the bill will impact on. This lack of clarity could impact on the finances required to implement the bill, and ultimately on the effectiveness of the bill, and how well anti-social behaviour is tackled in Scotland.

Given the limited resources of £65 million, there is a potential for non-legal measures to lose out financially, despite their proven successes. If the bill turns out to be more expensive than originally planned because of a lack of transparency around financing the bill, non-legal measures will suffer.

Yours,

Liz Nicholson

Director