

## PART 3 – RESPONDENT INFORMATION FORM

### THE ANTISOCIAL BEHAVIOUR ETC. (SCOTLAND) ACT 2004 CONSULTATION DOCUMENT – JUNE 2014

Please Note this form must be returned with your response to ensure that we handle your response appropriately

#### 1. Name/Organisation

Organisation Name

Together (Scottish Alliance for Children's Rights)

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#### 3. Permissions - I am responding as...

Individual / Group/Organisation

*Please tick as appropriate*

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

*Please tick as appropriate*  Yes  No

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

*Please tick ONE of the following boxes*

Yes, make my response, name and address all available

Yes, make my response and name available, but not my address

Yes, make my response available, but not my name and address

(c) The name and address of your organisation *will be* made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your *response* to be made available?

*Please tick as appropriate*  Yes  No

(d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

*Please tick as appropriate*  Yes  No

## Additional notes

Together (Scottish Alliance for Children's Rights) is an alliance of children's charities that works to improve the awareness, understanding and implementation of the UN Convention on the Rights of the Child (UNCRC) in Scotland. We have over 260 members ranging from large international and national non-governmental organisations (NGOs) through to small volunteer-led after school clubs. Our activities include collating an annual State of Children's Rights report to set out the progress made to implement the UNCRC in Scotland. We also provide a focal point through which Scottish NGOs report to the UN Committee on the Rights of the Child.

The views expressed in this submission are based on the general principles of the UNCRC and do not necessarily reflect the specific views of each member organisation.

Together welcomes the decision to review the Antisocial Behaviour etc. (Scotland) Act 2004 to provide a more unified and clear approach to antisocial behaviour in Scotland.

Fundamental to reviewing antisocial behaviour legislation is recognising the far reaching consequences it may have on different groups of children. The key points raised in this submission are that:

- Children may be involved in antisocial behaviour, experience it directly from a parent or carer or live in an unsafe neighbourhood.
- It is not necessarily easy or accurate to make a clear distinction between children who are victims of anti-social behaviour and those who are perpetrators. Some children are both victims and perpetrators.
- The rights as enshrined in the UNCRC must be protected, respected and fulfilled for all children and young people, regardless of their status and whether they are a victim or perpetrator of antisocial behaviour.
- Rights-respecting strategies to address anti-social behaviour must protect victims, whilst ensuring that children who act anti-socially are supported to understand the impact of their behaviour.

### Use of ASBOs

In the UK 2008 Concluding Observations, the UN Committee on the Rights of the Child highlighted its concerns at the use of ASBOs on children and young people. The UN Committee stated that ASBOs may not be in the best interests of children receiving them and that most children subject to them are from disadvantaged backgrounds<sup>1</sup> They also noted that ASBOs may violate the rights of children to freedom of movement and peaceful assembly<sup>2</sup> (as outlined in Article 15 of the UNCRC)<sup>3</sup>. The UN Committee recommended that UK conduct an independent review of ASBOs with a view to abolishing their application to children.<sup>4</sup>

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<sup>1</sup> Committee on the Rights of the Child (2008). Concluding Observations: United Kingdom of Great Britain and Northern Ireland (CRC/C/GBR/CO/4).

<sup>2</sup> Committee on the Rights of the Child (2008). Concluding Observations: United Kingdom of Great Britain and Northern Ireland (CRC/C/GBR/CO/4). No 35

<sup>3</sup> UN General Assembly (1989). UN Convention on the Rights of the Child (Article 15).

<sup>4</sup> Committee on the Rights of the Child (2008). Concluding Observations: United Kingdom of Great Britain and Northern Ireland (CRC/C/GBR/CO/4). No 80

A Scottish Government review of the use of ASBOs in Scotland in 2007 found that with regards to the specific powers to impose ASBOs on young people (aged 12-15) introduced in 2004, only 4 had been granted.<sup>5</sup>

Together recommends that the Scottish Government take into full account the observations and recommendations made by the UN Committee and conduct an up-to-date independent review of ASBOs in Scotland. The consultation document is limited in its evidence base of the current application of ASBOs and to whom, and the effects that they have on children and adults.

#### The views of children and young people

Scrutiny of the proposals going forward must take into account the views of children and young people, as required by Article 12 of the UNCRC.<sup>6</sup> When decisions are made affecting children - whether they have taken part in anti-social behaviour or have been affected by others anti-social behaviour - their views must be given due weight in accordance with their age and maturity.

#### Child rights impact assessment

The Scottish Government must ensure that proposals to amend the Antisocial Behaviour etc. (Scotland) Act 2004 respect, protect and fulfil the rights enshrined in the UNCRC for all children. This will require a continuous process of impact assessment and evaluation throughout their development and delivery.<sup>7</sup> As such, it is essential that the Scottish Government undertake a full Child Rights Impact Assessment on the proposals to determine how they will impact on the rights of children and young people, both as service users and as a family member of service users. This would be in line with the Scottish Government's commitments to children's rights as evident in Part 1 of the Children and Young People (Scotland) Act 2014.

#### Mosquito devices

The UN Committee on the Rights of the Child urged the UK to reconsider the use of mosquito devices to prevent antisocial behaviour, insofar as they may violate the rights of children to freedom of movement and peaceful assembly.<sup>8</sup> Together recommends that the Scottish Government fulfils its commitment to end the use of mosquito devices, by using this consultation as a vehicle to ban their use in Scotland (as recommended in Together's 2011 and 2012 State of Children's Rights in Scotland reports).<sup>9</sup>

## **CONSULTATION QUESTIONS**

Antisocial Behaviour Orders - Standard of proof

**Q1. Should the legislation be clearer that the standard of proof required when considering an application for an ASBO is 'balance of probabilities' rather than 'beyond reasonable doubt'?**

Agree  Partially agree  Disagree

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<sup>5</sup> <http://www.scotland.gov.uk/Resource/Doc/198276/0053019.pdf>

<sup>6</sup> UN General Assembly (1989). UN Convention on the Rights of the Child (Article 12).

<sup>7</sup> UN Committee on the Rights of the Child (2013). General Comment No. 5: General measures of implementation of the UNCRC (pg 11)

<sup>8</sup> Committee on the Rights of the Child (2008). Concluding Observations: United Kingdom of Great Britain and Northern Ireland (CRC/C/GBR/CO/4). No 35 & 80

<sup>9</sup> Together (2011,2012). State of Children's Rights in Scotland

Please provide reasons for your answer:

In its 2008 Concluding Observations to the UK, the UN Committee on the Rights of the Child stated that the UK should reconsider the use of ASBOs insofar as they may violate the rights of children to freedom of movement and peaceful assembly<sup>10</sup> (as outlined in Article 15 of the UNCRC).<sup>11</sup> This may be as a result of awarding an ASBO to an adult or a child. The Committee recommended that the State party conduct an independent review of ASBOs, with a view to abolishing their application to children.<sup>12</sup>

Together would like to emphasise the importance of adhering to this recommendation and conducting an independent review of ASBOs in Scotland. At present there seems to be little information on how often ASBOs are used and to whom they are applied.

Together is clear that if ASBOs are to be used on adults then they should be awarded sparingly and as a last resort, and that any steps taken to unify the standard of proof necessary should be taken very carefully.

The UN Committee highlighted concern at the ease of issuing ASBOs as well as the fact that a breach of an order is a criminal offence with potentially serious consequences. Therefore the use of 'balance of probabilities' or 'beyond reasonable doubt' as standard of proof may both be problematic.

Despite this, Together welcomes the Scottish Governments intention to make clear the standard of proof that should be taken when considering applications for ASBOs. Any changes made must respect, protect and fulfil the principles and requirements of the UNCRC. To do this, Together recommends that the Scottish Government carry out a Child Rights Impact Assessment on the proposals, to assess the potential impact on children's rights.

## Antisocial Behaviour Orders - Variation of Interim ASBOs

### **Q2. Should it be possible to vary an interim ASBO if the behaviour of the person who is the subject of the ASBO changes?**

Agree  Partially agree  Disagree

Please provide reasons for your answer:

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<sup>10</sup> Committee on the Rights of the Child (2008). Concluding Observations: United Kingdom of Great Britain and Northern Ireland (CRC/C/GBR/CO/4). No 35

<sup>11</sup> UN General Assembly (1989). UN Convention on the Rights of the Child (Article 15).

<sup>12</sup> Committee on the Rights of the Child (2008). Concluding Observations: United Kingdom of Great Britain and Northern Ireland (CRC/C/GBR/CO/4). No 80

The UN Committee on the Rights of the Child is clear that the ease at which ASBOs are used is concerning and that issuing ASBOs to children should be abolished.<sup>13</sup>

If ASBOs are granted to adults and interim ASBOs are applied (both which should be done so as a last resort), then Together is clear that they must be done so applying a person-centred approach, taking into account the particular circumstances of each individual.

The Scottish Government's decision to clarify the process of bringing an interim ASBO back to court to allow for appropriate variation is welcome. Careful consideration should be given to the proposals so that they do not result in indiscriminate and inconsistent applications of ASBOs. Any changes should be undertaken with appropriate rigour and consistency of procedures, and must ensure that the general principles of the UNCRC are fully taken into account, including that the best interest of the child are the primary consideration (Article 3 of the UNCRC) in all proposals moving forward.

## Antisocial Behaviour Orders - Service of Orders

### **Q3. Should the service of both interim and full ASBOs be capable of being made by Sheriff Officers as an alternative to recorded delivery?**

Agree  Partially agree  Disagree

Please provide reasons for your answer:

When ASBOs are issued, Together welcomes the decision to legislate for alternative ways of servicing interim and full ASBOs. Together recommends that the Scottish Government conduct a review of the use of ASBOs in Scotland, with a view to abolish their application on children and young people, as per the UN Committee on the Rights of the Child recommendations.

Yet if Sheriff Officers are to be capable of servicing both interim and full ASBOs to children and young people in the future, then they need to be child-friendly and offer information reflecting the age of the specified child or adult. When a child is being issued an ASBO, then Sheriff Officers should work with the child and its parents to explain what an ASBO is and what it means. Article 5 of the UNCRC requires that State Parties respect the duties of parents and carers to provide appropriate direction and guidance to the child in a manner consistent with their evolving capacities.<sup>14</sup>

The proposals must take into account the requirements in the UNCRC, including the right of the child to seek, receive and impart information of all kinds (Article 13); that the best interests of the child must always be taken into fully account and that children have the right to express their views freely in all decisions affecting them and for these views to be

<sup>13</sup> Committee on the Rights of the Child (2008). *Concluding Observations: United Kingdom of Great Britain and Northern Ireland (CRC/C/GBR/CO/4)*. No 35 & 80

<sup>14</sup> UN General Assembly (1989). *UN Convention on the Rights of the Child (Article 5)*.

given due weight (Article 12).

## Antisocial Behaviour Orders - Private Landlords

### **Q4. Should private landlords be able to receive information about police calls and actions in relation to antisocial behaviour by their tenants?**

Agree  Partially agree  Disagree

Please provide reasons for your answer:

Children and young people have a right to privacy under Article 8 of the European Convention on Human Rights (ECHR)<sup>15</sup> and Article 16 of the UNCRC. However, private landlords are not under the same obligations as social landlords and are not regulated or accountable in the same way. Therefore, any move to allow private landlords to receive information about police calls and actions in relation to anti-social behaviour need to be considered with caution. Any changes should be considered with full regard of the human rights of tenants and in the context of appropriate regulation of the private rented housing sector.

The description of '*actions in relation to anti-social behaviour*' is broad and Together has serious concerns about the extensive information that could be shared under this description. Any sharing of information regarding behaviour of tenants must be relevant and proportionate. In addition, any changes to sharing information needs to take into account the effect on those with ASBOs, those affected by others with ASBOs and those reporting anti-social behaviour.

### **Q5. Should limits be put on the type of information which private landlords may receive?**

Agree  Partially agree  Disagree

Please provide reasons for your answer:

Please see Q4 response.

### **Q6. Should any other controls be in place to ensure that information received by private landlords is not misused?**

Agree  Partially agree  Disagree

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<sup>15</sup> Council of Europe (1953) European Convention on Human Rights

Please provide reasons for your answer:

Please see Q4 response.

Closure Order Powers – Local Authorities

**Q7. Should closure order powers be extended to Local Authorities?**

Agree  Partially agree  Disagree

Please provide reasons for your answer:

Children are entitled to a safe and secure environment where they can learn, play and take part in community life, free from distress or harm. Article 27 of the UNCRC requires that State Parties must recognise the right of every child to a standard of living adequate for the child’s physical, mental and social development.<sup>16</sup> Yet many children bear the brunt of anti-social behaviour, either because they experience it directly, or because they live in unsafe neighbourhoods and are prevented from going out.

Any decisions made regarding closure order powers to reduce anti-social behaviour should be done with the best interests of the child as the primary consideration (reflecting Article 3 of the UNCRC). In any decisions taken to change the closure order powers, the rights of children as enshrined in the UNCRC must be protected, respected and fulfilled. Proposals involving closure order powers have the potential to be rights-enhancing if they are able to help create a safe and secure environment for all children.

Point number 31 of the consultation document states: *“When deciding whether an order should be granted, the sheriff will consider the ability of anyone living in the premises to find alternative accommodation and the vulnerability of anyone in the household who has not been involved in antisocial behaviour.”*

Together recommends that this sentence also includes the vulnerability of anyone in the household who has been involved in antisocial behaviour as well.

**Q8. Should a local authority power to issue closure orders be subject to consultation or other requirements?**

Agree  Partially agree  Disagree

Please provide reasons for your answer:

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<sup>16</sup> UN General Assembly (1989). UN Convention on the Rights of the Child (Article 27).

In the case that closure order powers are extended to local authorities, a local authority power to issue closure orders should be subject to the requirement to carry out a Child Rights Impact Assessment. This would ensure that the provisions within the UNCRC are respected, protected and fulfilled in relation in issuing closure orders. It would also ensure that the proposals are fully assessed in terms of their impact on the rights of children and that the impact is predicted, monitored, and if necessary, avoided or mitigated.

Ensuring that local authorities conduct a CRIA on closure orders would be in line with the Scottish Government's commitments to children's rights in Part 1 of the Children and Young People (Scotland) Act 2014.<sup>17</sup>

## Antisocial Behaviour Fixed Penalty Notices

### **Q9. Should 'drunk in a public place in charge of a child' be removed from the list of Fixed Penalty Notice offences?**

Agree  Partially agree  Disagree

Please provide reasons for your answer:

Together agrees with the recognition of the severity of this offence, the effects of such incidents on the child's welfare and the deeper problems that may be at the root of the offence. Together also agrees that this offence should not be dealt with as a minor problem.

Governments in the UK are under obligation to take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child (as stated in Article 19 of the UNCRC).<sup>18</sup>

There should be very clear guidance in place of what currently exists if decisions are taken to change the current procedure relating to this offence. It is crucial that when discussing this issue that the best interests of the child principle is at the heart of any decisions made, reflecting Article 3 of the UNCRC.<sup>19</sup>

The Scottish Government has previously highlighted that '*reducing alcohol consumption is key to reducing the effects on children*'.<sup>20</sup> Together recommends that the Scottish Government take into consideration the efforts being made across Scotland to tackle

<sup>17</sup> Scottish Government (2014). *Children and Young People (Scotland) Act 2014*

<sup>18</sup> UN General Assembly (1989). *UN Convention on the Rights of the Child (Article 19)*.

<sup>19</sup> UN General Assembly (1989). *UN Convention on the Rights of the Child (Article 3)*.

<sup>20</sup><http://www.scotland.gov.uk/Topics/People/Young-People/protecting/child-protection/capsm/wider-activity>



alcohol abuse early and effectively, to reduce the negative impact on children.

**Q10. Should 'malicious mischief' be removed from the list of Fixed Penalty Notice offences?**

Agree  Partially agree  Disagree

Please provide reasons for your answer:

**Q11. Should there be any other changes to the system of ASB Fixed Penalty Notices?**

Agree  Partially agree  Disagree

Please provide reasons for your answer:

Finally, if there are any other issues that you wish to raise regarding antisocial behaviour in Scotland, not covered by this consultation document, please use your Respondent Information Form to share these with us.