

MEASURES TO TACKLE ANTI-SOCIAL BEHAVIOUR IN NORTHERN IRELAND

A CONSULTATION DOCUMENT

Introduction

This consultation paper seeks views on a package of proposed measures to tackle anti-social behaviour in Northern Ireland.

The 1998 Crime and Disorder Act in England and Wales describes anti-social behaviour as "behaviour which causes alarm, distress or harassment to one or more people not in the same household as the individual causing it". Such behaviour is an increasing cause of anxiety and concern in Northern Ireland. Not only are the lives of people and communities blighted by anti-social behaviour but there are well-founded concerns about the linkages between anti-social behaviour and criminal actions.

The proposals in this document are a response to community concerns about anti-social behaviour in general and a direct response to one of the objectives of the Government's Community Safety Strategy for Northern Ireland which was launched in March 2003. Anti-social behaviour and low level neighbourhood disorder were identified as key issues and the strategy identified the need to promote measures to combat this kind of behaviour.

The Government welcomes responses from organisations and individuals to the consultation. These should be sent by 1 April 2004 to :

Anti-Social Behaviour Consultation,
Criminal Justice Policy Branch,
Northern Ireland Office,
Massey House,
Stoney Road,
BELFAST BT4 3SX
Fax: [02890 527507]
E-mail: [alison.fitzgerald@nio.x.gsi.gov.uk]

*Nicola to see G. info.
The NGOs / NIARC really
disagree with
ASBOs!
see attached NIARC report*

Unless confidentiality is requested, it will be assumed that your response can be made available to others.

1. This consultation proposes a package of measures to deal with anti-social behaviour. These measures:

- take account of the undertaking in the Community Safety Strategy¹ to "examine the legislation that has been introduced in England and Wales to deal with anti-social behaviour to see if it is appropriate for Northern Ireland";
- are consistent with the understanding that working in partnership is the most effective way of tackling anti-social behaviour;
- take into account existing local government structures in Northern Ireland which are different from those in England and Wales.

2. The proposed package consists of three specific measures:

- the development of Acceptable Behaviour Contracts (ABCs). ABCs are a non-statutory intervention and may be a sufficient warning to people involved in anti-social behaviour (including young people and their parents). They may also be a precursor to enforceable action;
- introduction of Anti-Social Behaviour Orders (ASBOs) as an option available to a court where there is a conviction for a related criminal offence;
- introduction of ASBOs without an associated criminal conviction and on the basis of a partnership arrangement between the police and, in the first instance, District Councils and the Northern Ireland Housing Executive.

Background - England and Wales

Anti-Social Behaviour Orders

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¹ "Creating a Safer Northern Ireland Through Partnership: A Strategy Document" Community Safety Unit, NI0, March 2005

Summary

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 - ◆ take into account existing local government structures in Northern Ireland which are different from those in England and Wales.
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behaviour which causes harassment, alarm and distress. They contain restrictions on the actions and behaviour of the individual to protect the community from further anti-social acts. Although ASBOs are civil orders, breach of an ASBO is a criminal offence which, on indictment, has a maximum penalty of five years imprisonment.

4. ASBOs were introduced to meet a gap in dealing with **persistent** unruly behaviour, mainly by juveniles, and can be used against any person aged 10 or over. They were not designed to replace any existing legislation or sanctions, but to complement measures that both the police and local authorities already had available to them to combat anti-social behaviour, for example, under existing environmental, housing and noise legislation.

5. ASBOs are seen as having a number of advantages when compared to existing criminal sanctions. Because they are civil orders, hearsay evidence may be admissible, which means that a court may rely on expert witnesses². This can make it easier for members of the public to make complaints about the anti-social behaviour of individuals without the risk of having to appear in court and the fear of reprisals. Also, when making an ASBO, the court may take into account the full range of anti-social behaviour involved whereas in dealing with a criminal offence, a court can only sentence for specific offences and not for associated behaviour. Once an ASBO has been made, breach of the order is a criminal offence for which the maximum sentence on indictment is five years' imprisonment.

6. The fact that civil standards of evidence apply in relation to ASBOs should not be taken as meaning that ASBOs are necessarily an easy option for those seeking them in court. ASBOs and the sanctions for breaching them are tough. In consequence courts in England and Wales have made it clear that, although ASBOs are civil orders, the standard of proof needed to obtain one is close to the standard of proof required in a criminal case.³

7. That said, it should be noted that ASBOs are aimed at stopping the anti-social behaviour rather than punishing the offender. The most recent Home Office

² In this context an expert witness is one who has special training and experience in a particular field, and is permitted to state his opinion concerning those matters even though he was not present at the event.

³ The civil standard of proof is "on the balance of probabilities", the criminal standard of proof is "beyond reasonable doubt".

guidance on ASBOs and ABCs⁴ lists the kinds of behaviour which can be tackled by means of these mechanisms, but makes the point that the terms of each order should be tailored to the circumstances of the individual case.

8. When ABSOs were first introduced in England and Wales they could be applied for either by police or by a local authority, following consultation the one with the other. Following Home Office research published in 2002,⁵ the Police Reform Act 2002 extended the bodies which could apply for ASBOs to include the British Transport Police and registered social landlords. If a body other than the police is making the application, the police must always be consulted. The 2002 Act contained other provisions:

- ◆ extending the area an ASBO can cover to any defined part, or the whole of, England and Wales;
- ◆ giving criminal courts the power to issue an ASBO on conviction of a criminal offence. The order on conviction is not part of the sentence and can only be made in addition to a sentence or a conditional discharge. The court may make an order on its own initiative or on application;
- ◆ giving County Courts the power to issue ASBOs alongside related proceedings, such as housing possession;
- ◆ allowing applications for an interim ASBO which can be made at an initial court hearing held in advance of the full hearing. The temporary order can impose the same prohibitions and has the same penalties for breach as a normal ASBO. The aim is to enable courts to order an immediate stop to anti-social behaviour and thereby protect the public more quickly.

⁴ "A Guide to Anti-Social Behaviour Orders and Acceptable Behaviour Contracts" Home Office 2002.

⁵ Home Office Research Study 236 "A Review of Anti-Social Behaviour Orders" Dr Siobhan Campbell January 2002.

9. Since that time the Anti-Social Behaviour Act 2003, provides for additional measures which will be introduced gradually in 2004:

- ◆ extending the power to apply for ASBOs to Housing Action Trusts;
- ◆ enabling local authorities as well as the Crown Prosecution Service to prosecute breaches of ASBOs where they applied for the order, or where the individual resides or appears to reside in their area;
- ◆ providing agencies that obtained orders with automatic access to breach prosecutions in the youth court, to monitor the case and keep witnesses and victims informed;
- ◆ extending orders in the County Court so that when a tenant is being evicted, for example, due to the anti social behaviour of a family member or friend, these persons can be joined to the proceedings so the court can also make an order against the person responsible for the anti-social behaviour;
- ◆ ensuring that Parenting Orders⁶ are made where appropriate when a juvenile under the age of 16 is given an ASBO. All types of Parenting Orders will be able to include a requirement for a parent to attend a residential course where the court is satisfied that:
 - (a) this will be more effective than a non-residential course; and
 - (b) any interference with family life which is likely to result from the parent's attendance is proportionate to the circumstances;
- ◆ defining the role of the Crown Prosecution Service more clearly, clarifying that the Crown Prosecution Service can ask the court to make an order, and that additional evidence, including evidence inadmissible in the criminal proceedings, can be presented by the Crown Prosecution Service in the court post-conviction;
- ◆ removing automatic reporting restrictions. Reporting restrictions will only apply to an Order imposed after conviction if they are specifically imposed by the Youth Court.

⁶ Parenting Orders were introduced in England and Wales by the Crime and Disorder Act 1998. An Order is made by the criminal or family court acting under civil jurisdiction. They are designed to help parents or guardians address their child's behaviour. Breach can lead to a criminal conviction.

Acceptable Behaviour Contracts (ABCs)

10. An ABC is a voluntary written agreement between a person who has been involved in anti-social behaviour and one or more local agencies whose role it is to prevent such behaviour. ABCs are most commonly used for young people, but may also be used for adults. In the case of a young person, they would be drawn up in discussion between the police and generally the representative of a partner organisation and the child and the child's parents or guardians. Support to address the underlying causes of the behaviour is offered in parallel to the contract which may include diversionary activities.
11. In England and Wales, ABCs have been used to address a wide range of anti-social behaviour and when a young person is involved, the contract may involve their school.⁷ An ABC normally lasts for six months, but it is not a statutory document, so any reasonable period can be specified.
12. An ABC is not, in itself, enforceable. However, it may carry the threat of tougher action and failure to abide by an ABC could form an important part of the evidence leading to an ASBO.

Evaluation: England and Wales

ASBOs

13. A Home Office Research Study⁸ on the use of ASBOs found that in many areas ASBOs are considered by those using them to be an effective response to anti-social behaviour. The reported benefits were not only a reduction in the anti-social behaviour targeted and the criminal offending by those involved, but also positive outcomes in terms of public confidence and improved quality of life.
14. The research did, however, identify that there was considerable variation in the use of ASBOs by authorities. Problems included the costs associated with obtaining an ASBO, bureaucracy, delay and issues of enforcement.

⁷ "A guide to Anti-Social Behaviour Orders and Acceptable Behaviour Contracts" Home Office 2002.

⁸ Home Office Research Study 236 "A Review of Anti-Social Behaviour Order" Dr Siobhan Campbell January 2002.

15. The report was clear that ASBOs were most successful where there was partnership and a multi-agency approach to the issues of anti-social behaviour. There was also a need for clarity about procedures and protocols, not only when seeking an ASBO but particularly to ensure that ASBOs were monitored and breaches prosecuted.

Acceptable Behaviour Contracts

16. There is relatively little by way of public research on ABCs in England and Wales. However, it would seem that, in general, ABCs are considered by those using them to be an effective way of dealing with lower level crime, particularly by young people. Experience in England and Wales suggests that ABCs are most successful where young people and their parents have been fully engaged in the process and where interventions are developed that are tailored to the individual needs.

The Position in Northern Ireland

Anti-Social Behaviour Orders

17. When the Crime and Disorder Act 1998 was being prepared, consideration was given to extending the provisions relating to anti-social behaviour orders to Northern Ireland. However, in Northern Ireland there was no equivalent of the local authorities in England and Wales which have not only a representative function but are also responsible for education, housing, and social services. It was, therefore, decided to keep a watch on how ASBOs were developing in England and Wales and consider the position here in the light of experience gained.

18. In addition, the review of the criminal justice system in Northern Ireland that was carried out between 1998 and 2000 did not make any specific recommendations about anti-social behaviour. It did, however, propose a range of restorative and rehabilitative responses to low level crime which are being implemented.⁹ These include the system of youth conferencing for young offenders which has been legislated for in the Justice (Northern Ireland) Act 2002. An important feature of

⁹ The "Review of the Criminal Justice System in Northern Ireland" was published in March 2000. The terms of reference for the Review were set out in the Belfast Agreement.

youth conferences is that they will be able to deal with wider aspects of behaviour around a specific offence and develop a plan of action to deal with problems.

19. In April 2002, the then Secretary of State published a consultation paper on community safety in Northern Ireland.¹⁰ This used recorded crime data, research findings on victimisation and fear of crime, and consultation with key people working in community safety, to identify specific issues which needed to be addressed. One of these was street violence, low level neighbourhood disorder and anti-social behaviour. The community safety strategy published in March this year¹¹ identified that the legislation in England and Wales on anti-social behaviour needed to be examined to see if it was appropriate for Northern Ireland and suggested that initiatives might include anti-social behaviour orders.

Acceptable Behaviour Contracts (ABCs)

20. In Northern Ireland there are a number of mechanisms for dealing with offending and anti-social behaviour which have elements similar to ABCs. For example restorative cautioning¹² used by the police involves the young offender and their families. And the system of youth conferencing provided for in the Justice (Northern Ireland) Act 2002 is designed to engage the offender, his family and others in developing a programme of action to deal with offending behaviour.

21. However, when compared to ABCs there are some important differences. Restorative cautions and youth conferences are only available where criminal offences have been admitted (or in some circumstances proven). Moreover both should ideally involve the victim of the offence in the process.

22. Because ABCs are not statutory, there is, of course, no legal reason why they cannot be used now in Northern Ireland. However, for them to be effective, they would require an infrastructure of co-operation between relevant agencies and possibly some form of recognised sanction.

¹⁰ "Creating a Safer Northern Ireland Through Partnership". A Consultative Paper, Community Safety Unit, NIO, April 2002.

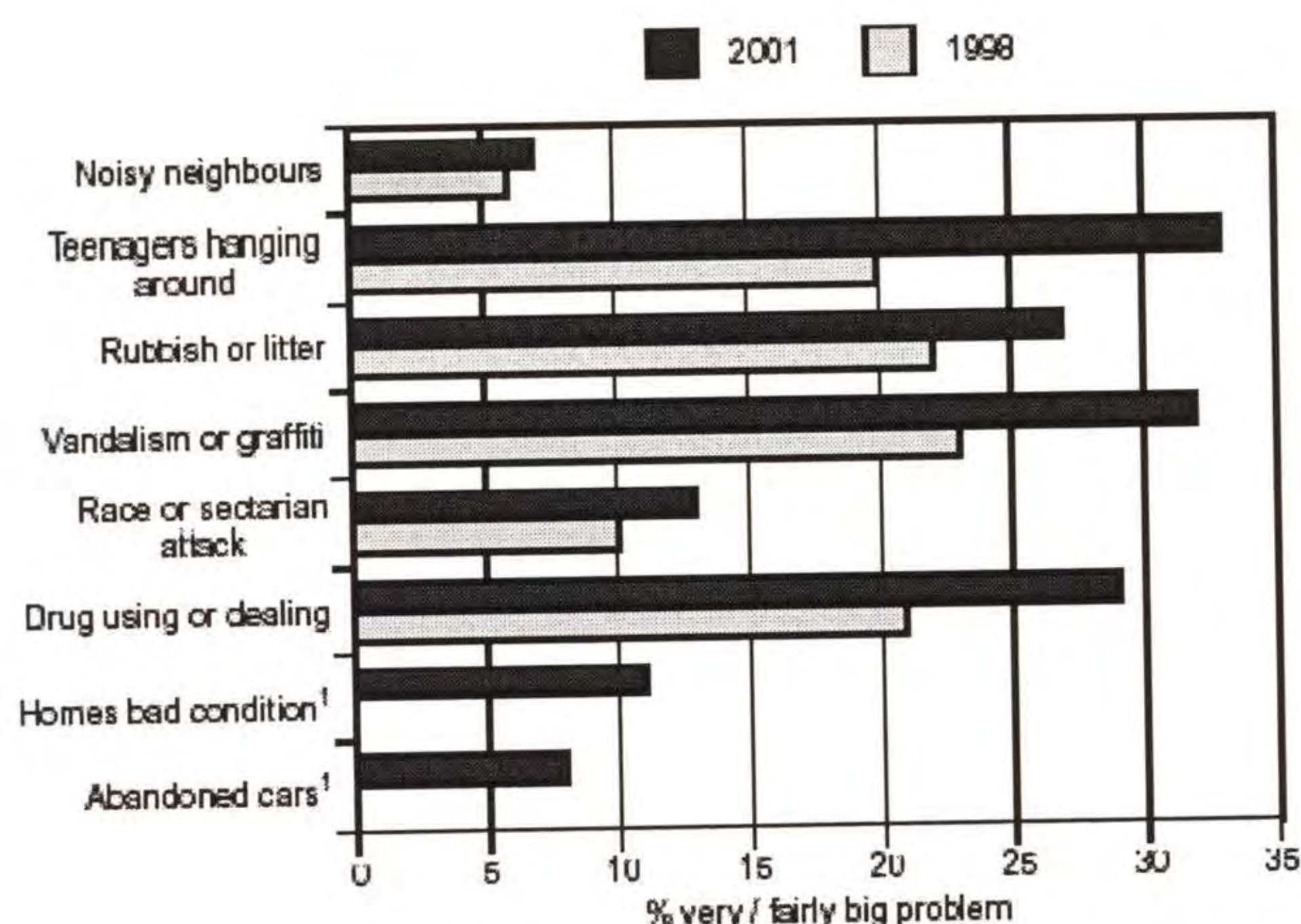
¹¹ "Creating a Safer Northern Ireland Through Partnership". A Strategy Document. Community Safety Unit, NIO, March 2003.

¹² Restorative cautioning is an approach for dealing with juveniles (under 17 years of age) who committed an offence, but were diverted away from prosecution by way of a caution delivered using a restorative framework.

Fear of Crime in Northern Ireland and Anti-Social Behaviour

23. The most recent Northern Ireland Office research on fear of crime in Northern Ireland¹³ identified that from a range of anti-social behaviour categories, one in three respondents to the 2001 Northern Ireland Crime Survey identified teenagers hanging around (33%) and vandalism/graffiti (32%) as being very or fairly big problems in their area.

24. Further, for all of the categories of respondent in the 1998 survey, the perception was that there had been an increase in anti-social behaviour. The table below gives the comparative picture. The last two categories were not included in the 1998 survey.



Proposals for Northern Ireland

25. Any measures to deal with anti-social behaviour in Northern Ireland must take into account local government structures that are different from those in England and Wales. Although recent legislation has extended the range of possible partners, the cornerstone of the system in England and Wales is partnership between the police and local authorities which have responsibility for education, housing, and social services and which have specific responsibilities in relation to criminal justice matters. Local authorities have been able to build up considerable expertise

¹³ "Fear of Crime in Northern Ireland: Findings from the 2001 Northern Ireland Crime Survey" NIO Research and Statistical Branch 5/2002.

in dealing with ASBOs which has enabled them to reduce costs while maintaining effectiveness. By contrast, in Northern Ireland separate authorities some covering relatively small geographic areas, have responsibility, for example, for education, and social services.

26. Measures here would also have to take into account the position of the Police Service of Northern Ireland. One possibility would be to allow the police to apply for ASBOs without the requirement for a partner. However in dealing with civil as opposed to criminal matters, the police would be reluctant to go on their own. They consider partnership to be an essential element in the development of approaches to anti-social behaviour.

27. In these circumstances a possible approach to anti-social behaviour in Northern Ireland could involve three elements as described in detail below.

First Element - The Development of Acceptable Behaviour Contracts

28. Development of acceptable behaviour contracts (ABCs) in Northern Ireland would enable the police working alongside partner bodies on an ad hoc basis to engage with anti-social individuals and steer them away from anti-social and criminal activities. Although it is anticipated that ABCs would most commonly be used in respect of young people, they could also be used for adults. In the case of a young person they would be drawn up in discussion between police (and generally the representative of a partner organisation) on the one hand and the child and the child's parents or guardians on the other. Possible partner bodies may include housing authorities, schools, environmental health.

29. Support to address the underlying causes of the behaviour would be offered in parallel to the contract. This could include diversionary activities, for example, attendance at a youth project, counselling or support for the family.

30. ABCs are not a substitute for ASBOs, not least because they are not legally enforceable. However, in some areas in England and Wales they (and other

mechanisms) are used **instead** of ASBOs; in others they are an option **before** an ASBO is sought and may form part of the evidence in court for an ASBO.

Second Element - Anti-Social Behaviour Orders Linked to Criminal Convictions

31. As a result of changes introduced by the Police Reform Act 2002, courts in England and Wales will be able to make ASBOs against individuals who have been convicted of an offence. The order may be made on the initiative of the court or on the application of the police or a partner body. It is suggested that a similar mechanism be introduced in Northern Ireland.

32. Using ASBOs in these circumstances would avoid the accusation that ASBOs are being used as a means of taking punitive action where there is insufficient evidence to secure a prosecution. And it would deal with one of the key problems that ASBOs were intended to address, namely that an individual offence may be part of a wider pattern of anti-social behaviour that cannot otherwise be dealt with.

33. There could be an additional advantage in Northern Ireland as regards juvenile offenders. As noted above, youth conferencing is a procedure which may deal with the wider context of an offence including associated anti-social behaviour. It may result in a plan of action for the offender which covers similar ground to an ASBO. However youth conferencing requires the consent of the offender. The availability of a conviction-related ASBO would fill a potential gap and might, indeed, be an additional incentive to young offenders to engage properly with youth conferencing rather than having the contents of an ASBO imposed on them.

Third Element – Partnerships Between the Police and District Councils and the Housing Executive

34. The third element would be the development of partnerships that would be able to apply for ASBOs in the civil courts in circumstances where there was no associated conviction. In the first instance it is suggested that these partnerships should be between the police and the District Councils and the Housing Executive but, just as the range of partner bodies in England and Wales has expanded, it might be possible for other bodies to become partners in the future..

35. A partnership involving the Housing Executive would allow ASBOs without associated convictions to be used in dealing with anti-social behaviour on housing estates where the Housing Executive is a major landlord. Such ASBOs would be available whether or not the individual involved in the anti-social behaviour was a tenant or related to a tenancy. In future it might be possible for Registered Housing Associations to become partner bodies, given their increasing role as social housing landlords.

36. Partnerships involving District Councils would allow ASBOs to be targeted at anti-social behaviour that came to the attention of District Councils, for example that which arises from the roles of District Councils in relation to noise pollution, entertainment licensing and the enforcement of by-laws, whether within or outside housing estates. And, although District Councils have a more restricted range of responsibilities than local authorities in England and Wales, a role in relation to ASBOs would be consistent with the new roles that District Councils have in relation to community safety, particularly within the context of the developing local Community Safety Partnerships.

37. If the model of England and Wales were to be followed, any partnership would have to involve the police who, if they were not initiating an ASBO, would have to be consulted before one could be sought. However such an arrangement need not preclude wider partnership working. Indeed, the development of Community Safety Partnerships could provide the opportunity for wider informal partnership arrangements to deal with anti-social behaviour and anti-social individuals.

38. Wider informal arrangements, as well as allowing a more rounded approach to problems of anti-social behaviour, might also help to address a problem of scale in Northern Ireland. In England and Wales there is evidence that the process of applying for ASBOs becomes more effective as the body applying for the ASBOs becomes more experienced. In Northern Ireland, the Housing Executive with its presence throughout the Province might find it easier to develop consistent approaches and procedures and gain economies of scale than would the 26 District Councils. Strong partnerships and the sharing of practice and experience might help to overcome this problem.

Section 75 of the Northern Ireland Act 1998: Equality

39. Under section 75 of the Northern Ireland Act, the Northern Ireland Office in carrying out its functions is required to have due regard to the need to promote equality of opportunity:

- ◆ between persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation;
- ◆ between men and women generally;
- ◆ between persons with a disability and persons without; and
- ◆ between persons with dependants and persons without.

40. In addition the NIO is required to have regard to the desirability of promoting good relations between persons of different religious belief, political opinion or racial group.

41. We have carried out an initial screening of the proposals set out above to assess whether they might impact adversely on any of the groups mentioned in section 75. This confirmed that the proposals in themselves are not likely to have an adverse differential impact on any of the groups. However, we invite comments or any other information in response to the consultation.

NEXT STEPS

42. Depending on the outcome of the consultation, if it is decided to introduce ASBOs into Northern Ireland law, the next step would be to publish for consultation a proposal for a draft Order in Council.

QUESTIONS

ANTI-SOCIAL BEHAVIOUR ORDERS

Would ASBOs be an effective measure for dealing with anti-social behaviour in Northern Ireland?

To what extent would the concept need to be modified so that it could be operated effectively in Northern Ireland?

Are specific safeguards required for Northern Ireland?

Should courts in Northern Ireland be empowered to impose an ASBO alongside a sentence for a conviction?

Would the Northern Ireland Housing Executive be an appropriate ASBO partner for the Police Service of Northern Ireland? Would District Councils be appropriate ASBO partners for the Police Service of Northern Ireland? Which other authorities or bodies might be suitable partners?

ACCEPTABLE BEHAVIOUR CONTRACTS

Would ABCs be an effective means of dealing with anti-social behaviour in Northern Ireland?

What steps could be taken to strengthen the operation of ABCs or to make sure that they operated effectively?

Is the possible "sanction" of an ASBO necessary for the proper working of a system of ABCs?