



COMMUNITIES COMMITTEE

AGENDA

24th Meeting, 2004 (Session 2)

Wednesday 15 September 2004

The Committee will meet at 10.00 am in Committee Room 6.

1. **Declaration of interests:** The new member of the Committee will be invited to declare any relevant interests.
2. **Item in private:** The Committee will consider whether to take items 4 and 5 in private.
3. **Antisocial Behaviour etc. (Scotland) Act 2004:** The Committee will consider the Scottish Executive's draft guidance on the provisions in the Act.
4. **The draft Charities and Trustee Investment (Scotland) Bill:** The Committee will consider its approach in relation to pre-legislative work on the draft Bill.
5. **Work programme:** The Committee will consider its work programme.

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The following papers relate to the meeting:

Agenda Item 3

Note by the Clerk

[COM/S2/04/24/1](#)

Agenda Item 4

Note by the Clerk (private paper)

COM/S2/04/24/2

Agenda Item 5

Note by the Clerk (private paper)

COM/S2/04/24/3

COMMUNITIES COMMITTEE

Wednesday 15 September 2004

**DRAFT GUIDANCE ON THE ANTISOCIAL BEHAVIOUR ETC
(SCOTLAND) ACT 2004**

Background

1. The Scottish Executive published draft Guidance on parts 1-6 of the Antisocial Behaviour (Scotland) Act 2004 in July 2004 as part of a consultation which will end on 16 September 2004. Copies of the draft Guidance have previously been distributed to all Committee members.
2. This paper considers specific parts of the draft Guidance in relation to commitments given by the Deputy Minister that the Executive would address issues raised during the debate of certain amendments at Stages 2 and 3 of the Bill consideration.
3. **Annex 1** contains a table which lists the amendments, the name of the Committee Member who lodged them, the main purpose of the amendments and the measures contained within in the Guidance which appear to address their objectives.
4. **Annex 2** provides information on the commencement timetable included by the Scottish Executive in the Guide to the Antisocial Behaviour Act. This provides details of when further Guidance will be issued in relation to parts 10, 12 and 13 of the Act and lists other implementation measures and the planned commencement dates.

Draft Guidance on Antisocial Behaviour Strategies

5. A number of amendments were proposed at Stage 2 of the Antisocial Behaviour (Scotland) Bill relating to the consultation of certain bodies and individuals in the preparation and operation of local authority ASB Strategies.
6. As Annex 1 illustrates, the Guidance refers to all of these issues to some extent. However, members may wish to consider the adequacy of the Guidance in relation to certain points, notably:
 - The sufficiency of the commitment to use or develop existing Community Planning structures to consult community bodies and other persons (especially young people); and
 - Whether the proposals for consulting those already discriminated against because of their race or ethnicity is sufficient to ensure that strategies address the issue of racially motivated Antisocial Behaviour.

Draft Guidance on Antisocial Behaviour Orders

7. This Guidance refers to Part 2 of the Act and covers procedures for making ASBOs. The Committee may wish to consider whether the Guidance takes adequate account of the concerns raised by members in relation to the following issues:

- The need for procedural guidance as to how the sheriff should have regard to any views expressed by the Principal Reporter before making an interim order when the specified person is aged 12-15.
- The adequacy of measures to ensure that the local authority has fulfilled any duty to provide an effective system of personal support to the specified person.
- The consideration of medical conditions which may have caused or contributed significantly to the behaviour complained of.

Draft Guidance on Dispersal of Groups

8. The Guidance on the Dispersal of Groups makes clear that whilst there is no legal requirement for the police to consult community bodies and other persons in relation to the application of the dispersal of groups powers, consultation with the local authority “in no way precludes” discussions with community representatives. It also states that it is “vital” that the police engage as fully as possible with affected communities – ideally long before an authorisation is sought.

9. The Committee may therefore wish to consider whether the Guidance effectively covers the concerns raised during Stage 2 proceedings in relation to this matter.

Action

10. The Committee may wish to consider whether it would wish to seek comments from the Executive in relation to any of the issues discussed above, or on any other issues covered in the draft guidance.

Clerk to the Committee
September 2004

Annex 1 – Table on Draft Guidance on Antisocial Behaviour Strategies

1. Draft Guidance on Antisocial Behaviour Strategies

Amendment number, member and action		Purpose of amendment	Draft Guidance
Stage 2	Stage 3		
36A DG Withdrawn	40 DG Agreed	To ensure strategies include consultation of community bodies and other persons especially young people where ASB exists or is likely to occur	See paras 42 – 51 and 60-61 - Exec proposal to utilise existing Community Planning structure & processes, and build on these or establish new ones where required
128 SS Not moved	None	Strategies for consulting and preventing racially motivated ASB	See para 43, p.9 - Guidance refers to need to consult those who are already discriminated against because of their race, ethnicity, religion or sexual orientation.
144 SB Not moved	None	To support measures for young offenders upon completion of their custodial sentence by local authorities and the voluntary sector within the relevant local authority area	See p.13 of guidance on rehabilitation: putting in place measures that will break the cycle of repeated antisocial behaviour, for example support to young offenders on release. Further detail of rehabilitation measures given in Annex B of guidance.
145 DG Withdrawn		Consultation re ASB strategies to include representatives of young people and persons working with young people in the relevant local authority's area about any existing facilities, activities or other opportunities offered for legitimate recreation in the authority's area and	See amendment 36A above Para 51, page 10 – Guidance refers to need to ensure that there are mechanisms in place for ongoing dialogue with children and young people, including on the need for appropriate facilities

Annex 1 – Table on Draft Guidance on Antisocial Behaviour Strategies

		any plans for improving them	<p>p.13</p> <ul style="list-style-type: none"> • Prevention: putting in place measures that will create a physical and social environment where antisocial behaviour is unlikely to occur in the first place • Early intervention and diversion: putting in place ... activities that will divert people from anti-social behaviour <p>p.9, paragraph 45 on methods for the consultation and engagement of young people.</p> <p>Further detail of measures given in Annex B of guidance.</p>
129 and 130 SB Not moved		ASB strategies - Consultation re ASB strategies to include children and young people	See amendment 145 above.

2. Draft Guidance on Antisocial Behaviour Orders

163 DG Not moved	42 and 44 Minister Agreed	Interim ASBOs - Where the specified person is aged 12-15, the sheriff shall have regard to any views expressed by the Principal Reporter before making an interim order	Guidance on ASBOs – sections on Consultation on Applications and Interim ASBOs on p.11-12, paras 67, 70 and 75 – specifies requirement but no procedural guidance
146 DG Withdrawn	None	ASBOs - As a condition of making an ASBO, the sheriff is satisfied that the local authority has fulfilled any duty to provide an effective system of personal support to the specified person	Minister supports that local authority must fulfil its duties to provide an effective system of personal support and will provide guidance if necessary (Col 837, OR, Communities Committee meeting, 21.4.04)

Annex 1 – Table on Draft Guidance on Antisocial Behaviour Strategies

			Guidance on ASBOs specifies that LA’s should ensure all relevant departments are involved in consideration of case (para 79, p 13)
149 DG Disagreed		ASBOs - take account of any medical condition which may have caused or contributed significantly to the behaviour complained of	Guidance on ASB Orders p.4. paragraph 26 states that the authority applying for an order does not have to prove intention and paragraph 27 states ‘it is highly unlikely that an ASBO would be the most appropriate means to address the behaviour of an individual with autistic spectrum disorder or any disability or other developmental or medical condition which might cause their behaviour’. Also, ASB Strategies p.4, paragraph 14 states ‘antisocial behaviour is not behaviour that is merely different, or that is the result of a medical or developmental condition or mental disorder.’ Disability also covered under equal opportunities in paragraph 32 of guidance on ASB orders.
164 SS withdrawn		ASBOs - Victim of ASB to be included in notification process for relevant ASBOs	Guidance on ASBOs states that authority who applied for ASBO should inform the complainer and anyone else affected by a breach of the order (para 120, p21)

3. Dispersal of Groups

268 DG Not moved	None	Dispersal of groups - Strategies for consulting community bodies and other persons especially young people in relation to the dispersal of groups power	Guidance on dispersal of groups states (para 3.4) that consultation with local authorities and police officers ‘in no way precludes discussions at local level’ with various community groups and residents of the area.
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Annex 1 – Table on Draft Guidance on Antisocial Behaviour Strategies

			<p>Paras 3.9 and 3.10 of the guidance state that while there is no legal requirement for police officers to consult with communities, it is considered vital that the police force engages as fully as possible with the relevant communities and explains why this is so.</p>
<p>266 DG Withdrawn</p>	<p>53 Minister Agreed</p>	<p>Dispersal of groups power – power to give police discretion as to what constitutes a group for the purposes of deciding whether to disperse that group</p>	<p>St 3 amdt (53) by Minister tightened dispersal powers so that dispersal power can be used only if police are satisfied that the group’s presence or behaviour was likely to result in members of the public being alarmed or distressed Definition of ASB expanded at St 3 (Amdt 51) to ‘significant, persistent and serious’ and guidance on dispersal of groups defines these terms (pgs 2 – 4) Definition of group as 2 or more retained due to ECHR concerns by Minister. Guidance on dispersal of groups also gives advice on how police should define alarm and distress and whether it is being committed (sections 3 and 8)</p>

Annex 2 – Commencement timetable in the Scottish Executive's 'Guide to the Antisocial Behaviour Act'

ANTISOCIAL BEHAVIOUR ETC (SCOTLAND) ACT 2004 - COMMENCEMENT TIMETABLE

PART	SUBJECT	PLANNED COMMENCEMENT	FURTHER INFORMATION	CONTACT
1	ASB Strategies	Autumn 2004	Draft guidance published 9 July. Final guidance for commencement	ASB Unit 0131 244 4919
2	ASBOs	Autumn 2004	Draft guidance published 9 July. Final guidance for commencement	ASB Unit 0131 244 4919
3	Dispersal of Groups	Autumn 2004	Draft guidance published 9 July. Final guidance for commencement	Police Division 0131 244 2142
4	Closure of Premises	Autumn 2004	Draft guidance published 9 July. Final guidance for commencement	Police Division 0131 244 2142
5	Noise nuisance	Autumn 2004	Draft guidance published 9 July. Final guidance for commencement	Noise Team 0131 244 0393
6	Environmental Offences	Autumn 2004		Waste Regulation 0131 244 1759
6	Graffiti Removal	Autumn 2004	Draft guidance published 9 July. Final guidance for commencement	Civic Governance 0131 244 7050
7	Housing: ASB notices	Summer 2005	Working group established to plan implementation	Private Housing 0131 244 7952
8	Registration of private landlords	Autumn 2005	Working group established to plan implementation	Private Housing 0131 244 7952
9	Parenting Orders	To be confirmed	Phased introduction	
10	ASBOs on conviction	Autumn 2004		ASB Unit 0131 244 4919

Annex 2 – Commencement timetable in the Scottish Executive's 'Guide to the Antisocial Behaviour Act'

10	Community Reparation Orders	Autumn 2004 (NB: not in effect until regulations made)	Pilots in Inverness, Dundee and Greenock from January 2005	Community Justice 0131 244 5438
10	Restriction of Liberty Orders for u16s	Late 2004		Community Justice 0131 244 5438
10	Ban on sale of spray paints to u16s	Autumn 2004	Guidance for commencement. Warning notices to be provided for retailers	ASB Unit 0131 244 4919
10	Seizure of vehicles	Autumn 2004 (NB: not in effect until regulations made)		Police Division 0131 244 2142
11	Fixed penalty notices	Autumn 2004 (NB: not in effect until regulations made)	Pilot in Tayside from January 2005	Police Division 0131 244 2142
12	Tagging through children's hearing	Phase 1 implementation from late 2004	Consultation on guidance in autumn	Youth Justice 0131 244 1676
12	Local authority accountability	Early 2005	Consultation on guidance in autumn	Youth Justice 0131 244 1676
13	Privacy of certain proceedings	Autumn 2004		ASB Unit 0131 244 4919
13	Disclosure and sharing of information	Autumn 2004	Guidance to be published for commencement.	ASB Unit 0131 244 4919
13	Equal opportunities	Autumn 2004		ASB Unit 0131 244 4919