

Briefing

Shelter's briefing on the Anti-Social Behaviour (Scotland) Bill

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Shelter

The Scottish Executive made the issue of anti-social behaviour a priority in its partnership agreement, published earlier this year. A bill to tackle the problem was introduced to parliament on the 29 October 2003. This briefing gives initial comment from Shelter on the Anti-Social Behaviour etc. (Scotland) Bill. A more substantial briefing will be made available in advance of Stage One of the bill's passage through parliament.

The key provisions in the bill:

- The bill extends the use of ASBOs to those aged 12 and over.
- It gives the police new powers to tackle the problem of anti-social behaviour, including powers of dispersal, Closure Orders and Community Reparation Orders.
- It increases the use of fixed penalties for acts of anti-social behaviour.
- It introduces provisions intended to ensure that private landlords manage the anti-social behaviour of their tenants.

The bill introduces a range of measures to tackle anti-social behaviour. When commenting on the bill, Shelter Scotland will stay within its specific area of expertise; those provisions which relate to, or impact on, housing and homelessness.

What works?

In our response to the government's consultation document 'A Strategy to Tackle Anti-Social Behaviour', Shelter called for an approach to anti-social behaviour based on what works. Unfortunately, some elements of the bill have a less than convincing evidence base, and as a result may not be effective in achieving their policy intentions.

- The bill proposes the introduction of measures to ensure that private landlords respond to any anti-social behaviour that is carried out by their tenants. By serving an anti-social behaviour notice on the landlord, a sheriff would then prescribe the kind of action that the landlord should take to respond to the behaviour. If the landlord does not follow the notice, the sheriff could order that no rent is paid to the landlord and that management of the property is passed to the local authority. Shelter agrees that measures should be taken to ensure that landlords manage the behaviour of their tenants. However, the law must act as a tool to encourage rather than force landlords to respond to anti-social behaviour. Otherwise, there is a risk that illegal evictions will increase if landlords don't receive rent because they have failed to take action on their tenant's behaviour. Anti-social behaviour notices must provide practical guidance to landlords on how to deal with bad behaviour by tenants; the tasks and timescale set must be realistic.
- The bill proposes giving local authorities the power to require all privately let property in a defined area to be registered. Shelter questions the potential effectiveness of this proposal. The bill gives no indication of how the criteria for dictating how an area is defined would be developed. We believe a more effective solution would be to introduce a mandatory certification scheme for all private landlords. In this case, all landlords would have to be certified before they could legally let out their property. All landlords would therefore have to register their own

contact details so that the local authority or police could contact them should their help be required in managing the behaviour of a tenant. Shelter recommended such a scheme to the Housing Improvement Task Force earlier this year, and in our response to the government's strategy to tackle anti-social behaviour. We believe it would be simpler to administer than a patchwork of varying local schemes.

- While Shelter accepts the reasoning behind giving local authorities the power to take over the management of individual properties, such a proposal has not worked in the case of HMOs, and we believe will be equally difficult to administer in terms of other private property. There is also a problem of principle: responses to anti-social behaviour should not be applied differently for owners than for tenants. It is the behaviour that matters, not the tenure.

Ending anti-social behaviour

Policies to tackle anti-social behaviour must fit within, and complement, the current social policy agenda. Shelter has a number of concerns regarding the bill.

Shelter supported the use of anti-social behaviour orders in the Crime and Disorder Act 1998 as a potentially constructive and effective approach to anti-social behaviour. An ASBO impacts directly on the behaviour of the perpetrator, and not other members of their household. However, during the passage of the Housing (Scotland) Act 2001, a provision was introduced which linked ASBOs to security of tenure, resulting in a situation whereby a household's full tenancy would be converted to a short tenancy, with far less security of tenure. Shelter opposed linking ASBOs to security of tenure on the grounds that it would lead to homelessness, and result in punishment of a whole family on the basis of the behaviour of one individual, sometimes in situations quite unrelated to their housing circumstances.

The bill continues this link between ASBOs and security of tenure. According to its Policy Memorandum, 'it is the Executive's intention that ASBOs for under 16s will be linked to provisions in the Housing (Scotland) Act 2001 in the same way as ASBOs for over 16s at present'. Extending ASBOs to under-16s would mean that the behaviour of a child could result in a household having their tenancy converted to a short tenancy. Under a short tenancy, a landlord can evict without relying on grounds at the contractual end of the tenancy, even if the reason for eviction was quite separate from the premise on which the tenancy was converted. A situation could therefore exist whereby an ASBO is served on a twelve year-old child, the family could have their tenancy converted to a short tenancy, and could in turn be evicted for a separate reason, such as rent arrears. Bad behaviour by a child could result in eviction for a whole household, and a family made homeless. Shelter is very concerned at the potential for such a scenario, and for this reason opposes the extension of the use of ASBOs to under-16s.

This situation puts implementation of the Homelessness Task Force recommendations in jeopardy. Practitioners all over Scotland are engaging with a new culture of providing services to homeless people. Linking ASBOs for under-16s with security of tenure calls into question how actions to tackle anti-social behaviour fit alongside progressive homelessness policies.

The bill gives the police a power to apply to the courts for a closure order on premises. The policy intention is to 'provide and police and courts with powers to seal off premises swiftly where other measures to tackle anti-social behaviour have failed.' A closure order being placed on a property results in that premises being secured against entry by any person. Shelter is very concerned that closure orders could potentially be served on private residences. This could mean that on the basis of the actions of one person within a household or HMO, a property could be closed for a fixed amount of time. Preventing individuals from gaining access to their private residence means effectively making them homeless. This raises serious concerns for Shelter. Policies to tackle anti-social behaviour must be effective, and must not damage existing housing and homelessness policies. This part of the bill disregards ongoing work to resolve homelessness, in an effort to get anti-social behaviour under control.

Conclusion

Some provisions in the bill will help to tackle anti-social behaviour. The provisions regarding noise nuisance are a potential effective solution to the problem, which could also act as a welcome alternative to eviction. Unfortunately, parts of the bill will fail to achieve their policy intentions. For example, Shelter is convinced that to ensure better management of tenancies by landlords, all landlords in Scotland must be required to register. Setting designated areas will be unwieldy and ultimately ineffective.

Attempts to tackle anti-social behaviour must solve problems without creating new ones. The link between ASBOs and tenure risks increasing evictions and homelessness. Creating a scenario whereby the actions of one child can impact on the housing of a household will cause more problems than it solves.

In our response to the government's strategy to tackle anti-social behaviour, Shelter referred to the government's own research which stated that existing laws were sufficient to tackle anti-social behaviour¹. We continue to believe that resources are best used in developing non-legal approaches to the problem. While this bill will provide some potentially constructive approaches to anti-social behaviour, and alternatives to eviction, there is a risk that other progressive policies, will suffer as a result. Communities in Scotland deserve to see an end to anti-social behaviour. However, this should not be at the expense of other policies, like policies to end homelessness. If this happens, those same communities will be rid of one problem and faced with another.

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¹ Atkinson et al *The Use of Civil and Legal Remedies for Neighbour Nuisance in Scotland*, Scottish Executive, 2000.