

**REPORT TO:** ENVIRONMENTAL SERVICES AND SUSTAINABILITY COMMITTEE  
20<sup>TH</sup> FEBRUARY 2006

**REPORT ON:** INTRODUCTION OF A SERVICE TO IMPLEMENT PART 5 (NOISE  
NUISANCE) OF THE ANTISOCIAL BEHAVIOUR SCOTLAND ACT 2004

**REPORT BY:** HEAD OF ENVIRONMENTAL HEALTH & TRADING STANDARDS

**REPORT NO.** 140-2006

## **1.0 PURPOSE OF REPORT**

- 1.1 This report seeks committee approval to adopt the noise nuisance provisions of Part 5 of the Antisocial Behaviour, etc (Scotland) Act 2004 and puts forward proposals for setting up a Night-Time Noise Team. The service will provide an additional resource to tackle antisocial behaviour (ASB) in the city.

## **2.0 RECOMMENDATIONS**

It is recommended that the Committee:

- 2.1 Resolve to implement the provisions of Part 5 of the Antisocial Behaviour, etc (Scotland) Act 2004 in respect of noise nuisance.
- 2.2 By resolution, in terms of Section 41 of the Antisocial Behaviour, etc (Scotland) Act 2004, specify Mon-Sunday 1900 hours - 0700 hours every week as the noise control period, with the exception of the Christmas/New Year Council closure periods, beginning at the earliest on 1st May 2006.
- 2.3 Instruct the Depute Chief Executive (Support Services) to prepare the necessary legal documentation for the resolution and to advertise the said resolution as required.
- 2.4 Agree to the proposals in this report and to the principles on which the Night-time Noise Team will operate.
- 2.5 Delegate to the Head of Environmental Health and Trading Standards, to make arrangements as necessary to set up and operate the Night-Time Noise Team.
- 2.6 Once the Enforcement Officers (Night-time Noise Team) have completed the appropriate training, authorise the Enforcement Officers to enforce the provisions under Part 5 of the Antisocial Behaviour, etc (Scotland) Act 2004.
- 2.7 Instruct the Head of Environmental Health and Trading Standards to report annually within the Council's performance framework on the operation of the Service and to report by 30th September 2007 with an evaluation of the Service in order to inform Committee with regard to future funding.
- 2.8 Delegate authority to the Head of Environmental Health and Trading Standards or appropriate nominated officer to issue fixed penalty notices under section 46 of the Antisocial Behaviour, etc (Scotland) Act 2004.

## **3 FINANCIAL IMPLICATIONS**

- 3.1 The Scottish Executive has awarded funding of £554,097.60 for 2006/07 and £557,569.80 for 2007/08. It is anticipated that this funding will be utilised as detailed in Appendix 1.

- 3.2 As the Scottish Executive funding only covers the two years to 31<sup>st</sup> March 2008, a further report will be submitted to committee regarding continuation of the service beyond that date. Any staff will be employed on a fixed term contract until 31<sup>st</sup> March 2008 in the first instance.

#### **4 LOCAL AGENDA 21 IMPLICATIONS**

- 4.1 This report addresses the key sustainability themes:
- Pollution is limited to levels at which natural systems can cope
  - Health is protected by creating a safe, clean, pleasant environment

#### **5 EQUAL OPPORTUNITIES IMPLICATIONS**

- 5.1 None

#### **6 REPORT**

##### **6.1 BACKGROUND**

- 6.1.1 The Antisocial Behaviour, etc (Scotland) Act 2004 introduced a range of measures intended to allow Local Authorities and the Police to be better equipped to deal with antisocial behaviour. Part 5 of the Act specifically deals with antisocial noise nuisance. This should not be confused with existing provisions for dealing with noise complaints – Civic Government (Scotland) Act 1982, Environmental Protection Act 1990, Control of Pollution Act 1974, civil actions and the use of mediation as well as the current antisocial measures available through the Housing Department.
- 6.1.2 The new antisocial noise offence is a further tool to complement, not replace, existing legislation in dealing with unreasonable noise within domestic dwellings, their grounds or common areas. The offence is based on noise exceeding set permitted levels after a warning notice deterrent is not complied with. The investigation will require officers to determine whether noise is caused by unreasonable behaviour, to be mindful of issues such as mental health and poor sound insulation, and where the use of mediation could be advocated.

##### **6.2 PROPOSALS**

- 6.2.1 The new Night-time Noise Team will become an integral part of the partnership approach that has been established between Dundee City Council, Tayside Police and their Community Planning partners to tackle ASB in the city. It is anticipated that the team will provide an additional specialist resource with objective assessment measures that will complement the existing interagency working that has proven to be very successful in tackling noise nuisance within the domestic sector in Dundee. Through the adoption of Part 5 and the provision of a dedicated resource, night-time complaints will be handled more quickly with a greater uniformity of action with the potential of better targeting of other resources such as the police. It will also act as an early intervention process by informing and educating the public and giving them an opportunity to rectify their behaviour.
- 6.2.2 In order to implement the noise nuisance provisions of the Act, the “noise control period” must be defined and passed by resolution. The commencement date must be at least 2 months after the resolution date and published in the local press. The noise control period may be set for up to 24 hours a day, 7 days a week. It need not be the same for all parts of the Council area.
- 6.2.3 It is proposed that Dundee City Council resolves to adopt the noise provisions of Part 5 of the Act for the whole of the local authority area for the time period detailed below, except for the Christmas/New Year closure periods. It should be noted that the Police will still be able to use their powers under the Civic Government (Scotland) Act 1982 during and outwith this period

- Monday-Sunday 1900 hours to 0700 hours

- 6.2.4 It is proposed to cover the “noise control period” with a mix of existing (Antisocial Behaviour Team) and the new Council officers, working in partnership with the Police and the Dundee Community Mediation Service. The vast majority of antisocial noise complaints occur in the evening through to the early part of the morning. For this reason, it is proposed to employ Enforcement Officers (Night-time Noise Team). They will work a shift system, in teams and will cover evenings and the hours up to 0300 hours every day during the noise period. A protocol regarding this partnership between the Council and the Police is in the process of being developed. This will detail each partner’s roles and responsibilities, information and intelligence exchange, record management, information analyses and research to target resources effectively.
- 6.2.5 Accessing this new service in a consistent fashion is vital. It is proposed to use an existing telephone number within the Tayside Police (Central Division) control room. The calls will be screened by the police to ensure the appropriate agency/agencies respond, and all Part 5 ASB complaints will be forwarded to the Night-time Noise Team. It will also be important for other Council offices who receive such complaints to know how and where to pass the information promptly. For example the Council’s Antisocial Behaviour Advice Line, other Council out of hours emergency numbers and the Council’s helpdesk may also receive complaints from the public. They will all be briefed on how to access the new service. In addition full information on the Service and how to access it will be advertised widely by a variety of methods.
- 6.2.6 This partnership proposal will require close liaison and understanding of action between the Night-time Noise Team, the Police and the Antisocial Behaviour Team. Council officers and the Police will share details of all complaints and outcomes through the Community Intelligence Unit (CIU). An Administrator /Researcher for this project will work within the CIU and collate statistical data, analyse trends and attend intelligence briefings acting as the liaison between the CIU and the council. This partnership allows for all the partner agencies to be fully briefed and agree joint actions. When the service is introduced, the outcomes will be reported to the Scottish Executive as part of the performance monitoring of the Council’s Antisocial Behaviour Strategy.

### **6.3 TRAINING**

- 6.3.1 Training of the new staff, and existing, where appropriate, will be carried out. In addition to specific noise/acoustics training, other subjects will range from Health & Safety issues such as conflict management, court proceedings, report writing, child protection awareness, diversification, vulnerable adults, driver awareness, etc to information about the various agencies involved, such as the Police function and mediation services.

### **6.4 ENFORCEMENT POLICY**

- 6.4.1 The basis of the noise nuisance provisions is that if noise from residential premises exceeds the permitted levels then a warning notice is issued. That notice will give a minimum of ten minutes to reduce the noise to below the permitted limits. If that does not happen then a fixed penalty notice may be issued. Police Officers will be requested to attend at the service of any fixed penalty notice. If the penalty (£100) is not paid within 28days, the matter can be reported to the Procurator Fiscal.
- 6.4.2 Only one fixed penalty notice can be issued to an individual in any one noise control period (Mon-Sunday 1900 - 0700 hours). Further breaches will be reported to the Procurator Fiscal
- 6.4.3 It is proposed that if people receive more than two warning notices then the information will be passed to the Antisocial Behaviour Team for further assessment and action, as appropriate. Also, no more than two fixed penalty notices will be issued to one person. Subsequent breaches will be reported to the Procurator Fiscal.

- 6.4.4 It is proposed that when warning notices and/or fixed penalty notices are issued, they will be followed up with letters and visits, if necessary, to reinforce the message at a time which that may be more conducive to effective communication. Letters will also be sent to property owners, if they are not responsible for the actual noise, in order that they are aware of what is happening in their properties. This will allow them to inform their tenants, etc of their responsibilities.
- 6.4.5 In addition to the powers to issue warning notices and fixed penalty notices, Officers have powers to seize the equipment making the noise. Such powers are similar to those available to the Police under the Civic Government (Scotland) Act 1982. It is envisaged that these powers will be used in conjunction with the Police after a risk assessment of the prevailing circumstances.
- 6.4.6 It should be borne in mind that the Night-time Noise Team will be using the Antisocial Behaviour etc (Scotland) Act 2004 provisions - prescribed noise meters with objective limits. The Police on the other hand, will be using the provisions of the Civic Government (Scotland) Act 1982, and a subjective assessment. It is intended to set up a training exercise for the Police in order to aid uniformity of action between the partners. The Antisocial Behaviour Team will continue to use the other parts of the Antisocial Behaviour etc (Scotland) Act 2004 to take action against individuals who cause distress and alarm in the community whether or not related to noise.

## **7 CONSULTATION**

- 7.1 Chief Executive  
Depute Chief Executive (Support Services)  
Depute Chief Executive (Finance)  
Assistant Chief Executive (Management)  
Director of Housing  
Divisional Commander Tayside Police (Central Division)

## **8 BACKGROUND PAPERS**

- 8.1 None

**Albert Oswald**  
**Head of Environmental Health & Trading Standards**

**10<sup>th</sup> February 2006**

**Night-time Noise Team - Estimated Expenditure 2006/07 and 2007/08**

Staff Costs:	Salaries	£421,646
	Training	£16,500
	Advertising	£10,000
Property:	Accommodation	£7,000
Supplies & Services:	Equipment	£9,020
	Furniture	£5,000
	Telephones	£2,000
	Computing	£18,000
	Others	£27,632
	Advertising & Publicity	£20,000
Transport:	Hire of Vehicles	£9,300
	Fuel	£8,000
TOTAL		<b>£554,098</b>

Staff costs are subject to approval at the Personnel Committee to be held on 13<sup>th</sup> March 2006. Any movement from the above will be adjusted within the funding approved.