

COMMUNITIES COMMITTEE

Wednesday 19 November 2003
(*Morning*)

Session 2

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COMMUNITIES COMMITTEE 9th Meeting 2003, Session 2

CONVENER

*Johann Lamont (Glasgow Pollok) (Lab)

DEPUTY CONVENER

*Donald Gorrie (Central Scotland) (LD)

COMMITTEE MEMBERS

*Scott Barrie (Dunfermline West) (Lab)
*Cathie Craigie (Cumbernauld and Kilsyth) (Lab)
*Patrick Harvie (Glasgow) (Green)
*Campbell Martin (West of Scotland) (SNP)
*Mary Scanlon (Highlands and Islands) (Con)
*Elaine Smith (Coatbridge and Chryston) (Lab)
*Stewart Stevenson (Banff and Buchan) (SNP)

COMMITTEE SUBSTITUTES

Shiona Baird (North East Scotland) (Green)
Christine May (Central Fife) (Lab)
Shona Robison (Dundee East) (SNP)
Mike Rumbles (West Aberdeenshire and Kincardine) (LD)
John Scott (Ayr) (Con)

*attended

THE FOLLOWING GAVE EVIDENCE:

Catherine Brown (Scottish Executive Justice Department)
David Doris (Scottish Executive Development Department)
Roger Harris (Scottish Executive Development Department)
Michael Kellet (Scottish Executive Development Department)
Alisdair McIntosh (Scottish Executive Development Department)
Duncan McNab (Scottish Executive Environment and Rural Affairs Department)
Kevin Philpott (Scottish Executive Environment and Rural Affairs Department)
Gillian Russell (Scottish Executive Legal and Parliamentary Services)
Kit Wyeth (Scottish Executive Education Department)

CLERK TO THE COMMITTEE

Jim Johnston

SENIOR ASSISTANT CLERK

Gerald McNally

ASSISTANT CLERK

Jenny Goldsmith

LOCATION

The Chamber

Scottish Parliament Communities Committee

Wednesday 19 November 2003

(Morning)

[THE CONVENER *opened the meeting at 10:15*]

Item in Private

The Convener (Johann Lamont): I welcome everyone to this meeting of the Communities Committee.

Under item 1, I invite members to agree to take item 3 in private. Item 3 concerns the approach that we will take to the Antisocial Behaviour etc (Scotland) Bill. Is that agreed?

Members *indicated agreement.*

The Convener: Before we move on to item 2, I have to announce that Jim Johnston, our clerk, will be leaving us at the end of this meeting—some might think that to be gone is an absolute joy. I want to say something at this point rather than at the end of the meeting because, given the work that we are about to do over the next hour, we might be a little brain dead by then.

I put on record my thanks to Jim Johnston, who has been the clerk to the committee over the last period. During his time on the committee, he has dealt with complex and often controversial legislation. We greatly appreciate all the work that he has done. He has been very supportive of my convenership. If he has been exasperated with me, he has never shown it—I suppose that that is the mark of the true civil servant. He has also given a lot of support to other committee members. Probably more importantly, he has given real commitment to the work of the committee. It is that kind of work that sustains the integrity of the committee structure.

As I said, we are very appreciative of everything that you have done, Jim. We wish you all the very best. Perhaps at some point in the future, if you are really badly behaved, you will come back to us. Again, I thank you very much for all that you have done. Your work is very much appreciated. We wish you all the best for the future. [*Applause.*]

Antisocial Behaviour etc (Scotland) Bill: Stage 1

10:17

The Convener: We move on to item 2. I welcome the Scottish Executive officials who are with us today. I invite Michael Kellet to make an opening statement.

Michael Kellet (Scottish Executive Development Department): We are grateful for the opportunity to come and give evidence today. I apologise for the mass ranks; it is almost a football team that we have assembled today. I recognise that committees had to shift the location of their meetings today because of the number of officials, but we thought that the breadth and scope of the bill meant that it was important to bring a range of officials who can answer as fully as possible the questions that members may have. I understand from the clerks that the committee would like us to give a short presentation about the bill and its genesis. We will keep it as short as possible to ensure that we move on to questions and deal with the meat of the issue.

It is important to be clear at the outset that the bill is one part of ministers' strategy to tackle antisocial behaviour. Although it is an important part of the strategy, the intention of which is to put in place the legal framework that is necessary to tackle effectively antisocial behaviour, it is not the whole story.

As the committee knows, the partnership agreement made a commitment to the introduction of legislation on antisocial behaviour. The commitment arose from ministers' view that antisocial behaviour is a serious issue in communities across Scotland and that the problem was not being tackled properly. It arose from the experience of ministers and other members of the Scottish Parliament who have to deal with the fallout from antisocial behaviour week in, week out in surgeries and in responses to postbags. Ministers believed that tackling antisocial behaviour was a clear priority for communities and it became a high priority for them. They were keen to make speedy progress to tackle the problem more effectively.

As members know, the document "Putting our communities first: A Strategy for tackling Anti-social Behaviour" was published on 26 June. That document brought together proposals for the bill, many of which featured in the partnership agreement, and contained other initiatives as part of ministers' wider strategy to tackle antisocial behaviour.

Even before the paper was published, ministers made it clear that they did not want the consultation to be only paper based. They identified early the need to hear the views of those who suffer antisocial behaviour and of those who are tasked with dealing with it locally, so in the summer, ministerial visits were made to more than 30 constituencies throughout Scotland. I know that ministers found those meetings invaluable in understanding fully the problem's scale and impact. Before and after the paper was published, ministers spent considerable time engaging with a wide range of interested stakeholders.

As members know, the consultation finished on 11 September. We published the University of Glasgow's analysis of consultation responses on 23 October and I understand that copies of that report have been made available to committee members.

The bill is large and ranges across several ministerial portfolios and Executive departments. However, the common thread is that, in the view of ministers, it will put in place the necessary legal framework to tackle antisocial behaviour effectively. Much of the bill will give local agencies—whether they are local authorities, the police, children's hearings, registered social landlords or others—the tools that are necessary for them to tackle antisocial behaviour.

It is clear from the work that ministers undertook in the summer that antisocial behaviour takes different forms in different parts of Scotland. Ministers do not wish to dictate from the centre how antisocial behaviour should be tackled. They wish to ensure that those with local responsibility work together to tackle antisocial behaviour and have the tools that are necessary to do the job of protecting their communities.

That is why part 1 of the bill provides for antisocial behaviour strategies. Ministers consider such strategies to be a crucial part of the solution to the problem. The strategies are the means by which agencies and those who are affected by antisocial behaviour can identify how antisocial behaviour manifests itself locally and therefore how it should best be tackled.

Ministers envisage that antisocial behaviour strategies should provide the context in which to use the new tools that the rest of the bill provides. The strategies are the gel that should ensure a co-ordinated, proportionate and targeted local response to antisocial behaviour. They are also the means by which communities can hold local agencies to account for their actions to tackle antisocial behaviour.

Rather than spending time on describing the rest of the bill's provisions, on which I imagine that members want to ask questions, I think that it is

best to leave my statement there. As I said, I apologise for the size of the Executive team, but I hope that the committee understands that it is required because of the bill's size and scope.

The Convener: I remind members that we are questioning officials, not ministers, so we should be clear about the boundaries of the questions that we can ask. If the officials deem any questions inappropriate, they should simply say so, and we will ask those questions of the Minister for Communities when she appears before us.

I will kick off the questions. You mentioned that the bill is just one part of the Executive's overall antisocial behaviour strategy. Will you outline the key components of the strategy that do not feature in the bill and which will be brought into effect in other ways?

Alisdair McIntosh (Scottish Executive Development Department): The strategy's themes were sketched out in the consultation paper and are intended to work with the grain of the action plan on youth crime and other relevant Executive policies. The strategy has four main elements. The first theme involves encouraging agencies to use existing tools and measures more effectively and supporting them in doing so. For example, the Executive already supports a wide range of activities to tackle youth crime, such as diversion, support for victims and the promotion of national standards. We need to give greater impetus and support and more funding to those activities.

The second theme involves establishing the detailed arrangements that will be needed to support the measures that the bill proposes, which will require a good deal of guidance and implementation mechanisms. The third theme involves piloting new approaches to tackling antisocial behaviour, sharing good practice in individual local authorities and making that common practice throughout the range of local authorities. Last but not least, the strategy involves establishing arrangements for inspection, monitoring and evaluation, to ensure that the quality of services and the effectiveness of action to tackle antisocial behaviour improve over time and that we see real change.

We are currently working on a delivery plan for the strategy that will encompass all those elements. We will discuss it with key delivery partners with the aim of finalising it before the bill becomes law.

The Convener: On using the tools that are already available, what work has been done to establish why some of the powers that already exist are not being used? One thing that has been raised with me is the fact that the Data Protection Act 1998 works as a block to information sharing.

Is work being done to address the fear of the powers in that act in that regard?

Alisdair McIntosh: A good deal of work is going on across a wide front. Information sharing has been discussed in the context of the community safety forum, which is chaired by Hugh Henry. Model protocols for information sharing have been drawn up for use at local level but, as you will know, we intend to use the provisions in the bill to ensure a freer flow of information. We will continue to work with key delivery partners to ensure that, in practice, information sharing is as easy as it needs to be to ensure effective co-operation.

With regard to assessing the barriers to effective action in other areas, we are in continuing dialogue with local authorities, the police, housing organisations and others to examine the barriers to effective action. We will address those in the context of the delivery plan so that we can ensure that any barriers are overcome and that agencies are able to tackle antisocial behaviour effectively, using the full range of measures that are available to them.

Mary Scanlon (Highlands and Islands) (Con): There have been two consultations on antisocial behaviour this year: the March consultation, which focused on community wardens and other community-based initiatives; and the summer consultation, which focused mainly on the proposals that now appear in the bill. Why was it decided to have two separate consultations?

Alisdair McIntosh: The reason is quite straightforward. The Executive had already decided that it wanted to provide support for community wardens and for other local initiatives to tackle antisocial behaviour. That was the basis of the first consultation exercise. However, the agenda widened as a result of the messages that came through clearly in the course of the election campaign and of the commitments that the Executive entered into in the partnership agreement, so ministers wanted to consult on a range of other measures. The process might not have been ideal, but I think that the first consultation demonstrated the importance of community involvement and the need to build community confidence. That theme has been carried over into the strategy that we are currently working on.

Mary Scanlon: You say that the Executive had made decisions in respect of community wardens before the consultation. Did the decision relate to having additional community wardens instead of additional policemen?

Alisdair McIntosh: No. We see the roles of community wardens and the police as being complementary. One is not a substitute for the other.

Mary Scanlon: Was the possibility that the resources might be better spent on the police considered as part of the consultation process?

Alisdair McIntosh: As you know, investment in the police is at a record level. The functions that are to be performed by community wardens are rather different from the functions performed by police officers.

Mary Scanlon: We will leave that issue there, as you obviously feel that that is adequate.

Are you saying, basically, that the first consultation informed the content of the second?

Alisdair McIntosh: Yes.

Mary Scanlon: How did you structure the consultation process that took place over the summer? In particular, how did you select the areas of Scotland that you visited?

Alisdair McIntosh: Michael Kellet has already touched on the consultation process, but I can say a little more. Ministers were clear that they wanted the consultation to be wide-ranging, active and not solely paper-based. For that reason, Margaret Curran wrote to all constituency MSPs and offered to meet representatives of communities in their constituencies that were affected by antisocial behaviour and the agencies involved in tackling it at a local level.

In addition, ministers and officials visited a number of projects around the country and had a large number of meetings with a range of stakeholders. The full programme is recorded in the University of Glasgow analysis that the committee has received.

Over the course of the summer, we sought to ensure that there was a geographical spread by making visits to the Borders, Dumfries and Galloway and all the way up to the Highlands. We sought to ensure a spread of stakeholders and other organisations, and where we saw that there were potential gaps, we tried to fill them. For example, we commissioned the Scottish Civic Forum to organise six regional meetings throughout the country to get the views of a spread of communities. We also commissioned YouthLink Scotland to conduct a consultation event aimed specifically at young people, which brought together young people from all over the country to discuss the problems. Overall, we got a good spread geographically and of the key people who experience and deal with the solutions to antisocial behaviour.

10:30

Mary Scanlon: I note that in paragraph 7 of the policy memorandum you say that you spoke to people who are affected by and who deal with

antisocial behaviour. Did you also talk to the neds who are involved in antisocial behaviour?

Alisdair McIntosh: On more than one visit, ministers and officials were able to speak to young people who had been through the criminal justice system and the children's hearings system. I am thinking of the inclusion project in Cambuslang, which deals with some particularly difficult cases. They took every opportunity to speak to as many people as possible, including people who had been through the system.

Mary Scanlon: I want to be clear in my mind about one point. When you said that there were record levels of policemen and resources, did you mean that you ruled out any further resources or involvement by the police before entering into the consultation?

Alisdair McIntosh: I ask my colleague Catherine Brown from the police division to answer that question about police resources.

Catherine Brown (Scottish Executive Justice Department): There has been consistent and increased investment in the police service in Scotland. Police numbers are up on previous years and there has been an increase of 848 officers since June 2000. Police funding has also increased and it is now at a record level. Another thing that is crucial to how the police will tackle antisocial behaviour is the commitment to ensure that more police officers are put back on operational duty. We will examine critically what police officers are doing and ensure that they are not doing duties that can be done by others. Some examples of that so far include custody and security duties. The Criminal Justice (Scotland) Act 2003 enabled civilian staff with enhanced powers to undertake such duties. More recently, prisoner escorting duties have been handed over, to release up to 300 police officers back to front-line duties. All those measures show a commitment to policing our streets.

Mary Scanlon: I was not looking for a party-political broadcast. When we go round taking evidence, many people have said—

The Convener: Mary, remember that you are dealing with a Scottish Executive official. You have already been cautioned about that.

Mary Scanlon: I appreciate that, but at the same time, we are being told by the policemen and members of the Scottish Police Federation that, given the £65 million available, they would like more police on the beat. I wanted to be clear about that.

There was quite a short period between the close of the consultation and the introduction of the bill. Are you satisfied that you were able to consider the consultation responses fully before

the bill was introduced?

Alisdair McIntosh: Yes. As the policy memorandum makes clear, we did not wait for the end of the consultation period to begin consideration of the consultation responses. Together with our colleagues from the full range of Executive departments whose policies are affected, we considered the responses as they came in and tracked the reactions that emerged in the course of the consultation process.

Patrick Harvie (Glasgow) (Green): May I ask a supplementary question?

The Convener: We will move on now and I will let you in later.

Stewart Stevenson (Banff and Buchan) (SNP): I want to ask about antisocial behaviour orders, research and about what is in the bill in relation to ASBOs. Have you done any research into how effective the ASBOs that were introduced in 1998 have been?

David Doris (Scottish Executive Development Department): The report of the latest study on the use of ASBOs, which was carried out by the Chartered Institute of Housing in Scotland, was published last Wednesday. The report, which is the fourth in a series of reports that the Executive has commissioned, concluded that ASBOs have become a significant tool in addressing antisocial behaviour. Where local authorities gave a view on whether ASBOs have resulted in a change in behaviour, 62 per cent reported a perceived improvement in the past 15 months.

Earlier reports from the Chartered Institute of Housing showed that delays were undermining ASBOs' effectiveness, which was crucial in informing the decision to introduce interim ASBOs. In general, the evidence suggests that ASBOs can be an effective tool.

Stewart Stevenson: The bill uses various terminologies, such as "relevant persons", whom I would describe as the victims, and "affected persons", who are people who might become victims. The definitions on page 9 mention "relevant consultees" in relation to seeking an antisocial behaviour order. Why have relevant persons and affected persons been omitted from the list of relevant consultees and of people who are notified of the contents of an ASBO? Did you consider whether victims should be informed that an ASBO has been taken out and of any changes to it? Did you consider whether victims should be part of the consultation process?

David Doris: That is a recognised part of the guidance on ASBOs as they exist at present and there is no intention to change that. The guidance states that relevant persons who are affected by

ASBOs should be made aware of their existence.

Stewart Stevenson: My reason for asking is that my experience of ASBOs and the feedback that I have had—although I may be alone in this—is that the victims, or “relevant persons” as the bill calls them, do not appear to be aware of the existence or content of ASBOs. The bill does not make the notification of relevant persons a formal requirement, as distinct from part of the guidance on ASBOs, but did you consider doing that?

David Doris: As Alisdair McIntosh mentioned, the bill will introduce more robust provisions on information exchange, which cover persons who are affected by antisocial behaviour. We would expect that information exchange to occur through the implementation of good practice.

Stewart Stevenson: I am sure that you are much more familiar with the words in this substantial bill than I am. Will you point me to the part of the bill that makes that provision, or otherwise guide me?

David Doris: The changes are found in the provisions on records of antisocial behaviour orders and the more general provisions on reporting information under the antisocial behaviour strategies. Those provisions are found in parts 1 and 2.

Stewart Stevenson: I want you to be more specific. I am not trying to be too difficult, but I might pursue the matter later, at a political level if necessary. I do not see a specific reference in the bill to a duty to share information with relevant persons. We should bear it in mind that a relevant person who is affected by antisocial behaviour will be a member of the public and that, unlike public sector employees in the police, social work or housing, they will not have signed up to non-disclosure agreements. They are not formally signed up to anything.

Michael Kellet: Your point is fair. If evidence arose that victims or people who have been subject to antisocial behaviour had not been made aware that an ASBO had been granted, I am sure that ministers would want to consider that problem to find ways to ensure that the information was shared with those people. There is no intention to hide things from people who have been subject to antisocial behaviour.

Stewart Stevenson: I am delighted to hear that. I will continue to monitor the issue as the bill progresses; I suspect that my colleagues will do so as well.

My next point relates to section 4(10). Can the local authority in which a person who is affected by antisocial behaviour lives take action against a person who lives outside its area?

David Doris: The intention is to widen the scope

of antisocial behaviour orders. Previously, orders were limited to a local authority's area. However, there are instances in which the people affected by antisocial behaviour and its perpetrators live across local authority boundaries. We are trying to allow for such instances and to deal with them more effectively.

Stewart Stevenson: That is great.

In section 7, on interim antisocial behaviour orders, a condition is that

“the application has been intimated to the specified person.”

Is there a specific legal reason for that? We are talking about interim orders; in other words, there is urgency. However, there could well be difficulties in tracking down a person who is behaving antisocially.

David Doris: The matter was considered in detail during the passage of the Criminal Justice (Scotland) Bill and the conclusion was that provision should be made for intimation. We actually pared back the provision—an amendment from the convener was accepted by the Executive. The agreed position was that, for some ASBOs, there should be intimation. The Criminal Justice (Scotland) Act 2003 has come into force only recently and we felt that the Antisocial Behaviour etc (Scotland) Bill should have the same provision.

Stewart Stevenson: Would there be a legal difficulty if that provision were not in the act that we expect the bill to become?

Gillian Russell (Scottish Executive Legal and Parliamentary Services): There would be a practical difficulty. If you are not able to intimate an order, the order has effect but you do not know where the person is who is subject to the order. It probably makes sense to track down the person and intimate the order so that, when the order is in place, it can have effect and the person who is subject to it knows about it.

Stewart Stevenson: All right—I am sure that we will pursue that issue.

Finally, have you done any research on the tagging of children?

Kit Wyeth (Scottish Executive Education Department): We have not conducted any specific research in Scotland. Research results are available from England and Wales on the effectiveness of intensive supervision and surveillance programmes, which include elements of tagging and support services. We envisage electronic monitoring working in a similar way in Scotland. In England and Wales, tagging has been found useful over time as a way of providing structure, discipline and support to the young people who are tagged; it also reduces peer

pressure in the groups that they move in.

There is no formal evidence from England and Wales as yet, but we hear anecdotally that such monitoring is going well. A positive sign is that they are looking to roll out ISSPs nationally more quickly than had been intended. I understand that the programmes will go national in January 2004. Clearly, they are working well.

The system down south is very different from the system up here. We therefore want to be sure that the programmes will work effectively here. Under the Children (Scotland) Act 1995, a children's hearing can restrict the movement of a young person as part of a supervision requirement. In using electronic monitoring through the hearings system, all we would be doing would be giving panel members and other agencies a way of monitoring and enforcing such restrictions on movement.

The Convener: I want to ask about the uptake of ASBOs. There is evidence that uptake is uneven in Scotland and there is a suggestion that the process is too expensive and cumbersome.

What is being done to encourage local authorities and registered social landlords to use ASBOs and to assure them that it is not a long and weary process? Antisocial behaviour is often perceived as a housing matter and therefore as the responsibility of the social rented sector, where the problem is seen to lie. However, we know that it goes far beyond the social rented sector. In fact, the mechanisms in place in that sector mean that antisocial behaviour is perhaps better managed there than in the owner-occupied or private sectors. What is being done in the Executive to address the perceived reluctance to take up ASBOs because the barriers are too high and to ensure that they are seen not as something that happens to people in rented housing but as something broader?

Michael Kellet: That is a fair point. There are different patterns of use for ASBOs across Scotland. Part of the wider strategy that Alisdair McIntosh mentioned is about ensuring that the barriers to effective use of the tools that are already in place are eliminated. To do that, we must disseminate good practice, and some work is being done on that through the Executive with an audit of antisocial behaviour and local authorities that was published earlier this year. Ministers would certainly be keen to look into the barriers that exist, how the existing tools are used and whether the Executive can find any way of getting over or eliminating the hurdles that are preventing the use of ASBOs by individuals or agencies at local level.

10:45

Donald Gorrie (Central Scotland) (LD): The bill is part of a wider Executive strategy for dealing with antisocial behaviour, which is to be funded to the extent of £65 million over two years. How will that money be spent?

Alisdair McIntosh: The £65 million will be split between the communities portfolio and the justice and education portfolios, with £30 million for the communities portfolio and £35 million for justice and education. We cannot yet be precise about the exact allocation of the money, because we are still examining exactly where the gaps in service provision are. In general terms, we can say, first, that that funding will support both the bill and the wider strategy and, secondly, that it will support a full range of intervention with young people. That will include diversion, early intervention, restorative justice and intensive support. There will also be support for parents, families and victims and for those who have to make the new measures in the bill work—local authorities, panels, the Scottish Children's Reporter Administration, the courts and the police. A significant amount will also be earmarked for a range of local initiatives to tackle antisocial behaviour.

Donald Gorrie: The money is all to be spent, as I understand it, on providing the legal framework for dealing with antisocial behaviour. What about what many people regard as the prime cause of the whole problem—the historic 20-year underfunding of facilities and activities for young people? Is any money going into that at all?

Alisdair McIntosh: As I said, the additional funding—and it must be remembered that it is additional funding over and above existing investment in parents, families, children, young people and a range of educational and other facilities—will include support for young people in terms of diversion, which may include facilities, and in terms of early intervention and other interventions to prevent rather than simply treat antisocial behaviour.

Donald Gorrie: The money is all related to antisocial behaviour. There is no money to help ordinary young people have more fulfilling leisure activities.

Alisdair McIntosh: As I said, the additional money must be seen against the background of existing funding for the whole range of activities aimed at parents, families and young people. The sure start Scotland initiative, the changing children's services fund and a range of existing programmes are just a few examples of what is being done. We clearly want to examine the availability of services that are relevant to preventing antisocial behaviour in the context of

the strategy, but it is not true to suggest that no funding is going into the kind of activities that you describe.

Kit Wyeth: In the partnership agreement, there is a commitment to making available £10 million specifically for diversionary activity at the local level. That is designed to provide the kind of activities to which the member refers. The aim is to work with young people on a universal basis to provide them with positive alternatives and facilities for such activities. Ministers remain committed to doing that.

Donald Gorrie: We shall see.

Scott Barrie (Dunfermline West) (Lab): Some have criticised the bill for being unduly focused on antisocial behaviour by young people. How do you respond to that criticism?

Michael Kellet: Ministers would not accept that the bill concentrates too much on young people. It is true that some of the provisions relate to young people, but much of the bill does not. The provisions on housing, noise and the environment are not focused specifically on young people. In fact, some of the important provisions in the bill are focused on ensuring that young people get the services and support that they need. The provisions in sections 104 and 105 are about ensuring that excluded children receive the education that they are due and that children who are subject to supervision orders receive supervision. Parenting orders are designed to ensure that children receive effective and supportive parenting.

Some of the bill's provisions—the extension of ASBOs to under-16s and the provisions on electronic monitoring—are focused on young people. Ministers consider that those powers are necessary to provide the full legal framework for dealing with the very small minority of young people who are persistently guilty of serious antisocial behaviour. Considerable support for that view was expressed during the consultation process. Ministers believe that at the moment there is a gap in the system and that the new provisions are required to close that gap.

However, as the member will be aware, ministers have said consistently that the bill is targeted not at the majority of young people, but at a minority that causes real and serious harm in communities. Margaret Curran made that point during a debate in the chamber on 2 October. The bill is about ensuring that we have the tools that are necessary to deal with the small minority that causes harm. It is not about stigmatising or blaming young people in general.

Alisdair McIntosh: One point that is sometimes missed is that young people are among the first victims of antisocial behaviour. It is important to

recall that, when we deal with the small minority of offenders, we are often delivering benefits for the majority of young people, who are affected by antisocial behaviour.

Mary Scanlon: Stewart Stevenson initiated a discussion of various measures in the bill, so I will not focus on them.

How do you respond to the view that although sufficient tools are in place to tackle antisocial behaviour, those measures are not being used or enforced? In *Third Force News*, Barnardo's Scotland states:

"Rather than introducing new and costly legal processes, the Executive should be developing the existing children's hearing system and concentrating on long-term solutions that we know will work."

Michael Kellet: Ministers would say that there is always a balance to be struck between dealing with long-term issues and dealing with particular problems as they arise. Ministers' view is that a number of tools are already in existence, but there are gaps in the legal framework that they are seeking to fill through the bill.

I can provide a number of examples of such gaps. Children's panel members have told us that for a long time they have been frustrated about the fact that they have no powers to deal with parenting issues relating to a child. They cannot impose sanctions on or issue guidance to parents. We believe that parenting orders will fill that gap. From discussions with Barnardo's, I know that it welcomes the bill's focus on parenting—although I am not saying that it agrees with the proposed parenting orders.

There are other gaps in the system. It is clear that in a number of areas the children's hearings system is failing a small minority of persistent young offenders. That creates considerable disillusionment in communities about the general effectiveness of the hearings system. Ministers consider that ASBOs for under-16s will provide a credible means of dealing with such young people.

There is a general view that current provisions for dealing with noise nuisance are not sufficient. We are filling a gap by making those provisions more flexible and effective. There is also real concern that private landlords are not taking seriously their duties to tackle antisocial behaviour. The bill provides a means of ensuring that they do so.

Tools for dealing with antisocial behaviour already exist, but we are trying to supplement them. However, we should also say—I repeat what Alisdair McIntosh said—that in the context of the delivery plan and the wider strategy we will look hard to ensure that the range of tools that is currently available and the new tools are used effectively.

Elaine Smith (Coatbridge and Chryston)

(Lab): Before I ask my question I will ask a supplementary on an issue raised by Stewart Stevenson. Can the panel members tell me at what age children in England have been electronically tagged?

Kit Wyeth: Electronic tagging is available within the legal system in England for 10 to 15-year-olds, but the evidence that I have seen suggests that, in the main, it tends to be 14 and 15-year-olds who are tagged, not younger children.

Elaine Smith: Is there any evidence from England on tagging? For example, have tags been seen as a badge of honour, as has been suggested in some of the evidence that we have been taking? Has it resulted in longer-term changes in children's behaviour? Have psychological problems been recorded for children who have been electronically tagged? Have there been any legal challenges or challenges under the United Nations Convention on the Rights of the Child?

Kit Wyeth: I am not aware of any evidence from down south that tags have been seen as a badge of honour. However, only the interim evaluation has been released, so the evidence is patchy.

The responses to the consultation were fairly mixed. Some suggested that a tag might be seen as a badge of honour and others that it might be seen as a badge of shame. We do not have a strong view on how that will pan out in practice.

I do not think that there is any evidence about the longer-term effect that being electronically monitored has on the young people concerned, because the work in England is relatively new. There is longer-term evaluation evidence from other countries, but that is primarily about adults who have been tagged.

Elaine Smith: If there is any written evidence, could the committee get it?

The Convener: I would have thought so; the more information that we have, the better.

Michael Kellet: We will seek to make available to the committee as quickly as possible any of the information mentioned by Kit Wyeth that we have or can get.

The Convener: Was there evidence from local communities of young people regarding the way in which they conduct themselves as being a badge of honour? I know that in my area carrying a knife is sometimes regarded as a badge of honour. Was there evidence of intimidation of local communities in that way?

Michael Kellet: I think that, in general, there was such evidence. When we and the minister spoke to people in communities, they expressed

considerable support for electronic monitoring of young people as a means of protecting communities by ensuring that those young people were not out causing trouble. We heard lots of anecdotal evidence of young people carrying knives, behaving badly, causing real fear and intimidating people in their communities—particularly other young people. That problem was made clear during the consultation process.

The Convener: Does Elaine Smith want to ask any more questions on tagging?

Elaine Smith: Not particularly, although I might come back to the issue.

The Convener: I will come back to you after Cathie Craigie has asked a question.

Cathie Craigie (Cumbernauld and Kilsyth)

(Lab): There are early indications in my own area in north Lanarkshire that tagging is effective in ensuring that young people stay at home at night, desist from antisocial behaviour and do not get into even more serious trouble.

The point of having early intervention and tagging a young person is to try to change their behaviour and ensure that they do not get into more serious trouble. Has any research been published that indicates that tagging has been successful in achieving that aim?

Kit Wyeth: There is no evidence on under-16s, but there is evidence on the effect of tagging on over-16s, who may still be young people. There is evidence on that from the United Kingdom and, more widely, from across Europe and Canada.

Cathie Craigie: It would be interesting to see that evidence.

Elaine Smith: The definition of antisocial behaviour in the bill is very wide, which has been a concern of organisations that represent the interests of adults and children with disabilities or special needs in particular. They fear that the behaviour of such individuals could be inappropriately labelled as antisocial or even criminal. Is the Executive happy that such behaviour will not be criminalised by the legislation?

11:00

Michael Kellet: That issue certainly arose during the consultation process. We had discussions with the agencies and bodies that made that point. There are a number of things to say in repeating the provisions that are mentioned in the equal opportunities section at the end of the policy memorandum.

I suppose that ministers will be absolutely clear that they do not wish ASBOs or any other tools to be inappropriately used to target young people

and adults. On the systems that are built into the bill, it is important that any decision-making body—whether a court or children's hearing—has full information about a child or adult when it makes a decision about the best way in which to deal with particular behaviour. Obviously, it will be crucial for those bodies to have information about children's or adults' disabilities or special needs.

It is important to bear in mind that the definition of antisocial behaviour that is used in the bill is the same as the definition that was used in the Crime and Disorder Act 1998, which established ASBOs, and that we are not seeking to change that definition. In that context, it is useful to be aware that ASBOs for adults have been established since 1999 and that they have been used on a consistent basis. We do not have any evidence that shows that adults with special needs or mental health difficulties have been unfairly or inappropriately targeted through the use of ASBOs.

That said, ministers will use the guidance-making powers in the bill to make it clear that such groups should not be inappropriately labelled or targeted through the use of ASBOs or other measures. It is important to stress that section 107, which deals with equal opportunities, says that any body that uses the powers that are contained in the bill must comply with equal opportunities requirements as set out in the Scotland Act 1998. Disabilities are one of the equal opportunities criteria. Therefore, the bill makes it clear that the powers should not be used to discriminate against those who suffer from particular disabilities. Ministers would hope that that makes it clear that the powers should not be used to target people with disabilities of any type and, perhaps, children with special needs or mental health disabilities in particular.

Elaine Smith: I presume that what you have said would also apply to any plans for electronic tagging. I also presume that close monitoring will take place.

Michael Kellet: Yes—very much so. The provisions of section 107 apply throughout the bill and we certainly want to ensure that there is close monitoring.

Members might find it useful if I explained that, on the strategies that are established under part 1, there are quite extensive requirements to ensure that consultation is carried out with groups at a local level, and certainly with groups that represent people from ethnic minorities and other minority groups. We envisage that people with disabilities should be consulted. If there are problems at the local level, they should be flagged up and dealt with in the local strategy.

Cathie Craigie: I thank Elaine Smith for raising

that point. The committee has been on evidence-taking visits and, on a visit to the Stirling area, it met at one of our focus groups representatives of a disabled group, who complained about being targeted because of their disabilities. You mentioned that you had discussions with groups that represent disabled members of the public, but have you had formal consultations with those groups?

Michael Kellet: Apart from those discussions, we also had discussions with several agencies including various equality groups; I am not sure what you mean by formal discussions. The discussions and consultation are on-going. Mary Mulligan is speaking on this issue to the parliamentary forum on autism—I am not sure if that is the right name—tomorrow or later this week.

Cathie Craigie: Alisdair McIntosh, I think, was talking about the wide-ranging consultation undertaken by ministers during the past few months. Were any disability groups involved in that consultation exercise?

Michael Kellet: I think that they were, but I do not have the details to hand as to who and when. We can certainly provide details. For example, we went to speak specifically to the racial equality groups. I can provide details about disability groups, but I know that the unfair targeting of people with disabilities was raised in several forums. I attended a session of the Scottish churches forum to talk about regeneration and other social issues, and the issue was raised with me there; we took it away to think about it.

The Convener: There is a distinction between those people whose behaviour might be deemed to be antisocial because they have special needs or a disability, and those who are targeted by the antisocial behaviour of other people because they have a disability. Did that come out during the consultation?

Michael Kellet: Very much so. Ministers consider that the bill should help those who suffer antisocial behaviour or are unfairly targeted because of any prejudice, whether on the grounds of race, sex, gender, sexuality or disability. Section 1 of the bill makes it clear that such interest groups should be involved at a local level in discussing strategies, and identifying how they are being targeted and how it can be dealt with.

Stewart Stevenson: I am sure that Michael Kellet did not mean to mislead us, but the definition of antisocial behaviour in section 75(3) of part 8 of the bill, which is about housing registration, differs in a couple of material words from the definition that is applied to the bill and that amends the Criminal Procedure (Scotland) Act 1995. The definition is also different from that

in the Crime and Disorder Act 1998 because it includes the terms "nuisance" and "annoyance". Why are those terms included in part 8, and why are they not applicable to the rest of the bill?

Michael Kellet: I apologise; I did inadvertently mislead the committee. I was talking about the definition of antisocial behaviour with respect to ASBOs. My colleague Roger Harris, who deals with housing, can explain why we have taken a slightly different approach to the housing provisions.

Roger Harris (Scottish Executive Development Department): The main point that we wanted to deal with in part 8 was the fact that antisocial behaviour in relation to housing matters should be linked to the locality; it should affect those in the area. We are not dealing with antisocial behaviour that a person might commit elsewhere. For example, we would not expect a private landlord to control the antisocial behaviour of one of his tenants in the centre of town. Part 8 is concerned with the effect of antisocial behaviour on the immediate area of the house and we would expect the landlord to have some sort of control over that.

Stewart Stevenson: I develop that slightly by taking you to section 75(3), which ends:

"to a person residing in, visiting or otherwise engaging in lawful activity at, or in the locality of, a relevant house."

In other words, it would appear that the person who is indulging in antisocial behaviour need not have any connection with the locality. It is the relevant person or the affected persons who have the connection with the locality rather than the person who is indulging in the antisocial behaviour. Correct me if I am wrong, or if I am misinterpreting the intention of that part of the bill.

Roger Harris: I am trying to find the relevant section.

Stewart Stevenson: Page 41.

Roger Harris: That relates to the effect of the person's antisocial behaviour. The provisions relate to antisocial behaviour by people who occupy the house or visit the house.

Gillian Russell: Section 75(3) states that a person engages in antisocial behaviour if they do certain things. For the purpose of this part of the bill there is a widening out of antisocial behaviour to include nuisance or annoyance. In the context of housing it was felt appropriate to have a broader test for antisocial behaviour. The antisocial behaviour has to be aimed at a person who resides in or is visiting the property, or who is engaged in lawful activity around the property. That makes it clear that the focus is on the property itself, but the measures do not simply apply to the person who happens to live in the

property, because they also apply to people who are visiting that person and to people who happen to be there for whatever reason. The section makes it clear that although antisocial behaviour relates to the property itself, it is not simply the resident of the property who can trigger the antisocial behaviour order.

Stewart Stevenson: I am delighted to hear that that is the intention. Let me play it back for the avoidance of doubt. The purpose of part 8 is not to stigmatise people who live in a particular area, but to stigmatise people who indulge in antisocial behaviour in a particular area, from wherever they come.

Gillian Russell: Exactly, yes.

Stewart Stevenson: Thank you very much.

Patrick Harvie: I take you back to a discussion we had earlier about the timing of the consultation on, and the publication of, the bill. Can you confirm that the bill was written before the consultation period ended?

Alisdair McIntosh: The bill was not written before the consultation period ended. However, given the wish of ministers to move very fast, we had to do what preparation we could in the course of the consultation period. The bill was written and finalised following the closure of the consultation period although, as I said, we worked in parallel with the consultation period to do what preparation we could.

Patrick Harvie: The bill allows for community reparation orders to be served on offenders between the ages of 12 and 22. Why has the Executive limited those orders to that age category?

Michael Kellet: For clarification, I think that the orders apply between the ages of 12 and 21. I think that people fall out of the application if they are 22. However, your point is valid. Community reparation orders are designed to give a further sentencing order to courts to deal with behaviour that is not at the very high end of offending behaviour, which would normally justify custody. Community reparation orders are low-tariff orders, and are restricted to summary prosecutions. Ministers believe that the orders are particularly appropriate for young offenders, and should help prevent the up-tariffing of young offenders. The view of ministers is that if, by the age of 22, people are still indulging in low-level antisocial behaviour, it is likely that the courts will take a more serious view of that behaviour.

Those are the reasons why community reparation orders have been restricted to 21-year-olds. However, I should say that ministers are clear that they wish to hear the views of the committee and hear the results of consultation on

whether that age limit is appropriate and correct, in terms of taking a final decision about what may eventually end up in the bill. It is about practicality, and because it is a low-level tariff it was thought better to restrict it to young people to whom it might be particularly appropriate.

Patrick Harvie: It is encouraging to hear that there is an open mind on that issue. On the fact-finding visits that I was involved in there was strong support for the orders. It would be a shame if they were limited to that age group.

On the dispersal of groups, the report on the consultation from the University of Glasgow showed that a significant majority of respondents—more than 80 per cent—believed that the police already had sufficient powers to disperse groups. Could you explain the reasoning behind the decision to include these new powers?

11:15

Catherine Brown: It is clear from the evidence that has been received, both in the written submissions and in the course of ministers' visits to communities throughout Scotland during the summer, that many people live in fear of becoming the victims of antisocial behaviour. They want something to be done, in particular about groups of people who hang about in public places and cause fear and alarm by their very presence.

The proposed new police powers on the dispersal of groups aim to address those fears in specific areas where such behaviour is "significant and persistent". The new powers would work alongside existing police powers to deal with people who are intent on causing a disturbance. Any criminal behaviour will be treated as such under existing criminal law, but the measures in the bill would give additional relief to communities in which antisocial behaviour was significant and on-going.

Ministers seek to address concerns that the new powers might be exercised indiscriminately by ensuring that there is a measured approach to their use. For example, before the powers can be exercised, there must be evidence that

"members of the public have been alarmed or distressed as a result of the presence or behaviour"

of groups of people. There must also be evidence that the problem is "significant and persistent" in the area. In addition, the police cannot exercise those powers without first consulting the local authority—that is crucial. In practice, that consultation is likely to extend to other partners in the antisocial behaviour strategy for the area. Ministers are keen to ensure that, when antisocial behaviour strategies are drawn up, the chief constable has a key role to play in discussions with others about the circumstances in which any

new powers invested in the police would be used.

The bill also provides for guidance and directions to be given to the police in respect of those powers. The police associations have said that they believe that police already have sufficient powers, but they have also made it clear that they would be willing to work with the Executive on the operational effect of the provisions. Ministers have addressed some of the other concerns that the new powers were unnecessarily draconian by ensuring that authorisations are time limited and by proposing targeted measures that would provide relief and respite to communities where the problem is persistent.

Patrick Harvie: Do you have any evidence of the reaction that might be expected and whether people's behaviour is likely to become more or less antisocial when the powers to disperse groups are used?

Catherine Brown: Ministers are keen that the new powers should address communities' concerns where there is a significant problem with groups of people hanging about, by making it clear to everyone involved that, if an area is subject to an authorisation under the proposed powers to disperse groups, people who continue to behave in a way that could cause fear and alarm will be dealt with.

Patrick Harvie: Is there no specific evidence, perhaps from other countries, of the impact of the use of such powers?

Catherine Brown: I am not aware of any.

Alisdair McIntosh: It is important to remember that ministers envisage that the powers will be exercised in the context of locally drawn-up and agreed strategies, which will be published and reported on and which will be the subject of consultation at community level. The powers are not intended to be add-on or free-standing measures; they are intended to provide for the possibility of action in the light of a community's circumstances. The powers will be the subject of discussion between police, local authorities and communities and will be used only in circumstances that are deemed appropriate by the police and local authorities, in light of the specific circumstances in an area at a given time.

Patrick Harvie: Has consideration been given to linking the use of those powers to the availability of accessible facilities for young people? Local authorities could be instructed, for example, that the powers could not be exercised unless young people had access to an alternative meeting place.

Alisdair McIntosh: As I said, the intention is that the matter should be discussed when strategies are drawn up. Indeed, we envisage that,

in drawing up local strategies, local authorities, community organisations and all the agencies will take a holistic approach to the existence of prevention, diversion and early intervention services as well as to enforcement measures. We would also expect local facilities and services to be a factor in any such discussions. In that regard, the answer to your question is yes.

Donald Gorrie: I have three questions on this subject. Although section 18 specifically excludes processions from the powers of dispersal given to senior police officers, it does not exclude legitimate and law-abiding demonstrations and pickets. Why are they not mentioned in the bill?

Gillian Russell: Obviously we have considered the matter. Because of the Scotland Act 1998, the relevant legislation in this area is reserved to Westminster and it would not be competent for an act of the Scottish Parliament to cut across existing legislation that allows picketing and so on. As a result, we do not feel that it is necessary for the bill to mention that. The legal effect is that picketing and so on can still take place. The powers of dispersal in the bill will not cut across any of that. In other words, although aspects such as lawful picketing are not mentioned in our bill for legal reasons, the legal effect is that they would be treated in the same way as any procession under the Civic Government (Scotland) Act 1982.

Donald Gorrie: Thank you. I find your response interesting and horrifying.

Are demonstrations also reserved to Westminster, or are we allowed to demonstrate?

Gillian Russell: I think that demonstrations would also be covered by the 1982 act.

Donald Gorrie: The bill refers to

"any members of the public"

who

"have been alarmed or distressed".

Although many people might feel genuine alarm or distress, it might be totally unreasonable for them to do so. For example, a person who lives alone might be very distressed because their budgie is ill. From my reading of the bill, the mechanisms could be triggered if a person feels genuine alarm, even though there is no reasonable cause for them to do so. Surely there should be reasonable cause for alarm.

Michael Kellet: You make a valid point about the subjective nature of the alarm that people feel. However, we have given this particular power to a senior police officer and the bill's provisions require him to be satisfied that members of the public are alarmed or distressed because of behaviour, and that antisocial behaviour is a significant and persistent problem in the local

area. He is also required to consult the local authority before using such a power. Those checks and balances should ensure that the power is used when local communities feel real fear, alarm and distress because of groups of people and that the police do not seek to use it inappropriately when alarm or distress was not objectively justified.

Donald Gorrie: Earlier, you said that although a minority of young people and others cause serious trouble, the majority do not. However, part 3 of the bill would deal with a group of young people whose antisocial behaviour poses a serious danger—for example, they might carry knives and so on—in the same way that it would deal with the many more young people who wander about the streets in groups because they have nowhere else to go. Although those young people are seen by some as a problem, they are not actually breaking the law. Am I wrong to suggest that part 3 deals with both groups in the same way?

Michael Kellet: As this part of the bill is designed to be used in situations in which there is significant and persistent antisocial behaviour, it might not be appropriate to use the power in question to deal with your second example. As Catherine Brown and Alisdair McIntosh have explained, the power is meant to be targeted at and used appropriately in areas where the antisocial behaviour of groups causes serious and persistent problems.

Donald Gorrie: The debate will continue.

The Convener: It will certainly continue right now.

Michael Kellet mentioned checks and balances. We have already reflected on the fact that existing powers have not been used because they are unwieldy and difficult.

For example, young people gather and, not just because folk do not like young people, but because there is evidence that criminal activity such as under-age drinking, graffiti writing or violence is taking place, the police come and the group disperses. The problem is that the young people return and no grounds exist for dealing with them, because nobody was caught in criminal activity, and perhaps some of the folk who witnessed the activity are silenced by intimidation.

The police have said that they do not use some powers because they are too difficult to exercise. In the same way, is it a problem that the power of dispersal might be made so difficult to exercise that the police will not use it and it becomes less effective than intended?

Alisdair McIntosh: It is important to situate the power in local strategies. Ministers are putting beyond doubt the existence of a power that can be

used to deal with problems in an area that has had persistent and serious antisocial behaviour. If powers are not used, local authorities and the police will need to account to local communities for that when reporting on their strategies.

It is important to put the whole bill in the context of the strategies that will be drawn up on the basis of consultation with communities and reported on. Ministers believe that, as a result, all the agencies that are involved in tackling antisocial behaviour will be made more accountable for what they do and for what they do not do locally to tackle problems.

The Convener: In an area where, for example, a corner has become an outdoor youth club—often outside youth facilities—would it not be easier to give the police the power to disperse a group and to ask youngsters not to return because of evidence of difficulties and harassment? The police would then be accountable in the same way as they are for using their current powers. Will the bill put in place a system that makes it less likely that the police will seek the power, which will reinforce the idea that nothing can be done and that such behaviour must be tolerated?

Alisdair McIntosh: The question is about where the balance is struck. Concern has been expressed that creating a wide-ranging power might inadvertently lead to problems with innocent patterns of behaviour. However, it is equally clear that effective action must be taken to deal with persistent and serious problems and with incidents that take place against the background of those problems and which cause fear, alarm and distress.

Ministers feel that they have struck an appropriate balance between those two extremes, but that will need to be considered in the context of strategies and to be reported on in the context of what local agencies do and how they account for those actions to communities.

The Convener: It flies in the face of early intervention to have a long process to obtain a power to deal with a continuing problem in a community.

Michael Kellet: The process need not be long and drawn-out. The power is given to a senior police officer. When evidence exists of serious and persistent antisocial behaviour in a situation such as that which the convener described, it would be appropriate for the police to use that power, after consulting the local authority. The power could be used fairly quickly. There is no reason for inordinate delay in dealing with a problem in one area.

Stewart Stevenson: I will develop the point that we have been discussing. Section 4(3) in part 2 provides that a

“sheriff shall disregard any act or conduct of the specified person which that person shows was reasonable in the circumstances.”

I understand that such a provision is also part of the Crime and Disorder Act 1998. Does evidence show that such a provision has enabled sheriffs to implement the definition, which is quite draconian when it stands alone, in a way that respondents to consultations thought was fair, reasonable and reflected what people understand by the term “antisocial behaviour”?

Michael Kellet: I do not know if there is evidence on that, but we would certainly hope that it would enable the sheriff to take a reasonable and balanced decision on whether antisocial behaviour evidenced by one person should be considered as being antisocial behaviour and should therefore merit an antisocial behaviour order. As you rightly say, that was a provision in the 1998 act, and we thought that it should be continued. The criteria on which sheriffs decide whether to grant an antisocial behaviour order seem to be working well, which suggests that we got the balance right in the 1998 act. There was a problem relating to delay, which the legislation on interim antisocial behaviour orders is intended to deal with.

Stewart Stevenson: Are you saying that there is no evidence that other agencies and individuals are being inhibited in going for antisocial behaviour orders because of the provisions in section 4(3) of part 2 of the bill?

Michael Kellet: There is no information that they are being inhibited in that way.

Stewart Stevenson: The amendments that the bill makes to the Criminal Procedure (Scotland) Act 1995 do not include the provision that I mentioned in relation to sheriffs. I have looked at the act but have not examined it thoroughly. Is the provision in the act already or is there simply an omission? I recognise that the provision relates only to antisocial behaviour orders, not to the entire bill, but I do not understand the rationale involved.

11:30

Michael Kellet: Could you clarify whether you are asking about the sheriff's power to grant an antisocial behaviour order when someone has been convicted of a criminal offence?

Stewart Stevenson: No, I am making a more general point. We have a definition of antisocial behaviour that covers the entire bill, but we also have a specific and different definition that covers part 8. There is a provision in part 2 that qualifies the former definition in relation to how the sheriffs will interpret it, but only in relation to antisocial behaviour orders. I am asking why there is not a

similar provision that would allow sheriffs to interpret the definition that applies to the entire bill in relation to parts of the bill that deal with issues other than antisocial behaviour orders. Similarly, I would like to know why such a provision is not included in the amendments that will be made to the Criminal Procedure (Scotland) Act 1995. Is there a different basis in different circumstances for the interpretation of the definition of antisocial behaviour? If so, has a difficulty been created that the committee should consider in its scrutiny of the bill?

Michael Kellet: We are more than happy to consider that issue and examine the detail to see whether there are any problems. We would expect that, when using any power, a sheriff would act on the basis of reasonableness and that, if something was not reasonable, they would not proceed.

Stewart Stevenson: I am pointing out that the power has been made specific at one point but not at another.

Michael Kellet: I accept that.

Scott Barrie: A parenting order cannot be made unless the parent has failed to engage on a voluntary basis in the past. Moreover, the orders will be available only in areas in which there are sufficient services and programmes to cope with them. Given those factors, what is the Executive doing to ensure that the services will be rolled out across Scotland? How many areas currently have sufficient programmes?

Kit Wyeth: We accept that the existing provision of parenting services is patchy. I do not think that any areas have enough parenting programmes and services in place to enable them to facilitate the use of parenting orders. Ministers are committed to parenting orders and are, therefore, committed to putting in place the necessary services and support programmes. Alisdair McIntosh has mentioned the amount of money that is being made available to help to support the measures in the antisocial behaviour strategy; a good proportion of that money will be used to fund parenting programmes and the services to underpin parenting orders.

At this early stage, we need to involve ourselves in some detailed discussions with local authorities and other partners who will deliver the services to determine how those services should be planned, where they are needed and what type are required. Once we have explored that, we will have a better idea of exactly how the orders will be rolled out.

Scott Barrie: Would the programmes and services have to be available throughout a local authority area in order for parenting orders to be available or would it be possible to have parenting orders in operation in one sheriff court area but not

in another, although they were both in the same local authority area? Will the programmes be provided solely by local authorities or through a range of local authority and voluntary agency services?

Kit Wyeth: We certainly expect local authorities to work with their voluntary sector partners to deliver the services, because the majority of parenting services are currently provided by voluntary sector organisations. We expect local authorities to use that existing expertise in providing the services.

We expect that parenting orders will be used on a local authority-wide basis, which will have implications. We do not necessarily expect the existence of decent services in one part of a local authority area to be enough to allow parenting orders to be used throughout that area. We have said that we intend to pilot the parenting orders when we have a better idea of the existing services. The pilot areas will be expected to have all the services that are required for the parents in that area.

Campbell Martin (West of Scotland) (SNP): Reference was made earlier to an audit of local authorities' use of antisocial behaviour orders. Part of the evidence that the committee received from people who responded to our questionnaire suggested that some local councils have not used antisocial behaviour orders. For example, a community group in North Ayrshire considered that North Ayrshire Council had not used the orders. Do we know why local authorities do not use antisocial behaviour orders and whether they are likely to use them in future when the powers have been extended?

David Doris: We are aware that there is wide variation among local authorities in the use of ASBOs and that a small number of authorities still have not used them. In principle, local authorities decide whether to use ASBOs depending on local policies and approaches. ASBOs are one of a range of available remedies. Although we want to ensure that the most effective tools are used and to encourage the use of ASBOs where they are appropriate, we have not taken a hard line on individual authorities that have not used the orders, because they might be dealing effectively with antisocial behaviour using alternative approaches.

Alisdair McIntosh: As I said at the outset, in the context of the strategy and the delivery plan, we will consider ways of disseminating good practice among local authorities and of making good practice common practice. As part of that, we will examine the ways in which different local authorities use the tools at their disposal and consider any barriers, either real or perceived, to using particular tools. We will seek to ensure that

local authorities are aware of all the possibilities and of best practice on a particular issue or with a particular instrument. All local authorities should have access to the expertise of the best. We hope to ensure that the situation is evened out, although, as David Doris rightly said, it is for local authorities to determine which set of instruments to use to tackle antisocial behaviour in the light of their specific circumstances.

David Doris: It is important to note that funding has been made available for community-based initiatives, including specialist antisocial behaviour units in each local authority area. The authorities will consider the use of ASBOs within those units.

Campbell Martin: I am surprised that we do not know any particular reasons why ASBOs have not been used in some local authority areas. Parts of North Ayrshire have huge antisocial behaviour problems. We would like to find out why certain local authorities have not used their existing powers before we extend those provisions.

The bill contains proposals for the closure of premises. The powers in the bill relate to non-residential and residential properties. How might the proposals in relation to residential properties impact on the policy objectives and the provisions of the homelessness legislation?

Michael Kellet: I will answer that question and perhaps colleagues will supplement my answer. It is important to be clear from the outset that the ministers intend the closure power to be targeted at a high level of persistent antisocial behaviour. It will be targeted at premises that, whether residential or non-residential, are at the epicentre of antisocial behaviour in particular communities. We are talking about properties or premises in an area where, for example, drugs are dealt or where serious drinking dens are causing antisocial behaviour. The power is intended to give relief to communities that suffer from that concentrated form of antisocial behaviour.

As I said about other parts of the bill, we must apply checks and balances. Consultation with local authorities is a prerequisite before a closure notice is served by a senior police officer. That senior police officer must then apply to the court for a closure order on the next working day to back up what he has already done. The court would make a closure order only where appropriate. If the court believed that a closure order was not justified, it would not grant one. In making its decision, the court would take into account the nature of the premises and the people living there, if any.

A closure order that is granted in respect of residential premises might lead to homelessness. If that were the case, normal homelessness rules and legislation would apply; the bill will do nothing

to change those provisions. However, it is important to bear in mind the fact that the closure power is intended to deal with extremely serious problems; ministers do not envisage it being used commonly.

Campbell Martin: I have in mind an example in which the person who might be dealing drugs from a house was not the tenant or even registered as living in the property. If the closure power were used and the residential premises were closed down, the partner and children of that person would become subject to homelessness legislation and they would probably be rehoused. What is to prevent the drug dealer from moving back in when the partner is rehoused?

Michael Kellet: The closure order would deal with the immediate problem of protecting the local community from the drug dealing. You are right to say that innocent parties affected by such a measure should be dealt with by the homelessness legislation and given the protection that they deserve. We expect that, in order to tackle the drug dealer, normal police enforcement measures to deal with criminal behaviour will be used, which will provide for family protection. The intention behind the closure power is to protect the community that is suffering from concentrated antisocial behaviour. We expect that innocent parties will be given the protection that they are due under homelessness legislation and other measures.

Campbell Martin: However, there is potential for the problem simply to be moved on to a different location where it will still exist.

Alisdair McIntosh: As Michael Kellet said, it is important to remember that, although there are short-term measures to deal with particular problems, other measures are designed to deal with longer-term situations. The way in which local authorities approach their housing policy, their support policies and their social work policies will be important.

It is important to ensure that short-term action will not simply lead to displacement of the problem. We are discussing with local authority practitioners and housing officials how they approach, on one hand, the tools that they have to deal with antisocial behaviour currently and under the bill and, on the other hand, their tools and responsibilities in relation to housing and homelessness.

Donald Gorrie: Would the power apply to pubs if behaviour were sufficiently bad and sustained? Would it apply to behaviour inside the pub or to the behaviour of the people skaling from the pub afterwards?

Michael Kellet: We would expect that the first forum for problems to do with public licensed

premises would be the licensing system. As members will be aware, there are continuing developments in that area, through the Nicholson report and the Daniels review. Pubs and clubs, like any other premises, are not excluded from the provisions of the bill.

11:45

Cathie Craigie: Part 5 of the bill deals with noise nuisance. From experience in my community and from consultation with various groups, I know that noise nuisance plays a significant part in making people's lives a misery in their own homes. However, although people accepted that, they did not support giving community wardens the role of investigating complaints and taking enforcement action. From the explanatory notes that accompany the bill, the Executive still appears to feel that notices could be served and action could be taken by a warden of the local authority. Why has the Executive taken that view when communities felt that some other appropriate officers should take that action?

Duncan McNab (Scottish Executive Environment and Rural Affairs Department): The provisions in the bill are designed to be enabling and flexible rather than obligatory and prescriptive. It will be for the local authority to decide which of its officers should have powers to carry out noise investigation and to issue fixed penalties. That decision will be based on local circumstances and strategy, as was described by Alisdair McIntosh earlier.

Cathie Craigie: So the use of wardens is merely a suggestion. As far as I can see, wardens are not mentioned in the bill. Are you saying that wardens will not be mentioned in any guidance either and that it will be for the local authority to appoint an appropriate officer?

Duncan McNab: Yes.

Cathie Craigie: When the bill refers to the monitoring of noise, it appears to rely heavily on noise-monitoring equipment. Again from experience, I know that local authorities can use the evidence of two appropriate council officers to take successful action against an individual. Why is that mechanism not satisfactory for the whole country? Why does the bill rely heavily on noise-monitoring equipment when we know that many local authorities do not have a great amount of that equipment and that the equipment can break down? People can wait for a long time before recorded evidence is available.

Duncan McNab: If a local authority decides to take up the provisions, the Executive intends to fund them with additional resources to purchase new and approved noise-monitoring equipment. The details of that will be laid out in subsequent

directions.

Cathie Craigie: When local authority officers deal with residents who are causing noise disturbance—especially in dwelling houses—they often go along in twos and can hear the noise for themselves. Why make it more difficult to gather such evidence by insisting that machinery be used?

Duncan McNab: The equipment would simply provide corroborative evidence for whoever was investigating a complaint—local authority officials, environmental health officers, community wardens or the police. It would provide further evidence in the event that the case went to court.

Cathie Craigie: The equipment will provide evidence, but, in a court case, will it be essential that evidence has been recorded by noise-monitoring machines?

Duncan McNab: We are proposing that only one witness will be required to provide proof of an offence. That will be backed up by the noise-monitoring device.

Cathie Craigie: When local authorities deal with antisocial behaviour, it is normal practice for officers to visit people in twos, as I said. When there is corroborative evidence from two council officers, independently of the person who makes the complaint, why do we need to make things more complicated by using machinery?

Duncan McNab: The proposal is that an offence has been caused if noise is above a certain determined level. To establish that that is the case, we require machines to provide evidence.

Cathie Craigie: We can pursue that issue with the minister.

Stewart Stevenson: I have two short questions about noise. First, was consideration given to noise emanating from vehicles? Many of the young bucks in our society have the most powerful sound systems that I have ever seen. The bill deals only with noise in housing.

Secondly, section 43(1) states that in due course ministers will prescribe

"the maximum level of noise".

Have you determined what measurement basis you will use? Will it be decibels or will it be a more sophisticated measure that takes account of the different levels of irritation that occur at different frequencies in the audible range?

Duncan McNab: The provisions in the bill relate only to neighbours' domestic noise. Noise from vehicles is covered by existing legislation. We have commissioned research to determine noise levels for different periods of the day. That will take into account the different sorts of ambient

noise at different times.

Cathie Craigie: Part 6 of the bill deals with the environment. One proposal that the Executive considered in the consultation document and that was widely supported was to allow local authorities to clear litter from Crown land and land owned by Network Rail and the roads authorities. I am sure that all members can confirm that correspondence on that issue fills our mailbags from time to time and that the problem is often difficult to solve. It would seem easy to give the responsibility that I have described to a local authority, with the powers to recharge. Why did the Executive not choose to include that measure in the bill?

Kevin Philpott (Scottish Executive Environment and Rural Affairs Department): To say that we made a proposal is to put it rather strongly. We raised the issue rather diffidently in the consultation paper. The question was about whether local authorities and other bodies had sufficient powers to clear up litter.

We were diffident for a reason—we wanted the matter to be informed by the consultation process. As members will have seen from the paper by the University of Glasgow, some of the responses to the consultation—notably that from Network Rail—pointed out the health and safety difficulties associated with the suggestion. It is not really possible to have untrained local authority staff wandering around the railway tracks. In the nature of things, the tracks with the most litter also happen to be those that carry the most trains.

We were uncertain about the issue, but we felt that there would be other ways of skinning this particular cat. In the bill, we propose to give powers to Scottish ministers to direct on litter clearances. Among the bodies that they would be entitled to direct would be statutory undertakers such as Network Rail. If local authorities were having difficulty in getting statutory undertakers to clear up litter, the Scottish Executive would have the power to direct them to clear it up.

Cathie Craigie: Parts 7 and 8 deal with housing and the problems that are caused by the lack of powers to deal with antisocial behaviour in the private rented sector. We know that for some time the housing improvement task force has been examining private sector housing and that it has recommended that we introduce measures to deal with private landlords. We were surprised, therefore, to see that the bill did not contain more measures to deal with the antisocial behaviour that can become a problem when private landlords do not address the quality of their housing stock or the regulation of their premises.

In the consultations that I conducted as part of the committee's inquiries into the subject, I found

that there is a strong feeling that a form of licensing and regulation should be introduced for the private rented sector. Disappointment was expressed in particular about part 8 of the bill, which introduces the powers to designate the areas where landlords would have to register. It was said that the provisions would be cumbersome and bureaucratic to use. Why did the Executive not choose to put some of the task force's recommendations into the bill more effectively?

We received a considerable amount of evidence about areas in which there are a high proportion of private sector landlords. It was said that, unless we have regulation to deal with those landlords, the other measures in the bill will not be implemented as effectively as might otherwise be the case.

Roger Harris: Clearly, a particular issue arises in respect of private sector landlords who fail to manage effectively the antisocial behaviour that emanates from their properties and which has an effect on the community. The problem could be avoided if the landlord were more effective in carrying out what one would expect to be reasonable good practice. To return to the point that Mr Stevenson made earlier, that is why section 65(1) contains a provision that relates registration to "persons occupying relevant houses".

Two overlapping sets of issues are involved, the first of which concerns antisocial behaviour and the need to obtain a suitable set of tools to reduce the impact of such behaviour on the community. That is the holistic approach to which Alisdair McIntosh referred. The other set of issues concerns the need to encourage improvements in housing standards. That will help tenants and improve the quality of the stock. It is the second set of issues that the housing improvement task force looked at and reported on and on which we consulted. The question is whether those two sets of issues should be dealt with as one or separately.

The consultation on the housing improvement task force report produced a mixed set of reactions. The task force recommended a system of voluntary accreditation backed up by discretionary, stronger regulation, whether that be by registration, certification or licensing. The Executive ministers' response to the task force recommendations is still being considered in the light of the reactions to the consultation.

In drafting the bill, it was not clear to us whether and how the antisocial behaviour element of any regulatory provisions would feature in the proposals in the legislation that emerged from the recommendations of the housing improvement task force. We felt that it was important to include

something in the package for antisocial behaviour that would allow firm action to be taken against failing landlords and would be consistent with the package. At the same time, we were aware that, in doing that, we were designing something that would need to be consistent with what might come out of the eventual consideration of the options under the housing improvement task force recommendations.

Cathie Craigie: I want to underline—I am sure that other committee members will agree—that we have enough on our plate in dealing with the Antisocial Behaviour etc (Scotland) Bill without going into housing standards. We look forward to that issue coming before us at another date.

We welcome the work and many of the recommendations of the housing improvement task force, but I think that it is wrong in saying that there should be a voluntary licensing code for private landlords. The people who have to suffer the problems that are caused by irresponsible private landlords say that the task force has got it wrong and that there must be a licensing and registration mechanism for private landlords. As I have said before, a person must be licensed as fit and proper to drive a taxi or to sell burgers, and the same should apply to private landlords. Some private landlords gain significantly from the public purse but put nothing but misery back into communities. Those people are not fit to be private landlords. We must introduce measures to regulate that sector.

If a local authority designates an area under part 8, the problem will simply move somewhere else—I am sure that we can all think of communities in our constituencies in which similar things have happened. The provision would endanger other measures in the bill. Would it be possible to amend the bill to include a licensing and registration mechanism for private landlords?

12:00

Roger Harris: That would be subject to the scope of the mechanism and to ministers' wishes. We will consider carefully the committee's views when considering the housing improvement task force's recommendations on the issue. The point has been registered.

Mary Scanlon: I have a couple of questions on the financial memorandum—they are not extensive. First, during our extensive discussion of antisocial behaviour orders today, it has been acknowledged that ASBOs are not being utilised fully and that there is scope for much greater use of them. Paragraph 245 of the financial memorandum, in the explanatory notes, states that £300,000 per annum of additional moneys will be required for local authorities. Is that a

reasonable assessment, given that the cost to a local authority of an antisocial behaviour order is between £500 and £6,000 and that you expect around an extra 100 orders per year? Even without the bill, we would expect more ASBOs, but with it I assume that we will have lots more. If you expect 100 more ASBOs a year, why have you allowed only £300,000 extra for local authorities?

My second question is about the police powers of dispersal, which my colleague Patrick Harvie and others have mentioned. Dispersal cannot be authorised by a police officer ranked lower than superintendent and it requires wide-ranging consultation with local authorities and others, but there is not a penny for the police in the financial memorandum; they are supposed to perform that extensive duty within their existing budget. Will you address that issue?

Michael Kellet: I will deal first with the point about the £300,000 that is mentioned in paragraph 245 of the explanatory notes. It is important to be clear that that money is intended to support the antisocial behaviour strategies; it is not specifically to fund local authorities to make applications for antisocial behaviour orders. We expect local authorities to judge whether an antisocial behaviour order is the most effective means of dealing with behaviour in particular circumstances. I imagine that cost will be one element that is taken into account in such decisions. The money that is mentioned in paragraph 245 supports the generality of local authorities drawing up antisocial behaviour strategies.

Mary Scanlon: Have additional moneys been allocated for the expected additional ASBOs? All I can see is the £300,000.

Michael Kellet: We do not specifically allocate money to local authorities to exercise, for example, their powers as a landlord to evict. As a result, we would expect local authorities to fund ASBOs in appropriate individual circumstances from the general funding that they receive to deal with antisocial behaviour in communities. The £300,000 supports the general strategy, not ASBOs in particular.

Mary Scanlon: Given that you have acknowledged that an ASBO can cost up to £6,000, will you confirm for me that local authorities will not receive additional money to serve these orders?

Michael Kellet: The cost of an ASBO can vary. Local authorities have had the power to serve ASBOs since 1999; the only new measure in our bill is the extension of that power to include under-16s. We think that local authorities should have that tool, but they must determine at a local level whether it is the most effective, cost-efficient and best tool to be used in an individual situation.

Alisdair McIntosh: Earlier, I said that we will examine how we can promote best practice and the most effective use of existing tools. Arguably, some local authorities can teach their colleagues in other authority areas lessons about ASBOs. As a result of activities such as exchanging best practice that we intend to promote and support, we hope that the average cost of, or the difficulty of serving, an ASBO will decrease. However, as Michael Kellet pointed out, such orders represent a tool among others that are at local authorities' disposal. Some authorities have found ASBOs to be very cost-effective and indeed very effective overall, and we intend to encourage others to learn from that experience. That said, there is no specific funding for ASBOs just as there is no funding for other tools that local authorities can use in this respect.

Mary Scanlon: Are the Convention of Scottish Local Authorities and local authorities satisfied that existing budgets will allow them to meet the additional demand for ASBOs that we expect will emerge from the proposed legislation? After all, you have allocated no money to them for that purpose.

Alisdair McIntosh: We have had extensive discussions with local authorities during the consultation process. It is important to remember that ASBOs are tools for local authorities and represent part of a range of options from which authorities can choose to achieve the results that they wish to achieve.

Mary Scanlon: I understand that.

Alisdair McIntosh: We are seeking to make ASBOs more effective overall, which is something that local authorities are pleased about. We do not think that there is a funding issue in the way that Mary Scanlon has suggested.

The Convener: The Local Government and Transport Committee is also taking evidence on the bill. I understand that COSLA either has given or will give evidence to that committee, and that evidence will of course inform our final report.

I call Cathie Craigie.

Mary Scanlon: I am sorry, convener, but the witness did not answer my second question.

The Convener: I will take Cathie Craigie and then come back to you.

Cathie Craigie: We all want to ensure that local authorities are properly resourced to meet any additional responsibilities that are placed on them. However, on the wide-ranging consultation that the Executive has conducted over the past few months, will you confirm my feeling that the culprits who indulge in antisocial behaviour are a very small minority of the population? It will not take many tens of ASBOs to deal with that

minority. Have the resulting benefits to the community—such as less vandalism and fewer calls for the police and local authority officers to attend—been taken into account in considering the final costs of the proposed legislation?

Alisdair McIntosh: You are absolutely right. Strong evidence suggests that tackling that small minority will bring considerably wider benefits. That ethos lies behind the proposals in the bill.

The Convener: Mary, do you have a final brief point?

Mary Scanlon: I am waiting for an answer to my question about why no money has been allocated to the police for the powers of dispersal.

Michael Kellet: Catherine Brown might want to supplement my response. Although the authorisation to disperse a crowd is given by a senior police officer or superintendent, any police officer or individual constable would use the power on the ground. The Executive feels that the police's responsibilities already include dealing with antisocial behaviour by groups of people in communities and that, therefore, we are not imposing another responsibility on them. Instead, we are giving them an extra tool to deal with the problem.

The Convener: With that, I thank the witnesses for attending the meeting. At the beginning, you were at pains to apologise for coming mob-handed; however, I think that members will agree that the evidence session has been very productive. I know that you want to follow up on one or two points, and we will be interested to hear from you.

12:10

Meeting suspended until 12:12 and thereafter continued in private until 12:25.

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