

REPORT TO: POLICY & RESOURCES COMMITTEE – 13 SEPTEMBER 2004

REPORT ON: CONSULTATION ON DRAFT GUIDANCE ON THE ANTISOCIAL BEHAVIOUR ETC (SCOTLAND) [ACT] 2004 PARTS 1-6

REPORT BY: HEAD OF COMMUNITIES AND ASSISTANT CHIEF EXECUTIVE (COMMUNITY PLANNING)

REPORT NO: 614-2004

1.0 PURPOSE OF REPORT

- 1.1 For agreement by Council on comments/issues to the Scottish Executive on the Draft Guidance on the Antisocial Behaviour Etc (Scotland) [Act] 2004 Parts 1-6.

2.0 RECOMMENDATIONS

It is recommended that the Committee:

- 2.1 approve this Report as the Council's submission to the consultation request from the Scottish Executive on the draft guidance to the legislation outlined in Paras 1.1 and 6.1.
- 2.2 use the final Scottish Executive published guidance as a basis of development and public consultation of an Antisocial Behaviour Strategy for the Council by 31 March 2005.

3.0 FINANCIAL IMPLICATIONS

- 3.1 This proposed legislation when fully implemented will have key implications for the operational costs of many Council services.
- 3.2 Until the final guidance is received it is not possible to quantify additional costs nor the amount of Scottish Executive additional external funding for the start up costs of implementation and continuing revenue implications.
- 3.3 The Executive have, however, noted that new duties will require additional funding support and have indicated this will be addressed either within central government or through going financial support or by one off grant or programme funding.
- 3.4 In some areas funding has already been announced and allocated to Councils to carry out piloting of new services or new provision eg Community Safety Wardens, Reparation Orders, Electronic Tagging of Minors.

4.0 LOCAL AGENDA 21 IMPLICATIONS

- 4.1 The Report will have an impact on the following Agenda 21 themes:
- people live without fear of personal violence from crime.
 - health is protected by creating safe, clean, pleasant environments.
 - all sections of the community are empowered in decision making.
 - the day to day protection of disturbance to a peaceful home life fostered.

5.0 EQUAL OPPORTUNITIES IMPLICATIONS

- 5.1 The Report addresses antisocial behaviour affecting all sections of society.

6.0 BACKGROUND

6.1 The Scottish Parliament has approved the new Antisocial Behaviour Etc (Scotland) [Act] 2004 and has produced 6 Consultation Papers related to forthcoming guidance as follows:

- Antisocial Behaviour Strategies.
- Antisocial Behaviour Orders.
- Dispersal of Groups.
- Closure of Premises.
- Noise Management.
- Graffiti Removal.

6.2 Copies of the Papers are available from the Scottish Executive website reference <http://www.scottish.parliament.uk/bills/pdfs/b12bs2.pdf> and have been placed in the Councillors' Lounge for perusal together with an overall guide to the complete legislation.

6.3 The Scottish Executive deadline for comments is 16 September 2004.

7.0 CONSULTATION

7.1 The Chief Executive and Council Management Team have been consulted on this Report together with Dundee Community Safety Partnership.

7.2 Notification of the above papers has been circulated to the following:

- Key Community Planning Partners.
- All Council Departments.
- Members of Dundee Community Safety Partnership

7.3 Tayside Police, the main community planning partner most affected by the proposals, are commenting independently to the Scottish Executive.

7.4 Comments on the consultation papers are outlined in Appendices 1-6 attached to this Report.

8.0 BACKGROUND PAPERS

8.1 The following background papers were relied upon in the preparation of this Report:

- Antisocial Behaviour Strategies.
- Antisocial Behaviour Orders.
- Dispersal of Groups.
- Closure of Premises.
- Noise Management.
- Graffiti Removal.

S Murdoch
Head of Communities

6 September 2004

C Ward
Assistant Chief Executive (Community Planning)

6 September 2004

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SUBJECT: CONSULTATION ON DRAFT GUIDANCE ON THE ANTISOCIAL BEHAVIOUR ETC (SCOTLAND) [ACT] 2004 – GUIDANCE PAPER NO 1 – ANTISOCIAL BEHAVIOUR STRATEGIES

1.0 PURPOSE

- 1.1 This guidance is directed at key stakeholders, in particular, the Local Authorities/Police in the preparation of a local Antisocial Behaviour Strategy by 31 March 2005.
- 1.2 It draws attention to the 6 draft consultation papers already issued all of which are relevant to any strategy.

2.0 COMMENTS/ISSUES

- 2.1 Dundee City Council welcomes the request for an overall strategy and will co-operate with key stakeholders to develop same. The Council and its partners are strongly of the view that the strategy should reflect local issues and solutions and the Executive should resist a “one fit solution” for all areas.
- 2.2 The proposed strategy will represent a significant task involving many stakeholders and public/community based consultation. An early receipt of the Scottish Executive’s final approved guidance papers and an adequate time period for development will be helpful.
- 2.3 It is our Council’s intention to advance this work within Community Planning structures, in particular, within the community safety theme co-ordinated by the existing well established Dundee Community Safety Partnership.
- 2.4 The Council has already facilitated practical/operational liaison between the Police/Antisocial Behaviour Team, Community Safety Worker and Warden Teams. Even at this early date initial feedback from this work is positive and constructive.
- 2.5 We continue to experience difficulties gaining consensus view from the myriad of local Registered Social Landlords who do not fully support group advisory opportunities.
- 2.6 The Council endorse the need to adequately involve young people in this area of work and are in discussion with Dialogue Youth and local youth forums over their input.
- 2.7 We welcome the involvement of COSLA in the development of guidelines related to the development of accountability, performance measurement and evaluation.
- 2.8 We stress, however, that the strategy’s success will depend on a combination of actions each complementing the other and not a series of unrelated statistical indicators.
- 2.9 We urge the Executive to recognise that public perception over the quality of life issues within specific areas is subject to distortion by a small number of people or incidents which statistically can have an adverse effect on continued progress over time.
- 2.10 We will always present statistics with supporting contexting and would urge the Executive to recognise the importance of contexting and explore with us tools to gain specific measures which best suit performance measurement.

- 2.11 It is noted that some of the guidance referencing does not match the referencing within the final legislation. This will need amendment when the final approved guidance is issued.

3.0 OVERALL SUMMARY

- 3.1 The Council welcomes the guidance offered within this draft consultation paper.

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SUBJECT: CONSULTATION ON DRAFT GUIDANCE ON THE ANTISOCIAL BEHAVIOUR ETC (SCOTLAND) [ACT] 2004 – GUIDANCE PAPER NO 2 – ANTISOCIAL BEHAVIOUR ORDERS

1.0 PURPOSE

- 1.1 This guidance is directed at the Courts, Police and supporting agencies who may wish to use the extension of ASBO orders to individuals aged 12-15 years of age. Existing ASBO legislation is contained within the provisions of the Crime & Disorder Act 1998. The guidance focuses on ASBOs within the civil legal process.

The draft statutory guidance will replace existing non statutory guidance.

2.0 COMMENTS/ISSUES

- 2.1 Dundee City Council notes the debate over the extension of such orders to this age group and welcomes the important role of the Reporter. On balance we accept the extension of age opportunities within the proposed legislation.
- 2.2 The Council welcomes the need to include these options within an overall Antisocial Behaviour Strategy which will commit all key partners to agreed protocols.
- 2.3 The Council notes the important role of community mediation services but is cautious over the ongoing support costs of this option should it be a pre-requisite of the application for an ASBO. It is also noted that youth mediation differs from adult mediation and may require different innovative approaches for success ie peer delivery methodology.
- 2.4 We would welcome further guidance over Para 20 in its use within the Disclosure record system.
- 2.5 We note and expect legal advice over the status of the existing standards of proof issues in relation to ASBO proof requests under Scottish law processes.
- 2.6 We await further information on the effectiveness or otherwise of the presumption that Acceptable Behaviour Contracts are effective in the vast number of cases which reach ASBO decision status.
- 2.7 We request sufficient external funding to help the Children's Hearing System access the widest menu of disposal options to prevent young people requiring access to the criminal justice system post 16 years of age. We strongly advocate that funding should be available for prevention and diversion services as key strategies in dealing with young people and challenging behaviour.
- 2.8 In Para 65 we are concerned that the proposed role for the Reporter will stretch existing resources and may not be practicable.

- 2.9 Paras 91-93 could be more explicit to tease out requirements to share information vis a vis issues of client confidentiality. Para 94 illustrates this issue well when complainants do not normally have access to feedback on disposal actions of the Reporter re under 16 years old clients. We would welcome more detailed guidance on these issues.

3.0 DURATION OF ORDERS/PENALTIES/ENFORCEMENT

- 3.1 The Police/Local Authority and Registered Social Landlords have key responsibilities to consult with the Reporter for orders for under 16 years of age clients.

- 3.2 Orders can last for 0-21 days.

- 3.3 The relevant local process is via the Sheriff Court.

4.0 OVERALL SUMMARY

- 4.1 Whilst this extension of powers legislation has been controversial it is now available and when used as a package of options by the Reporter may offer further opportunities in a small number of cases.

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**SUBJECT: CONSULTATION ON DRAFT GUIDANCE ON THE ANTISOCIAL BEHAVIOUR
ETC (SCOTLAND) [ACT] 2004 – GUIDANCE PAPER NO 3 – DISPERSAL OF
GROUPS**

1.0 PURPOSE

- 1.1 This guidance is directed primarily to Police authorities over new powers to facilitate the dispersal of groups/individuals who are engaging in Antisocial behaviour/activities.

2.0 COMMENTS/ISSUES

- 2.1 Dundee City Council welcomes the assurance given by the Executive that these new powers will be used only after existing attempts to alleviate/reduce or prevent occurrences have been tried.

We note the intention to ensure the Police consult with the Local Authority and for this power not be used to stigmatise young people lawfully congregating in open spaces.

- 2.2 We note that several Police spokespersons are of the view that existing legislation is sufficient to deal with dispersal issues/problems and potentially public expectation could force the Police into poorer relations with key community groups/minorities etc. We wish to support the Police in this difficult assessment and would wish to engage in local dialogue to use these new powers infrequently and carefully.

- 2.3 We note the proposed legislation does not replace lawful public demonstration/trade union disputes etc where Civic Government (Scotland) Act 1998 consents are necessary.

- 2.4 We welcome existing local liaison with Tayside Police (Central Division) over the implementation arrangements for these new powers.

- 2.5 We welcome the proposals for consultation with local communities, local elected Councillors and key community groups.

3.0 DURATION OF ORDER/PENALTIES/ENFORCEMENT

- 3.1 The order is advanced by the Police in conjunction with the Local Authority.

- 3.2 It covers a time period of 0-3 months (or longer if approved).

- 3.3 Infringement of orders is dealt with via the Sheriff Court.

4.0 OVERALL SUMMARY

- 4.1 The Council welcomes the focus of these new powers and has no comment from a Policing perspective over their necessity or otherwise.

- 4.2 Used effectively, they do, however, offer options to combat localised antisocial group behaviour. There may, however, be important community liaison/involvement gains to be achieved in placing the community voice at the core of dispersal strategies.

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SUBJECT: CONSULTATION ON DRAFT GUIDANCE ON THE ANTISOCIAL BEHAVIOUR ETC (SCOTLAND) [ACT] 2004 – GUIDANCE PAPER NO 4 – CLOSURE OF PREMISES

1.0 PURPOSE

- 1.1 This guidance is directed at the Police, Courts and Local Authorities wishing to close any self-contained premises for purposes of community safety, in particular, where there is a risk of disorder or serious nuisance.

2.0 COMMENTS/ISSUES

- 2.1 Dundee City Council welcomes the new powers to tackle a wide range of antisocial behaviour which can occur on different types of premises eg prostitution, substance misuse, intimidating behaviour, high noise.
- 2.2 The requirement for the Police to consult prior to action is noted especially at an early stage to allow co-ordinated action.
- 2.3 There will be a need for a reference group from key partners to be established to undertake this liaison. The local Public Protection Forum may be able to absorb this responsibility.
- 2.4 The new Antisocial Behaviour Strategy should be used to determine operational requirements arising out of these powers.
- 2.5 There are sufficient safeguards to ensure all relevant interested parties are advised balanced with the need for speed of action. The appeal procedures are noted as safeguards.
- 2.6 Alternatives to the powers outlined may be more appropriate in gaining a more effective result for all parties. This should not be forgotten.
- 2.7 There are implications for Housing and Social Work Departments if the premises are domestic property accommodating vulnerable individuals or families with children.
- 2.8 The Council welcomes the opportunity to apply to the Court for recovery of expenditure costs.

3.0 DURATION OF ORDER/PENALTIES/ENFORCEMENT

- 3.1 The order can last for 0-3 months with a maximum to 6 months.
- 3.2 The relevant legal process is via the Sheriff Court on a civil rather than criminal basis.

4.0 OVERALL SUMMARY

- 4.1 Extends options and gives Police and Community Planning Partners opportunities to jointly progress speedy short/medium term solutions.

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SUBJECT: CONSULTATION ON DRAFT GUIDANCE ON THE ANTISOCIAL BEHAVIOUR ETC (SCOTLAND) [ACT] 2004 – GUIDANCE PAPER NO 5 – NOISE MANAGEMENT

1.0 PURPOSE

- 1.1 This guidance is directed mainly at environmental health officers/police and is of a technical, specific and regulatory nature.

2.0 COMMENTS/ISSUES

- 2.1 The Council welcomes the advent of these new noise provisions which will complement the powers already exercised by the police and the Council's Antisocial Behaviour Team and Environmental Health Officers.
- 2.2 The Council looks forward to continued inter-agency collaboration to deal with complaints about noise.
- 2.3 The Council welcomes the development of a joint Antisocial Behaviour Strategy which will clearly enable the partner agencies within Dundee to detail and raise awareness of the interagency approach that will continue to be implemented in relation to antisocial noise.
- 2.4 The use of ASBO legislation has proven to be very successful in Dundee both in terms of best value and appropriateness to enforcement needs and this will continue in parallel with the new provisions.
- 2.5 The Environmental Health and Trading Standards Department will continue to support the ASBO Team, particularly in relation to noise level specifications for permitted noise.
- 2.6 Para 2.3 - reference should be made to the ASBO provisions of the current Crime and Disorder Act 1998 as this legislation is available and frequently used by local authorities to address antisocial noise problems.
- 2.7 Para 5.3 should be amended to read:

"In Dundee a free phone telephone number is provided for current complainants who are experiencing ongoing Antisocial noise problems".
- 2.8 In Para 7.8 a cross reference is made to Paras 4.10 – 4.17 which do not exist in the draft guidance paper.
- 2.9 The Council welcomes the opportunity to apply to the Court for recovery of expenditure costs.

3.0 PENALTIES/ENFORCEMENT

- 3.1 There are provisions for the offer of fixed penalty notices by Police and powers to seize equipment.

3.2 The relevant legal process post on the spot penalties is via the Sheriff Court.

4.0 OVERALL SUMMARY

4.1 While the Council is pleased to note that the means by which noise issues are currently being successfully tackled in Dundee are recognised in the draft Guidance, the Council welcomes the advent of the new noise provisions which will complement these existing strategies.

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SUBJECT: CONSULTATION ON DRAFT GUIDANCE ON THE ANTISOCIAL BEHAVIOUR ETC (SCOTLAND) [ACT] 2004 – GUIDANCE PAPER NO 6 – GRAFFITI REMOVAL

1.0 PURPOSE

- 1.1 This guidance is directed at Local Authorities to help them enforce graffiti removal from educational/transport related street furniture/buildings where the graffiti is considered offensive or detrimental to amenity.

2.0 COMMENTS/ISSUES

- 2.1 Dundee City Council welcomes these additional powers but is of the view that their application is limited as related to private property and service utilities.
- 2.2 Expenditure on regeneration of environmental improvements is costly and can easily be negated by graffiti.
- 2.3 We would welcome an extension of powers to proactively target graffiti on private property and recover expenses via an easier system which can offer reasonable/fair recompense for resources expended.
- 2.4 Further clarification is required under Para 5 on the definition of “a relevant surface” as its exclusion within the English/Welsh guidance suggests issues of definition difficulties. Para 9 is noted.
- 2.5 We would have preferred to see specific mention of a need to remove within a specific time racist/offensive graffiti ie 24 hours. The proposed notice timescale applied in this context ie 28 days we suggest is too lengthy.
- 2.6 The Council welcomes the opportunity to apply to the Courts for the recovery of expenditure costs.

3.0 PENALTIES/ENFORCEMENT

- 3.1 The relevant legal process for the issue of graffiti removal notices is via the Sheriff Court.

4.0 OVERALL SUMMARY

- 4.1 The Council welcomes this guidance but is of the view that it should be more encompassing to private owners to allow for maximum amenity gains. We would also welcome prioritising of offensive/racist graffiti removal timeously.