



*Enabling local authorities to
contract their Anti-Social Behaviour
Order functions to organisations
managing their housing stock*

Consultation Paper

November 2005



Enabling local authorities to contract their Anti-Social Behaviour Order functions to organisations managing their housing stock

Consultation Paper

Office of the Deputy Prime Minister
Eland House
Bressenden Place
London SW1E 5DU
Telephone: 020 7944 4400
Web site: www.odpm.gov.uk

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Ministerial Foreword

Housing and housing management play key roles in defining the qualities of areas in which people are happy to live. People want to live in safe, sustainable communities. Tackling anti-social behaviour is essential in building those communities and we are committed to supporting practitioners, and providing them with the means of doing so effectively.

I therefore invite your views on a proposal which we believe will help local authorities ensure that those in their area who are best placed to tackle anti-social behaviour can do so efficiently.

We propose to enable local authorities to ask those bodies managing their housing under s.27 of the Housing Act 1985 to also carry out some or all of their functions relating to Anti-Social Behaviour Orders. We believe that this proposal will help those charged with front line delivery of services to take account of changes both in the role that housing management plays in meeting the needs of communities, and the way that local authorities choose to deliver their housing management services.

This document sets out the proposal in more detail, including how arrangements might work in practice. I look forward to hearing your views.

Yvette Cooper MP
Minister of State for Housing and Planning

Responses

Please send your response, no later than 1 February 2006 to:

Mr Yemi Atiku
Office of the Deputy Prime Minister
1/J6 Eland House
Bressenden Place
London SW1E 5DU

E-mail responses are welcome. If you are replying by e-mail please include the words 'consultation response' in the subject or title. These and any enquiries can be sent to:

asbconsult@odpm.gsi.gov.uk

Telephone number for enquiries is:

020 7944 5143

Representative groups are asked to include a summary of the people and organisations they represent in their reply.

Individual responses will not be acknowledged. They may be published and deposited in the library of the Houses of Parliament. If the assumption that you will have no objection to such publication is wrong, please ask for your response to be treated as confidential. Corporate confidentiality clauses attached to outgoing e-mails will not be taken into account unless specifically requested. All comments will be aggregated in any statistical compilation of respondent's views.

This consultation paper conforms to the criteria set out in the Government's Code of Practice on Written Consultation at Annex 1.

A list of key organisations being consulted is at Annex 2.

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CHAPTER 1

Introduction

What is anti-social behaviour?

1. For the purposes of the Crime and Disorder Act 1998 anti-social behaviour is defined as behaviour that causes or is likely to cause harassment alarm or distress. This manifests itself in a number of ways – nuisance noise, verbal intimidation, criminal damage or vandalism, abandoning cars, kerb-crawling, street drinking and begging, or groups of people intimidating others. The Government is determined to tackle anti-social behaviour wherever it occurs.
2. The vast majority of people behave in a way that does not cause other people to feel intimidated or unsafe but the anti-social conduct of an irresponsible minority has a disproportionate effect on communities and can hold back the regeneration of deprived areas and the safety and progress of the community as a whole.

Housing in safe, sustainable communities

3. Housing and housing management play key roles in making an area in which people are happy to live. People want to live in safe, sustainable communities. In particular, we know that anti-social behaviour features highly among the concerns of tenants. The British Crime Survey (BCS) shows that people within local authority housing and low-income areas perceive the highest levels of anti-social behaviour. The provision of effective and efficient means to tackle anti-social behaviour is therefore a key element of providing decent places for people to live.

Housing Management

4. The management of social housing involves a wide variety of activities. Traditionally it has focused on providing services such as lettings, tenancy sign up, rent collection and recovering rent arrears, planned and responsive repairs and tenant consultation.
5. In recent years the scope of housing management has broadened to include key elements of neighbourhood management such as tackling crime and anti-social behaviour, in addition to the more traditional tenancy management role.

6. In endeavouring to meet the needs and concerns of tenants at local level it has become increasingly important for landlords and housing managers to develop approaches to tackling anti-social behaviour as a core component of their management activities.

Changes in the way housing management is delivered

7. In addition to changes in the role that housing management plays in meeting the needs of communities, there have also been a number of developments in the way in which local authority housing management services are delivered.
8. Many local authorities do not carry out the day to day management of their housing stock; instead they focus on strategic functions and delegate operational functions to other organisations who manage housing stock on their behalf. ‘Delegation’, means that all the local authority’s decisions relating to the discharge of a function are put into the hands of another organisation which then becomes the authorised decision maker responsible for the discharge of that function on behalf of the local authority.
9. These organisations include:
 - Arms Length Management Organisations (ALMOs)
 - Tenant Management Organisations (TMOs)
 - Bodies managing housing as part of PFI schemes
 - Registered Social Landlords (RSLs)
10. Where an authority delegates its’ housing management functions, it may also make sense to delegate responsibility for taking action to tackle Anti Social Behaviour (ASB) as part of the management function.
11. The processes by which these delegations are made and the nature of organisations to whom an authority may choose to delegate its housing management services are covered in more detail in Chapter 2.
12. Wales – There were no ALMOs, TMOs or bodies managing housing as part of PFI schemes in Wales at the date of publication of this consultation paper.

The case for change

13. The Government believes that local authorities should have the flexibility to make appropriate local decisions to ensure that their functions are carried out as effectively as possible. This includes tackling anti-social behaviour.
14. The Government believes it is essential that local authorities are in a position to ensure those organisations to which they delegate or contract management functions are properly equipped to do the job, subject to proper controls and accountability.
15. The Government also believes that those managing housing stock are often best placed to tackle anti-social behaviour in conjunction with relevant partners. A range of tools is already available to local authorities to tackle anti-social behaviour in the context of housing; these include injunctions, demotion orders and possession action. These tools may also be utilised directly by organisations managing housing on local authorities' behalf. However, those organisations are not currently able to seek Anti-social behaviour Orders (ASBOs) on behalf of local authorities. Instead, where an ASBO appears to be the most appropriate intervention, the housing management organisation must, in every case, ask the local authority to seek an ASBO through the courts to support them in tackling anti-social behaviour. (Further information on ASBOs and their place within the 'toolkit' of ASB measures is available in Chapter 2.)
16. While some ALMOs have developed ways of working with their parent authorities, a number have suggested that there are administrative difficulties and operational inefficiencies with the current arrangements. They have suggested that the process could be more effectively and efficiently delivered if the housing managers were able to seek ASBOs without having to ask that the local authority to pursue applications. For example, it may prevent unnecessary delays caused by liaison between the local authority and the housing management organisation in preparing cases to bring to court.
17. Local authorities need to be able to make decisions on how to tackle anti-social behaviour based on local circumstances. We believe that it would be sensible for local authorities to be able to ask those carrying out housing management functions on their behalf, to also carry out some or all of the ASBO functions where both parties agree. This consultation paper seeks views on this proposal.
18. **Chapter 2** sets out the legal framework around delegation of housing management functions and anti-social behaviour (including the means by which local authorities could contract out their ASBO functions). It also describes the bodies managing local authority housing in more detail.
19. **Chapter 3** sets out how the arrangements might work in practice and tells you how you can submit your views on the proposal.

CHAPTER 2

Background

20. This Chapter sets out the legal framework which governs local authorities' ability to delegate management of their housing stock to other organisations. It also covers legal measures available to local authorities and the housing management organisations with which to tackle anti-social behaviour. In particular it focuses on the current availability of powers to seek ASBOs and the means by which local authorities could contract out their ASBO functions.

The procedure for delegating housing management functions

21. As outlined in Chapter One many local authorities in England have delegated operational functions to other organisations who manage some or all of the housing stock on their behalf. This is in line with the Government's belief that local authorities should seek to improve the delivery of their housing services by separating their housing management functions from their strategic housing function. In addition in a number of areas tenants have exercised their statutory right to manage their homes. The Welsh Assembly Government is of the view that the operational and strategic housing functions should be separated but that it is for local authorities and their partners to determine the most effective means of achieving this locally.
22. The means by which local authorities delegate their housing management functions is governed by section 27 of the Housing Act 1985. This legislation contains an enabling power for local authorities to delegate their housing management responsibilities to other organisations. The relationship between a local authority and the organisation to which it delegates is governed and monitored by a management agreement between the two parties, which specifies both partners' respective roles and responsibilities. In terms of responsibilities for tackling ASB the agreement might include coverage of the following issues:
 - Procedures for making complaints – i.e. identification of the person/s to whom tenants should make an initial complaint
 - Responsibilities for processing a complaint of ASB
 - Responsibilities for supporting complainants and witnesses.

- Taking action, e.g. Acceptable Behaviour Contracts, injunctions, demotion and possession
- Information exchange and data protection
- Monitoring and review arrangements
- Arrangements for liaison and consultation between the authority and the housing management organisation

23. All such delegations under section 27 of the 1985 Act are subject to the consent of the Secretary of State or in Wales, the National Assembly for Wales. The approval process is designed to ensure that the rights of tenants' rights are protected. There are two approval routes:

- **General approval** – The Office of the Deputy Prime Minister has issued a General Consent that allows local authorities to delegate their housing management responsibilities without specific consent from the Government. This covers proposals involving competitive tendering provided that the agreement does not run for more than 5 years, contracts for less than 10 properties, and delegations to Tenant Management Organisations (TMOs) under the Right to Manage. No equivalent document has been issued for Wales.
- **Specific consent** – this involves the Office of the Deputy Prime Minister or the National Assembly for Wales in checking proposed management agreements to ensure that they are robust, and enforceable. This route must be followed for all instances in which the housing management functions are to be delegated to ALMOs and bodies managing housing as part of PFI schemes.

24. The effect of section 27 is to regulate the process by which a local authority appoints another housing body to manage council homes. The features of the delegation process (whether this is covered by the General or a Specific consent) regulates the local authorities' power to delegate housing management functions to another organisation in order to protect tenants' interests.

25. This process ensures that housing management responsibilities may be delegated only to those with appropriate skills and resources. It also ensures that the selection process has been influenced by tenants' views, following consultation requirements set out in Government guidance. Local authorities are also required to consult their tenants about matters of housing management and changes in the practice or policy of the authority under section 105 of the Housing Act 1985.

26. Local Authority tenants have the right to be consulted, make their views known to the local authority and for the authority to take these views into account before a final decision. Any managing organisation will have had to satisfy tenants, through the

procurement and selection process, and in running of any contract, that it is able to deliver a high quality service to standards set out in the management agreement.

27. It is also in local authorities' interest to ensure that only sound organisations manage their housing. This is important as housing managers deal with a whole range of sensitive people issues, including managing tenancies, enforcing tenancy agreements, and dealing with problems, like anti-social behaviour, which affect the quality of people's lives. Such organisations are dealing with some of the most vulnerable sections of society.

Housing Management Organisations

28. This section provides an overview of the different types of organisations to which a local authority may delegate its housing management functions.

- **Arms Length Management Organisations (ALMOs):**

29. An Arms Length Management Organisation (ALMO) is an organisation set up by a local authority to manage and improve all or part of its housing stock. Ownership of the housing stock remains the local authority and tenants remain secure tenants of the authority. ALMOs are normally companies limited by guarantee with council nominees, tenants and independent members on the board.
30. As its name implies, an arms length body has a significant degree of independence from its local authority. The relationship between them is set by the terms of the management agreement. It rests with local authorities to devise arrangements which best suit their circumstances, encouraging a business-like and innovative approach to the management of their housing stock.

- **Tenant Management Organisations (TMOs):**

31. The Housing (Right to Manage) Regulations 1994 allow properly constituted tenants' organisations to set up Tenant Management Organisations (TMOs) and to take on the responsibility for the day-to-day management of their estates. Ownership of the housing stock remains with the local authority and tenants remain secure tenants of the authority.
32. In order for tenants to take responsibility, a prospective TMO must undergo a statutory training and development programme, negotiate its management agreement and allowances with the local authority (based on a statutory modular agreement), in which they decide which functions they wish to manage and the level of responsibility. The TMO must be assessed as competent before it can take on management and have the support of most tenants in the area. Tenants do not have to undertake housing

management activities tasks themselves. They can employ staff, use local authority housing staff or employ a managing agent.

• Bodies managing housing as part of Private Finance Initiative (PFI) schemes:

33. A local authority may opt to pursue a PFI scheme to manage and improve part of its housing stock. PFI is not an option for the whole of the stock but is usually chosen for individual estates or groups of houses with high investment needs. In housing PFI the local authority retains ownership of the stock and the tenants retain their secure tenancies. A consortium of private sector firms (usually consisting of a bank, a housing association and a building contractor) raise capital to refurbish or replace homes under a contract negotiated with the local authority. The consortium then provides repairs, maintenance and a range of housing management services to the stock as part of the contract. The private consortium is paid on a performance basis.
34. A typical PFI contract lasts for about 30 years. Throughout that time tenants remain tenants of the local authority. Following consultation with tenants, local authorities are able to delegate, or sub-delegate, their housing management function to the appropriate member of the consortium or the sub contractor employed by the consortium to undertake the housing management role. This role is mostly, but not always, undertaken by a housing association.

• Registered Social Landlords (RSLs):

35. Registered Social Landlord (RSL) is the technical name for social landlords that are registered with the Housing Corporation in England and the National Assembly for Wales in Wales – most are housing associations, but there are also trusts, co-operatives and companies. RSLs are private landlords (they are classed as voluntary not for profit sector bodies in Wales) run as businesses but they do not trade for profit. Over the last decade, many new associations have been formed to manage and develop homes transferred to them by local authorities (where the RSL takes full ownership of the stock).
36. Local authorities may also, if they wish, enter into agreements with RSLs, to enable RSLs to manage some of their stock while retaining ownership of that stock. Where this occurs, it is often on the basis of localised neighbourhood arrangements.

Powers available to tackle ASB

37. As outlined in Chapter One social landlords (local authority landlords and Registered Social Landlords) have a number of measures available to them to tackle anti-social behaviour as it impacts on their tenants and the wider community.
38. These include measures introduced by Part 2 of the Anti-Social Behaviour Act 2003 such as flexible housing injunctions (often known as Anti-social Behaviour Injunctions (ASBIs)) and demoted tenancies. New measures under the Housing Act 2004 are also

now available for use giving landlords the right to refuse a secure tenant's request for a mutual exchange in certain cases of anti-social behaviour and measures to suspend tenants' right to buy on anti-social behaviour grounds.

39. All these tools are linked in some way to tenure or the landlord's housing management function but other tools are available to tackle ASB which are not linked in anyway to these factors. They include Acceptable Behaviour Contracts (ABCs) and Anti Social Behaviour Orders (ASBOs).

ASBOs

40. The Crime and Disorder Act 1998 provides for Anti-social Behaviour Orders. These can be made against any person aged 10 or over who has acted in an anti-social manner, defined as 'a manner that caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household' as the perpetrator.
41. Currently ASBOs may be sought through the courts by local authorities (including English County Councils), police forces, British transport police, registered social landlords and housing action trusts and county councils. These agencies are known as 'relevant authorities' under the law for the purposes of seeking ASBOs. Where registered social landlords manage local authority housing stock (see paragraphs 34–35) they may therefore, as a relevant authority, apply for ASBOs in their own right.
42. It is important to note that regardless of the applicant ASBOs are granted at the discretion of the court (i.e. the court considers whether or not it is reasonable to make an order).
43. Orders can be used against persons living in any type of housing and to tackle anti-social behaviour in a wide range of situations and settings. ASBOs are civil orders made by a court which may, for example, prohibit a person from specific anti-social acts or from entering defined areas on a map (exclusion zones). An order lasts for a minimum of two years.
44. The purpose of an ASBO is to protect the community from anti-social behaviour that causes, or is likely to cause harassment, alarm or distress, not to punish the perpetrator. Breach of the order is a criminal offence.
45. If a magistrate court is imposing an ASBO as a stand alone measure against a young person (10–17 years old), it will be obliged to make an Individual Support Order (ISO) if it takes the view that the order would prevent further anti social behaviour. ISOs contain positive obligations designed to tackle the causes of anti social behaviour. For example, a counselling order designed to tackle substance misuse.

46. As noted above landlords also have housing injunctions available to them as a tool for tackling anti-social behaviour. Anti-social behaviour orders and injunctions are useful tools and operate in a similar manner in that they prohibit specified forms of conduct and can be used to put a stop to such conduct quickly. In many cases it will be possible to use either of these measures and landlords and housing managers working on the case will have to make a decision on the individual case details as to which measure is the more appropriate.

Powers available to tackle ASB under delegation

47. Currently an organisation to which a local authority delegates its housing management functions may utilise some of the powers available to the authority for whom it is carrying out the management function. This includes those measures outlined previously which are linked to form of tenure or housing management functions, for example housing injunctions, demotion and possession on anti-social behaviour grounds.
48. However, the housing management organisation may not currently utilise legal measures which are not in anyway linked to tenure or their management activities. This means that they may not seek an ASBO on behalf of the local authority because ASBOs are not linked in anyway to tenure or housing management functions. Instead where they identify that an ASBO would be the most appropriate intervention they may approach the local authority and request that they seek an ASBO to support them in tackling ASB. As noted earlier, registered social landlords form an exception as they are relevant authorities for the purposes of seeking ASBOs and may therefore pursue applications in their own right.

The means of enabling local authorities to contract their ASBO functions

49. The Government has added section 1F to the Crime and Disorder Act 1998 to enable local authorities to make arrangements for all or some of their ASBO functions to be exercised by organisations or types of organisations defined by an Order by the Secretary of State. This power was introduced by the Serious Organised Crime and Police Act 2005.
50. This power is not limited to housing, and therefore could be used, subject to consultation, to allow local authorities to contract their ASBO powers to other organisations or bodies. However, local authorities may only make contracting arrangements with bodies covered by an Order made by the Secretary of State.

Crime and Disorder Reduction Partnerships

51. To tackle anti-social behaviour effectively, all agencies must work together in partnership. There are a number of key partnerships which facilitate this including Crime and Disorder Reduction Partnerships (CDRPs) in England, or Community Safety Partnerships (CSP) in Wales. The CDRP or CSP is a statutory partnership established in each local authority area. The partnership must undertake an audit of crime and disorder (including anti-social behaviour) and produce a strategy for reducing these problems. A number of organisations undertaking housing management activities on behalf of local authorities, including a number of ALMOs, are active members of their local partnership.

CHAPTER 3

The proposal

52. We propose to make it possible for local authorities to be able to ask those managing their housing under s.27 of the Housing Act 1985 also to carry out all or some of their ASBO functions on their behalf. This would include ALMOs, TMOs and those managing stock as part of PFI schemes (where these are not an ALMO, TMO or RSL).
53. We believe that this would enable those best placed to tackle anti-social behaviour to do so efficiently and effectively. It could reduce operational inefficiencies caused by the current need for local authority officers to become involved in cases handled by housing officers employed by a housing management body. We need to make sure that an authority's decisions about how to deliver their housing management service do not interrupt the way they respond to anti-social behaviour.
54. In addition, the contracting out of ASBO functions, where it is considered appropriate, may also strengthen the effectiveness of ASBOs by passing operational responsibilities to front line service providers. Those delivering services directly are likely to be best placed to understand local circumstances and to work with the local community in gathering evidence. They are also likely to be best placed to monitor the conduct of such persons subject to an ASBO, including taking swift action where any breaches occur.
55. This chapter describes how these contracting arrangements could work in practice.

Setting out the process

56. As Chapter 2 sets out, the power to enable local authorities to make arrangements for their ASBO functions to be exercised by other bodies is in section 1F of the Crime and Disorder Act 1998. If this consultation exercise showed that there was support for enabling local authorities to delegate their ASBO functions to housing management bodies, the Secretary of State would need to make an Order under that Act, and this would need to be approved by both Houses of Parliament.
57. The purpose of such an Order would be to entitle a local authority to ask an organisation to which it had already delegated housing management functions (under s.27 of the Housing Act 1985) to carry out some or all of its ASBO functions, also by delegation. Local authorities could not make such arrangements before an Order is in place.

58. Once an Order is in place, local authorities would not have to seek any further consent before making contracting arrangements with their housing management bodies. However, the Secretary of State would issue guidance on how local authorities could use the power. Local authorities and management organisations would be required to have regard to this guidance when making local arrangements, and as they operate under those arrangements.

Scope of contracting arrangements

59. We believe that it is important to consider how contracting arrangements should work in practice. Section 1F gives the Secretary of State the power, when making an Order, to attach conditions to the contracting arrangements. This means that the Order could set limits on the circumstances in which all local authorities could ask an organisation to carry out these functions on its behalf, or could define how the arrangements should operate in each case. For example, an Order could state that an organisation could only carry out ASBO functions where the anti social behaviour was related to housing or committed by a secure tenant of the local authority. An Order could also specify a date by which contracting arrangements should be reviewed. Section 1F also enables local authorities to build in similar conditions or limitations to the arrangements they make with contracting organisations.

60. It is likely that the Secretary of State will set out in guidance the general principles by which contracting arrangements should operate. As indicated above, local authorities and their housing management organisations will be required to have regard to this guidance.

Effect of contracting arrangements

61. Entering into a contracting arrangement for the delivery of ASBO functions would not remove any of the local authority's responsibilities under the Crime and Disorder Act 1998. Any ASBO application pursued under such a delegation would be pursued in the local authority's name, and would be subject to the same consultation requirements as any other. Local authorities who have made contracting arrangements would still be able to pursue ASBOs directly.

62. Section 1F provides that for all purposes (except those relating to criminal proceedings or contractual relations between the local authority and the contractor) acts of the contractor are in effect acts of the local authority. Employees of the organisation contracted to carry out ASBO functions on the local authority's behalf would be treated as local authority officers for the purposes of related legal proceedings.

63. There would be no change in the position that, while a range of organisations may apply for ASBOs, final decisions on whether an application is appropriate and whether an ASBO should be issued will always be for the Courts.

Ensuring accountability

64. We see no problem with increasing community involvement in delivering safer communities, including ASBO functions, providing safeguards are in place and working effectively. We recognise that ASBO's are powerful tools and that there may be concerns that by enabling local authorities to contract their ASBO functions we are diluting accountability and risking misuse of these powers. We are satisfied that sufficient safeguards are in place to ensure that functions would only be contracted out where there is confidence they will be exercised sensibly.
65. Asking a housing management organisation to also carry out ASBO functions on its behalf would not diminish the accountability or legal liability of the local authority for the exercise or non-exercise of those functions. We believe that linking the Order to those bodies already delegated housing management functions under section 27 of the Housing Act 1985 will help achieve proper accountability. Chapter 2 described how section 27 works, including the requirements to which organisations managing local authority housing are subject.
66. As noted earlier it is likely that the Secretary of State will set out in guidance the general principles by which contracting arrangements should operate. This will be likely to include coverage of our expectations upon authorities to set clear and enforceable standards of performance which contractors will be expected to meet. In addition authorities will need to establish rigorous approaches to monitoring and reviewing those standards on an ongoing basis.
67. For example, where an authority chooses to delegate its ASBO functions to a TMO, we would expect the authority to clearly establish their requirements regarding the organisation's governance and procedures for exercising those functions and for these to be included in the management agreement between the parties. Protocols will also need to be established to ensure that any potential conflicts of interest are properly identified and avoided.
68. When deciding whether to enter into a contracting arrangement, local authorities would need to assess whether the housing management body has sufficient resources and training to undertake the role. In addition, local authorities would need to consider the implications a contracting arrangement might have on how it carries out its wider responsibilities for addressing anti-social behaviour.
69. Within these principles, we believe that local authorities should be able to make local decisions about what arrangements are most appropriate for their circumstances. Including conditions in an Order, which would then have to apply to all contracting organisations, may not give local authorities this same flexibility. We therefore do not propose that the Secretary of State attaches any conditions to the Order. We welcome your views on this (see paragraph 72).

How would it work in practice?

70. Local authorities would be free to choose whether or not they wish to contract out their powers. If they do and those delivering housing management services on their behalf feel it is best for the authority to continue to make ASBO applications, some of which may be at the suggestion of the housing manager, then they may continue to do so. We are simply trying to ensure that local authorities have the flexibility they require to make those choices.
71. If a local authority opted to make a contracting arrangement, it could do so with any body managing its housing under delegation via s.27 of the Housing Act 1985. However, Registered Social Landlords (RSLs) already have powers to pursue ASBOs under the Crime and Disorder Act 1998. Given this, it is already open to local authorities to ask a RSL managing its housing to pursue ASBOs as part of the housing management arrangements. It may not therefore be necessary for local authorities to make separate contracting arrangements under this Order for RSLs.
72. Where an authority had delegated housing management functions to more than one organisation, for example, if there was an ALMO and a TMO operating in the area, the local authority could make contracting arrangements with more than one body. An authority in this position would need to consider the most efficient and effective solution to their circumstances, and whether making more than one contracting arrangement would have resource implications.
73. In addition, local authorities may wish to consider whether it would be more efficient to ask the relevant housing management body to deliver its front line ASBO functions on a broader basis, rather than only where the anti-social behaviour was linked to housing or tenants. We believe that it should be for local authorities to make these decisions according to local circumstances. However, in doing so, an authority would need to take account of its wider responsibilities for tackling crime and disorder, and ensure that any contracting arrangements would not unduly effect how these are discharged.
74. The contract between the local authority and the housing management body will need to set out in detail the terms of contracting arrangement including its duration, the process for reviewing it, and standards of performance which the contractor must achieve. This proposal is not about increasing the number of ASBOs issued and is not designed to provide an opportunity for bodies to profit from tackling anti-social behaviour. Therefore, we certainly would not expect arrangements between local authorities and organisations contracted to carry out these functions to work in a way which encouraged this. It is likely that any guidance the Secretary of State issues on this will highlight these principles.
75. Delegating responsibilities for carrying out particular functions should not necessarily increase overall costs. Indeed, one of the purposes of the proposals in this consultation

paper is to avoid duplication of effort by the local authority and housing manager in cases where the latter is best placed to undertake ASBO functions. Since local authorities already monitor many aspects of the performance of their housing managers, adding their performance on ASBO functions should not significantly affect the total work involved.

Consultation questions

76. We would welcome your views on the following questions:

- a) Do you support the proposal to make it possible for local authorities to be able to ask any organisation managing their housing under s.27 of the Housing Act 1985 to also carry out all or some of their ASBO functions on their behalf?
- b) Do you agree that the Secretary of State should not attach any conditions to an Order made as part of this proposal, and that local authorities should set any conditions when making local arrangements? If not, what national conditions should be set?
- c) Do you have any other comments about the proposal, including any practical implications you think it might have?

Wales

77. This consultation will be of limited interest in Wales where there are no ALMOs, TMOs or PFI housing projects so that the majority of these proposals will have no effect. However, Welsh consultees are invited to give their general comments and to respond specifically to the following questions:

- a) Do you feel any order under Section 1F of the Crime and Disorder Act 1998 to delegate local authority functions in relation to ASBOs should extend to Wales also to establish these powers if needed in future?
- b) What are your views on Paragraph 73 of this consultation which describes the possibility of a housing management body delivering ASBO functions even if not limited to housing. This may be of interest in Wales where, like England, it is open to RSLs to apply for ASBOs.

Confidentiality

78. A summary of responses to this consultation will be published by 1 May 2006 at the address below.

<http://www.odpm.gov.uk/housing/consult>

Paper copies will be available on request.

79. Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

80. If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

81. The Department will process your personal data in accordance with the DPA and in the majority of circumstances; this will mean that your personal data will not be disclosed to third parties.

ANNEX 1

Code of Practice on Consultation

The Government has adopted a code of practice on consultations. The criteria below apply to all UK national public consultations on the basis of a document in electronic or printed form. They will often be relevant to other sorts of consultation.

Though they have no legal force, and cannot prevail over statutory or other mandatory external requirements (e.g. under European Community Law), they should otherwise generally be regarded as binding on UK departments and their agencies, unless Ministers conclude that exceptional circumstances require a departure.

- 1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.**
- 2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.**
- 3. Ensure that your consultation is clear, concise and widely accessible.**
- 4. Give feedback regarding the responses received and how the consultation process influenced the policy.**
- 5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.**
- 6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.**

The full consultation code may be viewed at

www.cabinet-office.gov.uk/regulation/Consultation/Introduction.htm

Are you satisfied that this consultation has followed these criteria? If not, or you have any other observations about ways of improving the consultation process please contact

Adam Bond,
ODPM Consultation Co-ordinator,
Room 2.19, 26 Whitehall, London, SW1A 2WH; 020 7944 8922
or by e-mail to: adam.bond@odpm.gsi.gov.uk

ANNEX 2

List of Key Organisations being Consulted

All Local Housing Authorities in England

Arms Length Management Organisations

Association of London Government

Association of Tenants in Control

Audit Commission

BME TARAN

Chartered Institute of Housing

Commission for Racial Equality

Confederation of Co-operative Housing

Crime and Disorder Reduction Partnerships

Housing Action Trusts

Housing Corporation

Local Government Association

National Audit Office

National Council of YMCAs

National Federation of Tenant Management Organisations

National Federation of Arms Length Management Organisations

National Housing Federation

PFI consortia

Social Landlords Crime and Nuisance Group

Tenant Management Organisations

Tenant Participation Advisory service

Tenants and Residents Organisations for England

The Tenants Union