RESEARCH PAPER 03/34
4 APRIL 2003

The *Anti-social Behaviour Bill*

Bill 83 of 2002-03

The *Anti-social Behaviour Bill* was published on 27 March 2003 and is due for its Second Reading on 8 April. It is a multi-faceted Bill that takes forward a number of the Government's proposals for tackling anti-social behaviour. The Government's policy on this was outlined in the March 2003 White Paper *Respect and Responsibility - Taking a Stand against Anti-Social Behaviour* (Cm 5778).

Elena Ares, Gavin Berman, Sally Broadbridge, Rob Clements, Grahame Danby, Christine Gillie, Stephen McGinness, Pat Strickland, Wendy Wilson, Ross Young

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ISSN 1368-8456

Summary of main points

A recurring theme of the Government's policies since 1997 has been the tackling of anti-social behaviour. The Government has introduced a number of measures aimed at dealing with various aspects of such behaviour which, as it says, means different things to different people. Anti-social behaviour can range from the problem of noisy neighbours to 'crack houses' and from begging, litter and graffiti to the use of airguns and abuse of fireworks. Many of these measures, including Anti-Social Behaviour Orders, were introduced by the *Crime and Disorder Act 1998* and the *Criminal Justice and Police Act 2001*.

The White Paper *Respect and responsibility – taking a stand against anti-social behaviour* (Cm 5778) was published on 12 March 2003. It reviewed the Government's actions to date and set out its next steps for dealing with the problem. Some of these are included in the - *Anti-social Behaviour Bill*, which had been foreshadowed in the 2002 Queen's Speech and which was published on 27 March. Others will be taken forward through separate legislation, some of which is currently before Parliament, and in other ways.

The Bill's main provisions seek to:

- close 'crack houses'
- extend landlords' powers to deal with anti-social behaviour in social housing
- provide the means for schools, local authorities and youth offending teams to work with parents in preventing and tackling anti-social behaviour by their children
- increase the powers of community support officers and certain other civilians in tackling low level crime and nuisance behaviour
- introduce new powers to disperse groups
- improve the operation of anti-social behaviour orders
- widen the use of fixed penalty notices
- restrict the use of air weapons and ban the possession of imitation guns in public
- widen powers to close establishments that create noise nuisance
- make it an offence to sell spray paints to under 18s
- give stronger powers to local authorities to tackle fly-tipping, graffiti and fly-posting

Initial reaction to the Bill and the White Paper has welcomed some of the proposals but expressed concern at others. In particular, some commentators have said that more effort should be put into tackling underlying social problems and into making existing laws work rather than introducing more new powers.

The Bill extends to England and Wales, with the exception of Part 6, on firearms, which also covers Scotland.

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I Introduction

A. What is anti-social behaviour?

The term "anti-social behaviour" has different meanings according to the context in which it is used. This was emphasized, at the outset, in the White Paper, *Respect and Responsibility – Taking a Stand Against Anti-Social Behaviour*, published on 12 March 2003:

> Anti-social behaviour means different things to different people – noisy neighbours who ruin the lives of those around them, 'crack houses' run by drug dealers, drunken 'yobs' taking over town centres, people begging by cash-points, abandoned cars, litter and graffiti, young people using airguns to threaten and intimidate or people using fireworks as weapons.[1]

While most crime may be generally categorised as anti-social behaviour, the converse is not true. Behaviour is not automatically criminal just because it is anti-social, although the White Paper does go on to say:

> As a society we have rules and standards of behaviour. For the minority who flout these rules and standards, we must take action to enforce them.

In giving evidence to the Home Affairs Committee, Home Office Minister Bob Ainsworth agreed that the Government was effectively calling for a cultural change, for communities to become more willing to take a stand against anti-social behaviour.[2]

B. Sanctions

The *Anti-social Behaviour Bill*, which was introduced in the House of Commons 15 days after the White Paper was published, is the latest in a series of measures with that aim.[3] It would create some new offences, and confer a number of new powers on the police and other authorities, as well as extending some existing sanctions. Some of those build on previous measures which have the effect of criminalising acts which would not amount to an offence under the general law, when a person does them in contravention of a court order which has been made against him.

The concept is not entirely new. For many years the courts have exercised penal sanctions against people who disobey court orders, doing things which are not criminal, as

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1 The White Paper (Cm 5778) is available electronically at http://www.official-documents.co.uk/document/cm57/5778/5778.pdf

2 Uncorrected evidence, presented to the Committee on 25 March 2003, http://www.publications.parliament.uk/pa/cm200203/cmselect/cmhaff/uc568/uc56802.htm

3 The *Anti-social Behaviour Bill*, Bill 83 of 2002-03, is also available electronically, at http://pubs1.tso.parliament.uk/pa/cm200203/cmbills/083/2003083.htm

contempt of court. But the use of the criminal law, to provide sanctions for disobedience to court orders, is a relatively recent development. The *Protection from Harassment Act 1997*, which has wide application although it was particularly intended to deal with the phenomenon of "stalking", had the effect of providing that particular courses of conduct would be both a criminal offence and the subject of a claim in civil proceedings. Moreover, breach of a non-harassment order, made in the civil court, would itself be a criminal offence as well as a contempt. And the criminal courts were given power to make restraining orders (broadly based on the civil courts' power to grant injunctions), breach of which would amount to a further criminal offence. In both cases the order could prohibit a person from doing something which would not otherwise be a criminal offence, such as going within a prohibited distance from another person's home, so that doing so would be a criminal offence by that person.

C. Measures introduced since 1997

These anti-harassment provisions appear to be the model for the anti-social behaviour order (commonly called an "ASBO") introduced by Part 1 of the *Crime and Disorder Act 1998*. The ASBO is one of the raft of measures which have been introduced to combat anti-social behaviour under the 1998 Act and the *Criminal Justice and Police Act 2001*. Others include:

Crime and Disorder Act 1998

- Crime and disorder strategies (ss5-7)
- Parenting orders (ss8-10)
- Local child curfew schemes (ss14-15)
- Reparation orders (ss67-68)
- Action plan orders (ss69-70)

Criminal Justice and Police Act 2001

- Fixed penalty notices (ss1-7)

A brief outline of each is given below.

1. Anti-social behaviour orders

Section 1 of the *Crime and Disorder Act 1998* introduced ASBOs and authorised local authorities and the police to apply to the magistrates' courts for them in circumstances where an individual over 10 years of age has acted "in a manner that caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household" and an ASBO is necessary to protect persons in that local government area from further antisocial acts by that individual.

The acts complained of do not have to amount to criminal offences (although they may do). However, courts should apply the criminal standard of proof, despite the fact that the

House of Lords has recently held that applications for ASBOs are civil proceedings in domestic law, and do not involve the determination of a criminal charge for the purposes of *Article 6* of the *European Convention on Human Rights*.[4]

The ASBO may prohibit *any* act or behaviour and will have effect for a specified period of at least two years, or indefinitely until the court makes an order discharging or varying it. It was intended that orders should be targeted at criminal or sub-criminal behaviour, not minor disputes between neighbours or matters which could be dealt with effectively under other legislation. Examples of cases where it was anticipated that ASBOs might be appropriate included:

> - where individuals intimidate neighbours and others through threats or violence or a mixture of unpleasant actions;
> - where there is persistent unruly behaviour by a small group of individuals on a housing estate or other local area, who may dominate others and use minor damage to property and fear of retaliation, possibly at unsociable hours, as a means of intimidating other people;
> - where there are families whose anti-social behaviour, when challenged, leads to verbal abuse, vandalism, threats and graffiti, sometimes using children as the vehicle for action against neighbouring families;
> - where there is persistent abusive behaviour towards elderly people or towards mentally ill or disabled people causing them fear and distress;
> - where there is serious and persistent bullying of children on an organised basis in public recreation grounds or on the way to school or within the school grounds if normal school disciplinary procedures do not stop the behaviour;
> - where there is persistent racial harassment or homophobic behaviour;
> - where there is persistent anti-social behaviour as a result of drugs or alcohol misuse.[5]

The Home Office website contains information and guidance on the use of ASBOs and gives a list of types of behaviour incidents and complaints which are examples of anti-social behaviour:

- Noise
- Using & selling drugs
- Unkempt gardens (e.g. those which attract dumping of goods, creating ‘eyesores’)
- Alcohol and solvent abuse
- Criminal behaviour
- Prostitution
- Verbal abuse

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[4] Clingham (formerly C (a minor)) v Royal Borough of Kensington and Chelsea; Regina v Crown Court at Manchester Ex p McCann (FC) and Others (FC) 17 October 2002, [2002] UKHL 39

[5] http://www.homeoffice.gov.uk/cdact/asbo.htm

- Uncontrolled pets and animals
- Intimidating gatherings of young people in public places
- Harassment (including racist & homophobic incidents)
- Damage to property (including graffiti & vandalism)
- Intimidation
- Nuisance from vehicles (including parking & abandonment)
- Nuisance from business use
- Rubbish dumping and misuse of communal areas
- Riding/cycling on footpaths
- Aggressive begging

In December 2002, Cheltenham magistrates made an ASBO which included a condition that a man should not be in possession of or consume alcohol anywhere in England and Wales for the next three years.[6]

a. Use of ASBOs

Although the provisions came into force in April 1999, very little use was made of them at first. Among the reasons suggested were that councils did not know enough about ASBOs or had not seen their full potential, that applicants had found that the procedure was not quick, easy and cheap as they had anticipated and fears that applications would be challenged as being racially or otherwise discriminatory, or as contravening human rights legislation. In February 2001, the then Home Secretary, Jack Straw, drew protest from the legal profession by suggesting that some of their clients were too vigorously defended:

> Yesterday's comments were made in relation to court challenges to the Home Office's anti-social behaviour orders. Mr Straw said: "Very aggressive defence lawyers sometimes forget about their wider social responsibilities and their responsibilities to the court, and, in trying to protect their niche markets with the local criminal fraternity, act in a way which would have been unacceptable when I was practising 25 years ago."[7]

Some reports of successful use began to appear in the press. In 2000, police heralded the use of ASBOs to banish prostitutes from the streets where they work as a new and effective deterrent[8]. In February 2001, Medway magistrates granted ASBOs against a group of children accused of -

> a catalogue of unacceptable behaviour, including causing damage, theft, intimidation, threats, swearing and even an alleged arson attack[9]

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6 "Man faces sober future under antisocial order", 24 December 2002, *The Guardian*
7 *Straw raps 'greedy and aggressive' lawyers*: 28 Feb 2001 The Independent
8 *Curbing street sex*: 2000 Police Review pp22-24
9 *The triplet tearaways:* Daily Telegraph 15 Feb 2001

But the slow take-up continued to cause concern. On 2nd July 2001, in answer to oral questions, the Home Secretary said that up to March 2001, only 214 antisocial behaviour orders had been issued across England and Wales.[10] 33 of the 43 police authority areas had been responsible for their issue. He hoped very much that there would be an acceleration in that programme. He added:

> I hope that, by examining any suggestions for slimming down the procedures and speeding up the process, we shall be able to persuade local authorities and the police to take them up. Of course, they are civil orders--and were opposed for that reason--as opposed to criminal orders which are available as part of broader community sentencing.
>
> I read in The Times this morning an article that suggested that I was about to abandon antisocial behaviour orders. The article was full of all sorts of other inaccuracies. I want to make it clear that, far from abandoning them, I want to strengthen them and spread them more widely.

Humfrey Malins commented on the difference between the predictions and the use actually made of ASBOs:

> Three years ago, when considering the proposals in Committee, I warned the Government that antisocial behaviour orders would be unworkable and over-bureaucratic. Ministers responded that more than 5,000 would probably be made every year. Is not the fact that only just over 200 have been made evidence that this flagship policy has been an utter failure and flop? What will the Government do to stop these orders? They are an absolute waste of time. [11]

During 2001-02, the number of ASBOs issues increased somewhat. The latest figures, for the period ending 30 November 2002, show that - in all - 785 antisocial behaviour orders had been granted (and 29 refused), and there was only one police force area that had not been responsible for the issue of at least one order.[12]

b. Home Office Research Study

On 2 April 2002, the Home Office published *A review of anti-social behaviour orders*[13], pursuant to a commitment the Government made during the passage of the *Crime and Disorder Bill*, to review ASBOs after 2 years. The Review evaluated the effectiveness of ASBOs in dealing with anti-social behaviour, identified best practice in how they were

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10 later revised to 215 orders issued in 34 police force areas
11 HC Deb 2 Jul 2001 Col 8
12 www.crimereduction.gov.uk
13 http://www.homeoffice.gov.uk/rds/pdfs2/hors236.pdf

being used, looked at the concerns of practitioners and made recommendations. It concluded that:

> The overall opinion in the areas visited was generally positive. When used successfully, ASBOs have managed to curb unruly behaviour, help rebuild the quality of life in communities and cement good relationships both between partner agencies and between these agencies and the community. Reservations focused on poor relationships with one of the links in the ASBO chain – the local authority, the police or the courts. Co-operation is needed from all agencies, and experience and time are needed for the process of working in partnership and applying for ASBOs to bed-down. However, in the absence of cooperation, local strategies need to be developed to deal with local situations.
>
> Delays in the process are a major concern. There are a number of reasons for this, but they can be tackled by streamlining local processes for dealing with anti-social behaviour; setting timeframes for each stage of the process; allowing key staff time to develop the case; using other agencies to collect evidence where appropriate; and having strategic support.
>
> Some areas of the country are using many ASBOs, whereas others are using very few. This can be because of a lack of strategic support or disillusionment, or else the result of a variety of strategies dealing with anti-social behaviour, tackling the behaviour but not necessarily using ASBOs.
>
> Resources were also a concern for some, although it was acknowledged that a successful ASBO should free up resources in staff time, support and repairs. However, to legal departments ASBOs represent extra work without savings in any other aspect of their work.

The 12 recommendations were:

> • Local areas need to develop streamlined time-limited strategies to deal with antisocial behaviour to overcome delays and unnecessary bureaucracy.
> • An information resource or network should be provided to give support and encouragement to individual agencies' attempts to tackle anti-social behaviour and troubleshoot potential problems.
> • Each agency should be able to demonstrate their commitment to talking anti-social behaviour either alone or in partnership by demonstrating strategies and their outcomes.
> • Outside agencies should be invited onto problem-solving groups and given training by partners on their anti-social behaviour strategy.
> • All partnerships should have clear procedures in place to ensure ASBOs are enforced and breaches prosecuted.
> • Registered social landlords need to be able to deal with their anti-social behaviour problems in as effective and timely a manner as their statutory partners, as do the British Transport Police.
> • Local attempts need to be made to develop a two-way understanding between the courts and partnerships: training and feedback to the courts would be useful and lead to a demonstrably consistent approach.

> • Those responsible for administering the civil legal aid system should pay urgent attention to speeding up the process of obtaining legal aid in ASBO cases.
> • Problem-solving would be helped if small funds were available to pay for diversion initiatives.
> • Local areas should develop clear strategies to protect witnesses both before and after the order is granted, while managing their expectations.
> • In the absence of speedy court processes, interim orders should be considered to ensure witness protection and a timely end to the problem behaviour.
> • Strategies should be developed centrally to assist local areas to monitor the use and effectiveness of ASBO and other anti-social behaviour initiatives. This information should also be communicated to the community.

c. Police Reform Act 2002

The ASBO provisions were extended by Government amendments, at Lords Committee stage, to the Bill which became the *Police Reform Act* 2002. The Joint Committee on Human Rights, which published its report on *the Police Reform Bill* in March 2002, expressed concern that these measures, which had important human rights implications, had not been included in the Bill as published. Thus they were not covered either by the Explanatory Notes, or by the Minister's statement under s19 of the *Human Rights Act 1998*: the Committee considered that there had been no justification of urgency. The principal changes made were:

- enabling the courts to make orders irrespective of the local government area in which the initial acts of anti-social behaviour were carried out
- adding the British Transport Police and registered social landlords to the list of relevant authorities able to apply for orders
- enabling relevant authorities to apply to the county court in certain circumstances for ASBOs
- enabling criminal courts to make an order prohibiting a defendant from doing anything described in the order where the defendant has been convicted of an offence committed after the coming into force of the section
- adding the power for courts to make interim orders before the full application process is complete, if the court considers it just to do so

The Act also conferred power on a uniformed constable to require a name and address from a person he believes has been acting, or is acting, in an anti-social manner and made it an offence for a person to fail to give his name and address when so required, or to give a false or inaccurate name. The human rights organisation Liberty commented on that proposal as follows:-

> We object to this provision as a further muddling of the criminal and civil law aspects of anti-social behaviour orders. According to the government ASBOs are not a criminal offence. We therefore fail to see the justification for creating a criminal offence of failing to give a name and address when stopped on mere suspicion of committing a non-criminal offence when it is not even a criminal

> offence to fail to give a name and address in respect of criminal offences such as murder.

Most of the amendments came into force in December 2002.

One offshoot of ASBOs, which has no statutory basis, is the "acceptable behaviour contract". These were pioneered by Islington LBC in association with the police and Islington Community Safety Partnership. They provide an alternative to legal action. They are defined in Appendix G of the Home Office guidance Local ASBO Protocols as:

> an individual written agreement by a young person with a partner agency and the police not to carry on with certain identifiable acts, which could be construed as anti social behaviour.[14]

Although the term 'contract' is used, an acceptable behaviour contract is not a legally binding document.

2. Crime and disorder strategies

Section 5 of the *Crime and Disorder Act 1998* placed on local authorities and the police a joint responsibility for the formulation of crime and disorder reduction strategies in each district, borough or unitary local authority area in England and Wales. This duty applies equally to county councils where they still exist even though the strategies themselves must concentrate on the district area. The Act placed a legal obligation upon police authorities, probation committees and health authorities to co-operate fully in this work. It also gave the Home Secretary power to extend that obligation by order of Parliament to any other person or body he chooses; and by similar means to require local authorities and the police to ensure that other specified people or organisations are invited to contribute to the process. These latter provisions were intended to ensure that there was adequate scope for input by the local business and voluntary sectors and others.

Section 6 requires local authorities and the police to draw up and implement a strategy for reducing crime and disorder in their area. The first step is to conduct a thorough review of the levels and patterns of crime and disorder (the Crime and Disorder Audit), consulting widely in the local community. An analysis of the results must be prepared and published locally, and the views of people and bodies in the area of the analysis must then be obtained. A strategy for tackling crime and disorder, including targets, must be developed, based on the analysis and the views obtained on it. The local authority and the police in the local area must publish details of the entire process, including ownership of targets and performance against them. Strategies will be expected to run for three years but they must be kept under review during that period.

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[14] http://www.homeoffice.gov.uk/cdact/asboapg.htm

3. Parenting orders

Parenting orders were introduced by s8 of the *Crime and Disorder Act 1998*. They were implemented across England and Wales on 1 June 2000 following pilots which ran in a number of areas from 30 September 1998 to 31 March 2000.[15] By the end of September 2002, 3,121 parenting orders had been made[16] and, by March 2003, the Home Secretary said that there had been 'almost 4,000'.[17]

> A parenting order may be imposed in any court proceedings where:
>
> (a) a child safety order has been made (section 8(1)(a));
>
> (b) an anti-social behaviour order or sex offender order has been made in respect of a child or young person (section 8(1)(b));
>
> (c) a child or young person has been convicted of an offence (section 8(1)(c)); or
>
> (d) a person has been convicted of an offence under section 443 (failure to comply with school attendance order) or section 444 (failure to secure regular attendance at school of registered pupil) of the Education Act 1996 (section 8(1)(d)).

Failure to comply with a parenting order can result in criminal proceedings for breach. The parenting order can consist of two elements. The first imposes a requirement on the parent or guardian to attend counselling or guidance sessions where they will receive help and support in dealing with their child. This element will normally form the core of the parenting order and must normally be imposed in all cases when an order is made. The second element is discretionary, and can require the parent or guardian to exercise control over their child's behaviour. These could include seeing that the child gets to school every day, or ensuring that he or she is home by a certain time at night. All elements of the parenting order are supervised by the responsible officer, who will generally be a member of the local youth offending team ("YOT").

YOTs are charged with responsibility of providing or identifying suitable services for parents who are subject to parenting orders and other parents who might benefit from preventive intervention. The Youth Justice Board's Parenting Programme funded the development of 42 new parenting projects across England, set up and run by YOTs in partnership with other local agencies. A three year national evaluation of the effectiveness

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15 Crime and Disorder Act 1998 (Commencement No 2 and Transitional Provisions) Order 1998 SI 1998/2327

16 HC Deb 18 December 2002 c846-8W

17 HC Deb 12 March 2003 c295

of the Programme was carried out by the independent Policy Research Bureau, whose report was published in September 2002.[18] The overall conclusions were:

> The successful establishment of many thriving parent support projects within the context of the youth justice system was a major achievement of the Programme. There is now a growing body of expertise in this field and the time is ripe to draw this together, consolidate the learning, and document models of successful practice.
>
> Although short-term programmes aimed at parents may be thought unlikely to have much immediate impact on young people's behaviour, there were some encouraging signs for young people associated with the Parenting Programme. These included mild improvements in young people's perceptions of the parent-child relationship, and drops in official reconviction rates. There were also some reasons to think the Programme might have a 'preventive' effect for later generations of children.
>
> The Parenting Programme was clearly successful in having an impact on parents, according to both parents and staff. In the short term at least, participation in the Parenting Programme was associated with positive improvements in parenting skills and parent-child relationships, and with high satisfaction levels. Parents referred by Order and those attending voluntarily showed similar levels of benefit. Further research would, however, be needed to see if the benefits persisted in the longer term. Moreover, even though many parents felt 'reprimanded' when referred to a parenting support project – especially if they had also received a Parenting Order – the supportive (rather than punitive) reality of the projects was successful at dissolving initial reservations.
>
> There does seem to be a place, in both policy and practice terms, for Parenting Orders. These may be a powerful way of reaching some parents who might otherwise never manage to set foot over the threshold of a parenting support service. However, a system which privileged a genuinely voluntary route, but with Parenting Orders held in reserve where voluntary engagement had failed might prove more acceptable to family support providers, opinion formers and parents themselves. This would help to reduce the initial barriers to engagement with a service arising out of parents' distress at receiving a Court Order, and help minimise the number of parents being drawn into the criminal justice system.

4. Local child curfew schemes

Sections 14 and 15 of the 1998 Act put in place arrangements for local authorities to introduce local child curfew schemes to deal with the problem of unsupervised children under ten on the streets late at night. Schemes may be made by local authorities after consulting the local police, but have to be confirmed by the Secretary of State before they can take effect. A police officer who has reason to believe that a child has breached a curfew notice must return the child home.

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[18] "Positive Parenting: The National Evaluation of the Youth Justice Board's Parenting Programme", 2 September 2002, http://www.youth-justice-board.gov.uk/policy/positive_parenting.pdf

Although these provisions came into force in September 1998, they have not been used. A BBC survey in 1999 showed a lack of enthusiasm among local authorities.

> The BBC survey found that 87% of the local councils questioned said they were unlikely to use curfew measures set out in the Crime and Disorder Act in the coming year.
> (…)
> Many councils told the survey they were worried about crime among under-10s, but did not see them as a particular problem in their plans for fighting crime. Most said they could see no use for curfews.
>
> Ian Tresseden, of Coventry Council, said the city would prefer to see a welfare-based approach to dealing with young troublemakers.
>
> > "We'd not be wanting to criminalise under-10s - we'd be wanting to intervene positively with those children.
> >
> > "Once police are involved with young people there is a tendency for those children to be labelled as bad ones."
>
> Paul Ennals, director of the National Children's Bureau, believes that the curfew laws will be forgotten in a few years.
>
> "I think this legislation will be seen as one of those mistakes which governments make when they think they are responding to popular demand," Mr Ennals told the BBC.
> (…)
> Home Office Minister Paul Boateng insists that the powers contained in the act are important.
>
> "Where under-10s are identified as presenting a particular problem, then the local authority, with the police, having consulted the whole community, ought to have the powers available to them to cope with that."
>
> Mr Boateng said the presence of children on the streets at night was an indication of a problem that needed to be tackled.
>
> "Far from criminalising them, what the child curfew order does is to enable the police to take them home and then to require the local authority - the social services department - to come along and find out what the problem was."[19]

In August 2001 the power was extended, by the *Criminal Justice and Police Act* 2001, so that schemes could be made by the police as well as local authorities, and could apply to children under 16. In 2002, police planned to introduce a scheme in Corby, but the proposal was abandoned.

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[19] http://news.bbc.co.uk/1/hi/uk/345410.stm

> Police in Corby were keen to implement the scheme to combat a rise in youth crime in the town. In one area on the edge of the Kingswood estate, shopkeepers complained of having their windows smashed and of frequent lootings. Opposition to the curfew came mostly from Labour councillors.
>
> Yesterday Rob Hearne, the council leader, said: "We felt that it was too heavy handed to do it and that it would be sending the wrong message out. The majority of children in Corby are good kids."[20]

In answer to a written question in January 2003, John Denham said:

> No applications have yet been received to establish a local child curfew scheme under section 14 of the Crime and Disorder Act 1998. Some local authorities and police forces have considered the possibility, but concluded that other measures should be taken to tackle specific local problems.[21]

This remains the case.

5. Reparation orders

These orders, introduced by s67 of the 1998 Act, require young offenders to make specific reparation either to the individual victim or the community. The reparation must be commensurate with the seriousness of the offence(s) for which the order is being given, but may not exceed a total of 24 hours in aggregate. It must be made within three months of the making of the order, and may not be made to any person without their consent. Reparation under the order might involve writing a letter of apology, apologising to the victim in person, cleaning graffiti or repairing criminal damage for which the offender has been responsible. Where the victim of the offence does not wish to receive direct reparation, reparative activity appropriate to the nature of the offence may be made to the community at large.

YOTs are responsible for co-ordinating arrangements for the provision of reports to the courts and communicating with the victim to ascertain whether reparation is appropriate. A reparation order cannot be combined with a custodial sentence, or with a community service order, a combination order, a supervision order or an action plan order.

By the end of September 2002, 18,368 reparation orders had been made in England and Wales.[22]

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[20] "Town shelves child curfew", 3 Oct 2002, *The Telegraph*
[21] HC Deb 16 Jan 2003 c756W
[22] HC Deb 18 Dec 2002 c846-8W

6. Action plan orders

Action plan orders were introduced by ss 69 and 70 of the 1998 Act, making provision for a new community sentence specifically tailored to address the cause of a child or young person's offending behaviour. The action plan order is available where a child or young person aged 10-17 is convicted of any offence other than one for which the sentence is fixed by law.

The action plan order is a community order for the purposes of Part 1 of the Criminal Justice Act 1991. The court may make an action plan order when it considers that to do so will prevent re-offending or rehabilitate the offender. Such an order will require the offender to comply with a three month action plan, supervised by a probation officer, a social worker or a member of a youth offending team. The plan will impose certain requirements as to the offender's behaviour and whereabouts for the period of the order.

These orders are designed to provide a short but intensive and individually tailored response to offending behaviour, so that the causes of that offending as well as the offending itself can be addressed. This may include making reparation to the victim if this is considered appropriate and the victim consents. The order places certain requirements on the young offender who is supervised by a responsible officer. These requirements must last for three months in total.

By the end of September 2002, 20,444 action plan orders had been made in England and Wales.[23]

7. Fixed penalty notices for disorderly behaviour

Fixed penalties have been familiar in the context of parking and some driving offences for many years.[24] They have also been used for some customs and excise infringements, and local authorities have powers to issue fixed penalty notices to those accused of littering and allowing dogs to foul public spaces.

In June 2000, the Prime Minister suggested that police should be given the power to impose on-the-spot fines to drunken louts, to deter drunken and anti-social behaviour.[25] The suggestion was not taken up. Sir John Evans of the Association of Chief Police Officers explained that the collection of cash by police was not a practical idea: forces did not have that kind of provision.[26]

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23 ibid

24 they were introduced by the *Transport Act 1982*, which came into force in 1986.

25 "Blair: fine louts on the spot", 30 June 2000, BBC News, http://news.bbc.co.uk/1/hi/uk_politics/812935.stm

26 "Blair backs down on fining 'louts'", 3 July 2000, BBC News, http://news.bbc.co.uk/1/hi/uk_politics/816949.stm

In September 2000, the Home Office issued a consultation paper seeking views on a proposal to introduce fixed penalty notices in dealing with disorderly behaviour, and asking specifically:

- What offences involving disorder should be covered by the fixed penalty system?
- What should the fixed penalty be?
- What should be the lower age limit for receipt of fixed penalties?
- Should there be a limit on the number of fixed penalty notices that an individual can receive before being prosecuted?
- What ancillary powers are needed to make the system work?

The result was ss1-7 of the *Criminal Justice and Police Act 2001*. Under these provisions a constable who has reason to believe that a person aged 18 or over has committed a "penalty offence" may give that person a "penalty notice". A "penalty notice" is a notice offering the opportunity by paying a penalty, to discharge any liability to be convicted of the offence (s2). A "penalty offence" is one of the offences listed in s1, and the Secretary of State has power to add to the list, by order. The offences currently on the list are:

- Being drunk in a highway, other public place or licensed premises
- Throwing fireworks in a thoroughfare
- Knowingly giving a false alarm to a fire brigade
- Trespassing on a railway
- Throwing stones etc at trains or other things on railways
- Buying or attempting to buy alcohol for consumption in a bar in licensed premises by a person under 18
- Disorderly behaviour while drunk in a public place
- Wasting police time or giving false report
- Using public telecommunications system for sending message known to be false in order to cause annoyance
- Behaviour likely to cause harassment, alarm or distress
- Consumption of alcohol in designated public place

The offence of behaviour likely to cause harassment, alarm or distress (under s5 of the *Public Order Act 1986*) had been in the Bill, but was one of two offences (the other was criminal damage) which were removed from the list during the Bill's passage through the House of Lords. But it was put back, under the order making power, before the provisions were brought into force in August 2002.[27]

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[27] The *Criminal Justice and Police Act 2001 (Commencement No 7) Order 2002*, SI 2002/2050, The *Criminal Justice and Police Act 2001 (Amendment) Order 2002*, SI 2002/1934

Lord Falconer of Thoroton explained:

> Section 5 does not involve racially motivated behaviour, the threat of violence or the intent to cause harassment, alarm or distress, which are covered in other offences and which would not be appropriate for penalty notice disposal.
>
> (…) We have had time to consider the matter in greater detail and in the light of representations made by the Association of Chief Police Officers. ACPO's view is that the penalty notice for disorder schemes would be seriously hampered by the omission of this offence. Its advice is that this offence is used operationally to deal with a very similar type of offending to that covered by Section 91 of the Criminal Justice Act 1967—disorderly behaviour while drunk in a public place. Section 91 is already a penalty offence. But while Section 91 requires the offender to be drunk, Section 5 does not. It is wider drawn and a significant number of offences currently occur under it. We believe that it would be anomalous for a person who is behaving in a disorderly manner and is drunk to receive a penalty notice but for a person behaving in a similar way who is not drunk not to be given a penalty notice.
>
> In the interests of consistency, we have accepted police representations that Section 5 of the Public Order Act should be added to the list of penalty offences and its use tested in the forthcoming pilots. ACPO's views on the need for the inclusion of this offence have received the strong support of the five police forces which will be running the pilots. They see the penalty notice for disorder scheme as providing an additional tool for dealing with low-level nuisance behaviour on the streets in a quick and effective way.[28]

Expressing disappointment at the re-inclusion, Lord Goodhart said:

> It is a matter of some considerable concern to us that, barely 12 months later, the proposal has comes back before this House in the form of a statutory instrument.
>
> This proposal was opposed on grounds of principle, particularly—as the noble Viscount, Lord Bridgeman, has said—because this offence carries a substantial subjective element. In particular, when the offence is one of threatening or insulting behaviour, one has to know who was threatened, who was insulted and whether the conduct was sufficient to cause a reasonable person to feel threatened or insulted. So it is not a classic penalty offence, which is simply a matter of either yes or no. One thinks of the original penalty offence; namely, a parking offence. In that case, someone is either wrongly parked or he is not. With this proposal there is a much more substantial subjective element, which makes it unsuitable for inclusion as a penalty offence.
>
> We are concerned also about the practicality. In particular, we believe that if an officer is trying to serve a penalty notice on someone who is threatening or

[28] HL Deb 21 Jun 2002 c 1030

> abusing him or someone else in the locality, it will prove a matter of some difficulty. We also have serious doubts as to whether penalty notices will be observed in terms of payment. It is our belief that this type of offence does not lend itself to the penalty notice procedure.
> (…)
> I want to make it clear that, although we shall not vote against this statutory instrument on this occasion, it is one with which we disagree.[29]

Pilot schemes, to last for a year, were launched in some areas in August 2002. The Home Office Crime Reduction website noted that the Police Forces involved had welcomed the new proposals as speeding up the administration of justice in tackling routine, low-level offences, but other organisations had expressed reservations about the scheme.[30] The Guardian reported some reactions:

> The Home Office said yesterday: "The project provides police with an additional tool to tackle nuisance crimes and intimidating behaviour which blights the lives of so many people." A spokesman added: "It will reduce the amount of police time spent on paperwork and courts' time in dealing with prosecutions, and yet provides a punishment for the offender."
>
> The higher level fines will be for offenders who use threatening behaviour or words causing alarm or distress, wasting police time, knowingly giving a false alarm to the fire brigade or sending false messages under the Telecommunications Act 1984.
>
> (…) Beat officers in Essex said that in almost all instances the offender would be arrested and taken to a police station to be issued with a notice, although officers would have the power if required to issue them on the spot.
>
> The initiative was given a cool response by the Metropolitan police federation chairman, Glen Smyth, who said officers would soon be walking around like bus conductors.
>
> Liberty, the human rights organisation, also expressed concern yesterday. "This scheme lumps together some trivial offences that shouldn't be criminal, and some more serious ones that are criminal and should be subject to the full process of law," said Mark Littlewood, its campaigns director.
>
> "Is treating both anti-social behaviour and potentially far more serious criminal acts in the same way as parking tickets really the way forward? It puts policemen in the position of having to be judge and jury for these offences.

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29 HL Deb 21 Jun 2002 c 1032

30 http://www.crimereduction.gov.uk/antisocialbehaviour8.htm

> "It's another shortcut scheme to get around the fact that our police and courts are struggling and under-resourced. The right answer is to give them more resources to enforce existing law properly and fairly." [31]

D. Further proposals

The Government's intention to introduce an Anti-social Behaviour Bill was announced in The Queen's Speech on 13 November 2002. Background notes published by the Home Office explained:

> The Government will be publishing both a strategy to combat anti-social behaviour and a green paper on dealing with the problems of children at risk. The Home Office will take responsibility for this work and will also bring forward a Bill. The Bill would cover a range of measures encompassing:
>
> - Making it easier to evict anti-social tenants;
> - Extending the application of fixed penalty notices and increasing the number of people who can enforce them;
> - Continuing to improve implementation of anti-social behaviour orders through the courts;
> - Measures to clear up the environment. Following up the consultation on public spaces by introducing measures to tackle graffiti, use of spray paints, and fly-tipping;
> - Measures to combat anti-social behaviour by young people including vandalism and dangerous use of airguns, fireworks and other anti-social behaviour that damages communities.

On 7 March 2003, several newspapers reported on a draft of the anticipated White Paper, which had apparently been leaked to *The Independent*, which said:

> Beggars will be handed criminal records - and fixed-penalty fines will be imposed on antisocial children as young as 10, under plans to be announced next week.
>
> A White Paper, leaked to The Independent, includes measures to crack down on "nuisance neighbours, yobs, drunks, drug users and beggars" and tackle problems from "dysfunctional" families.
> (…)
> The proposals are supported by Tony Blair and David Blunkett, the Home Secretary. But they will alarm some Labour MPs and fuel criticism that the Government is adopting "illiberal" measures.
>
> The 65-page report, "Winning Back Our Communities", takes a particularly hard line on beggars. It says the public feels intimidated by people begging and

[31] "Police pilot spot fines for 'yob' offences", 13 Aug 2002, *The Guardian*

states: "There is no need for anyone to beg in this country."

It denies claims there is a "no home, no benefit, no job" cycle, saying the homeless are entitled to benefits. "The reality is the majority of people who beg are doing so to sustain a drug habit and giving them money on the street does not serve to help them deal with their problems at all. Beggars are also very likely to be caught up in much more serious crime."

The White Paper says begging will be made a recordable offence, so convictions form part of a criminal record, and persistent offenders can be fingerprinted. After three convictions, courts will be able to impose a "community penalty" such as drug treatment or work in the community.

There is no mention of plans floated previously by Mr Blair to cut child benefit payments to the parents of truants or persistent offenders. They are believed to have been dropped after a cabinet rebellion.[32]

The leader added:

> These draconian laws will clog up our courts, not curb anti-social behaviour.
> (…)
> Two of the measures proposed in the White Paper … are particularly repugnant. One is the idea of criminalising begging… The second bad idea is the idea floated of cutting the age at which on-the-spot fines can be imposed to as young as 10.

It also commented that:

> the White Paper includes measures to try to deal with the vast pointlessness of unpaid fines, and to set up "community" courts to deal with low-level offences. It must be doubted whether merely introducing discounts for fines paid early would make any difference to the large number of people who have no intention of paying. As for new courts, simply prefixing them with the c-word will not conceal the fact that they are extra courts to handle extra work and that it might be more sensible to pass fewer laws and find other ways to reduce the workload.

The Home Secretary was reported to have said that he knew who had leaked the draft.[33]

E. The White Paper

The White Paper, *Respect and Responsibility – taking a stand against antisocial behaviour*, was published on 12 March.[34] A Home Office press notice announced:

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32 "Government to outlaw begging", 7 March 2003, *The Independent*

33 "David Blunkett", 18 March 2003, *The Times*

34 The White Paper Respect and Responsibility – Taking a Stand Against Anti-Social Behaviour, Cm 5778, was published on 12 March 2003: it is available electronically at http://www.official-documents.co.uk/document/cm57/5778/5778.pdf

> Crime has dropped by 27 per cent since 1997, and the chance of being a victim of crime is the lowest it has been for more than twenty years, but anti-social behaviour undermines people's confidence that crime is being tackled and fuels a fear of crime. The Government is determined to deal with this type of low level criminality which blights communities and ruins lives

It gave several lists of new proposals. Some measures were to be included in the Anti-social Behaviour Bill:

- Developing a package of support and sanctions to enable parents to prevent and tackle anti-social behaviour by their children.
- Widening the use of Fixed Penalty Notices – e.g noise nuisance, truancy, graffiti– and applying them to 16-17 year olds.
- New action to close down 'crack houses'.
- Restricting the use of air weapons and replica guns. Banning air cartridge weapons that are easily converted to firearms.
- A new offence to sell spray paints to under 18s and stronger powers for local authorities to tackle fly-tipping, graffiti and fly-posting.
- Widening powers to shut down establishments that create noise nuisance.
- Courts to consider the impact of anti-social behaviour on the wider community in all housing possession cases.
- Improving the operation of Anti-social Behaviour Orders (ASBOs)

Other measures would be taken forward elsewhere:

- Begging to be made a recordable offence (**secondary legislation**), with a community penalty after three convictions (**Criminal Justice Bill**).
- New style cautions for kerb-crawling offences with courts able to take away driving licenses of those convicted of kerb-crawling.
- Developing new approaches to victim and witness protection.
- New measures for local authorities to target problem private landlords and introduce a licensing scheme (**Housing Bill**).
- Consultation on withholding Housing Benefit as a sanction against anti-social behaviour.
- Improving Fine enforcement (**Courts Bill).**
- Developing a restorative justice strategy to ensure greater accountability and responsiveness to the wider community
- Supporting a **Private Members Bill** to introduce a more effective regime for fireworks.
- Measures to tackle anti-social behaviour in and around pubs, clubs and entertainment outlets (**Licensing Bill**).

- Powers to social landlords to take action against anti-social tenants including faster evictions and removing their right to buy their home (**Housing Bill**).[35]

When he published the White Paper the Home Secretary made a statement, in which he said:

> Antisocial behaviour can affect people physically and emotionally, undermining health and destroying family life. It can also hold back the regeneration of our most disadvantaged areas, creating the environment in which crime can take hold. Where enforcement is poor and antisocial behaviour goes unpunished, criminals learn that they can get away with lawlessness. That is why we are now leading a new drive to work with individuals, families and communities to build effective action against antisocial behaviour.
>
> Rights and responsibilities must go hand in hand. The White Paper and the legislation to follow aim to put in place support and help for those who are prepared to accept it, and clear, speedy, and effective enforcement when they are not. Our public spaces should be open and free for everyone to use. Our streets should be free of loutishness, gangs and drunken hooligans, or drug dealers capturing the lives of young people. Neighbours creating noise and nuisance and those intimidating others are a blight on our society. Those who do not suffer should not get in the way of protecting those who do.
> (…)
> At the heart of antisocial behaviour is a lack of respect for others—the simple belief that one can get away with whatever one can get away with. We need the help of the community as a whole in changing the culture. We need parents to instil a sense of responsibility and respect; communities to build the confidence to provide witnesses and to stand up to the thugs; and businesses to help in overcoming unacceptable and irresponsible behaviour.[36]

The Opposition spokesman, Oliver Letwin, said that the Home Secretary had put forward a plethora of specific policy intentions, but he feared that in the absence of police on the streets, and in the absence of coherent long-term programmes to lift young people off the conveyor belt to crime, the Home Secretary would find that the vast new range of powers would do no more than mask his failure to enforce effectively the laws that already existed. He explained:

> The difference between the Government and the Conservative party consists not in a difference of diagnosis, but in a difference of views about the cure. Since the Government came to power, we have seen the introduction of some 15 Bills and Acts dealing with crime and disorder. Legislation is seeping out of every pore of the Home Office, and now we are to have another Bill. I doubt, alas, that this next

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35 "Respect And Responsibility - David Blunkett Publishes Anti-Social Behaviour White Paper", Home Office press notice 069/2003 - 12 Mar 2003.

36 HC Deb 12 Mar 2003 c292

> accretion of the Home Secretary's prodigious legislative energy will do any more to cure the problems that we both diagnose than have his and his predecessors' previous endeavours.
>
> The fact is that the boys in the gangs on the streets are strangely unaware of the Home Secretary's laws, because they are so little enforced.[37]

That comment was later echoed by the Home Secretary, when he said:

> One thing that has really struck me over recent months is how little those who have the power to implement these policies know what they have at their disposal. Even last Friday night, in my own constituency—in a most deprived and difficult part of the city in terms of crime—I found that people were not aware of what was already on the statute book. We have a major task to inform people simply and clearly about how the police and housing and environmental health officials can do their job.[38]

The Liberal Democrat spokesman, Simon Hughes, said that the Home Secretary would know that Liberal Democrat Members supported the aims and objectives he had set out:

> We want a less violent society and a more civil and respectful society. He knows, too, that we shall judge each proposal on its merits, which is why proposals for dealing with crack houses and unscrupulous landlords will be welcome, but why further criminalising beggars, most of whom are on drugs, drunk, homeless, mentally ill or all of those, seems to us a wholly misguided way of tackling a problem that requires people to be brought back into society rather than being given a longer criminal record.
>
> Will the Home Secretary tell us why he has not followed the advice of the Government's social exclusion unit, which made clear, in its most recent report, that we need effective use of existing powers. We need to allow them to settle down and to work across the country rather than to introduce new legislation. Why do not the Government heed the advice that I certainly receive, and which I am sure the right hon. Gentleman receives? There is panoply of legislation. What we need is not more legislation but more people: more police, more community wardens, more special constables and more youth and community workers. We need more people in the community to help to manage the community and to follow successful examples.[39]

He also asked:

> will the Home Secretary tell us how we can hold realistic consultation on a White Paper produced in the second week of March when he proposes to introduce a

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37 HC Deb 12 Mar 2003 c293
38 ibid c 300
39 ibid. c295

> Bill in the first week of April? Is not the reality that this is more about dressing the window for a local election in May and to cover up the Government's six years of inadequate law and order policy, rather than the long-term solutions that the right hon. Gentleman knows work better—as does everybody else?

F. The Anti-social Behaviour Bill

The *Anti-social Behaviour Bill* was introduced in the House of Commons on 26 March. *Explanatory Notes* to the Bill, prepared by the Home Office, are published separately as Bill 83-EN.[40]

G. Committees and the Bill

On 13 March, the Home Affairs Committee issued a press release inviting written comments on the White Paper, and announcing that it would hold an evidence session, on 25 March 2003, on the White Paper (and, if published by then, the Bill).[41] At that session, evidence was given by the Home Office Minister, Bob Ainsworth, and Ms Louise Casey, Director of the Anti-Social Behaviour Unit, Home Office. The uncorrected evidence is available on the Parliament website.[42]

The main issues covered were

- The short period between publication of the White Paper and the Bill
- Arguments that the thrust of the government policy was to stigmatise young people
- The practicality of intensive fostering
- Dealing with truancy
- Parenting classes
- Various aspects of fixed penalty notices
- Fireworks nuisance and the Fireworks Bill
- Crack houses
- Banning sale of spray paints
- Fly tipping
- Eviction of anti-social families
- Links between social conditions and anti-social behaviour
- Demotion of secure to probationary tenancies

The Committee has not published a report. The Joint Committee on Human Rights has not yet reported on the Bill.

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40 These are available electronically at http://pubs1.tso.parliament.uk/pa/cm200203/cmbills/083/2003083.htm and http://pubs1.tso.parliament.uk/pa/cm200203/cmbills/083/en/03083x--.htm respectively.

41 Home Affairs Committee Press Release 2002B03

42 http://www.publications.parliament.uk/pa/cm200203/cmselect/cmhaff/uc568/uc56801.htm.

H. Other reactions to the White Paper and the Bill

Some of the proposals have been welcomed, but others have been criticised. Commenting on the White Paper, the human rights organisation, Liberty, welcomed the proposals that more use should be made of restorative justice, intensive fostering as an alternative to custody for some young people and more support for struggling parents. The White Paper offered some promising approaches to difficult problems. But:

> it mixes this with once again throwing the statute book at real social problems, when resources, not more new laws, are almost always the bigger issue.
>
> Mr Blunkett himself said today that many people being given this batch of new powers still don't know what they could be doing with the last batch. The truth is that existing powers, with improved resources, could tackle these problems. Stacking up more overlapping powers just adds to inefficiency and confusion.
> (…)
> Beggars, often with other problems like substance abuse or mental illness, need constructive support to bring them back into society - not criminalisation to drive them further out. Begging was first criminalised just after the Napoleonic wars. The Vagrancy Act 1824 has not eradicated poverty, homelessness or begging and perhaps history can teach us a lesson here.
>
> On-the-spot fines lump together potentially serious criminal offences that should be a matter for the police with more trivial offences.[43]

When the Bill was published, Liberty's director of campaigns added:

> Mr Blunkett himself told the Commons two weeks ago that many people being given this batch of new powers still don't know what they could be doing with the last batch.
>
> The truth is that existing powers, with improved resources, could tackle these problems. Stacking up more overlapping powers just adds to inefficiency and confusion.
>
> The Bill also gives the Home Secretary power to extend on the-spot fines to ten-year-old children [by statutory instrument - clause 38]. While we welcome measures like more support for struggling parents, is fining 10-year-old children a sensible approach?"[44]

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[43] "Anti-social behaviour: Liberty response" 12 March 2003, http://www.liberty-human-rights.org.uk/press/press-releases-2003/anti-social-behaviour-liberty-response.shtml

[44] "Liberty reaction to Anti-Social Behaviour Bill", 27 March 2003, http://www.liberty-human-rights.org.uk/press/press-releases-2003/anti-social-behaviour-bill.shtml

The National Children's Bureau, the charity which seeks to identify and promote the interests and well-being of children, also welcomed some of the White Paper proposals, but expressed dismay at others:

> The National Children's Bureau (NCB) today expressed dismay at new Government proposals which the charity believes will jeopardise children's life chances by increasing pressure on disadvantaged and failing families.
>
> NCB also fears that several of the measures outlined in the White Paper, Respect and Responsibility – Taking a Stand Against Anti-Social Behaviour, will reinforce negative perceptions of children and young people as trouble makers who should be swept from our streets and public spaces.
>
> The charity particularly condemns proposals to remove automatic reporting restrictions on youth court convictions, which it sees as a charter for demonising children in trouble.
> (…)
> NCB's view is that several of the proposed measures are unhelpful and unworkable:
>
> - Police powers for group dispersal and fast-track child curfews may penalise law-abiding young people with nowhere else to go, while encouraging the myth that it is groups of young people who are largely responsible for anti-social or criminal behaviour. The measure will also damage relationships between young people and the police.
>
> - Removing automatic reporting restrictions on orders made on conviction in the youth court – where specially trained magistrates deal with cases involving 10 to 17-year-olds – will fuel the demonising of young people in the media, and may significantly damage the rehabilitation of young offenders. The measure may also contravene the UN Convention on the Rights of the Child: concern on this issue was raised by the UN Committee in its report to the UK Government in October 2002.
>
> - Extending fixed penalty fines to 16 and 17-year-olds – who in reality are unlikely to be able to pay the fines themselves – will increase financial pressure on poor families and may exacerbate tensions between parents and children, especially where parents are already having difficulty managing their child's behaviour. For those 16 and 17-year-olds who do not have the support of a family there is a real danger that they may be criminalised on account of their poverty.
>
> - Powers for designated local education authority and school staff to issue fixed penalty notices to parents in truancy cases will add to the burden upon teachers and undermine trust between parents and schools. What is more, the measure will not help in addressing the causes of truancy, which often include disaffection or unhappiness at school.

> The Government is right to focus energy and resources on revitalising our communities," commented Paul Ennals, NCB's Chief Executive, "but many of the measures proposed in today's White Paper will serve only to deepen existing divisions, without addressing the problems which underlie them.[45]

The Law Society believes that the aim of intervention should be to change the offending tenant's behaviour, with eviction being used as a last resort. Extending the application of Fixed Penalty Notices to deal with anti social behaviour needs careful consideration. The Law Society would have serious concerns about which types of offence they would apply to and who would have the power to issue and enforce them.[46]

The Local Government Association has commented:

> • The LGA agrees with and supports the Government's objective of a society in which people respect each others' property, respect the streets and public spaces we share and respect neighbours' rights to live free from harassment and distress. We welcome some of the new powers in the Bill – particularly those relating to improving the physical environment – which we lobbied for.
>
> • Tackling anti-social behaviour is a key issue for councils and the communities they serve. However we are concerned that the White Paper and Bill place an undue emphasis on enforcement. Whilst enforcement measures have a role to play they make little, if any, contribution towards tackling the real issues that give rise to anti-social behaviour in the first place.
>
> • Indeed there is a danger that some of the proposals may simply reinforce negative perceptions of young people as trouble-makers, jeopardise their future life chances and lead to further alienation.
>
> • Some of the proposals in the Bill also appear difficult to implement and require more thought – for example
>
> Dispersal orders may only have the effect of moving the problem to other areas;
>
> Fixed penalty notices arising in the context of truancy could undermine home/school relationships;
>
> Additional financial pressures resulting from extending fixed penalty notices to 16 and 17 year olds may have an adverse impact on family relationships.
>
> • The Government needs to give more emphasis to working with local communities to tackle the social conditions that give rise to much Anti-social

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[45] "Children will lose out under anti-social behaviour proposals, says NCB", 12 March 2003, http://www.ncb.org.uk/media/pressrelease.asp?id=142

[46] http://www.lawsoc.org.uk/

> behaviour. We are ready to work together with Government and other national partners to identify and promote sustainable solutions that can have a real impact in local communities.

The human rights organisation, Justice, commented:

> Any bill following on from the white paper, if published in this parliamentary session, will represent the sixth bill affecting criminal justice in this session. JUSTICE echoes the view expressed by various commentators that rushing through more and more legislation, some of it arguably unnecessary, is not the best way to deal with perceived social problems, nor the best use of resources. Existing legislation must be given sufficient time to bed down.

II Premises used for drug misuse

According to the 2001/02 *British Crime Survey*, 12% of 16-to-59 year olds had taken an illegal drug during the previous twelve months, while 3% had used Class A controlled substances. This represents around four million users of all drugs and around one million users of Class A substances. 30% of 16-to-24 year olds reported using illegal drugs while 9% used Class A substances.

Cannabis was the most common drug used (by 11% of 16-to-59 year olds and 27% of 16-to-24 year olds). Ecstasy was used by 2% of 16-to-59 year olds and 7% of 16-to-24 year olds. It is estimated that crack was used by less than 1% of the population during the preceding twelve months, although prevalence of use was twice as high among the 16-to-24 year olds as among the 16-to-59 population.[47]

Prevalence estimates of drug misuse among 16 to 24 and 16 to 59 year olds

percentage

	16-24	**16-59**
Amphetamines	5.0	1.6
Cannabis	26.9	10.6
Cocaine	**4.9**	**2.0**
Crack	**0.5**	**0.2**
Ecstacy	**6.8**	**2.2**
Heroin	**0.3**	**0.2**
LSD	**1.2**	**0.4**
Magic mushrooms	**1.5**	**0.5**
Methadone	**-**	**0.1**
Tranquilisers	1.0	0.5
Amyl nitrate	3.8	1.2
Anabolic steroids	0.2	0.1
Glues	0.6	0.1
Any drug	29.6	12.0
Class A	8.8	3.2

Class A drugs listed in **bold**
- estimate less than 0.05%

Source: Home Office 2001/02 British Crime Survey
Home Office *Findings 182* (2002)

[47] Home Office *Crime in England and Wales 2001/02* (British Crime Survey) (2002); Home Office *Findings 182* (2002); see also Library Standard Note SN/SG/1862 *Drug Misuse Statistics* available at: http://hcl1.hclibrary.parliament.uk/notes/sgss/snsg-01862.pdf

As part of the strategy to tackle the use of Class A drugs, part 1 of the *Anti-social Behaviour Bill* would grant:

> …police the power to close down premises being used for the supply or use of Class A drugs where there is associated nuisance or disorder.[48]

This part of the Bill is intended to provide police with the ability to deal with the relatively intractable problem of crack houses.

In 2000, 584 people were found guilty or cautioned (418 guilty; 166 cautioned) under the *Misuse of Drugs Act 1971* for permitting premises to be used for unlawful purposes. 65 people were granted absolute or conditional discharge, 76 were given probation or supervision orders, 64 community service orders and 20 combination orders. 68 people were fined and the average fine was £99. 41 people were sent to immediate custody and the average length of the sentence was fifteen months. Seven people were sentenced to custodial sentences of two years or more, but no sentence exceeded five years. [49]

Persons found guilty, cautioned, or dealt with by compounding under Drugs Acts for permitting premises to be used for unlawful purposes

United Kingdom

	1995	1996	1997	1998	1999	2000
All persons	669	714	805	826	818	584
Males	458	494	539	531	523	382
Females	211	220	266	295	295	202
Drug						
Amphetamines	12	26	30	26	27	19
Anabolic steroids	…	0	0	0	2	0
Cannabis	595	572	646	651	606	446
Cocaine	12	12	17	25	34	15
Crack†	5	5	1	3	7	4
Ecstasy	6	4	6	3	5	5
Heroin	11	34	47	66	80	59
LSD	1	5	2	2	3	4
Methadone	0	0	1	0	1	0

† data for England and Wales only

Source: Home Office *Drug Seizure and Offender Statistics,United Kingdom 2000* (2002)

[48] Explanatory notes for the Anti-social Behaviour Bill http://pubs1.tso.parliament.uk/pa/cm200203/cmbills/083/en/03083x--.htm

[49] Home Office *Drug Seizure and Offender Statistics: United Kingdom 2000* (2002), supplementary table S2.13

A. Crack houses

Alan Brown, a Commander in the Metropolitan Police, provided a definition of a crack house at the Crack Cocaine Conference in Birmingham last year:

> But what is a 'crack house'? Well, usually a flat that has been taken over for the purpose of making and smoking crack. No great scientific knowledge or equipment is needed. In fact all you really need is a microwave, a water supply and a bowl. Consequently the operations are highly mobile.
>
> In many instances the people who run the 'crack house' are unwanted guests of the flat's legitimate occupier. However, they are able to remain by using intimidation and threats of extreme violence that underpins the crack trade.[50]

He went on to explain why such premises were particularly unwelcome within a community:

> Once established, a 'crack house' has a significant impact upon the local area. The level of crime in the vicinity escalates; much of it is violent acquisitive crime. The quality of life for members of the local community diminishes and a threat of violence pervades. Similarly, open 'crack markets' exist in many of our cities.
>
> They also attract their clientele and have a significant impact upon crime levels in the local area. The commercial viability of the area dramatically reduces and members of local communities become fearful of using local facilities.[51]

The *Misuse of Drugs Act 1971* does have the potential for action to be taken against 'premises offences'. Under section 8 of the 1971 Act, it is an offence for the occupier or person concerned in the management of any premises knowingly to permit or suffer the following activities to take place on them:

> a) producing or attempting to produce a controlled drug;
>
> b) supplying or attempting to supply or offering to supply a controlled drug;
>
> c) preparing opium for smoking;
>
> d) smoking cannabis, cannabis resin or prepared opium.

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50 Crack Cocaine Conference, *Conference Report*, Birmingham 24-25 June 2002 http://www.drugs.gov.uk/ReportsandPublications/NationalStrategy/1038398896/Crack_report.PDF

51 ibid

However, this is not an absolute offence, as the Runciman Report pointed out:

> Because it has to be committed 'knowingly', the burden is on the prosecution to prove that the accused knew that the prohibited activities were taking place. An offence against section 8 is not a drug trafficking offence for the purposes of the Drug Trafficking Act 1994. Conviction therefore does not result in confiscation under that Act, although it may lead to forfeiture under section 27 of the [*Misuse of Drugs Act 1971*].[52]

Runciman recommended that the section should be repealed entirely:

> 44 One possible solution would be, as has been recommended by ACPO and others, to extend paragraphs (c) and (d) to all controlled drugs. **We prefer the alternative of repealing the paragraphs altogether.** This would leave the more serious activities in relation to all controlled drugs to be caught by paragraphs (a) and (b). As far as the offences of use are concerned, insofar as the law has an influence at present, it is likely to drive drug-taking out on to the streets and other places where it is potentially far less safe. Our recommendation is intended to reverse that effect.[53]

In response to Runciman,[54] a general review of Section 8 of the *Misuse of Drugs Act 1971* led to the provisions of that section of the 1971 Act being extended by the *Criminal Justice and Police Act 2001*. Knowingly permitting the use of a controlled drug was an offence only in respect of the smoking of cannabis or opium which reflected the drug misuse fashions of the time (e.g. opium dens). The rationale behind this distinction was that the smoking of opium or cannabis should be readily detectable and owners and occupiers could be certain that such drug use was illegal, whereas consumption of other drugs might be legitimate under prescription. The amendment made by the *Criminal Justice and Police Act 2001* extends the offence to all controlled drugs, but it has not yet been brought into force (see below).

Thus, under the (currently unamended) *Misuse of Drugs Act 1971* the operators of crack houses are not liable to prosecution for allowing the use of crack on their premises - although they could be prosecuted for allowing the dealing or supply of the drug on their premises.

The amendment of section 8 of the 1971 Act has been a recent point of controversy. The Home Office decided to consult with the police, other government departments and the

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52 The Police Foundation, *Drugs and the Law: Report of the Independent Inquiry into the Misuse of Drugs Act 1971*, 2000, Chapter 5 paragraph 35

53 The Police Foundation, *Drugs and the Law: Report of the Independent Inquiry into the Misuse of Drugs Act 1971*, 2000, Chapter 5 paragraph 44

54 The Police Foundation, *Drugs and the Law: Report of the Independent Inquiry into the Misuse of Drugs Act 1971*, 2000 http://www.druglibrary.org/schaffer/Library/studies/runciman/default.htm

treatment and voluntary sector to agree guidelines before bringing the amendment into force. The amendment was not welcomed by many voluntary agencies. They believed that the change in legislation would make those working to help and rehabilitate drug-users and homeless people more liable to prosecution:

> Whilst Transform understands the impetus behind the updating of Section 8d, it believes that it has the potential to make the enforcement of the [*Misuse of Drugs Act 1971*] even more likely to increase the harm associated with the use and misuse of drugs.
>
> […]
> …the amendment will do far more to impinge upon harm reduction initiatives than it will benefit police activities in increasing community safety and crime reduction.[55]

The Home Affairs Select Committee recognised the potential problem in their third report of Session 2001-2, *The Government's Drug Policy: is it working?* They provided, in an annex to the report, two options that might alleviate the potential problem faced by those working in harm reduction initiatives:

> The first is draft an exclusion clause, which applied specifically to a defined group (eg drugs agencies), or for a defined purpose (eg to provide safe injecting areas). The second, and perhaps simpler, option is to draft an exemption which permitted a licencing [sic] system, whereby the Secretary of State would authorise specific harm reduction activities to take place on specified premises.[56]

Concerns about the amendment of Section 8 were calmed recently when the Home Office stated that they would wait to see how the implementation of the Anti-Social Behaviour Bill changed things before deciding whether to bring the amendment into force.[57]

The White Paper on anti-social behaviour[58] had the following to say about crack houses:

> 3.12 For sometime local authorities, the police and local communities have been frustrated by their lack of powers to close down premises – rented, owner occupied or otherwise – where Class A drugs are being sold and used. We are determined to ensure that the ruin they can cause in communities is stopped.
>
> 3.13 We have to close down these properties from which drug dealers operate, or new dealers will simply move in. These dealers are sophisticated and devious in

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55 Transform Drug Policy Institute, *Response from the Transform Drug Policy institute to the Home Office Consultation on amendment to Section 8 of the MDA 1971*, 8 November 2002

56 Home Affairs Committee, *The Government's Drug Policy: is it working?*, 22 May 2002, HC 318-I 2001-2, Annex paragraph 9

57 "Harsh draft excluded: Drug workers cheer government's 'crack house' law rethink", *The Guardian*, 19 March 2003

58 Respect and Responsibility – Taking a Stand Against Anti-Social Behaviour, Cm 5778 2003, pp40-1

> their methods. They can prey on vulnerable people compelling them to give over their property whilst they deal and use drugs, and intimidate both the residents and neighbours, sometimes making them too frightened to speak out for fear of retribution.
>
> 3.14 The new powers will give police the power, after consulting the local authority, to issue notice of impending closure, ratified by a court, which will enable the property to be closed within 48 hours and sealed for a fixed period of up to six months. Drug dealers will be dealt with through the courts and the property will be recovered by the landlord.

Roger Howard, the Chief Executive of DrugScope (an independent centre of expertise on drugs), welcomed the new measures outlined in the White Paper:

> The Government has produced a potent way of tackling the problems of houses used for crack dealing. DrugScope welcomes moves that will enable the police to quickly close these premises down. The new proposals will give communities the protection they deserve.[59]

Danny Kushlick, Director of the Transform Drug Policy Institute, issued a guarded welcome to the provisions of the legislation. He said that Part 1 of the Bill would provide useful measures for tackling community problems caused by crack houses but was concerned that they would not solve the problems of crack cocaine:

> 3. However, any enforcement against crack house needs to be seen in a wider context. The illegal drug market is driven by demand and crack houses are a product of a high level of demand for crack combined with prohibitionist legislation. In this sense crack houses are actually a product of outdated prohibition-based drug laws. Assuming that we cannot eradicate crack use, users will always require somewhere to buy crack and smoke or inject it.
> 4. This means that attempts to close places of use or sale of crack will only serve to displace these activities, not undermine the market itself. TDPI recognises that a specific closure notice may reduce nuisance and increase community safety in one area. However, it is highly likely that this nuisance will only be moved elsewhere rather than stopped completely.[60]

III Housing

In April 2002 the Department of Transport, Local Government and the Regions (now the Office of the Deputy Prime Minister, ODPM) published a consultation paper entitled

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[59] DrugScope Press Release, *DrugScope gives mixed reaction to Anti-Social Behaviour White Paper*, 28 March 2003

[60] Transform Drug Policy Institute, *Response from Transform Drug Policy Institute (TDPI) to the Anti-social Behaviour Bill*, 28 March 2003

Tackling Anti-Social Tenants.[61] The paper identified a threefold problem in respect of social landlords and anti-social behaviour:

> - A minority, through their offending behaviour, are creating a disproportionate and damaging impact on many neighbourhoods, particularly in deprived areas.
> - Whilst some landlords are using the current framework of legislation effectively to stop this behaviour, many are not.
> - Some aspects of current legislation do not assist those landlords who are trying to stop this behaviour.[62]

The paper went on to propose a series of changes aimed at strengthening the existing powers of social landlords to tackle anti-social behaviour. There is no agreed definition of anti-social behaviour but it is accepted that for some social landlords tackling anti-social behaviour has become a key function; research has shown that up to 20% of housing managers' time is spent on dealing with nuisance and anti-social behaviour and that between 2 and 10% of tenants on any given estate have been the subject of complaints.[63] *Tackling Anti-Social Tenants* noted that 'social landlords perceive severe noise nuisance as the most serious type of complaint, followed closely by abuse or intimidation and criminal offences.'[64] The paper acknowledged that deficiencies in recording systems 'make it impossible to measure the scale of the problem or to know whether it is increasing or decreasing.'[65]

Part 2 of the *Anti-social Behaviour Bill* will take forward some of the proposals set out in *Tackling Anti-Social Tenants.* The Law Commission published a consultation paper in April 2002, *Renting Homes 1: Status and Security*,[66] which also contains proposals in relation to tackling anti-social behaviour; there is a degree of overlap between the two papers' proposals and responses to both are referred to in this section.

Information on existing remedies available to social landlords for tackling anti-social behaviour can be found in Library standard note SN/SP/264, *Anti-social behaviour in social housing.*[67] A separate note deals with remedies for anti-social behaviour in private housing, SN/SP/1012.[68] The *draft Housing Bill* which was published on 31 March 2003 contains measures aimed at tackling anti-social behaviour in private rented housing.[69]

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61 This document is available online at: http://www.housing.odpm.gov.uk/information/consult/antisocial/pdf/asb.pdf

62 *ibid* pp7-8

63 www.housing.odpm.gov.uk/local/asb/index.htm

64 http://www.housing.odpm.gov.uk/information/consult/antisocial/pdf/asb.pdf Annex 1, p57

65 *ibid*

66 Law Commission Consultation Paper No 162, online at: ww.lawcom.gov.uk/library/lccp162/cp162.pdf

67 http://hcl1.hclibrary.parliament.uk/notes/sps/snsp-00264.pdf

68 http://hcl1.hclibrary.parliament.uk/notes/sps/SNSP-01012.pdf

69 *Housing Bill – Consultation on draft legislation*, Cm 5793, 2003

The Home Office White Paper, *Respect and Responsibility – Taking a Stand Against Anti-Social Behaviour* said that measures would enable social landlords to extend the initial 12 month period of introductory, starter or probationary tenancies by a further period of 6 months where there are continuing concerns about behaviour.[70] This is not contained in the current Bill but the Ministerial Foreword to the *draft Housing Bill* and consultation paper states that a proposal to give local authorities this power will be introduced.[71]

A. Anti-social behaviour: landlords' policies and procedures

Clause 12 of the Bill will amend the *1996 Housing Act* to place a new duty on social landlords (including local housing authorities, housing action trusts and registered social landlords, RSLs[72]) to publish anti-social behaviour policies. The aim of this change is to inform tenants and members of the public about the measures that these landlords will use to address anti-social behaviour issues in relation to their stock. In this context anti-social behaviour will be defined in new sections 153A and 153B of the 1996 Act, ie:

> 153A (1) This section applies to conduct—
>
> (a) which is capable of causing nuisance or annoyance to any person, and
>
> (b) which directly or indirectly relates to or affects the housing management functions of a relevant landlord.
>
> 153B (1) This section applies to conduct which consists of or involves using or threatening to use housing accommodation owned or managed by a relevant landlord for an immoral or unlawful purpose.

Social landlords will be required to have regard to relevant guidance when preparing or reviewing their policies and procedures. The duty to publish anti-social behaviour policies will come into effect within six months of the commencement of clause 12. *Tackling Anti-Social Tenants* contains a model policy statement on anti-social behaviour for social landlords.[73]

Bob Ainsworth, Parliamentary Under-Secretary at the Home Office, set out the reasoning behind this new duty when giving evidence to the Home Affairs Committee on 25 March 2003:

> The publishing is not just for information about those who are likely to wind up being confronted by action, it is about trying to make local authorities and social landlords accountable to the wider community. Publish what you are supposed to

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70 Cm 5778, 2003, p60

71 *Housing Bill – Consultation on draft legislation*, Cm 5793, 2003

72 Also known as housing associations.

73 http://www.housing.odpm.gov.uk/information/consult/antisocial/pdf/asb.pdf pp44-47

> be doing, so that we can see what you are doing alongside what you are supposed to be doing. That is the motive behind obliging them to publish their policies.[74]

1. Comment

Some support was forthcoming from respondents to *Tackling Anti-Social Tenants* for placing a duty on social landlords to publish anti-social behaviour procedures but there were also calls for the Government to go further and place a general duty on local authorities to deal with anti-social behaviour:

> It may be that the variable response of social landlords to tackling anti-social behaviour is in part caused by the absence of a specific duty. However the paper shies away from establishing a duty to deal with anti-social behaviour, preferring to rely instead on a duty to publish anti-social behaviour procedures.[75]

The Law Commission's April 2002 consultation paper, *Renting Homes 1: Status and Security*,[76] proposed the introduction of such a general duty; this has not been greeted with enthusiasm by social landlords:

> We are pleased that the ODPM does not favour the option of placing a *specific* duty on landlords to tackle anti-social behaviour. We share concerns that this would lead to 'ambulance chasing' for legal work, as has happened in disrepair claims.[77]

The National Housing Federation (NHF), the representative body of around 1,400 RSLs, has pointed out that many social landlords already publish their policies on anti-social behaviour:

> We support the proposals to place a statutory duty on social landlords to publish their policies and procedures on anti-social behaviour. This should cover harassment as well. Many will already do this as a matter of good practice. Landlords should provide a summary of these policies and procedures free of charge on request and a full copy for a reasonable fee. This will enable tenants to evaluate their landlord's performance and it should encourage the spread of good practice between landlords.[78]

The Local Government Association's (LGA) response to *Tackling Anti-Social Tenants* opposed the proposal to place a duty on social landlords to publish anti-social behaviour procedures on the basis that local authorities already have a duty under the *Crime and*

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74 http://www.publications.parliament.uk/pa/cm200203/cmselect/cmhaff/uc568/uc56802.htm Uncorrected evidence Q. 80

75 National Association of Citizens Advice Bureaux (NACAB) response to *Tackling Anti-Social Tenants*, July 2002

76 Law Commission Consultation Paper No 162, online at: ww.lawcom.gov.uk/library/lccp162/cp162.pdf

77 NHF's response to *Tackling Anti-Social Tenants*, July 2002, para 2.2.2

78 NHF's response to *Tackling Anti-Social Tenants*, July 2002, para 2.2.1

Disorder Act 1998 to take reasonable steps to prevent crime and disorder and, under the *Local Government Act 2000*, a duty to promote the 'well-being' of their areas:

> Authorities should already have strategies in place under the Crime and Disorder Act and anti-social clauses should be written into tenancy agreements. It is our belief that there is enough regulation on local authorities in this respect and that a duty to publish ASB procedures is unnecessary. In addition to this, a duty will leave local authorities open to judicial review and therefore the LGA opposes this proposal.[79]

From the 'landlord' point of view, the LGA was also concerned that the consultation paper's proposals focused on social landlords and their tenants:

> There are two specific issues of concern here:
>
> - The implication being that social tenants are a problem whilst private tenants, or owner occupiers are not; and that social landlords are the only ones who have to take action or do not take action. Social tenants already suffer an amount of stigmatising and the emphasis of this paper does nothing to get away from this.
> - There are as many if not more problems in the private sector and to ignore this in this paper is a lost opportunity. Local authorities often have to use private sector landlords to house people and again there is no recognition of this in the paper.[80]

B. Injunctions against anti-social behaviour

The *1996 Housing Act* introduced powers for the courts to grant injunctions against anti-social behaviour with the possibility of attaching a power of arrest.[81] Injunctions have been described as a 'swift, inexpensive and effective means of stopping anti-social behaviour.'[82] Local authority landlords and RSLs[83] may currently apply to the court for such injunctions. Local authority landlords may apply for such orders against anyone who has used or threatened violence against someone else going about their lawful business in the locality of the local authority housing stock, while RSLs can apply for orders only against their own tenants. The applicant has to provide evidence of the activity complained of and, in addition, the court must conclude that there will be a continuing threat of harm if the order is not granted.

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79 LGA's response to *Tackling Anti-Social Tenants*, July 2002, http://www.lga.gov.uk/Documents/Briefing/Our_Work/social%20affairs/housingbrief.pdf

80 *ibid*

81 Sections 152-158 of the 1996 Act

82 http://www.housing.odpm.gov.uk/information/consult/antisocial/pdf/asb.pdf para 1:4.1

83 Registered Social Landlords

Clause 13 of the Bill will repeal sections 152 and 153 of the *1996 Housing Act* and introduce new provisions allowing certain social landlords to apply for injunctions to prohibit anti-social behaviour that affects the management of their housing stock. The key changes that clause 13 will introduce include:

- Giving all social landlords the same powers as local authorities to obtain county court injunctions to exclude perpetrators of anti-social behaviour from a specified area and, if necessary, their home. Landlords of charitable housing trusts will have to establish that the behaviour in question constitutes a breach of the respondent's tenancy agreement.
- Injunctions will be available where the behaviour in question *is capable* of causing nuisance or annoyance to residents of the landlord, visitors to the premises or locality, or staff employed by the landlord in connection with stock management. This will widen the range of people who can be protected from the perpetrators of anti-social behaviour.
- It will not be necessary for the anti-social behaviour to have occurred in the vicinity of the landlord's housing accommodation but there will still need to be a connection with the landlord's management of its accommodation.
- A power of arrest will be available in cases where there is a significant risk of harm to residents of the landlord, visitors to the premises or locality, or staff employed by the landlord in connection with stock management, even if there has been no actual or threatened violence. Significant risk of harm could include emotional or psychological harm.

1. Comment

In its response to *Tackling Anti-Social Tenants,* the NHF argued for RSLs to have access to the same powers as local authorities in regard to injunctions.[84] Respondents also expressed wide support for an extension of scope to cover the exclusion of people from non-residential premises, such as housing offices. There is general support amongst housing bodies for the extension of the power of arrest beyond cases involving threats of, or actual, violence with some caveats:

> Greater powers for the courts to grant injunctions need to be matched by police resources to respond to potential breaches and make arrests as appropriate. Some of our members do not support the extension of injunctions without such reassurances.[85]

The Chartered Institute of Housing (CIH) said:

> We would also approve of the power of arrest being extended to beyond threats of violence and intimidation. However, we believe that this serious sanction

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[84] NHF's response to *Tackling Anti-Social Tenants*, July 2002, para 2.6.1
[85] *ibid* para 2.6.4

> should have its limits prescribed. We agree that the categories and examples in the consultation paper (racist, homophobic or hate behaviour or behaviour targeting the elderly, disabled or other vulnerable groups) would be the basis for boundaries which would have wide public support, provided a suitable form of words can be found.[86]

Tackling Anti-Social Tenants identified some potential disadvantages associated with extending the power of arrest:

- Blurring the focus of what are currently very precisely targeted sanctions.
- Police resources would be diverted from dealing with violent and threatening behaviour to an engagement in more widely defined anti-social behaviour.[87]

The CIH wanted an extension of social landlords' powers to seek an injunction to cover private housing; it described this 'gap in coverage' as 'a major defect.'[88]

A team from Sheffield Hallam University published the findings of research into social landlords' use of legal remedies in summer 2000.[89] The survey team found that the majority of RSLs rarely or never used injunctions; landlords with a stock size of less than 1,499 properties were least likely to use this remedy. Reasons for the lack of use varied but a lack of training was cited along with the perception that it is an expensive process with no guarantee of a successful outcome. Landlords experienced in their use found injunctions an effective and valuable method of resolving problems compared with possession action. The fact that they are obtainable on an interim basis and are addressed to specific individuals to cease specific behaviours was cited.

C. Security of tenure: demotion of tenancies

1. The operation and effect of demotion

a. Secure tenants of local authorities and housing action trusts

Clause 14(2) of the Bill will insert a new section 82A into the *1985 Housing Act* to give local authorities and housing action trusts a new power to apply for a 'demotion order' where a secure tenant, or another resident of the dwelling, or a visitor to the tenant's home, has behaved in a way which is capable of causing nuisance or annoyance or where

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86 CIH's response to *Tackling Anti-Social Tenants*, July 2002 http://www.cih.org/cgi-bin/display.pl?db=policies&id=309

87 http://www.housing.odpm.gov.uk/information/consult/antisocial/pdf/asb.pdf para 4:1.1

88 CIH's response to *Tackling Anti-Social Tenants*, July 2002 http://www.cih.org/cgi-bin/display.pl?db=policies&id=309

89 *The use of legal remedies by social landlords to deal with neighbour nuisance*, jointly published by the Chartered Institute of Housing and the Joseph Rowntree Foundation.

such a person has used the premises for illegal or immoral purposes. Before granting a demotion order the court will have to be satisfied that it is reasonable to make the order. A demotion order will have the effect of ending a secure tenancy.

New Section 82A(5)(a) will define what is meant by a demoted tenancy where the landlord is a local authority or housing action trust by reference to new section 143A of the *1996 Housing Act.* Schedule 1 to the Bill will make amendments to the *1996* and *1985 Housing Acts* in relation to demoted tenancies; it will insert a new Chapter 1A in the *1996 Housing Act* entitled Demoted Tenancies.

During the period of demotion tenants that remain in occupation will not enjoy the right to buy, nor will time spent as a demoted tenant count toward the qualification period for the right to buy and the calculation of discount entitlement. A demoted tenancy will normally remain demoted for a period of one year at which point it will again become secure. If a landlord issues a notice of proceedings for possession during the first 12 months of a demoted tenancy it will remain demoted until either the notice is withdrawn, the proceedings are determined in favour of the tenant or six months elapses from the date of service of the notice and no proceedings for possession have been brought. Tenants will not have the right to apply for 'promotion' back to secure status. If secure status is regained, the rights associated with this status will be regained, eg the right to buy.

The procedure for seeking possession against a demoted tenant will be similar to that used to end introductory tenancies.[90] Landlords will be obliged to serve a notice on the tenant which must contain certain prescribed information. Tenants may request a review of the decision to seek possession within 14 days of receiving the notice and landlords must inform the tenants of their decision. The courts will have no discretion over the making of an order to end a demoted tenancy unless they are of the opinion that the correct procedure (set out in new sections 143E and 143F) has not been followed.

Provision is made for the transfer of demoted tenancies in cases where the landlord's interest passes to another body (new section 143C). If the new landlord is a local authority or housing action trust the tenancy will continue to be a demoted tenancy on transfer and will revert to a secure tenancy unless further action is taken. Where a local authority or housing action trust transfers its stock to an RSL, the demoted tenancy will become an assured shorthold tenancy (new section 143C(4)). If the tenant's behaviour gives no further cause for concern these tenancies will revert to assured tenancies after the expiry of one year. It is normal for secure tenancies to become assured tenancies when local authority stock is transferred to an RSL but tenants in occupation at the time of the transfer retain a 'preserved right to buy.' It appears that demoted tenants at the time of transfer to an RSL may not regain their preserved right to buy if and when they are 'promoted' to assured status.

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[90] The power to develop a scheme of introductory tenancies was introduced by the *1996 Housing Act.*

New sections 143H-143J will provide for succession to a demoted local authority/housing action trust tenancy. New section 143P will make it clear that the categories of people who will be able to succeed to a demoted tenancy will include heterosexual, lesbian or gay unmarried partners.[91]

b. Secure tenants of RSLs

Housing association/RSL tenants who entered into their tenancy agreements before 15 January 1989 (the date on which Part I of the *1988 Housing Act* came into force) have retained their secure tenancy status as long as they have remained in the same accommodation since this date. The rights of these tenants are governed by the *1985 Housing Act*; a significant difference with assured tenants of RSLs is that these tenants (with a few exceptions) have the right to buy.

As with local authorities and housing action trusts, new section 82A of the *1985 Housing Act* (inserted by clause 14(2) of this Bill) will give RSLs the power to apply for a demotion order where a secure tenant, or another resident of the dwelling, or a visitor to the tenant's home, has behaved in a way which is capable of causing nuisance or annoyance or where such a person has used the premises for illegal or immoral purposes. Such an order will end the secure tenancy and new section 82A(5)(b) will provide that new section 20B of the *1988 Housing Act* (inserted by clause 15 of this Bill) will apply to these tenancies.

Under new section 20B these previously secure tenancies will be demoted (on the granting of a court order) to the status of an assured shorthold tenancy. The period of demotion will normally be one year unless the landlord issues a notice of proceedings for possession during this period. In this event, the tenancy will remain a demoted assured shorthold tenancy until the expiry of 12 months after the order takes effect or (if later) until either the notice is withdrawn, the proceedings are determined in favour of the tenant, or 6 months elapses from the date of service of the notice and no proceedings for possession have been brought.

If the tenant's behaviour gives no further cause for concern the demoted assured shorthold tenancy will automatically turn into an assured tenancy after one year. Under current legislation RSLs may not grant new secure tenancies. Therefore, if a secure tenant of an RSL has their tenancy demoted it appears that they will not regain their secure

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[91] The Court of Appeal considered a case last year in which it held that discriminating against a partner on the grounds of sexual orientation when dealing with rights of succession would amount to a breach of Article 14 of the European Convention of Human Rights. See *Time Law Report*, 'Sexual orientation no reason for bias,' 14 November 2002.

status and will lose the right to buy permanently.[92] The rights of succession to an assured tenancy are also not as extensive as those available to secure tenants under the 1985 Act. The Housing Corporation has confirmed that there are around 195,000 RSL properties in England currently let on secure tenancies.

c. Assured tenants of RSLs

Clause 14(3) will insert a new section 6A into the *1988 Housing Act* to provide for RSLs to obtain demotion orders against assured tenants.[93] These orders will be available in the same circumstances as under new section 82A of the *1985 Housing Act* (see above). New section 20B of the *1988 Housing Act* will apply to demoted assured tenancies so that they will become assured shorthold tenancies (see section **C.1.b** above).

Where a demoted tenant's behaviour gives no further cause for concern their demoted assured shorthold tenancy will automatically turn into an assured tenancy after one year. All the rights associated with assured tenancy status will be restored.

2. Comment

Tackling Anti-Social Tenants noted that the proposal to demote tenancies with recourse to the courts was derived from work carried out by the Law Commission.[94] The consultation document set out some perceived advantages and disadvantages of the proposal:

> Advantages
>
> - The use of injunctions might be increased.[95]
> - The idea is clear and understandable.
> - The desirability of being promoted would give the tenant an incentive to work with the landlord and to change their behaviour.
> - The tenant could be swiftly evicted if their behaviour did not improve. Tenants could see a difference marked (by the landlord and the courts) between themselves and their anti-social neighbours.
> - The proposal offers protection to tenants against unreasonable action by the landlord in that it requires the landlord to provide proof of anti-social behaviour to the court for the injunction hearing and again at the breach hearing.

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92 Some assured tenants of RSLs have the right to acquire – for more information see Library standard note *Housing Association Tenants: Right to Buy* (SN/SP/648) http://hcl1.hclibrary.parliament.uk/notes/sps/snsp-00648.pdf

93 People who entered into their housing association/RSL tenancy agreements after 15 January 1989 are assured tenants whose rights are governed by the *1988 Housing Act*.

94 Law Commission Consultation Paper No 162, online at: www.lawcom.gov.uk/library/lccp162/cp162.pdf

95 The idea here is that landlords would seek a demotion order in the event of an injunction being breached at the breach hearing.

Disadvantages:

- Tenants may feel threatened by and distrustful of proposals which give such large scope to landlords – though it would be a clear signal to those bent on anti-social behaviour that they must change or risk severe consequences.[96]

There was some support from respondents to *Tackling Anti-Social Tenants* for a power to 'demote' tenancies with the proviso that demotion should only be imposed by the courts.[97] The CIH commented:

> The majority of our panel favoured this alternative to the permanent introductory style procedure and this is the option favoured by the CIH. It had the advantage of being more targeted at perpetrators and so would be perceived to be fairer by well behaved tenants. It would also be less vulnerable to human rights challenges. Whilst an additional tool to deal with anti-social behaviour was welcomed our panel thought that it would be useful in only a minority of cases because there still needs to be a hearing and this takes time. Further, possession would be delayed to the second 'offence' rather than the first which would only result in demotion.
>
> However, this sort of option may be more useful if the Law Commission's proposals for tenure reform are adopted by the Government. At present the 'last chance warning' is usually made by applying for suspended possession. Under the Law Commission's proposals there will be no option to suspend. This may make this option more attractive and allow for a greater degree of flexibility where there is significant anti-social behaviour but which is not so serious that it requires immediate possession.[98]

Shelter expressed opposition to the proposal to demote tenancies:

> Although we agree that there are circumstances in which eviction is the appropriate response, we believe it should be a last resort. A range of powers are already available to landlords and we oppose further measures to make it easier to evict people or to 'demote' tenancies.[99]

The case of a single parent who was evicted from her housing association home in November 2002 attracted press attention. A court order was obtained by her housing association landlord on the grounds that her failure to respond to requests to tidy up her garden amounted to a breach of the tenancy agreement. This led to suggestions that social landlords were being over zealous and widening the interpretation of what amounts to

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96 http://www.housing.odpm.gov.uk/information/consult/antisocial/pdf/asb.pdf para 1:4.2

97 NACAB's response to Tackling Anti-Social Behaviour, July 2002

98 CIH's response to *Tackling Anti-Social Tenants*, July 2002 http://www.cih.org/cgi-bin/display.pl?db=policies&id=309

99 Shelter Briefing, *Tackling Anti-social behaviour*, February 2002

anti-social behaviour.[100] A board member of the housing association reportedly commented:

> There are double standards here; gardens in other parts of Blackburn, mainly owner-occupier or private rental, are often in a much worse state than those on the estate.[101]

The case prompted Shelter to comment that social landlords are adopting an increasingly 'eviction-happy' stance against neighbourhood nuisance.[102] It is possible that the power to demote the tenancy would have prevented the eviction of the tenant in the case referred to above; however, there remain concerns over whether social landlords always adopt a proportionate response.

The LGA has also expressed concerns about the potential of the power to demote tenancies 'to place the most vulnerable members of society in a more precarious position.'[103] This reflects the belief that many 'nuisance' tenants are actually vulnerable people who are in need of support to enable them to manage their tenancies and relationships within their communities. Indeed, *Tackling Anti-Social Tenants* acknowledged that 'many perpetrators of anti-social behaviour have high levels of vulnerability and disadvantage.'[104] The consultation paper referred to the need for 'enforcement, prevention and rehabilitation' but respondents felt that there was rather too much emphasis on the enforcement aspect of the proposals:

> The paper focuses on three themes, namely enforcement, prevention and rehabilitation, and the LGA agrees that these are the correct themes. However, the Association believes that the paper is strongly weighted towards enforcement and that there is a need for a more balanced approach. Each case of anti-social behaviour that is perpetrated is different from the next and effective solutions need to be developed on a case-by-case basis. To ensure that the problem is simply not moved on greater emphasis needs to be placed on prevention and rehabilitation activity.[105]

The NHF's members were divided on the desirability of the power to demote a tenancy:

> Those in favour see it as a way of overcoming the protracted nature of possession proceedings and the lack of understanding that some judges display of the

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100 'Strict business', *Guardian Society*, 22 January 2003 http://society.guardian.co.uk/housing/story/0,7890,879362,00.html

101 *ibid*

102 *ibid*

103 LGA's response to *Tackling Anti-Social Tenants*, July 2002 http://www.lga.gov.uk/Documents/Briefing/Our_Work/social%20affairs/housingbrief.pdf para 1.2.1

104 http://www.housing.odpm.gov.uk/information/consult/antisocial/pdf/asb.pdf Annex 1 p57

105 LGA's response to *Tackling Anti-Social Tenants*, July 2002 http://www.lga.gov.uk/Documents/Briefing/Our_Work/social%20affairs/housingbrief.pdf para 1.2.1

> problems communities face. Some also see it as a more attractive option than seeking a suspended or outright possession order from the outset. It could, they argue, provide a powerful incentive for individuals to stop their anti-social behaviour or engage with support agencies to help them address their problematic behaviour.
>
> Some opponents of the proposal are concerned at the withdrawal of security of tenure from tenants and the possibility that this will lead to increased evictions. Others are concerned that individual households will be stigmatised by such actions and that it may have a negative impact on intervention to address problematic behaviour. They are concerned that it will trap vulnerable households in cycles of homelessness, without successfully challenging their behaviour to safeguard others. Some are against the proposal because they see a 'demotion' as providing a more cumbersome and protracted enforcement tool than is currently available via possession action.[106]

The NHF has also questioned whether the power to demote will jeopardise the independent status of RSLs:

> Before going down the route of 'demotions' the government needs to test that it does not jeopardise the independent status of housing associations, with all that this entails in relation to restricting their ability to raise private finance under public sector borrowing rules. We do not support the idea aired by the Law Commission that '*it should be made clear by statute that RSLs should be deemed to be public authorities.'* We oppose this because it fails to recognise that RSLs are not state bodies and it has implications for other 'public body' issues, such as eligibility for judicial review, EU procurement rules and public sector borrowing rules.[107]

D. Proceedings for possession

Schedule 2 to the *Housing Act 1985* sets out the grounds upon which a court may grant an order for possession against a secure council or RSL[108] tenant. Ground 2 (as amended by section 144 of the *Housing Act 1996*) provides for the eviction of a tenant or any person residing in the dwelling-house or visiting the dwelling- house who has:

> (a) been guilty of conduct which is, or is likely to cause, a nuisance or annoyance to a person residing, visiting or otherwise engaged in lawful activity in the locality, or
> (b) who has been convicted of:
> (i) using the dwelling-house or allowing it to be used for immoral or illegal purposes, or

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[106] NHF's response to *Tackling Anti-Social Tenants*, July 2002, paras 2.3.12-2.3.13
[107] *ibid*
[108] Registered Social Landlord

> (ii) an arrestable offence committed in, or in the locality of, the dwelling house.

Similar grounds for eviction against assured tenants of RSLs are contained in Schedule 2 to the *Housing Act 1988*.[109]

Before granting a possession order under one of the 'nuisance' grounds the court must be satisfied not only that the alleged breach has occurred, but also that it is reasonable to grant the order. This requirement of 'reasonableness' provides a judicial restraint on arbitrary eviction by social landlords.

Tackling Anti-Social Tenants set out some concerns that social landlords had expressed in relation to using court proceedings to deal with anti-social behaviour cases:

> Some social landlords have expressed a need for more certainty regarding the outcome of trials for anti-social behaviour. While the survey of landlords by the Joseph Rowntree Foundation (2000) found no evidence of widespread difficulty with judges making orders where sufficient evidence was put before them, it has remained an issue for landlords.
>
> …In particular, some landlords have said that they would find it easier to sustain witnesses if they themselves had more confidence in the outcome. They have pointed to individual cases where failure to secure an order from the court has damaged not only the confidence of individual witnesses, but also the confidence in 'the system' of residents in whole neighbourhoods.
>
> Moreover, the failure of the court to grant an order can greatly embolden the perpetrator to create a worse, rather than better, situation for residents and for staff managing the tenancy. The individual case can have a disproportionate effect. All these possibilities can seriously demotivate landlords and residents from engaging in legal progress in future cases.[110]

The paper went on to propose the introduction of 'structured discretion for judges in housing possession cases' with a view to increasing the certainty of outcome. Clause 16 of the Bill will introduce new sections into the *1985 Housing Act* (85A) and the *1988 Housing Act* (9A) to oblige the court, when considering whether it is reasonable to grant an order under one of the nuisance grounds, to give particular consideration to the actual or likely effect which the anti-social behaviour has had or could have on others.

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[109] Ground 14

[110] http://www.housing.odpm.gov.uk/information/consult/antisocial/pdf/asb.pdf para 1:3.1

1. Comment

The proposal to introduce structured discretion for courts dealing with applications for possession orders against anti-social tenants was welcomed by social landlords and their representative bodies:

> Giving structured discretion would improve the situation in the courts and the LGA supports this proposal.[111]
>
> We think that this problem should be addressed by improving the responsiveness of judges to the problems that victims face and not by removing their discretion to consider the reasonableness of granting a possession order. For this reason, we favour the ODPM option of structuring the discretion of the judge and not the option of making anti-social behaviour a mandatory ground for possession.[112]

Tackling Anti-Social Tenants noted that judges might be unhappy with any curtailment of their freedom to use their discretion to decide the outcome of a case.[113]

Devolution: Wales

Clause 17 will ensure that all functions of the Secretary of State arising from the amendments to the Housing Acts are, so far as exercisable in relation to Wales, to be carried out by the National Assembly for Wales.

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[111] LGA's response to *Tackling Anti-Social Tenants*, July 2002 http://www.lga.gov.uk/Documents/Briefing/Our_Work/social%20affairs/housingbrief.pdf para 1.3.1

[112] NHF's response to *Tackling Anti-Social Tenants*, July 2002, para 2.5.2

[113] http://www.housing.odpm.gov.uk/information/consult/antisocial/pdf/asb.pdf para 1:3.1

IV Truancy and exclusion from school

A. Introduction

Clauses 18 to 23 of the Bill seek to build on existing provisions relating to dealing with exclusions from school and truancy. Essentially, the aim is to offer parents support through parenting contracts; but, if necessary, to compel parents to take greater responsibility for their children through the use of parenting orders and penalty notices. These provisions are outlined in section C below, and some reactions to them in section D. Background information explaining the context is provided first, in section B.

B. Background

a. Truancy

The Government has emphasised the links between truancy and underachievement and youth crime. The DfES Public Service Agreement has a target to reduce school truancies by 10% by 2004 compared with 2002, to sustain the new lower level, and to improve overall attendance levels thereafter.[114] To achieve this objective, the Government is investing nearly £470 million over the next three years in a national behaviour and attendance strategy to support schools.[115]

Statistics on unauthorised absences in maintained schools in England are available through the DfES.[116] Provisional statistics for 2001/02 show that, of the 3.7 million pupils in maintained primary schools, 564,000 (15 per cent) had taken half a day unauthorised absence at least once. The average truant missed nine half days of school through unauthorised absence. Of the 3 million pupils in English maintained secondary schools in 2001/02, almost 567,000 (19 per cent) had taken half a day unauthorised absence at least once. The average secondary school truant missed seventeen half days of school through unauthorised absence.

In his latest annual report, 2001/02, Her Majesty's Chief Inspector of Schools commented that attendance remained a priority for many schools, and noted that a lack of parental support, including the condoning of unwarranted absence, continued to hamper the efforts of some schools.[117] Mary Atkinson, Senior Research Officer at the National Foundation for Educational Research has drawn attention to the detrimental effect of parentally condoned absences in her research on the role of support services in reducing unauthorised absence.[118]

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[114] *HM Treasury, Public service Agreements 2003-2006*, Cm 5571 July 2002, p 5
[115] HC Deb 11 February 2003, c 700-04W; HC Deb 24 February 2003, c 374W
[116] *Pupil absence in schools in England 2001/02 (Provisional Statistics)* SFR 30/2002 17 December 2002
[117] *The Annual Report of Her Majesty's Chief Inspector of schools 2001/02*, February 2003, paragraph 107
[118] *Education Journal*, Issue 55, 2001, pp 26 to 28

On 27 February 2003, the DfES released data from national 'truancy sweeps' (see below) conducted across the country in December 2002 which showed that the police had apprehended 20,000 pupils out of school, and that more than a third, 7,341, did not have a valid reason to be out of school; of these, over half were accompanied by an adult. Also, a MORI poll[119] studying parents' attitudes to taking children out of school for family holidays indicated that up to 40% of those who had done so did not believe that it would have an impact on their education. In response, the Government emphasised the need for continued efforts to cut truancy rates by Government, local education authorities and parents.[120]

The Government was considering withdrawing child benefit from the parents of children who truant. In his speech at the Labour Party Conference on 1 October 2002, the Prime Minister said that 'Parents of truants who refuse to cooperate with the school will be fined or lose benefit'.[121] According to a number of press reports the idea had been raised by the Prime Minister in the wake of the Damilola Taylor murder trial, and that ministerial discussions were taking place.[122] A No 10 Lobby briefing on 19 July 2002 said that the Government was looking at the practicalities of cutting child benefit payments to the parents of persistent truants.[123] Press reports suggested that the cabinet was divided on the issue, and the matter appears to have been dropped; however, the letter to parents notifying them of their rate of child benefit from April 2003 was accompanied by a DfES leaflet about parents' responsibilities for ensuring that their children attend school.[124]

b. Current law regarding school attendance

The law requires regular attendance at school for children of compulsory school age (5 to 16 years) unless the parent has arranged suitable education otherwise than at school.[125] Schools are required to take an attendance register twice a day: at the start of the morning session and once during the afternoon session. The register shows whether the pupil is present, engaged in an approved educational activity off-site, or absent. If a pupil of compulsory school age is absent, the register must show whether the absence was authorised or unauthorised.[126] Authorised absence is where the school has either given approval in advance for a pupil of compulsory school age to be away, or has accepted an

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[119] conducted by the DfES in conjunction with the Association of British Travel Agents

[120] http://www.dfes.gov.uk/pns/DisplayPN.cgi?pn_id=2003_0028

[121] http://www.labour.org.uk/tbconfspeech/

[122] see for example 'Blair plans to punish bad parents', *Sunday Times*, 28 April 2002; 'Blair: parents of tearaways should lose child benefit', *Sunday Telegraph*, 28 April 2002

[123] No 10 Lobby Briefing, 19 July 2002 available at http://www.number-10.gov.uk/output/Page5660.asp

[124] HC Deb 28 November 2002, c 464W; "Benefits cut for truancy shelved", *Observer*, 1 December 2002, p15

[125] *Education Act 1996*, sections 7 and section 437

[126] SI 1995/2089 as amended by SI 1997/2624 and SI 2001/2802, Regulation 7

explanation offered afterwards as a satisfactory justification for absence. All other absences are treated as unauthorised.[127]

Under the *Education (Pupil Registration) Regulations 1995*, as amended, parents can request that their child be granted leave of absence from school to go away on holiday. However, a pupil cannot be granted more than 10 school day absences for holidays in any school year, except in special circumstances.[128] DfES guidance 10/99, *Social Inclusion: Pupil Support*, provides guidance on the arrangements.[129] Annex A sets out the types of absences which schools may treat as authorised; there is a section on family holidays during term-time. This makes it clear that parents should be discouraged from taking pupils on holiday during term time, and that schools should only, exceptionally, agree absence of more than 10 school days in a school year for holidays in term. The guidance stresses that the 10 days should not be regarded as the norm. If a school does not agree an absence and the pupil goes on holiday, the absence is unauthorised. If parents keep a child away for longer than was agreed, any extra time is recorded as unauthorised. Schools may delete from roll a pupil who fails to return within 10 school days of the agreed return date unless there is a good reason for the continued absence, such as illness.

LEAs are responsible for ensuring that pupils attend school, and may enforce attendance through school attendance orders. Parents of registered pupils at school can be prosecuted if they fail to ensure that that their children attend school regularly. The relevant statutory provisions on school attendance orders are contained in sections 437 to 448 of the *Education Act 1996*.[130] Section 443 creates the offence of failure to comply with a school attendance order. Subsection (4) specifies the penalty on summary conviction of a fine not exceeding level 3 on the standard scale – currently £1,000. Section 444 creates the offence of failing to secure the regular attendance at school of a registered pupil. Under section 447 of the Act LEAs are obliged, before instituting proceedings under sections 443 or 444, to consider whether an education supervision order would be appropriate instead of, or as well as, prosecution for school attendance offences. Education supervision orders are made under section 36 and Schedule 3 of the *Children Act 1989*. Under an order a supervisor (usually an education welfare officer or an education social worker) has a duty 'to advise, assist and befriend, and give directions' to the supervised child and his parents.

Section 444 of the 1996 Act was amended by section 72 of the *Criminal Justice and Court Services Act 2000* to provide a higher penalty for persistent and aggravated truancy (where the parents know that their child is not attending school regularly and fails, without reasonable justification, to cause the child to attend). The higher penalty, which

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[127] DfES Circular 10/99, *Social Inclusion: Pupil Support*, http://www.dfee.gov.uk/circulars/10-99/
[128] SI 1995/2089 as amended by SI 1997/2624 and SI 2001/2802, Regulation 8 (3) and (4)
[129] http://www.dfee.gov.uk/circulars/10-99/
[130] a consolidation Act

came into force on 1 March 2001, is a maximum fine not exceeding level 4 on the standard scale – currently £2,500, with the possibility of three months imprisonment.

In May 2002, Patricia Amos was given a prison sentence in Banbury, Oxfordshire, for not ensuring two of her daughters regularly attended school.[131] Since then other parents have been sent to prison for failing to ensure that their children attended school regularly.[132]

A new 'fast track' prosecution process for parents of persistent truants is being piloted, and a national implementation of the arrangements is planned for September 2003.[133] Under the procedure parents are given 12 weeks to improve their child's attendance, and if there is no sustained improvement parents face fines or imprisonment. The first prosecutions under the procedures took place in Thurrock on 26 February 2003.[134] However, there have been delays in dealing with the cases as some parents failed to attend court for various reasons, and some cases were adjourned.[135]

Under section 8 of the *Crime and Disorder Act 1998* magistrates may impose a parenting order to require parents to attend counselling or guidance sessions. It can also specify other requirements.

Under section 16 of the *Crime and Disorder Act 1998* the police are empowered to remove truants found in public places and to return them either to their schools or to a place designated by the Local Education Authority. Such 'truancy sweeps' are being used as part of the Government's efforts to reduce street crime.[136]

Section 63 of the *School Standards and Framework Act 1998* enables the Secretary of State to require school governing bodies to set school-level targets for unauthorised absence. The *Education Act 2002*, section 53, extends this power to include authorised absence and will therefore enable the Secretary of State to require specified schools to set targets to reduce their overall level of absence.

c. Exclusion from school

Data on permanent exclusions are published in DfES Statistical Bulletins, which are available on the DfES website.[137] In 2000/01 there were 9,135 permanent exclusions from maintained primary and secondary schools and all special schools in England. Of these

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131 http://news.bbc.co.uk/1/hi/uk/1984502.stm

132 "Truancy falls after jailing of mother," *Times Educational Supplement*, 17 January 2003, p 3

133 DfES Press Notice, *Tackling truancy hits the high street – Lewis*, 2 December 2002; DfES Press Notice, *Tackling truancy, tackling underachievement, tackling crime – Lewis*, 27 February 2003

134 Fast track truant scheme sees first 13 prosecuted, *TES*, 28 February 2003, p 2; http://news.bbc.co.uk/1/hi/uk/2804491.stm

135 "Fast-track truancy court fails to bring parents to book", *Times*, 13 March 2003, p 4; "Slow start to truancy fast track," *Guardian*, 27 February 2003, p 7

136 HC Deb 16 December 2002, cc 634-5W

137 www.dfes.gsi.gov.uk/statistics.

1,500 were from primary schools, 7,300 from secondary schools and 400 from special schools. The number of exclusions peaked in 1996/97 at around 12,700, fell slightly in 1997/98 and then more dramatically in subsequent years. In 2000/01 the number of exclusions increased for the first time by almost 10 per cent from the previous year, but overall this still represents a decrease in the number of exclusions of more than a quarter since 1996/97.

The New Labour Government made tackling exclusion from school a major priority of the Social Exclusion Unit, and introduced targets for reducing exclusion by one-third by 2002. The policy was strongly criticised by the teaching unions. In response, the guidance on exclusions was amended to take account of teachers' concerns and to make it easier for head teachers to exclude violent or very disruptive pupils from school. On 4 May 2001, the Government announced that it would not set fresh targets.[138]

There have been a number of high profile court cases where pupils have been excluded for serious offences, and teachers' unions urged the Government to take action to ensure that the interests of the excluded pupil were balanced against those of the school as a whole. The *Education Act 2002* re-enacted the law on exclusions contained in the *School Standards and Framework Act 1998* but with important changes. It makes changes to the composition of appeal panels, and makes new provision requiring panels to balance the interests of the excluded pupil against the interests of all the other members of the school community.

New DfES guidance on exclusions has been issued: *Improving behaviour and attendance – guidance on exclusion from school and Pupil Referral units*.[139] This came into force on 20 January 2003 and applies to any exclusion on or after that date. Any exclusion before then will be dealt with under the old procedures, which are set out in DfES Circular 10/99, *Social Inclusion: Pupil Support.*

The Home Office white paper, *Respect and Responsibility – Taking A Stand Against Anti-Social Behaviour*, notes that out of approximately 6,000 11 to 16 year olds in education, almost two-thirds of excluded pupils admitted having committed an offence in the past year. 44% of those who had offended in the past year had also played truant.[140]

d. Current provision for home-school agreements

Sections 110 and 111 of the *School Standards and Framework Act 1998* require all maintained schools to adopt a home-school agreement and parental declaration. An agreement is intended to be a clear statement of the school's aims and ethos, its responsibilities towards pupils, the parents' responsibilities while their child is registered

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138 DfES Press Notice: http://www.dfes.gov.uk/pns/DisplayPN.cgi?pn_id=2001_0242

139 http://www.teachernet.gov.uk/_doc/3470/ACF6D3B.pdf

140 Cm 5778, p 15

at the school, and the school's expectations of its pupils. The DfEE has issued guidance on what should be included in such agreements.[141] Amongst other things, this states that parents cannot be compelled to sign an agreement and that breaches of the terms of an agreement will not be actionable through the courts. The guidance stresses that agreements work best where they are the product of a genuine discussion between all parties concerned, and are introduced as part of a whole school approach to working with parents.

e. Extending the use of parenting orders

A parenting order (currently available under section 8 of the *Crime and Disorder Act 1998*) can be made by a court where:

- a child or young person has been convicted of a criminal offence that took place off or on school premises; or
- a child safety order, anti-social behaviour order or sex offender order has been made against a child or young person; or
- a person is convicted under section 443 or 444 of the *Education Act 1996* for failing to comply with a school attendance order or to secure the regular attendance at school of a registered pupil.

An order can last up to 12 months, and may include attendance at counselling or guidance sessions to help the parent cope more effectively with a child's behaviour. It may also include other requirements aimed at encouraging parents to exercise control over their child. For example, parents can be required to ensure the child attends school. Failure to comply with the order can lead to prosecution and, on conviction, to a fine not exceeding level three on the standard scale (£1,000).

From April 2000 to December 2002, 3,105 parenting orders were made: 2,129 for criminal offences; 538 for school attendance offences; and 438 other.[142]

2001 consultation on extending the use of parenting orders

On 9 July 2001 the DfES also issued a consultation note setting out how parenting orders could be extended to situations where pupils behave badly in school.[143] It sought views, amongst other things, on the coverage of parenting orders; the circumstances in which parenting orders should be used (whether they should be prompted either by a pattern of fixed period exclusions or by a permanent exclusion, where a child has been persistently

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[141] *Home School Agreements*, DfEE, 1998

[142] HC Deb 18 December 2002 c 846W and Home Office

[143] DfES Press Notice, *New measures will tackle violent pupils and parents and help promote good behaviour*, 9 July 2001

disruptive or violent on school premises); and, who should be empowered to make applications for parenting orders.[144]

The issue of sanctions when parents themselves display poor behaviour was also raised. (Parenting orders are authorised where children are in court for poor behaviour, not where parents themselves display poor behaviour.) The Annex to the consultation note set out the range of remedies currently available in circumstances where parents or carers are behaving in a threatening or abusive manner, and invited views on how schools could be supported and guided to make use of them where they need to. The consultation ended on 9 October 2001.

A DfES summary of responses has not been published. The following paragraphs highlight some points that the National Governors' Council (NGC), the National Association of Head Teachers (NAHT) and the Secondary Heads Association (SHA) made in their responses.

The NGC noted that 'difficult parents' include the 'litigious' parent, who is keen to take schools and LEAs to court, and that the NGC felt ambivalent about extending the role of courts in the relationship between schools and parents. However, the NGC could see definite advantages if it were possible for support services such as the Education Welfare Service or Behaviour Support Service to institute a parenting order that gave planned support in parenting skills without the need for court proceedings. It envisaged that court proceedings and the imposition of penalties should only apply as a result of non-compliance with an order. NGC also wished to see evidence of the effectiveness or otherwise of parenting orders.[145]

In its response to the consultation, the NAHT thought that it would be appropriate to use parenting orders where parents themselves are violent, irrespective of the behaviour of the child.[146] The SHA felt that in such cases existing statutory provisions should be used, and commented that what was missing was the will to invoke them, or the ability to enforce them.[147]

f. Charles Clarke's speech (12 December 2002) and the Home Office white paper

Charles Clarke, the Secretary of State for Education and Skills, made a speech to the Social Market Foundation on 12 December 2002 announcing a five point plan for improving behaviour and school attendance:

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144 http://www.dfes.gov.uk/consultations/archive/archive1.cfm?CONID=93

145 *Response from the National Governors' Council to the consultation on Extending the Use of Parenting Orders*, 9 October 2001

146 Response to the consultation on extending the use of parenting orders, *NAHT*

147 Response to the consultation on extending the use of parenting orders, *SHA*

- a national behaviour and attendance strategy for schools
- improved working with the police
- modernising the role of the Education Welfare Service
- new measures and rules on exclusions
- making parents face up to their responsibilities

The DfES Press Notice on the speech stated:

> Mr Clarke also announced a comprehensive package of investment that will provide support for those families facing real difficulties as well as sanctions for those parents who refuse to take responsibility for their children. This will mean:
>
> • Targeted help for schools in the most challenging circumstances will mean intensive support for around 400 secondary and 1,500 primary schools educating around 800,000 children
> • Funding for over 200 teams specialising in tackling disruptive behaviour
> • Increasing the number of Learning Support Units
> • Ensuring that all secondary schools are fully equipped to deal with discipline issues and tackle issues such as pupil behaviour at lunchtimes
> • Introducing new rules on exclusions and strengthening appeals panels by ensuring that a serving or retired head teacher must sit on the panel
> • Increasing the use of police patrols in schools
>
> Mr Clarke also outlined tough new consequences for parents who fail to take responsibility for their children. Education Welfare and Police Officers will have the authority, should they wish to use it, to issue fixed penalty notices to parents who condone or ignore truancy. Head teachers will also be able to apply this sanction if they consider it appropriate. This is in addition to other tough measures to tackle truancy including fast track to prosecution which could result in fines of up to £2,500 or a jail sentence. Parents whose children are excluded for a fixed term, and do nothing to turn around their child's behaviour, will be subject parenting contracts. Refusal to sign or breach of contract can trigger a court-imposed Parenting Order and could trigger a prosecution.[148]

These measures are part of the Government's wide-ranging programme to tackle truancy and problem behaviour at school. Under the Government's Behaviour Improvement Programme dedicated school behaviour support teams, electronic registration schemes and truancy sweeps are available to help tackle bad behaviour and truancy.[149]

The Home Office white paper, *Respect and Responsibility – Taking a Stand Against Anti-Social Behaviour*, proposed a range of measures aimed at families who are unable or

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[148] http://www.dfes.gov.uk/speeches/12_12_02/index.shtml

[149] For a summary of the various measures see DfES Press Notice, *Improving behaviour and attendance in local schools – Lewis*, 1 April 2003

unwilling to deal with their children's anti-social behaviour. The school-related proposals include parenting contracts, the new parenting orders and fixed penalty notices:

> Schools
>
> We will give Local Education Authorities (LEAs) and schools powers to ask parents who have failed to secure their child's regular attendance or whose child has been excluded for serious misbehaviour to sign parenting contracts.
>
> Refusal to sign or breach of the contract may result in a fixed penalty notice or prosecution (for an attendance-related contract) or a court imposed Parenting Order (for an exclusion related contract).
>
> Designated LEA and school staff and police officers will have powers to issue FPNs to parents who condone or ignore truancy.
>
> We will enable LEAs to seek a free-standing Parenting Order where a child has been excluded for serious misbehaviour.[150]

The white paper also stated that the Government believes that 'residential options' for parents experiencing problems to improve their parenting are sometimes needed, and would consider whether it is necessary to take further powers to ensure that they comply. This may include a residential requirement attached to parenting orders. (The Bill as it stands does not make specific provision for residential provision for parents).

The white paper also referred to the forthcoming publication of a green paper on children at risk, which will look at a strategy for universal and targeted provision for services for children, including measures to streamline the agencies working with families and children in need.

C. The Bill

The Queen's Speech announced that the Government would 'bring forward proposals to tackle problems of truancy.'[151]

Clauses 18 to 23 of the Bill seek to introduce new measures to ensure that parents take greater responsibility for their children's behaviour at school, and that they do not condone or ignore truancy from school. Local education authorities (LEAs) and school governing bodies will be empowered to ask parents to enter into a parenting contract where a child has been excluded from school or has failed to attend school regularly. Existing legislation, which provides for parenting orders for parents convicted of school attendance offences, will be complemented by the Bill's provisions for a new free-

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[150] Cm 5778, p 36, http://www.official-documents.co.uk/document/cm57/5778/5778.pdf
[151] *Queen's Speech,* 13 November 2002

standing parenting order where a child has been excluded from school. In addition, the Bill seeks to amend the existing law on school attendance to provide, as an alternative to prosecution, for Fixed Penalty Notices to be issued to the parents of a registered pupil at school whose child fails to attend school regularly.

1. Parenting contracts: exclusion and truancy cases

Clause 18 of the Bill empowers a LEA or a school governing body to enter into a school-related parenting contract. The Explanatory Notes on the Bill state that there will be no requirement on LEAs and school governing bodies to use parenting contracts and that signing a contract will be voluntary for parents. Where a parenting contract is entered into it cannot result in legal action for breach of contract or civil damages (clause 18(8)).

A school-related parenting contract can be made where a pupil has:

- been excluded from school on disciplinary grounds for a fixed period or permanently, and conditions specified in regulations are met. The regulations will be made by the Secretary of State for Education and Skills for England and by the National Assembly for Wales for Wales (NAW).

- failed to attend regularly at the school at which s/he is registered.

These provisions apply to pupils at maintained schools, Pupil Referral Units, Academies, City Technology Colleges, or a City College for the Technology of the Arts.

Under the Bill's provisions a school-related parenting contract consists of a statement by the parent that s/he agrees to comply with the requirements laid down in the contract for a specified period, and a statement by the LEA or school governing body that it agrees to provide support to enable the parent to comply with those requirements. The requirements may specifically include counselling or guidance sessions. LEAs and school governing bodies are required to have regard to any guidance issued by the Secretary of State or the NAW.

Under clauses 19 and 20 an exclusion-related parenting order may be made following a parent's refusal to sign a parenting contract or breach of a parenting contract. In relation to school attendance, refusal to sign, or breach of a contract, *may* result in a penalty notice or prosecution.[152] However, the Bill does not make a direct link between refusal to sign or breach of contact on the one hand and penalty notices and prosecution in cases of truancy on the other. Presumably the regulations and guidance will set out how the provisions should be used and what should be taken into account.

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[152] HC Deb 12 March 2003 c 303W

2. School exclusion-related parenting orders

As noted above, provision for school attendance-related parenting orders already exists under sections 8 and 9 of the *Crime and Disorder Act 1998*. Clause 19 of the Bill complements this provision by seeking to provide a free-standing school exclusion-related parenting order. LEAs will be empowered to apply to a magistrates' court for a parenting order for parents of children who have been excluded from school on disciplinary grounds for a fixed period or permanently, and where conditions prescribed by regulations are met. The court may make an order if it is satisfied that it would be in the interests of improving the behaviour of the pupil. As with existing statutory provision relating to parenting orders for school attendance offences, parenting orders in cases of exclusion may last for up to 12 months and may include attendance at counselling or guidance sessions.

The Explanatory Notes to the Bill state that an LEA may apply for a parenting order as a first response; or it may make an application following a parent's refusal to sign, or breach of, a parenting contract. Clause 20 prescribes some of the things that a court must take into account in deciding whether to make a parenting order. These include any previous refusal to sign a parenting contract, or any failure to comply with a contract which they have signed. Before making a parenting order the court must obtain and consider information about a pupil's family circumstances and the likely effect of the order on those circumstances. As noted earlier, the Government is considering whether there should be 'residential options' for parents experiencing problems, to improve their parenting.[153] The Bill as it stands does not make specific provision for residential provision for parents. Section 9 subsections (3) to (7) of the *Crime and Disorder Act 1998* (which established parenting orders - see above) are applied to the new parenting orders proposed by the Bill.

Provision is made for the Secretary of State for Education and Skills and the NAW to make regulations relating to parenting orders and to issue guidance (clause 20 (4) (5)).

There will be a right of appeal to the Crown Court against a school exclusion-related parenting order (clause 21).

3. Penalty notices for parents in cases of truancy

Clause 22 seeks to amend section 444 of the *Education Act 1996* [*Offence: failure to secure regular attendance at school of registered pupils*], which makes parents of a registered pupil who fail to secure regular attendance at school guilty of an offence. At present prosecution under this provision is the only available sanction. Clause 22 adds two new sections to section 444.

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[153] HC Deb 12 March 2003 c 292; White Paper, Cm 5778, p 9

New section 444A enables authorised LEA and school staff and the police to issue a penalty notice in respect of a school attendance offence in England. There is however no requirement on them to do so. The section applies to maintained schools, Pupil Referral Units, Academies, City Technology Colleges, or a City College for the Technology of the Arts. School staff authorised to give penalty notices are a head teacher of a 'relevant school' in England, or a member of the school staff authorised by the head teacher of the school. Penalties are to be paid to LEAs who may use the revenue for purposes specified in regulations.

Under new section 444B the Secretary of State may make regulations governing the form and content of penalty notices, including the amount of any penalty and the time by which it must be paid; the action to be taken if a penalty is not paid; and, codes of conduct relating to penalty notices. The regulations may also make provision as to the persons who may be authorised by a LEA or head teacher to give penalty notices. The Secretary of State intends to consult local authorities, head teachers and the police about implementation before deciding the details.[154] In carrying out their functions LEAs, head teachers and authorised officers will be required to have regard to any guidance issued by the Secretary of State. The *Police Reform Act 2002*, Schedules 4 and 5, will be amended to enable community support officers and accredited persons to issue penalty notices.

Under Clause 23 [*Interpretation*] a parent in relation to a pupil or child is to be construed in accordance with section 576 of the *Education Act 1996*, which includes any individual who has parental responsibility or care of the child.

Clauses 22 and 23 do not apply to Wales unless the NAW makes an order under new section 444B (9) and (10) amending the *Education Act 1996*.

D. Reactions

Generally speaking, the Government's behaviour and truancy strategies aimed at providing more support for pupils and their parents have been welcomed; however, the proposals to issue fixed penalty notices to the parents of truants are controversial.

So far, few organisations have formally responded to the school-related provisions in the Bill and the Home Office white paper preceding it.

Following Charles Clarke's speech on 12 December 2002, teachers' unions expressed concern about the proposals to give head teachers powers to issue fines to the parents of truants. BBC News reported that the NUT was opposed to the proposal; John Bangs, head of education at the NUT, was quoted as saying that the legal powers to fine parents should remain with the courts, and that if head teachers were involved enormous amounts

[154] paragraph 61 of the Explanatory Notes

of their time could be taken up. Similarly, David Hart, the general secretary of the National Association of Head Teachers, was reportedly opposed to head teachers being involved in issuing fines.[155] Eamonn O'Kane, general secretary of the National Association of Schoolmasters Union of Women Teachers (NASUWT) reportedly said that such powers would put head teachers in a semi-judicial position; would create the potential for anomalies in fining and would involve heads in possible litigation; and, that the relationship between heads and obstructive parents would be made more difficult.[156]

Concern was also expressed by the Association for Education Welfare Management. It pointed out that on-the-spot fines would be fraught with logistical problems, and would undermine the relationships that education welfare officers develop with families.[157]

Jacqui Newall, head of the pupil inclusion at the National Children's Bureau, criticised the proposals for penalty notices, arguing that truancy is too complicated for it to be dealt with in this way, and that a 'parking ticket-style penalty' would be dangerous and would not be in the interests of children or the professional dealing with them. She called instead for a greater use of education supervision orders, but said that lack of resources to undertake casework had prevented this from happening.[158]

The Local Government Association (LGA) has reservations about the proposals. While it believes that the powers may be useful in exception cases, it is concerned about them being used more widely. The measures are seen as focusing too much on enforcement rather than on building partnerships. LGA is doubtful about giving head teachers the power to impose fines on parents, arguing that it may make it more difficult to promote co-operative relationships between parents and schools. Moreover, if the power is given in parallel to LEAs and head teachers, there could be difficulties where head teachers' and LEAs' views differ. LGA is further concerned that fines could have an adverse affect on family relationships. On parenting orders, it argues that they should only be applied if voluntary measures have failed. LGA also notes that there will be financial implication for LEAs in training and supporting staff internally and in schools on the implementation of the new enforcement measures.[159]

One of the general criticisms made of the Bill is that there are already adequate powers to deal with the problems with which the new measures are intended to deal. Commenting on the publication of the Home Office white paper, Oliver Letwin, the Shadow Home

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155 http://news.bbc.co.uk/1/hi/education/2567021.stm

156 "Parents of truants face fines from head," *Guardian*, 12 December 2002, p 10

157 "Enforcers condemn spot fines for truants," *TES*, 15 November 2002, p 4

158 "Plans to let head teachers issue fines to parents of truants are 'dangerous', *Community Care*, 19 December 2002, p 12

159 An initial response by the Local Government Association to the Anti-Social behaviour White Paper and Bill, *Local Government Association*, Education and Lifelong Learning Executive, 28 March 2003: http://www.lga.gov.uk/Documents/Agenda/education/280303/Item3.pdf; Second Reading briefing, 8 April 2003

Secretary, drew attention to the amount of legislation that the Government had introduced to deal with crime and disorder. He questioned whether the new fines will be enforced, and whether the new parenting (orders) will be any less bureaucratic than the anti-social behaviour orders.[160] Simon Hughes, the principal Liberal Democrat spokesperson for Home and Legal Affairs, emphasised the need for effective use of existing powers.[161]

Following Charles Clarke's speech on 12 December 2002, Phil Willis, principal Liberal Democrat spokesperson for Education and Skills, emphasised that the most successful programmes to tackle truancy were where young people felt that they were being offered a valuable chance rather than a system designed to reinforce their failure. Damian Green, the Shadow Education and Skills Secretary, proposed linking school admission to home-school contracts covering matters related to school conduct and discipline.[162] A similar proposal was made under the last Conservative government.

V Parenting contracts within the criminal justice system

1. Parenting contracts

In addressing a seminar held by the Youth Justice Board and the National Family and Parenting Institute, on 23 October 2002, Home Office Minister Hilary Benn said that the Government would like to extend the benefits of Parenting Orders to more parents, making them available with referral orders, with more use alongside ASBOs, and trying to get more fathers involved. Parenting contracts, which would include voluntary attendance at parenting programmes, would be introduced within the criminal justice system.

The parenting contract, introduced by clause 24, follows that approach, whose benefit was identified in the National Evaluation of the Youth Justice Board's Parenting Programme.[163] The parenting contract resembles the extra-statutory Acceptable Behaviour Contract, in being (despite the name) a voluntary and unenforceable arrangement which may, if successful, avoid the need for a formal order. The *Explanatory Notes* comment:

> 65. Subsection 1(2) sets out the circumstances for a parenting contract being made. Parenting contracts are designed to provide support for parents when their children are beginning to display anti-social or criminal behaviour. This might include:

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[160] HC Deb 12 March 2003 c 293
[161] HC Deb 12 March 2003 c 295
[162] BBC News at: http://news.bbc.co.uk/1/hi/education/2567021.stm
[163] see the introduction to this paper, and "Positive Parenting: The National Evaluation of the Youth Justice Board's Parenting Programme", 2 September 2002, http://www.youth-justice-board.gov.uk/policy/positive_parenting.pdf

- A child who is referred to the Youth Offending Team in connection with a final warning;

- A child under 10 has committed an act, which if he had been older, would have constituted an offence.

- A child referred to the Youth Offending Team for an offence.

A child identified as being at risk of offending by a Youth Inclusion Support Panel or Identification, Referral or Tracking scheme.

66. Subsection 1(5) describes the purpose of the parenting contract to prevent the young person from engaging in criminal conduct. Evidence suggests that early intervention, particularly family based interventions, are more effective at preventing offending.

67. Subsection 1(7) sets out that there would be no penalty for the breach of the contract as it is a voluntary agreement between the parent and the Youth Offending Team. However, the Youth Offending Team could use their experience of the parents' engagement during the contract process in any future recommendations for parenting orders.

68. This clause complements clause 18 which enables Local Education Authorities and school staff to arrange parenting contracts for parents of children who have been excluded from school for a fixed period or have failed to attend the school at which he is registered regularly.

2. Parenting orders

Clauses 25 – 28 would extend the circumstances in which parenting orders, under ss8-10 of the *Crime and Disorder Act 1998* may be made. Where a child or young person has been referred to a YOT, a member of the YOT may apply to a magistrates' court for a parenting order, which may be made if the court is satisfied:

(a) that the child or young person has engaged in criminal conduct or anti-social behaviour, and
(b) that making the order would be desirable in the interests of preventing the child or young person from engaging in further criminal conduct or further anti-social behaviour (clause 25(3)).

VI Powers for police civilians

Parts 4 and 5 of the Bill contain provisions which would extend the powers of certain police support staff. The *Police Reform Act 2002* made a number of changes to extend the "police family" by allowing chief police officers to confer limited police powers on civilians so that they could perform a range of routine police duties.

There are two main groups of civilians covered by the Act. The first are "designated" civilians, who are either directly employed by police authorities or contracted-out to the police by other organisations. Designated civilians may be: community support officers; investigating officers; detention officers; or escort officers.

The second group of civilians are "accredited" persons, who are not employed by the police. The Act allows chief police officers to establish community safety accreditation schemes, in order that some police powers could be conferred on people accredited under these schemes. Those involved could include neighbourhood wardens, football stewards and officers from the private security sector. The 2002 Act also provides for the Home Secretary to make regulations enabling the chief constable of the British Transport Police to institute a railway safety accreditation scheme.[164]

The *Anti-Social Behaviour Bill* extends the powers of community support officers and accredited persons.

A. Community support officers

Community Support Officers (CSOs) are uniformed civilians, employed by the police authority, under the control of the chief officer of police. They are intended to deal with low level crime and nuisance behaviour. CSOs have to be distinguished from Special Constables: the latter are volunteers who spend a few hours a week helping their local police force. Unlike CSOs, special constables are attested as police constables and have full police powers. Further details are in a Library Standard Note.[165]

a. The introduction of CSOs

The 2001 White Paper *Policing A New Century: A Blueprint for Reform* explained how the Government foresaw the role of CSOs as follows:

> Front line policing can be strengthened by enhancing the role of police support staff, and by giving them new powers which will allow them to take over tasks currently carried out by police officers for example in custody suites. Other support staff ('Community Support Officers') will be empowered to carry out basic patrol functions. They will provide a visible presence in the community with powers sufficient to deal with anti-social behaviour and minor disorder. [166]

The White Paper went on to describe the duties CSOs might perform:

> 5.8 Community Support Officers deployed in the community would have a vital role to play in support of the police in increasing public safety and contributing to

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[164] S43(1)
[165] SNHA/1154, *Special Constables http://hcl1.hclibrary.parliament.uk/notes/has/snha-01154.pdf*
[166] *Policing A New Century: A Blueprint for Reform* (Cm 5326) Home Office December 2001: page 11

the regeneration of an area. It is envisaged that they would deal with functions such as:

- Anti-social behaviour (monitoring compliance with Anti-Social Behaviour Orders and Acceptable Behaviour Contracts, truancy checking, viewing CCTV footage; dealing with off road vehicles which are mostly unlicensed and without a current registered keeper).

- Environmental matters (liaison with local authority on graffiti removal, abandoned vehicles, litter).

- Public order support (crowd stewarding, street wardens, crime scene cordon).

- Criminal justice support (curfew checks of offenders on bail, supervision of reparation scheme activities, house to house enquiries, missing persons enquiries, victim support, bail enquiries).

- Providing additional eyes and ears on the streets at all times, but particularly at times of terrorist threat. [167]

Further background on the Bill, which became the *Police Reform Act 2000*, is provided in Library Research Paper 02/15.

Police forces were first invited to bid for funds for CSOs in July 2002. £19 million was made available to "kick start" their introduction in 2002-03.[168] 27 out of the 43 forces in England and Wales applied for and received funding,[169] and most of the provisions granting CSOs powers came into force in December 2002. By the end of March 2003, over 1,200 CSOs were in place.[170] The following table shows the distribution of CSOs in the 26 forces who had recruited them by 17 March 2003:[171]

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[167] *ibid* page 85

[168] Home Office Press Release 285/2002, "Blunkett announces more than a thousand Community Support Officers to boost record police numbers", 23 September 2002

[169] Ibid

[170] Home Office Press Release 094/2003, "More police and new powers to tackle anti-social behaviour", 27 March 2003

[171] HC Deb 21 March 2003 c971-2

Community Support Officers: Numbers recruited by 17 March 2003 in forces in England & Wales

Force	Number
Metropolitan	422
Metropolitan (funded by Transport for London)	83
Greater Manchester	160
Lancashire	72
Merseyside	41 *
Cleveland	40
West Yorkshire	36
Surrey	36
Lincolnshire	32
Gwent	30
Leicestershire	28
Sussex	22
Devon and Cornwall	20
Wiltshire	14
Hertfordshire	14
South Yorkshire	12
Norfolk	12
Northamptonshire	12
Warwickshire	11
Durham	10
Essex	10
Nottinghamshire	10
West Mercia	10
Dorset	7
Kent	9
Cambridgeshire	6
Cheshire	6
Total	**1,165**

* includes 2 part-time

The Government has a target of 4,000 CSOs by the end of 2005.[172]

b. CSOs powers under current legislation

The potential powers of CSOs are set out in Part 1 of Schedule 4 to the *Police Reform Act 2002*. However, the powers given to individual CSOs will be at the discretion of the chief police officer. Also some of the powers are being piloted in certain areas before being rolled out nationally. These are discussed below.

[172] HC Deb 20 January.2003 c173W

Under the current provisions CSOs in pilot areas may, subject to the discretion of the chief police officer, be able to issue a range of fixed penalty notices for public nuisance under Chapter 1 Part 1 of the *Criminal Justice and Police Act 2001*. [173] The offences covered are set out in section IC.7 of this research paper. They include acts such as trespassing on the railway, throwing fireworks, and certain alcohol related offences. CSOs nationally may also be able to issue fixed penalty notices for dog fouling, littering and cycling on footpaths.

CSOs may also have limited powers, in connection with certain offences, to detain a person who fails to comply with a request to give their name and address. This can be for up to 30 minutes, pending the arrival of a constable. This power is only being used in six pilot areas,[174] and will not be rolled out nationally until a review has been conducted by Her Majesty's Inspectorate of Constabulary and the evaluation report has been laid before Parliament.[175] CSOs in these areas may also have the power to use reasonable force to detain a person.

CSOs may be able to confiscate alcohol in certain circumstances, and seize tobacco or cigarette papers from under 16s smoking in a public place. CSOs may also have limited powers to stop vehicles and direct traffic, and to keep people away from an area which has been cordoned under the *Terrorism Act 2000*.

Further details of CSOs powers are available from the police reform website at:
http://www.policereform.gov.uk/community_support_officers.asp

The provisions covering CSOs in the *Police Reform Bill* caused some controversy, with the Police Federation describing the proposals as "policing on the cheap" and arguing that they would undermine the concept of policing by consent.[176] Liberty suggested that community support officers would be poorly trained and less accountable than police officers.[177] The controversy has continued since the introduction of CSOs in December 2002. An article in *Jane's Police Review* by a retired senior police officer argued that CSOs were a waste of taxpayers' money and could undermine the Special Constabulary.[178] Subsequent articles, however, were supportive of the introduction of CSOs, arguing that their introduction adds to "visibility and reassurance" at a much lower

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[173] See Home Office *Community Support Officers: Frequently asked questions* available at http://www.policereform.gov.uk/community_support_officers.asp

[174] The six forces piloting these powers are: the Metropolitan Police; West Yorkshire; Lancashire; Devon and Cornwall; Northamptonshire; and Gwent.

[175] Home Office Press Release 210/2002, "Police Reform Bill receives Royal Assent", 24 July 2002

[176] "Civilian Police To Go On The Beat Within Months" *Daily Telegraph* 26 January 2002

[177] "Crime: Civilian Patrols To Hold Suspects For 30 Minutes" *Independent* 26 January 2002

[178] "Plastic policemen", *Jane's Police Review*, 21 February 2003 pp28-9

cost than police officers[179] and that they form a complementary, but different, part of the police team in the same way as traffic wardens.[180]

B. Accredited persons

The 2001 policing White Paper also put forward proposals for making greater use of organisations - such as neighbourhood wardens or sports stewards – already involved in aspects of community safety:

> 5.12 This is not policing on the cheap but a realistic, hard headed approach to deploying and co-ordinating the people who can work to rid the community of abandoned cars, graffiti, thuggish and anti-social behaviour. The extended police family gives the neighbourhood additional power to take proper responsibility for itself. The sort of functions members of the extended police family would address are broadly the same as for community support officers above, covering environmental matters, anti-social behaviour, stewarding, supervision of reparation scheme activities etc. [181]

Accordingly, the *Police Reform Act 2002* provided for a chief officer of police to accredit non-police employees involved with the provision of community safety with powers to undertake certain functions to support the police. Their powers, which are set out in schedule 5 of the Act, are more limited than those of Community Support Officers. The measures came into force on 1 April 2003.[182]

Accredited persons can issue fixed penalty notices for:

- cycling on the footway
- dog fouling
- litter

They also have the same powers regarding the confiscation of alcohol and tobacco as CSOs. However, they do not currently have the same powers to issue fixed penalty notices for public nuisance. Neither do they have the powers to detain, use reasonable force, enforce a cordon or stop vehicles for a road check. A more detailed comparison of the powers of accredited persons and CSOs can be found in a Home Office Press Release.[183]

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179 "The way forward", *Jane's Police Review*, 7 March 2003, p 29

180 "Stronger together", *Jane's Police Review*, 14 March 2003 p31

181 *ibid*: page 87

182 See Home Office Press Release, "Accredited officers will support police officers in fight against crime and anti-social behaviour", 1 April 2003, available at http://213.121.214.245/n_story.asp?item_id=432

183 ibid

C. The Bill's provisions

The Government states that CSOs will play a "key role" in combating anti-social behaviour by assisting police in tackling low level crime and nuisance:[184]

> The 1,281 community support officers will play a key role in helping communities see a difference from the measures in today's Anti-Social Behaviour Bill. Introduced last December by 26 forces as part of the police reform agenda, CSOs provide vital assistance to the police in tackling low-level crime and nuisance behaviour. Measures announced in the Anti-Social Behaviour Bill would give CSOs the tools they need to do their job even more effectively, such as issuing fixed penalty notices.

Clause 32 extends to CSOs the new police power set out in Clause 29 to disperse groups and remove persons under 16 to their homes. This new power is discussed in more detail below.

Clause 40 extends the powers of both CSOs and accredited persons. For example, it adds to the power to issue fixed penalty notices for cycling on the pavement by giving them the power to stop cyclists believed to have committed this offence.

Clause 40(3) enables people accredited under a community safety accreditation scheme, or a railway safety accreditation scheme, to issue many of the fixed penalty notices for disorder which CSOs in pilot areas can currently issue. The Explanatory Notes set out the changes as follows:

> S*ubsection (3)* adds the power to issue fixed penalty notices for disorder under the Criminal Justice and Police Act 2001 to the powers that can be conferred on suitably trained persons who are accredited under either a community safety accreditation scheme or a railway safety accreditation scheme. This power is already available to community support officers. Accredited persons will be given the power to issue fixed penalty notices under this scheme but *subsection (4)* excludes certain offences where the offender must be drunk for the offence to apply. Therefore the offences covered are:
>
> - Use of insulting or abusive behaviour to cause harassment alarm or distress.
> - Throwing fireworks in a thoroughfare.
> - Trespassing on a railway
> - Throwing stone etc at trains or other things on railways
> - Buying or attempting to buy alcohol for consumption in a bar in licensed premises by a person under 18
> - Knowingly giving a false alarm to the fire brigade
> - Wasting police time or giving a false report

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[184] Home Office Press Release 094/2003, "More police and new powers to tackle anti-social behaviour", 27 March 2003

- Consumption of alcohol in a designated public place
- Using a public communications system for sending messages known to be false in order to cause annoyance.

VII Dispersal of groups etc

Clause 30 contains provisions about 'authorisations' which may be made by police, specifying the period and the locality in which two separate and quite different powers under clause 29 may be exercised. Any authorisation must be preceded by consultation with any local authority whose area includes any part of the relevant locality, and there must be publicity for the authorisation, either in a local newspaper or by posting in some conspicuous place(s). This must be done before the period starts, but there is no further requirement for the 'authorisation notice' to be given in advance.

Clause 29 sets out the conditions which must be satisfied before an authorisation may be made, and the powers which may be exercised once an authorisation has been made:

> 29 **Dispersal of groups and removal of persons under 16 to their place of residence**
>
> (1) This section applies where a relevant officer has reasonable grounds for believing—
>
> (a) that any members of the public have been intimidated, harassed, alarmed or distressed as a result of the presence or behaviour of groups of two or more persons in public places in any locality in his police area (the "relevant locality"), and
>
> (b) that anti-social behaviour is a significant and persistent problem in the relevant locality.
>
> (2) The relevant officer may give an authorisation that the powers conferred on a constable in uniform by subsections (3) to (6) are to be exercisable for a period specified in the authorisation which does not exceed 6 months.
>
> (3) Subsection (4) applies if a constable in uniform has reasonable grounds for believing that the presence or behaviour of a group of two or more persons in any public place in the relevant locality has resulted, or is likely to result, in any members of the public being intimidated, harassed, alarmed or distressed
>
> (4) The constable may give one or more of the following directions, namely—
>
> (a) a direction requiring the persons in the group to disperse (either immediately or by such time as he may specify and in such way as he may specify),
>
> (b) a direction requiring any of those persons whose place of residence is not within the relevant locality to leave the relevant locality (either immediately or by such time as he may specify and in such way as he may specify), and
>
> (c) a direction prohibiting any of those persons whose place of residence is not within the relevant locality from returning to the relevant locality

> for such period (not exceeding 24 hours) from the giving of the direction as he may specify;
>
> but this subsection is subject to subsection (5).
>
> (5) A direction under subsection (4) may not be given in respect of a group of persons—
>
> (a) who are engaged in conduct which is lawful under section 220 of the Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52), or
>
> (b) who are taking part in a public procession of the kind mentioned in section 11(1) of the Public Order Act 1986 (c. 64) in respect of which—
>
> (i) written notice has been given in accordance with section 11 of that Act, or
>
> (ii) such notice is not required to be given as provided by subsections (1) and (2) of that section.
>
> (6) If, between the hours of 9pm and 6am, a constable in uniform finds a person in any public place in the relevant locality who he has reasonable grounds for believing—
>
> (a) is under the age of 16, and
>
> (b) is not under the effective control of a parent or a responsible person aged 18 or over,
>
> he may remove the person to the person's place of residence unless he has reasonable grounds for believing that the person would, if removed to that place, be likely to suffer significant harm.
>
> (7) In this section any reference to the presence or behaviour of a group of persons
>
> is to be read as including a reference to the presence or behaviour of any one or more of the persons in the group.

So there are two rather different powers, the power to disperse groups, whatever the age of the members, and the power to remove individuals under 16.

The group dispersal directions, *under subsection (4), may* be quite specific as to what the individual members are to do, particularly those whose *place of residence* is not within the relevant locality. They may be required to leave the locality, and not return, for up to 24 hours. Such a direction could therefore affect a person whose place of work was in the locality, or who had other legitimate business there, and it could prevent his access to private premises within the area. Disobedience to a direction given under subsection (4) will be an offence under clause 31(2), with a maximum penalty of a level 4 fine (currently £2,500) and/or 3 months imprisonment. The dispersal scheme, applying to groups of two or more, resembles the model of earlier public order measures, under which police have been given power to remove trespassers, such as those under the *Public Order Act 1986*, and the *Criminal Justice and Public Order Act 1994*.

The scheme under clause 29, insofar as it relates to the removal of under 16s, is not dissimilar to the existing provision for local child curfew schemes under ss 14 and 15 of the 1998 Act (which would not be repealed by the Bill). In both cases a particular area has to be designated, albeit, under the new provision, by police rather than local authorities, and with less formality. In the new provision, the police officer (of at least the rank of superintendent) who makes the designation must be satisfied that serious and persistent

anti-social behaviour has occurred in the locality and that intimidation, harassment, alarm or distress has been caused to members of the public by the *presence or* behaviour of groups in the locality. In both cases the powers of removal apply between the hours of 9 in the evening and 6 in the morning, where under-16s do not appear to be under the *effective control* of a person over 18.

It is not spelt out on the face of the Bill what could happen if, say, a well-behaved, unaccompanied fifteen-year-old was unwilling to be taken home by an officer exercising the power under clause 29(6). Clause 33 gives the Secretary of State power to issue codes of practice, both about authorisations and about the exercise of the powers under clause 29. Those powers are to be exercisable by "a constable in uniform".

The comment of the Children's Bureau was:

> Police powers for group dispersal and fast-track child curfews may penalise law-abiding young people with nowhere else to go, while encouraging the myth that it is groups of young people who are largely responsible for anti-social or criminal behaviour. The measure will also damage relationships between young people and the police.

Justice considered the new power of dispersal to be unnecessary:

> 11. The designation of areas with significant levels of anti-social behaviour so as to empower the police to disperse groups of young people would seem to be unnecessary – current law gives police adequate power to deal with potential breaches of the peace. Rather than creating draconian new police powers perhaps it would be better to invest money in creating places where children and young people can congregate and where there are interesting things to do. Where facilities such as youth centres and sports grounds exist, the need for children to gather in gangs is reduced. JUSTICE applauds the comprehensive program of works that is underway to improve youth service provision. In our view the need to consult with young people and develop positive ways to utilise their energy is a far preferable solution to deal with children hanging around together than creating new laws to disperse them.[185]

The Local Government Association has also expressed reservations. They said:

> Whilst these proposals may have some value in persistent cases of neighbourhood disorder the LGA is mindful that earlier curfew provisions contained in the 1998 Crime and Disorder Act have not been supported or used by local authorities. The LGA is also aware of cases where local authorities and the police are already

[185] Justice "Response to White Paper 'Respect and Responsibility – Taking a Stand Against Anti-social Behaviour", (Submission to Home Affairs Select Committee) March 2003 http://www.justice.org.uk/parliamentpress/parliamentarybriefings/index.html

having some success in targeting youth disorder by informing parents that their children are congregating in areas where disorder takes place.

The proposals could help the police in reducing repeat attendance at disorder incidents that currently occur where dispersed groups simply re-congregate once police leave the scene. Alternatively they may simply displace problems from one area to another. If the proposals are to be effective the police will need to adequately enforce those areas where an order is made.

Decisions to invoke an order should only be taken where Police commanders and local authorities are convinced that alternative interventions have failed. Decisions should also take into account the views of the local community (and where possible young people in the area) as part of a wider problem solving approach. These factors should be included in the proposed code of practice which should also promote more sustainable long term solutions involving both local authorities and other relevant crime and disorder reduction partners.

VIII Sanctions

A. Anti-social Behaviour Orders

Clause 36 would further extend the list of bodies which may now apply for ASBOs, under s1 of the *Crime and Disorder Act 1998*, by adding housing action trusts. It also confers on local authorities the power (concurrent with the power of the Crown Prosecution Service) to bring proceedings for breach of an ASBO.

Procedure in Youth Courts is governed by s47 of the *Children and Young Persons Act 1933*, which now provides, inter alia, that:

> 2) . . . No person shall be present at any sitting of a youth court except—
>
> (a) members and officers of the court;
> (b) parties to the case before the court, their solicitors and counsel, and witnesses and other persons directly concerned in that case;
> (c) bona fide representatives of newspapers or news agencies news gathering or reporting organisations;
> (d) such other persons as the court may specially authorise to be present.

Clause 36(4) would add "one person authorised to be present by a relevant authority" to the list, where the young person is being prosecuted in the youth court for breach of an ASBO obtained by that authority. The Youth Court will be the appropriate venue when a young person is charged with breach of an ASBO, and may make an ASBO when a person is convicted of an offence but it has no power to hear a free-standing application for an ASBO.

Section 1C of the *Crime and Disorder Act 1998*, inserted by the *Police Reform Act 2002*, allows courts to make ASBOs on conviction (for any offence committed after December 2002) of an offender who has behaved in an anti-social manner, in addition to a sentence imposed or conditional discharge for the offence. *Clause 37* makes some amendments said by the Explanatory Notes to clarify s1C. For example, *s1C(2)* currently provides that if the court considers that two conditions are satisfied, it may make an order which prohibits the offender from doing anything described in the order, and *subsection (3)* provides that the court may make an order under the section:

> whether or not an application has been made for such an order.

After amendment it would provide that the court may make an order:

> (a) if the prosecutor asks it to do so, or
> (b) if the court thinks it is appropriate to do so.

It is not apparent, from the *Explanatory Notes* or from reported cases, whether the present wording has caused any confusion or uncertainty in the courts.

Clause 37(3) would also remove the automatic reporting restrictions which apply to Youth Court proceedings, where the Youth Court makes an ASBO on conviction of a person. The court would, however, retain a discretion to prohibit publication.

The court has recently considered the question of publicity identifying a young person in respect of whom an ASBO has been made. The judge said that the decision involved a balancing exercise between the public interest in disclosure and the welfare and right to privacy of the young person. It was incumbent on a court to weigh the conflicting considerations carefully, and set out those considerations in its decision. Where an ASBO had been made, the general public interest in disclosure was reinforced, because disclosure might improve the prospects of the order being effectively enforced. The purpose of an ASBO was to protect the public from wholly unacceptable behaviour, so the public had a particular interest in knowing who was responsible for it.[186]

The human rights organisation, Justice, has suggested that it was not desirable to make these changes to the rules governing Youth Court procedures. In their submission to the Home Affairs Committee, they said:

> 6. Justice is concerned at the suggestion that restrictions on publicity be lifted in relation to children against whom anti-social behaviour orders are made. Most children will grow out of bad behaviour. The reason for the anonymity given to young offenders in the Youth Courts is recognition that their rehabilitation is very important, and that it is counter-productive to this for their names to be published, perhaps adversely affecting their ability to obtain employment in the future.

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[186] *Chief Constable of Surrey Police v J H-G* 20 May 2002

> Naming children subject to ASBO's may also backfire, in that they may try to live up to their reputation. Those people affected directly by the anti-social behaviour will, one presumes, be informed that order has been made.
>
> 7. Allowing publication of a child's details would breach the international law standards contained in rule 8 of the Beijing Rules. This rule states that a juvenile's right to privacy shall be respected at all stages of the criminal justice process to avoid harm being caused to him or her by undue publicity or the process of labelling, and that, in principle, no information leading to the identification of a juvenile offender shall be published.
>
> 8. We understand that local authorities feel they lose control of the process when the Crown Prosecution Service is brought in to prosecute cases of breach of an ASBO. However, giving them the power to prosecute such cases is, in our view, not appropriate. They are serious charges, carrying with them a maximum penalty of 5 years imprisonment. The CPS must comply with the Code for Crown Prosecutors, in particular the twin tests of sufficiency of evidence and whether the prosecution is in the public interest. Better liaison between local authorities and the CPS may solve the way problem.
>
> 9. We would similarly oppose the removal of the principle of closed Youth Courts for ASBO breach proceedings so as to allow local authority officer, police and social landlords access. The reasons for the exclusion of the public apply equally in relation to these offences. Surely the result of the proceedings can be conveyed by the prosecutor to the relevant officers.[187]

When questioned by the Home Affairs Committee, Home Office Minister, Bob Ainsworth, replied:

> Publicity is effective in some circumstances, very effective. I do not take the view that in every situation people are not to be exposed to that. If people have behaved in a shameful way then, where the court decides it is appropriate, why not put those circumstances into the public domain. Publicity is available for Anti-Social Behaviour Orders in other areas. It is not as if we are breaking new ground entirely in this area.

Ms Casey added:

> We have proved this, as it were, at a policy level for those sorts of issues, and the answer is that it seems fine. As the Minister has said, in the magistrates' court if you apply for a straightforward Anti-Social Behaviour Orders for a young person there are not the automatic reporting restrictions and, where appropriate, you have to apply for them if you want to be restricted. We are simply trying to consolidate

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[187] Justice "Response to White Paper 'Respect and Responsibility – Taking a Stand Against Anti-social Behaviour", (Submission to Home Affairs Select Committee) March 2003 http://www.justice.org.uk/parliamentpress/parliamentarybriefings/index.html

> that in the youth courts. Where there is an Anti-Social Behaviour Order on conviction, for example, it is not an automatic restriction. We are just cleaning up what already exists, as opposed to anything clever or terribly new, to be honest. I wish we could say we were, but we are not.[188]

B. Penalty Notices for disorderly behaviour

Clause 38 is one of the more controversial provisions in the Bill, extending the availability of penalty notices for disorderly behaviour, initially to 16 and 17-year olds, with the option of a further extension to younger children. The Secretary of State would have power to amend the provisions, by order, specifying an age limit lower than 16 – but it may not be lower than 10. The order would be subject to the affirmative procedure. Subsection (3) would also give the Secretary of State power to make provision (if lowering the age limit below the age of 16) for the parent or guardian to be liable to pay the penalty under the notice. This could be done by amending any enactment, and would probably involve some amendment of the *Powers of Criminal Courts (Sentencing) Act 2000*, under which a court sentencing a person under 18, and imposing a fine or costs, or making a compensation order, may already order that the amount should be paid by the parent or guardian.[189] In practice, the liability would presumably amount to an option to pay the amount specified, if there is no request for a trial, potentially followed by liability to pay one and a half times that amount (enforceable as a fine).

According to the *Explanatory Notes*:

> Subsection (4) permits different levels of penalty to be set for different age groups. For the present, it is not intended to have a different level of penalty in respect of 16 and 17 year olds.
>
> 93. The extension of the scheme to 16 and 17 year olds will be piloted and supplementary guidance will be issued to the police on the use of their discretion. The power to extend the scheme to a younger age group at this stage will be revisited in the light of the outcome of these pilots for 16 and 17 year olds.

Fixed penalty notices, and the range of offences to which they applied, were controversial when they were introduced: the 12 month pilots have now been running for over 7 months, since 12 August 2002. According to the White Paper:

> **Fixed Penalty Notices**
> 5.4 FPNs are the first stage for most forms of low level disorder offences. They offer speedy and effective action that frees up police and court time. The offender receives an immediate punishment, which if paid, will not result in a criminal record.

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[188] http://www.publications.parliament.uk/pa/cm200203/cmselect/cmhaff/uc568/uc56802.htm
[189] s137

> 5.5 The Criminal Justice and Police Act 2001 provided the police with new powers to issue FPNs to those aged 18 years or older, for 11 specified offences, including being drunk and disorderly, throwing fireworks, and causing harassment, alarm or distress.
> 5.6 Pilot schemes are progressing successfully in four areas (West Midlands, Essex, Croydon and North Wales). As of 5 January 2003 a total of 1835 FPNs had been issued. An overall payment rate of 60% is being achieved and only 2% are ending up in court.
> 5.7 We will build on these schemes to introduce FPNs that will bring benefits to the local community in terms of reducing anti-social behaviour. We will be consulting with police forces, including the British Transport Police, to see whether FPNs are needed for other offences.[190]

The human rights organisation Liberty, has queried whether fining ten-year-old children is a sensible approach, while the National Children's Bureau has suggested that extending the penalties to 16 and 17 year olds could exacerbate tensions between parents and children, and there is a real danger that those without the support of a family may be criminalised on account of their poverty.[191]

C. Intensive fostering

Clause 39 introduces Schedule 2, which makes provisions about curfew orders (not local child curfews) and supervision orders. In particular, it would add a power for a court imposing a supervision order to include 'a foster parent residence requirement'. This is what had been referred to as 'intensive fostering' . The requirement is that the offender shall live for a specified period with a local authority foster parent. It may only be imposed when particular conditions are satisfied. These include that the offence is one which would be punishable by imprisonment in the case of an adult offender and that:

> (i) the behaviour which constituted the offence was due to a significant extent to the circumstances in which the offender was living, and
> (ii) the imposition of a foster parent residence requirement will assist in his rehabilitation.

The LGA is amongst those who have welcomed this initiative, although it has been pointed out that it may be difficult to find enough suitable foster parents.

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[190] *Respect and Responsibility – Taking a Stand Against Anti-Social Behaviour*, Cm 5778, 12 March 2003, http://www.official-documents.co.uk/document/cm57/5778/5778.pdf

[191] Liberty reaction to Anti-Social Behaviour Bill", 27 March 2003, http://www.liberty-human-rights.org.uk/press/press-releases-2003/anti-social-behaviour-bill.shtml and "Children will lose out under anti-social behaviour proposals, says NCB", 12 March 2003, http://www.ncb.org.uk/media/pressrelease.asp?id=142

IX Firearms

On 6 April 2000 the Home Affairs Committee published a report on *Controls over Firearms*.[192] The Committee recommended a number of changes to the present system in Great Britain, embodied by the *Firearms Act 1968* (chapter 27), as amended. Replying to a recommendation for "urgent consolidation" of the present complex Firearms Acts, the Government saw merit in a wholly new Firearms Act.[193] The present Bill introduces further measures in relation to air weapons and imitation firearms, both of which formed a substantial part of the select committee's report.

In 2001-02 there were 22,314 notifiable offences recorded by the police in which firearms were reportedly used, an increase of 27% on the previous year. 12,340 offences involved the use of an air weapon, up by 21% compared with 2000-01. The table below details the number firearms offences, by principal weapon used, since 1990.[194]

Notifiable offences recorded by the police in which firearms were reported to have been used, by principal weapon, England and Wales, 1990 to 2001-02

number of offences

	Airgun	Shotgun	Handgun	Other (a)	Total
1990	5,380	1,193	2,537	1,263	10,373
1991	5,464	1,569	3,430	1,666	12,129
1992	6,098	1,494	4,023	1,726	13,341
1993	6,337	1,592	4,273	1,865	14,067
1994	7,165	1,190	3,087	1,725	13,167
1995	7,568	983	3,319	1,564	13,434
1996	7,813	933	3,347	1,783	13,876
1997	7,506	580	2,648	1,676	12,410
1997-98	7,902	565	2,636	1,702	12,805
1998-99	8,665	642	2,687	1,880	13,874
1999-00	10,103	693	3,685	2,465	16,946
2000-01	10,227	607	4,019	2,736	17,589
2001-02	12,340	711	5,871	3,392	22,314

(a) Includes starting guns, rifles, prohibited weapons, imitation and supposed weapons.

Source: Home Office *Criminal Statistics England and Wales* (various years)
Home Office *Crime in England and Wales 2001/02 Supplementary Volume* (2003)

Firearms can be fired, used as a threat or used as a blunt instrument. Where air weapons are involved, they are nearly always fired (in 95% of offences), although usually they only cause damage to property (77% of air weapon offences). Air weapons were

[192] Home Affairs Committee, *Controls over Firearms*, 6 April 2000, HC 95 1999-2000
[193] *Controls over Firearms* Cm 4864, October 2000
[194] Further information can be found in Library Standard Note *Firearm Crime Statistics* available on the parliamentary intranet at http://hcl1.hclibrary.parliament.uk/notes/sgss/snsg-01940.pdf

responsible for 1,909 injuries in 2001-02, including 2 fatalities and 166 cases of serious injury necessitating hospitalisation.

In 2001-02, 1,201 offences recorded by the police in England and Wales involved the use of an imitation firearm. In 16% of cases, imitation weapons were fired causing injury while most imitation firearm offences (64%) involved their use to threaten others. Imitation weapons were used in 277 robberies in 2001/02, representing 23% of all imitation firearms offences.

Around one-third of firearm robberies occurred in shops or convenience stores (31%), 5% in banks or building societies and 10% in garages or post offices. 36% of firearm robberies took place on the public highway.

Imitation *Brocock* air revolvers can be readily converted to accommodate .22 bullets which can kill or cause serious injury. There has been recent concern at their increasing use and availability. Converted Brococks have been used to commit 10 solved murders and attempted murders since May 2001 and between 50 and 60 unsolved murders and attempted murders during the same period.[195]

In 2000-01, there were 6,064 police officers authorised to carry firearms. The number of police operations in which firearms were issued was 11,109, up by 2% compared with the previous year. Armed response vehicles (ARVs) were deployed in 73% of armed police operations (8,179). The number of occasions on which firearms were discharged (fired) by the police increased from six to nine between 1999-2000 and 2000-01. Corresponding offence, injury and fatality data is not publicly available. The Metropolitan Police recorded the highest number of armed police operations in England and Wales – 1,862 operations during 2000-01, 45% fewer than the previous year.[196]

A. Air weapons

High-powered air weapons are subject to certification under section 1 of the *Firearms Act 1968*. The *Firearms (Dangerous Air Weapons) Rules* SI 1969/47 (as amended) specify the muzzle energies that trigger licensing requirements.[197] Lower-powered air weapons are subject to some controls, including those restricting acquisition and possession of firearms by minors.[198] Air weapons with still lower muzzle energies, less than 1 foot-pound,[199] are not considered firearms since they are judged to lack the capacity to inflict a

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[195] Home Affairs Committee, *Anti-Social Behaviour* (uncorrected evidence), 25 March 2003, HC 568 2002-03, para. 50

[196] HC Deb 23 July 2002, cc1049-52w

[197] in excess of 6 foot-pounds (ft. lb) for an air pistol; 12 ft. lb for any other kind of air weapon, such as an air rifle.

[198] Section 22, *Firearms Act 1968*

[199] the "foot-pound force" is an archaic energy unit, equivalent to 1.36 joules

lethal wound.[200] The Home Affairs Committee recommended the Government establish unambiguous criteria for judging firearm lethality, and that the energy threshold for licensing air weapons be lowered. In their response to the latter, the Government acknowledged the Committee's concerns.

> However, as the Committee itself recognises, there are substantial implications in terms of the resources needed to carry such a measure into practice. Apart from the financial implications of such a measure, it would place a considerable administrative burden on the police service in addition to their current licensing work on other classes of firearms.[201]

Some four million low-powered air weapons are estimated to be already in circulation.[202] However, the Government believes that raising the age limits for unsupervised access to firearms would be simpler to introduce and operate. An incentive for this is the observation that the "main mischief involving the misuse of firearms by young people is in the unsupervised misuse of airguns".[203] The present age limits were summarised by the Home Affairs Committee:

> 144. At present, children of any age may use air weapons, subject to certain controls. Children under 14 may not buy, hire, be given or own air weapons or ammunition. They may use them under the supervision of a person over the age of 21, as long as they do not shoot beyond the boundaries of the property or premises where they are using the weapon. They may also use them for target practice at approved clubs, or at a shooting gallery for air weapons or miniature rifles. Young people between the ages of 14 and 17 may be given or lent air weapons and ammunition, but may not themselves buy or hire them. They may carry an air rifle (though not an air pistol) in a public place, as long as it is covered by a securely-fastened gun cover; they may use an air weapon for target practice at an approved club of which they are a member, or at a shooting gallery as above.

The British Association for Shooting and Conservation point to the importance of young people being taught to handle air guns legally and safely at an early age; such weapons have a legitimate role in both target shooting and pest control.[204]

During the 2001/02 parliamentary session, three similar Private Members' Bills were introduced with the aim of restricting air gun use by minors. None got as far as second reading. The most recent of these was the *Air Weapons Bill*, Bill 198 2001-02, introduced by Jonathan Shaw under the ten minute rule on 29 October 2002. During the Bill's unopposed first reading, Mr Shaw said:

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200 Home Affairs Committee, *Controls over Firearms*, 6 April 2000, HC 95-I 1999-2000, xxxvii, para 123
201 *Controls over Firearms* Cm 4864, October 2000, p 9
202 Home Affairs Committee, *Controls over Firearms*, 6 April 2000, HC 95-I 1999-2000, xxxvii, para 152
203 *Controls over Firearms* Cm 4864, October 2000, p 10
204 BASC press release, *Age limits on airguns will not curb misuse*, 29 October 2002

> My Bill seeks to amend the Firearms Act 1968, by raising the age for unsupervised possession and use of air weapons from 14 to 17 years. That would bring the legislation relating to air weapons into line with other gun control legislation. My Bill will not have an effect on youngsters under 17 using air weapons in registered clubs.[205]

Clause 43 of the *Anti-social Behaviour Bill* closely mirrors these proposals by amending sections 22, 23 and 24 of the *Firearms Act 1968*. Consequential amendments are made to Schedule 67 of the Act covering prosecution and punishment.

Section 22(1) of the 1968 Act states: "It is an offence for a person under the age of seventeen to purchase or hire any firearm or ammunition". Unlike the *Air Weapons Bill* 2001-02, the present Bill sees no need to amend this to include, explicitly, the purchase or hire of an air weapon by someone under seventeen. This is presumably because air weapons are judged to be caught by the Act's general interpretation of a firearm as a "lethal barrelled weapon of any description…"[206]

B. Imitation firearms

While it is an offence to possess an imitation firearm with intent to cause fear of unlawful violence,[207] the Home Affairs Committee noted that some imitations lay outside further controls:

> 164. The only controls at present imposed on the possession and use of imitation firearms under the Firearms Acts relate to imitation firearms which have the appearance of, and are readily convertible into, section 1 firearms. These provisions were put in place by the Firearms Act 1982. Such imitation firearms are subject to the same controls as would apply if they were converted into functioning firearms. ACPO presented us with two examples which they believed presently lay outside the scope of the 1982 legislation: the Brocock air revolver, the cartridges of which could be altered to take .22 bullets, and Derringer-type blank-firing weapons which have had their barrels replaced. The Home Office noted the Brocock example and also cited the example of replica Beretta blank firing pistols which could be converted to fire live 8mm ammunition.

Clause 44 of the *Anti-social Behaviour Bill* provides the Secretary of State with an order making power to prohibit or introduce other controls on especially dangerous air weapons; it is clearly designed to capture the convertible imitation firearms mentioned in

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[205] HC Deb 29 October 2002 c 685
[206] Section 57, *Firearms Act 1968*
[207] Section 16A, *Firearms Act 1968* (inserted by the *Firearms (Amendment) Act 1994*, s 1(1))

the preceding paragraph.[208] However, the clause does allow for the introduction of licensing in respect of such imitation firearms already held.[209]

According to the Association of Chief Police Officers, realistic imitation, or replica, guns are used in crime to threaten victims in at least 25-30% of such cases. The possession in public of such weapons will often lead to an armed response by the police, and a number of fatal shootings have resulted. These points were referred to in the recent white paper, *Respect and Responsibility – Taking a Stand Against Anti-Social Behaviour*.[210] In the Netherlands, possession of replica weapons is banned as having no social purpose – though they do find theatrical use and may be of harmless interest to collectors. However, so far as young people were concerned, the Committee made the following recommendation:

> We recommend that the purchase or sale of any imitation firearm by or to persons under eighteen via telephone, mail order or Internet should be prohibited.[211]

The Government accepted this recommendation, "and would wish to consider carrying it further by prohibiting the sale of imitation firearms to young people under 18 under all circumstances, including face-to-face as well as telephone, mail-order and Internet sales."[212] David Atkinson's *Firearms (Replica Weapons) Bill*, Bill 41 2001-02, would have proscribed possession of ball bearing guns by minors; it did not get beyond second reading.[213]

Imitation firearms were also considered at length in the eleventh annual report[214] of the (independent, statutory)[215] Firearms Consultative Committee. Beginning with an observation on the difficulty of definition:

> 3.3 In broad terms an imitation or replica firearm may be held to be an item which is not a firearm, but looks sufficiently like a firearm to give possible cause for concern. However, when it comes to drawing up a specific definition, there are real difficulties.
>
> 3.4 At one extreme, these may include close replicas of specific firearms designed to use blank ammunition and used in film and television work. Such items would be difficult for even an expert to distinguish from a real gun without close examination. A step down from these would be the imitation and replica

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208 *Anti-social Behaviour Bill Explanatory Notes*, Bill 83-EN

209 Home Office press release 005/2003, *Further government crackdown on gun crime: new controls on replicas and airguns*, 8 January 2003

210 Cm 5778, March 2003

211 Home Affairs Committee, *Controls over Firearms*, 6 April 2000, HC 95-I 1999-2000, xlviii, para 172

212 *Controls over Firearms* Cm 4864, October 2000, p 10

213 further background is given in library standard note SN/HA/1000, *Firearms (Replica Weapons) Bill*

214 HC 501 2001/02

215 Firearms (Amendment) Act 1988

> guns available from hobby shops, some incapable of firing any missile or firing only plastic pellets. Such items are either intended to look like particular guns or types of gun and would probably appear to most observers to be a real gun. Apart from these, there are many items that are intended to look something like a gun, albeit loosely. Children's toy cap guns and water pistols and novelty cigarette lighters might fall into this group.
>
> However, the boundaries between these different groups are not defined in law or practice…

The FCC does not favour a licensing system for imitation firearms. Another option, controls over the sale of imitation firearms (including some low-power air weapons), found little favour with a majority of the committee:

> 3.28 The Gun Control Network have suggested that a prohibition on the sale, import and manufacture of imitation guns along the lines of the Canadian system might be adopted in the UK. Exemptions might be allowed under the Secretary of State's authority to possess prohibited weapons. This may help reduce the availability of imitations in both the medium and long term while allowing for legitimate possession and use.
>
> 3.29 However, a majority of FCC members did not support this proposal. Allowing that there were legitimate reasons to possess imitation firearms, those businesses involved in supplying the legitimate market would have a reasonable case to hold the Secretary of State's authority to do so. As no licence would be needed to buy an imitation firearm, those selling them would have no easy way of distinguishing between legitimate purchasers and potential criminals. HM Customs & Excise have suggested that any prohibition on import of imitations would have to be regulated by an import licensing system, and it had been difficult in other circumstances for HM Customs to prevent the import of items that could be possessed freely in this country. On this basis, a majority of FCC members did not support this proposal.

However, the committee did support the introduction of an offence of possession of an imitation firearm in public:

> 3.30 At Committee the British Association for Shooting and Conservation (BASC) supported by the police have proposed a new offence of possession of an imitation firearm in a public place without lawful authority or reasonable excuse. This should not interfere unduly with the legitimate uses of imitation firearms, but would allow the police to deal with those who were either misusing replicas or carrying them around in suspicious circumstances which appears to be at the centre of their current difficulties.
>
> 3.31 The FCC as a whole, including the police service, supported this measure in principle. Subject to our comments on defining imitation firearms above, we believe that it would provide a useful measure for the police in curbing the misuse of imitation firearms. The police would be able to detain those found with

> such items in suspicious circumstances and perhaps confiscate the item concerned even if no formal criminal charges were brought.

Section 19 of the 1968 Act already prohibits the carrying of loaded air weapons and shot guns, and any other firearms (whether loaded or not), in public without lawful authority or reasonable excuse. Clause 42 of the *Anti-social Behaviour Bill* would add to this unloaded air weapons and imitation firearms (i.e. those which have the appearance of being a firearm).[216]

X The Environment

Noise, litter and graffiti were highlighted in the Government's Sustainable Development Strategy as symptoms of urban decline which themselves can promote further degradation.[217] Poor local environmental quality can detract from town and city living in particular and act as a barrier to urban renaissance:

> Concerns about the quality of public spaces affect all areas and are bound up with the social and economic life of communities. The quality of public space, real or perceived, plays a vital role in the vicious or virtuous cycles which characterise communities on the up, in decline or in recovery. Degraded public spaces are not a sign of a vibrant community.
>
> Dirty and dangerous places encourage graffiti, vandalism and anti-social behaviour, which in turn undermine public confidence in them and lead people to avoid them. An unattractive and threatening local environment encourages people to use their cars for short journeys and to move to a better area if they can. It can discourage investment and lead to abandonment and dereliction. A high quality local environment is a big influence in making people visit a place, spend money and invest in it. Conversely, a low quality environment can lead to places becoming stigmatised and drive people, businesses and investment away.[218]

Part 7 of the Bill aims to address some of these issues.

As the table overleaf illustrates, anti-social behaviour is seen to be an issue that affects people living in inner-city districts more than those living in towns or rural areas. Rubbish and litter, vandalism and graffiti, and people using or dealing in drugs are regarded as particular problems. One in five people (20%) living in inner-city areas have experienced attacks or harassment (against either themselves or others) because of their ethnicity.

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216 Section 57(4), *Firearms Act 1968*

217 A strategy for sustainable development for the United Kingdom, 1999, Cm4345 http://www.sustainable-development.gov.uk/uk_strategy/index.htm

218 ODPM, *Living Places, Cleaner, Safer, Greener*, October 2002 http://www.urban.odpm.gov.uk/greenspace/living/pdf/lp_doc.pdf

Those living on council estates experience anti-social behaviour more than those living elsewhere.

The number of noise-related complaints received by Environmental Health Officers tends to vary year-on-year. In 2000/01, there were 169,810 complaints received by EHOs relating to noise from domestic premises, representing 71% of all complaints received. Of these domestic premises complaints, 18% were confirmed and 8% were remedied informally. 5,351 abatement notices were served. 313 prosecutions were brought for contravention of abatement notices, of which 81% resulted in convictions.

Since 1996, the proportion of people reporting vandalism, graffiti and other acts of property damage as a "very" or "fairly" big problem in their area has increased from 23% to 35% in 2001/02. Rubbish and litter lying around on the streets is seen to be a particular problem for a number of people. The proportion of those reporting rubbish and litter as a problem in their area rose from 26% in 1996 to 32% in 2001/02.

Experience of anti-social behaviour by type of area, England and Wales, 2001/02

percentages

	Noisy neighbours/ loud parties	Teenagers hanging around on streets	Rubbish/ litter lying around	Vandalism/ graffiti/ deliberate damage to property	People attacked/ harassed because of race/colour	People using/ dealing drugs	People drunk/ rowdy in public
Area type							
Inner-city	18	45	50	53	20	49	31
Urban	11	36	34	37	9	33	24
Rural	4	16	16	18	3	16	12
Council estate	16	48	47	52	12	47	29
Non-council estate	9	28	28	30	8	27	20
Level of physical disorder							
High	23	56	66	66	21	57	42
Low	9	30	28	21	7	28	20
All adults	10	32	32	35	9	31	22

Source: Home Office *Crime in England and Wales 2001/02* (British Crime Survey) (2002)

Noise complaints and prosecutions, England and Wales, 1995/6 - 2000/1

number

	Domestic premises						All complaints					
	1995/96	1996/97	1997/98	1998/99	1999/00	2000/01	1995/96	1996/97	1997/98	1998/99	1999/00	2000/01
Complaints received												
by EHOs	164,115	173,436	148,006	114,245	155,860	169,810	232,437	242,181	212,327	160,200	214,158	238,525
sources complained of	133,761	118,202	112,102	90,203	122,440	132,002	183,257	158,993	155,549	121,435	164,674	184,479
Nuisances												
Confirmed	48,197	32,784	32,012	23,690	31,132	31,298	69,417	49,215	47,847	34,988	45,600	45,665
Remedied informally	40,085	51,492	25,806	12,758	17,518	14,280	57,911	72,822	39,150	19,000	26,301	20,360
Abatement notices												
Number served	6,547	6,040	4,820	3,479	5,142	5,351	9,918	9,287	7,413	5,089	7,652	8,578
Prosecution for contravention	435	490	363	168	349	313	589	632	515	235	410	440
Convictions	359	322	241	156	304	255	474	439	293	191	358	338

Source: DEFRA *Digest of Environmental Statistics 2002* (2002)

Trends in disorder perceived to be a "very" or "fairly" big problem, 1996 to 2001/02

England and Wales
percentage

	1996	1998	2000	2001	2001/02
Noisy neighbours or loud parties	8	8	9	9	10
Teenagers hanging around on the streets	24	27	32	31	32
Rubbish or litter lying around	26	28	30	32	32
Vandalism, graffiti and other deliberate damage to property	24	26	32	34	35
People being attacked harassed because of their race/colour	5	5	8	9	9
People using or dealing drugs	21	25	33	30	31
People being drunk or rowdy in public places	…	…	…	22	22

Source: Home Office *Crime in England and Wales 2001/02* (British Crime Survey) (2002)

A. Noise

In its widest sense, neighbourhood noise might be defined as any unwanted sound in the vicinity of the home or its locality. That definition might embrace industrial noise, noise from transport as well as noise from domestic premises, which is the biggest source of noise nuisance complaints.[219]

Recent statistics from the Chartered Institute of Environmental Health (CIEH) show that the trend in noise nuisance complaints to environmental health offices which had been rising constantly over the past decade has levelled off.

[219] National Society for Clean Air and Environmental Protection *NSCA 2002 Pollution Handbook* (2002) p125

> Commenting on the figures, CIEH Assistant Secretary Howard Price said:
>
> "While numbers of complaints remain high, it is pleasing to see that they have levelled-off. That must in part be due to the increasing attention given to them by environmental health officers despite growing responsibilities in other fields."[220]

The noise provisions of the *Anti-social Behaviour Bill* are aimed at the problem of night-time noise. This problem is a difficult one as those exposed to it quickly suffer from a lack of sleep and the consequent anger and impatience that brings.

Sections 2 to 9 of the *Noise Act 1996* provided local authorities with an option to adopt powers to deal with night-time noise: most importantly the power to issue a fixed penalty notice. If these powers were desired, the authority had to notify the Secretary of State that they were taking them up and also take on the responsibility of staffing an out of hours service. There was a very low adoption rate of the powers provided by the Act, only fourteen local authorities took up the powers on offer. In its response to the Government review of the 1996 Act,[221] the Chartered Institute of Environmental Health said:

> The reasons for the failure of the [night noise offence (NNO)] may be several but principally among them is that it offers only one real advantage - that of short-circuiting an often protracted judicial process with the option of a fixed penalty notice - over the powers co-existing under Pt III of the 1990 Environmental Protection Act. Otherwise, the scope of the NNO is actually more limited, i.e. in the hours during which it is applicable, in the origin of the noise to which it relates and in the use of a fixed sound pressure level as an intervention threshold, this latter feature imposing a resource requirement which few authorities have been able to justify by reference to their pattern of noise complaints.[222]

In response to the review, DEFRA announced its intentions to amend the 1996 Act:

> The problem at present is that to use the powers of the 1996 Act councils have to first adopt it and then provide round-the-clock noise patrols which are very expensive. We will aim to ensure the authorities can use the Act fully by seeking an amendment which will mean they don't have to formally adopt it and commit such large resources to the problem. At the same time the councils will this way have more powers to prosecute.

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[220] CIEH Press Release, *No noise is good noise*, 20 December 2001

[221] The Department of Environment, Transport and Regions (DETR) commissioned the University of Birmingham to undertake a review of the take up and workings of the Noise Act 1996 (the 1996 Act) in October 1999.
http://www.defra.gov.uk/environment/consult/reviewofnoise/document/index.htm

[222] CIEH, *Review of the* Noise Act 1996, *A response to the DETR's consultation paper*, March 2001
http://www.cieh.org/about/policy/responses/nareview.htm

> By not forcing local authorities to adopt the Noise Act 1996 in order to use the Night Noise Offence, there will be another weapon in their armour to combat the problem. At present they can still seize people's music equipment and issue abatement notices under the Environment Protection Act 1990.[223]

Clause 47 of the *Anti-social Behaviour Bill* would remove the need for local authorities to provide a 24 hour on call service to be able to access the powers provided by the *Noise Act 1996*. Instead there would be a duty for 'an officer of the authority to take reasonable steps to investigate the complaint'.

This power would be further supplemented by the ability to close down noisy premises for a twenty four hour period. Clause 45 of the Bill would provide powers to the chief executive officer (or an environmental health officer authorised by the chief executive officer) of a local authority to issue a closure order that would result in the premises having to remain closed for a period of up to twenty four hours. Contravention of such an offence would attract a prison sentence not exceeding three months or a fine of £20,000 or both.

Once in place, a chief executive officer might cancel the closure order before the end of specified period by writing to the manager of the premises. The chief executive officer would also be charged with cancelling the order before the end of the specified period if it was no longer thought necessary to prevent a public nuisance and with notifying the relevant licensing authority of the fact that an order had been given.

B. Graffiti and fly-posting

Graffiti and fly-posting are factors identified by the Government as contributing to poor environmental quality and acting as a barrier to regeneration. Graffiti is a form of criminal damage, but convictions for graffiti are not recorded separately within national statistics for all criminal damage.

Encams, an environmental charity which aims to achieve litter free and sustainable environments by working with communities and is responsible for the Keep Britain Tidy Campaign, published *The Environmental Quality Survey for England, 2001 – 2002* (LEQSE) in September 2002. This concluded that the problem is focused on relatively small but high profile areas:

> The LEQSE reports give a reading for the whole country or the nine English regions, these generalised reports show flytipping, flyposting and graffiti as *good*. This result may prove surprising, but the incidences are not widespread and are focused in relatively few hotspots, where the problem is intense. Where it does occur it is immediately highly visible and greatly influences the public in their

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[223] DEFRA Press Release 307/01, *Making it easier to prosecute noisy neighbours - Meacher*, 20 December 2001

> perception of the area. In the cases of graffiti and flyposting these are often in prominent locations, having a disproportionate effect on the perceptions of passers-by. […]The survey also found that the majority of graffiti comprises small juvenile marks; that flyposting is composed largely of small stickers. [224]

A recent report by the Greater London Assembly estimated the costs of graffiti to London:

> We estimate the total cost of graffiti in London to be over £100 million per annum. In this report we have identified expenditure by London Boroughs and transport companies of approximately £13 million per annum. This figure rises to £23 million if all the etched glass on the underground is replaced, but does not include costs to businesses, utilities, rail companies and homeowners. Costs go beyond just removal costs and include damage to economic development and loss of capital values to people's homes. We were unable to identify accurately these additional costs, but we estimate that when they are taken into account, the cost of graffiti to the London economy each year exceeds £100m.[225]

The current legislation gives local authorities powers to deal with litter, but not graffiti or fly-posting. The Government in the consultation document *Living Places - Powers, Rights and Responsibilities* (published in October 2002) proposed broadening the scope of the litter laws by extending them to include other issues affecting the quality of public spaces, such as graffiti and fly-posting:

> Local authorities already have a suite of strategic powers under Part IV of the Environmental Protection Act 1990. This legislation makes littering an offence (with fixed-penalty notice) and gives local authorities, educational institutions, designated statutory undertakers and other public bodies a duty to clear litter and refuse from their relevant land and highways. The legislation also gives local authorities powers to intervene (and recover their costs) and the public a mechanism to hold local authorities to account.
>
> However, the narrow focus on litter may have contributed to the legislation's apparent failure to be adhered to, as it is ostensibly only applicable to the cleansing departments within local authorities and public bodies, and hence fosters management fragmentation (including central Government). Moreover, the narrow focus has meant that the mechanism for individuals to seek redress has not been well publicised.

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[224] Encam, *The Environmental Quality Survey for England, 2001 – 2002,* September 2002 http://www.encams.org/publication.php#research

[225] London Assembly, *Graffiti in London, Report of the London Assembly Graffiti Investigative Committee,* May 2002, http://www.london.gov.uk/assembly/graffmtgs/Graffiti_all.pdf

Relevant Legislation

Environmental Protection Act 1990, Part IV – Provides for the offence of leaving litter; a fixed-penalty system, a duty to keep certain types of land clear of litter or clean; to designate litter control areas; to issue a Litter Abatement Notice if relevant land is not kept clear of litter, for a member of public to seek a Litter Abatement Order.[226]

The Anti-Social Behaviour White Paper announced a further measure to deal with graffiti, the intention to make it illegal to sell spray cans to under 18 year-olds:

> Real reductions in the amount of graffiti can be made if spray paints were made harder to obtain for those most likely to abuse them. We will create a new power to make it an offence to sell spray paints to young people aged under 18 years. We will also, through the Criminal Justice Bill, give the police new powers to enable them to search for items which they suspect may be intended for use in causing criminal damage, such as spray paints.[227]

and

> We are introducing legislation to address the issue of rubbish ridden areas by extending the strategic powers of local authorities to include not only litter but also other aspects of environmental quality such as vandalism or fly-posting.[228]

In recent evidence to the Home Affairs Select Committee on the Anti-Social Behaviour Bill Bob Ainsworth, Minister of State for crime reduction, policing and community safety, was questioned about the effectiveness of giving local authorities increased powers if they were not willing to deal with the problem in the first place. In his view, however, this was not the main issue:

> Having listened to local authorities about what the barriers are to taking effective measures in this area and having tried to provide them with the tools to take those effective measures, that is something that maybe we would want to look at some time in the future if we saw a situation where there was no interest in dealing with the problem, but that is not our analysis of it at the moment. Our analysis of it at the moment is that we are not giving local authorities the effective tools to deal with litter and that is what we are trying to do.[229]

1. The Bill

Clauses 48 to 53 introduce a power for local authorities to impose fixed penalty notices for certain offences and makes it an offence to sell aerosol paints to anyone under the age of eighteen.

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[226] DEFRA, *Living Places - Powers, Rights and Responsibilities*, October 2002 http://www.defra.gov.uk/environment/consult/pubspace/index.htm

[227] Home Office, *Respect and Responsibility - taking a stand against anti-social behaviour*, March 2003 http://www.crimereduction.gov.uk/antisocialbehaviour13.htm

[228] ibid

[229] Bobs Ainsworth, evidence to the Home Affairs Select Committee (uncorrected), Q64, 25 March 2003

Fixed penalty notices, which will be payable within 14 days to avoid prosecution, may be issued by officers of the local authorities for the following offences:

- Affixing posters;
- Defacement of streets with slogans;
- Damaging property which involves the painting or writing on, or the soiling, marking or other defacing of, any property by whatever means;
- Obliteration of a traffic sign;
- Painting or fixing things on structures on the highway.

Penalties will be applicable only to the person committing the offence. A fixed penalty may not be issued if the officer considers the offence to be racially aggravated criminal damage (under section 30 of the *Crime and Disorder Act 1998*) or motivated by religious or racial hostility.

The Bill also makes it an offence to sell spray paints to anyone under eighteen. According to the Regulatory Impact Assessment (RIA) published by the Government on this part of the Bill the wording is "sale of" rather than "supply of" to remove legitimate supply by businesses to under 18s, for example employees using these products in the workplace, from falling within the scope of the Bill. The new legislation will be complemented with increased powers for the police under PACE to stop and search those they believe are carrying spray paints or other items used for graffiti.[230]

If fully enforced the legislation could have a significant impact on graffiti as the general consensus is that the majority of graffiti is carried out by those under eighteen:

> Evidence submitted from boroughs, businesses and world cities points to the majority of graffiti being carried out by young males between the ages of 11 and 16. However, the evidence also makes clear that a lot of graffiti writing is done by those in their thirties and beyond. "M*any graffiti writers are not young kids as is popularly believed. The majority of graffiti writers are over eighteen and many are in their thirties. Some hold down respectable jobs. Although it may be difficult to understand, graffiti is a way of life for some people and is something they enjoy".* A recent Guardian article reported the arrest of six graffiti writers two of whom were aged thirty. We considered whether the age of the graffiti writer had any influence on the type of graffiti they did. It appears from our evidence that tagging is predominantly carried out by younger people in their early teens, whilst the more artistic types of graffiti are carried out by older people.[231]

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[230] Home Office, *Anti- Social Behaviour Bill: Restricting the sale of paints to persons aged under 18*, Regulatory Impact Assessment, March 2003

[231] London Assembly, *Graffiti in London, Report of the London Assembly Graffiti Investigative Committee*, May 2002, http://www.london.gov.uk/assembly/graffmtgs/Graffiti_all.pdf

However the full impact of the legislation would only be felt if the changes proposed in Clause 38 of the Bill are carried through. These would reduce the age of those to whom fixed penalty notices can be issued from 18 to 16, with powers for the Secretary of State to decrease this to as low as 10, making guardians or parents liable to pay the fine for those under 16.

The Small Businesses Service in its response to the Regulator Impact Assessment was unhappy that a blanket ban on under 18s would result in many legitimate users, such as those carrying out vehicle maintenance and DIY, being caught by the measure. They suggested a ban on sales to under 16s instead.[232]

C. Waste and Litter

1. Fly tipping

Clause 54 extends the powers of local authorities in their waste management roles to help them deal with the problem of fly-tipping. Currently most of powers are invested in the Environment Agency in its role as waste regulator.

Though statistics on the incidence of fly tipping are not collected centrally the Government acknowledged recently that the problem may well be on the increase:

> Anecdotal evidence suggests that fly-tipping may have increased recently, but the Government have no firm evidence. We intend to carry out some further work in this area to ensure that we have a firm data base to inform future policy development.[233]

Between 1999 and 2001, data on prosecutions for fly tipping were combined with data for the overall numbers prosecuted for the offence of unlawfully depositing waste under section 33(1)(a) of the *Environmental Protection Act 1990*. The number of successful prosecutions rose significantly, from 141 in 1999 to 225 in 2001, an increase of 60%.

Since January 2002, the Environment Agency has collected specific information on prosecutions for fly tipping. Last year there were 70 successful prosecutions, and in the three months to March 2003 there were 7 successful prosecutions.[234]

Under the *Control of Pollution (Amendment) Act 1989* waste regulation authorities, at that time the local authorities, were given powers to carry out spot checks on vehicles carrying waste and fine them if they were not registered carriers, and to seize vehicles that

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[232] Home Office, *Anti- Social Behaviour Bill: Restricting the sale of paints to persons aged under 18*, Regulatory Impact Assessment, March 2003

[233] HC Deb 21 November 2002 c771W

[234] HC Deb 20 March 2003 cc872-3w

had been used to commit the offence. This power was transferred from the authorities to the Environment Agency following its creation in 1996.

Joan Ruddock MP introduced the *Waste Bill* as a ten minute rule bill in April 2002. The Bill, which was dropped, aimed to extend the powers outlined above to waste collection authorities. During the Bill's introduction Ms Ruddock summarised why this was an issue for local authorities:

> The Environment Agency estimates that removing fly-tipped waste costs it £500,000 per annum. By contrast, a recent Local Government Association survey of fly-tipping provided evidence that the estimated cost of clean-ups to English and Welsh local authorities was £25 million per annum. It found that 94 per cent. of the 128 responding authorities had recorded incidents of fly-tipping, with 20 per cent. recording more than 1,000 incidents. Furthermore, 84 per cent. believed that local authorities did not have sufficient powers to deal with fly-tipping, and 97 per cent. supported a change in regulations.[235]

The current Bill would amend the above 1989 Act to extend the powers contained in it to local authorities in their role as waste collection authorities. Authorities have already been given increased powers through a recent amendment of the *Environmental Protection (Duty of Care) Regulations* 1991. This gives them powers like those of the Environment Agency to serve notice on businesses, requiring them to produce waste transfer notes.[236] Waste transfer notes are the written description that must accompany every consignment of controlled waste and are proof that a consignment of waste is being legally transported and disposed of.

Proposals to increase the powers of local authorities were also included in the recent consultation by DEFRA, *Living Places - Powers, Rights and Responsibilities*. This summarised some of the issues and current legislation as follows:

> Local authorities, in their capacity as waste collection authorities, can enforce s.59 of the Environmental Protection Act 1990 (see below). The other enforcing body is the Environment Agency. The powers of investigation set out in s.108 of the Environment Act 1995 are not available to the local authority for these purposes yet several local authorities have suggested that they could be more effective at dealing with and preventing fly-tipping if they had these powers.
>
> **Relevant Legislation**
>
> Environmental Protection Act 1990, s.59 – power to serve a notice on the occupier of land requiring removal of controlled waste which has been deposited without or in breach of the terms of a waste management licence, or registered exemption from licensing; or where waste has been deposited in a manner which is likely to cause pollution of the environment or harm to human health. Failure to

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235 HC Deb 20 April 2002 c813

236 HMSO, *The Environmental Protection (Duty of Care) (England)(Amendment) Regulations*, SI 2003/63 http://www.legislation.hmso.gov.uk/si/si2003/20030063.htm

> comply with a notice entitles a local authority to prosecute or take steps to remove and recover the cost from the occupier or the person who knowingly caused or knowingly permitted the deposit of the waste. However, it is a defence for the occupier if they did not deposit the waste, or allow or permit the deposit to occur.
> Environment Act 1995, s.108 – sets out the relevant investigation powers and the local pollution control functions that can be used by a local authority. These functions include local air pollution and litter. They do not include investigation powers for local authorities to enforce s.59 of the Environmental Protection Act 1990.[237]

And

> Enforcement bodies need useable powers to order the removal of fly-tipped waste and carry out a clean-up if the land owner refuses, with the option of reclaiming costs. The powers that exist are regarded as limited and weak. One such power is in s.59 of the Environmental Protection Act 1990. This power allows waste regulation and waste collection authorities to require removal of waste unlawfully deposited. However, in practice it is almost never used by waste collection authorities (local authorities) and rarely by waste regulation authorities (the Environment Agency). The power to recover costs only applies when the occupier/owner of the land caused or permitted the deposit of waste. This can be very difficult to prove and limits the power's usage to the Environment Agency, which has stronger powers of evidence gathering, surveillance, etc than local authorities.[238]

This Bill would give the Secretary of State the power to issue guidance on how section 59 of the Environment Protection Act 1990 should be enforced. The guidance would set out which categories of waste should be given priority. The Secretary of State would also have the power to request information from authorities and the Agency on the amount and type of waste dealt with under the section, which would help address the lack of national data on fly-tipping already highlighted above.

Finally waste collection authorities would be given the same powers as the Environment Agency, under section 108 of the *Environment Act 1995*, to investigate incidents of fly-tipping.

2. Litter

Clause 55 would extend the power of local authorities, in their role as litter authorities, to enter Crown land and land owned by statutory undertakers to deal with litter, if a litter abatement notice is not complied with. The authority could then recover any reasonable

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[237] DEFRA, *Living Places - Powers, Rights and Responsibilities*, October 2002 http://www.defra.gov.uk/environment/consult/pubspace/index.htm

[238] ibid

expenditure. Crown land and statutory undertakers are currently specifically excluded from this power in Section 92(10) of the *Environmental Protection Act* 1990.

'Statutory undertaker' is defined as follows in the EPA Act 1991:

> (6) "Statutory undertaker" means—
> (a) any person authorised by any enactment to carry on any railway, light railway, tramway or road transport undertaking;
> (b) any person authorised by any enactment to carry on any canal, inland navigation, dock, harbour or pier undertaking; or
> (c) any relevant airport operator (within the meaning of Part V of the [1986 c. 31.] Airports Act 1986).

However Crown land which is occupied for military purposes is still excluded, as is any land the Secretary of State designates as excluded.

Local Government Association comments

The Local Government Association (LGA) particularly welcomed the environmental measures contained in the Bill, many of which they have previously campaigned for. However the expressed reservations about certain areas and called for increased powers in others. They also highlighted the lack of any extra resources:

- The LGA supports the additional powers which provide local authorities with more "tools" to maintain and care for the environment. The appearance of the local environment is a priority for local people and a poor environment encourages anti-social behaviour and fuels the fear of crime. We supported these new powers when DEFRA consulted on them in *Living Places, Powers, Rights and Responsibilities.*
- The additional powers are of a rather ad hoc nature and we would have preferred to have seen a greater range which would give local authorities a more strategic responsibility for managing the local environment. Most people think local authorities have this role anyway. We would like to see an Environment Bill as early as possible, to include a whole suite of additional powers, many of which are set out in DEFRA's review of legislation, which would be more effective in maintaining our public spaces.
- No extra resources have been allocated for the use of the extra powers, so this will affect authorities' ability to use them.
- In regard to fixed penalty notices for littering (and the suggested graffiti and fly-posting) and fly tipping, the levels of fines are currently derisory and not a real deterrent, we would like local authorities to be able to set their own levels of fines, within an agreed minimum and maximum.
- The suggested closure powers for noisy premises, relate only public nuisance. In reality, most noise nuisances are private nuisances and

therefore, the usefulness of this power is limited. We would like to see this extended to include private nuisances.[239]

[239] LGA Brief, *Anti-social Behaviour Bill Second Reading Briefing, 8 April 03*, 4 April 2003