

**REPORT TO:** POLICY & RESOURCES COMMITTEE – 13 DECEMBER 2004

**REPORT ON:** CONSULTATION ON DRAFT GUIDANCE ON THE ANTISOCIAL BEHAVIOUR ETC (SCOTLAND) [ACT] 2004 – SECTIONS 136 AND 137

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

**REPORT NO:** 800-2004

## **1.0 PURPOSE OF REPORT**

1.1 For noting by Council on comments/issues to the Scottish Executive on the Draft Guidance on the Antisocial Behaviour Etc (Scotland) [Act] 2004 Sections 136 and 137 related to local authority accountability.

## **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- 2.1 approve this Report as the Council's submission to the consultation request from the Scottish Executive on the draft guidance to the legislation outlined in Sections 136 and 137.
- 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 some 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 through ongoing financial support by one off grant by 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 a further Consultation Paper related to forthcoming guidance as follows:

- Local Authority Accountability reference supervision requirements for young people Section 136.
- Provision of education for excludees Section 137.

6.2 Copies of this Paper are available from the Scottish Executive website reference <http://www.scottish.parliament.uk/bills/pdfs/b12bs2.pdf> and a copy has been placed in the Councillors' Lounge for perusal.

6.3 The Scottish Executive deadline for comments was 3 December 2004.

## **7.0 CONSULTATION**

7.1 The Chief Executive, Assistant Chief Executive (Community Planning), Depute Chief Executives (Finance) and (Support Services) and Directors of Education and Social Work 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.
- Key Council Departments.
- Members of Dundee Community Safety Partnership (Antisocial Behaviour Strategy Working Group)

7.3 Tayside Police and the Reporter Children's Panel, the main community planning partners most affected by the proposals, are commenting independently to the Scottish Executive.

7.4 Comments on the consultation papers are outlined in Appendix 1 attached to this Report.

## **8.0 BACKGROUND PAPERS**

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

Consultation on Draft Guidance on Local Authority Accountability Sections 136 and 137.

**S Murdoch**  
**Head of Communities**

**6 December 2004**

**C Ward**  
**Assistant Chief Executive (Community Planning)**

**6 December 2004**

**POLICY & RESOURCES COMMITTEE 13 DECEMBER 2004 REPORT NO 800-2004**

**SUBJECT: CONSULTATION ON DRAFT GUIDANCE ON THE ANTISOCIAL BEHAVIOUR  
ETC. (SCOTLAND) (ACT) 2004 (SECTION 136)**

**1.0 PURPOSE**

- 1.1 This guidance is directed at local authorities, Children's Panel members, the Scottish Children's Reporter Administration, and the Courts, and relates to new powers to enforce the implementation of supervision requirements issued by Children's Panels. Existing legislation covering supervision requirements is contained within the Children (Scotland) Act 1995 and associated regulations. The guidance addresses circumstances where supervision requirements have not been implemented.

**2.0 COMMENTS/ISSUES**

- 2.1 Dundee City Council notes the context and background contained within the draft guidance, particularly the concerns raised by Audit Scotland about previous failures to implement supervision requirements. We accept that these failings, which were relevant to some parts of Scotland, provide the context for this section, and therefore accept that the intention of this new measure is to ensure that all supervision requirements throughout Scotland are implemented.
- 2.2 We note that the new legislative framework sets out a number of key steps, including a period of notice, to be taken before a court order may be made, and welcomes the opportunities this allows for a process of dialogue between the local authority, Reporter and Children's Panel. This should allow every opportunity for dialogue to take place and for conflicting opinions to be resolved.
- 2.3 The Council welcomes the emphasis given to the process of dialogue at strategic level between all relevant local authority departments and Children's Hearing stakeholders, to ensure clear expectations prevail on all relevant parties. The Council has found such specific and focused dialogue between stakeholders to be a successful part of the "Fast Track Hearings" process.
- 2.4 The Council notes the expectation that planning processes are joined up, and that an appropriate menu of services is prepared and publicised. Again, this has proved a helpful part of the "Fast Track" process as a mechanism for communicating resource information to all stakeholders, including Panel members.
- 2.5 We welcome the commitment to update the National Youth Justice Standards to specify minimum contact requirements, as this can help further clarify expectations from the outset about what should happen during supervision requirements. (Further comments about this are noted at Para 2.9 below.)
- 2.6 The Council notes the roles of the Reporter and the Sheriff Court in proceedings and looks forward to establishing constructive liaison arrangements with both as part of the process of implementing this legislation.
- 2.7 We note the comments made in Para 54-55 of the draft guidance relating to voluntary organisations. We would, however, welcome clarity about the circumstances in which failure to provide services by another organisation can lead to action against a local authority, and those circumstances in which it cannot. We note that a voluntary organisation's failure to provide a service should not in itself be enough for a hearing to

consider action under s136 of the Act. However, Para 35 of the draft guidance indicates that supervision requirements should be clear by indicating who, *including external agencies such as health*, will be providing services. In a case where a health service was seen as essential to a supervision requirement but the service is not provided, might the local authority be seen as responsible for the failure to implement the requirement? Further clarification is therefore sought on exactly which services, and in what circumstances, may lead to an order being sought.

- 2.8 The Council would also welcome clarification about the realistic expectations of Panel members particularly in relation to residential supervision requirements. Such supervision requirements can take some time to arrange and therefore to implement, particularly for the more scarce forms of residential or secure care. A similar scenario is where a supervision requirement is imposed, where a scarce community-based resource has been requested has not been provided. This would be in circumstances where that service is not normally provided by that local authority. Such scenarios can often be complex and challenging to address, and in the case of a particularly scarce resource may in fact be almost impossible to resolve. We would therefore welcome as full guidance as possible to enable resolution of such cases and to minimise the potential for unnecessary s136 orders being made.
- 2.9 Regarding Annex B, we would welcome a clarification within the "proposed text for insertion in the revised (youth justice) standards" of the circumstances in which such levels of contact is appropriate. We would suggest that this level of contact appears reasonable and justifiable for all *new* supervision requirements, where such a order coincides with the start of the action plan. However, there are a variety of circumstances that may have led a child to be placed on supervision, including cases where the action plan commences some time prior to the commencement of supervision. This would include cases of a renewed or continued supervision requirement, where the child may have been known and under supervision for some time. In such cases, therefore, we would suggest that the timetable as per Annexe B Para 19 should relate to a *new action plan* and not necessarily the supervision requirement. Indeed, Para 16 suggests the timetable relates to the supervision requirement; therefore, specific clarity about this is sought.

### **3.0 OVERALL SUMMARY**

- 3.1 The Council recognises this new power is now available and therefore we look forward to discussing the final guidance with our stakeholders to ensure reasonable expectations prevail and the use of this new power is kept to a minimum.

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**SUBJECT: CONSULTATION ON DRAFT GUIDANCE ON THE ANTISOCIAL BEHAVIOUR  
ETC (SCOTLAND) [ACT] 2004 (SECTION 137)**

**1.0 PURPOSE**

- 1.1 The guidance is directed at Local Authorities in particular their responsibilities and accountability with regard to failure to provide education services for excluded children.

**2.0 COMMENTS/ISSUES**

- 2.1 Dundee City Council Education Department broadly welcomes that part of the Antisocial Behaviour etc. (Scotland) (Act) 2004 that deals with failure to provide education for excluded children. The education authority readily accepts its statutory duty to make appropriate provision for all children of school age.
- 2.2 The new Antisocial Behaviour strategy will certainly require all education establishments and the education authority to re-visit and amend the guidelines on managing exclusion, but it will also promote the formal involvement of the range of other agencies who have a responsibility to support children. Paragraph 74 of this draft guidance alludes, rightly, to the Council's corporate responsibility for excluded children, and we have some evidence of success in Dundee with children whose cases are discussed in multi-agency School Referral Teams.
- 2.3 In general terms, in focusing on the needs of children excluded from Scotland's schools the Scottish Executive must recognise the reasons, often complex, that lead to exclusion and situations of recurring exclusion. Nevertheless Dundee City Council has no difficulty in accepting its responsibility to these children. There are, therefore, significant sections with which we are comfortable. There are other aspects of the guidance that need cautious interpretation, and some that, in our opinion, require re-consideration.
- 2.4 We note the acknowledgement that, while exclusion stems from an event or series of incidents, its resolution is a process. By definition it results inevitably in time away from school. We therefore applaud the acceptance that it would be unreasonable to expect alternative measures to be put in place before a period of time has elapsed, and note the suggestion that no more than 10 days ought to be sufficient for this purpose.
- 2.5 We note moreover that this guidance and legislation refers specifically to those subjected to a period(s) of long-term exclusion, to an extent where they effectively disappear from the educational scene. We seek, in this education authority, to minimise the incidence of such cases, and therefore have in place exclusion guidelines that aim to limit each exclusion to a maximum of 7 school days: this legislation will empower us to reinforce with Head Teachers the requirements of our own guidelines.
- 2.6 Paragraph 72 states that local authorities should take reasonable steps to provide education. The emphasis must be on the word 'reasonable'. It is unrealistic, for instance, to expect resources to be available for home tuition schemes that will deliver the "range and quality of learning appropriate to their needs", or "enable them to re-integrate into full-time school education". We must also appreciate that there will be significant resource implications with regard to the remits of Support for Learning and Pupil Support staff, who might take on the important responsibility of co-ordinating alternative measures.

- 2.7 We would urge the Executive to recognise the value of offsite alternative education provision in managing the exclusions of those pupils or young persons who have either conclusively failed to respond to available onsite support or who represent an active danger to others in the open environment of mainstream school.
- 2.8 It is right, as stated in paragraph 74, that hearings and the Reporter should consider all the circumstances of an individual child before concluding that referral to the Minister is called for. In particular the disposition of the pupil himself and the degree of co-operation exhibited by the parent/carer are two very important considerations, not only in resolving exclusion, but also in arranging for meaningful work to be undertaken during the exclusion. This point must be emphasised.
- 2.9 We are also concerned that Reporters will be encouraged to make quick referrals to the Minister without taking time to explore a case in detail with the local authority. There can be no disputing that it will be appropriate to refer a case if, after due investigation, the Reporter decides that there is indeed a case to answer, but rapid referral is likely to ignore key facts held by the local authority pertaining to the particular case.
- 2.10 The need for the Reporter and local authorities to liaise and work together becomes ever more pressing when consideration is given to the amount of time that will be lost in making referral to the Minister, taking a decision that there is a case to answer, undertaking a full and thorough investigation, informing the local authority of the outcome, and setting a date for compliance. In other words this is legislation that ought not to be necessary if there is effective liaison, and is not likely to be productive even if it is necessary.

### **3.0 OVERALL SUMMARY**

- 3.1 The Council welcomes much of the proposed guidance offered within this draft consultation paper and will work with partners to achieve the best outcomes for all young people involved.