

## EAST AYRSHIRE COUNCIL

### POLICY AND RESOURCES COMMITTEE – 12 APRIL 2005

#### SUPPORTING POLICE, PROTECTING COMMUNITIES: PROPOSALS FOR LEGISLATION

##### Report by Executive Director of Neighbourhood Services

### 1. PURPOSE OF REPORT

- 1.1 To advise Members of a Scottish Executive consultation “Supporting Police, Protecting Communities: Proposals for Legislation” and to seek approval of a proposed response.

### 2. DISCUSSION

- 2.1 In September 2004 the First Minister indicated that he would consult on proposals for a new Scottish Police Bill which would strengthen and improve policing and law enforcement in Scotland. A number of the reforms are focussed on how serious and organised crime is dealt with, others will address issues associated with violent crime and sectarianism.

- 2.2 In summary it is proposed that the legislation will cover the following specific issues.

- National delivery of services
- Knife Crime
- Football Banning Orders
- Marches and Parades
- Mandatory Drug Testing and Assessment
- Taking of fingerprints outwith a Police Office
- Date and Place of Birth
- Establishment of Independent Police Complaints Body
- Incentives for providing information or evidence for use against others

- 2.3 The Consultation Paper is therefore based on the above and in addition to a short narrative on each point it seeks responses to forty six individual questions which are based on the proposals. A draft response to these questions is contained in Appendix 1 to this report.

- 2.4 The full Consultation Paper is available at <http://www.scotland.gov/consultations>. Responses are sought by 3 May 2005. A hard copy of the Consultation Paper has also been made available in the Members’ Information Point.

2.5 In addition to the matters raised in the Consultation on which a response is sought it is interesting to note that there would appear to be a commitment not to revisit the number of police forces in Scotland. The opportunity is also being taken to introduce new legislation in relation to the possession of fireworks.

### **3. POLICY IMPLICATIONS**

3.1 None for the Council at this time.

### **4. FINANCIAL IMPLICATIONS**

4.1 None at this stage.

### **5. LEGAL IMPLICATIONS**

5.1 This will be dependent on the outcome of the Consultation.

### **6. CONCLUSION**

6.1 This Consultation by the Scottish Executive Justice Department seeks views on a wide range of policy proposals which may underpin new legislation in due course. The proposals seek to improve effectiveness of the Police and enhance community safety.

6.2 It is, however, important to recognise the role of local government in providing Police services and therefore the proposed legislation should not diminish this in any way. Equally appropriate and sufficient funding should be made available to meet the resource implications of the new legislation.

### **7. RECOMMENDATIONS**

7.1 It is recommended that the Committee consider this document and approve the draft response at Appendix 1 if acceptable

William Stafford  
Executive Director of Neighbourhood Services  
WS/ND  
9<sup>th</sup> March 2005

### **LIST OF BACKGROUND PAPERS**

1. Letter from Scottish Executive Justice Department dated 10 February.

Any person wishing to inspect the background paper above should telephone 01563 576023 and ask to speak to William Stafford, Executive Director of Neighbourhood Services.

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**EAST AYRSHIRE COUNCIL**

**SCOTTISH EXECUTIVE CONSULTATION PAPER**

**SUPPORTING POLICE, PROTECTING COMMUNITIES – PROPOSALS FOR LEGISLATION**

**National Delivery of Service**

- 1. Do you agree that a Service Authority should be created to maintain the SDEA and provide the other common police services?**

Response. Yes. The proposals should eliminate structural duplication and avoid any potential conflict between political imperatives and operation policing issues. They may also reduce the risk of challenge under European Human Rights legislation.

- 2. Do you agree with the proposed division of responsibilities between the Director of SDEA, the Service Authority and the Scottish Ministers?**

Response. Yes. The Director should have autonomy in operational matters. The Service Authority would in fact be based on the tried and tested model under which Police Forces currently operate. This would provide a 'common thread' between national policing units and in common with these Scottish Ministers would be distanced from operational policing matters.

- 3. Do you agree that, in certain circumstances, it is appropriate that the SDEA should be able to recruit officers directly?**

Response. There would be both advantages and disadvantages if this proposal was adopted. In terms of advantages it may be that recruitment from police forces outwith Scotland or by direct recruitment could bring new ideas, examples of best practice, experience from the private sector etc. However there are also a number of disadvantages such as loss of personal development or career opportunities to officers serving with Scottish forces. Similarly officers coming in from other forces in UK or direct recruits may not have the detailed knowledge of Scottish legislation or procedures. There will be an immediate training need which would reduce the perceived advantage.

Whatever the outcome it is important that recruiting takes place now to avoid the difficulties which could be caused by the retiral of considerable numbers of Police Officers between 2008 or 2010. Alternatively measures could be taken to retain experienced officers who would otherwise retire.

**4. Have we identified all the initial functions to be provided by the new Service Authority?**

Response. Yes. It may be that a degree of flexibility should be built into the proposed legislation to allow the ranges of services provided by the Service Authority.

**5. Do you agree with the proposed division of responsibilities between the Services Authority and the Scottish Ministers for the provided common police services?**

Response. Yes. With the exception that the Service Authority should determine strategic priorities which should then be approved by Scottish Ministers. It is however important that the powers of the Board and the extent of its responsibilities do not conflict with the roles and responsibilities of the Joint Police Boards. Furthermore the relationship between Joint Police Boards and Local Authorities should not be amended in any way.

**6. Do you agree that there should be a senior strategic director for the provided common police services?**

Response. Yes. The Service Authority would require this degree of support if it is to be effective and provide consistent and cohesive high quality services across Scotland.

**7. Do you agree that the Service Authority Board should comprise representatives from APCOS, Police Conveners and lay members, and do you have any views on the proposed composition of the Board?**

Response. Yes. However, it is suggested that the Convention of Scottish Local Authorities could also be requested to nominate one of the lay members to ensure that in addition to Joint Board members the interest of local government are also represented. It may also be that the Board could include a Senior Officer from a local authority. This would raise the size of the Board from ten to twelve members but may give a greater breadth of input.

**8. Do you agree that the legislation should include an enabling provision to allow functions to be added or removed?**

Response. Yes. This suggestion could avoid potential difficulties in future. However appropriate safeguards should be built in to ensure that major changes could not be introduced without appropriate consideration and consultation. The introduction of this flexibility must be based on mutual trust, respect, openness and transparency.

**9. Do you agree that the SDEA's budget should be simplified, provided on a 50:50 basis by central and local government and that Ministers should be able to direct additional funding if necessary?**

Response. Yes. Due to the unpredictable nature of policing and in particular drug and serious crime operations it is agreed that funding should be able to augmented by Scottish Ministers especially if the operation is in the interest of national security. However the move to change the way in which the SDEA is funded should be considered with great care and any increased burden on local authorities reflected in grant settlements. In these circumstances it may be that the proposed new arrangements should be phased in over at least three years.

It is agreed that in some cases the local authority should not be required to contribute when additional funding has been granted to the SDEA by Scottish Ministers to address specific issues.

**10. Do you agree that the Scottish Ministers should directly provide the whole of the funding for the provided common police services?**

Response. Yes. This proposal reflects current practice although the transfer of forensic science services from individual forces to a central service will require to be the subject of separate discussion.

**11. Are there any other comments you wish to make with respect to our proposals to create a single Service Authority which maintains the SDEA and provides common police services where police powers are not exercised?**

Response. The proposals should in general terms ensure more streamlined services and thereby better value for money.

### **Knife Crime**

**12. Do you agree with the proposal to double the maximum penalty for carrying a knife (or other articles with a blade or point)?**

Response. Yes. The proposal to increase the maximum penalty from 2 to 4 years for carrying a knife in a public place is to be welcomed. However to be an effective deterrent the judiciary must make maximum use of the extent of this proposal.

**13. Do you agree with the proposal to give the police the power to arrest a person whom they reasonably suspect has committed or is committing an offence of carrying a knife (or other articles with a blade or point) or an offensive weapon?**

Response. Yes. This will send out a strong message that carrying a knife is legally and socially unacceptable. It may also reduce the number of serious injuries arising from knife crime.

**14. Do you agree with the proposal to increase the minimum purchase age for knives (and other bladed and pointed objects) to 18?**

Response. Yes. This is a common sense proposal. However, certain exemptions must be built in. For example an apprentice joiner must be able to buy tools such as chisels and Stanley knives.

### **Football Banning Orders**

- 15. Do you agree that football banning orders as described above are an appropriate and effective response to the problem of football-related violence and disorder?**

Response. Football banning orders could be appropriate but effective enforcement could be an issue and therefore a full review would have to be undertaken prior to implementation to assess how they would work in practice. They would only be beneficial if processes were in place to disseminate information to relevant agencies who police events i.e. Police, stewards, club staff etc.

- 16. Do you agree that courts should be able to impose banning orders *on conviction* for a football-related offence and *on summary application* by a Chief Constable?**

Response. Yes.

- 17. Do you agree that the courts should be able to make a banning order if they are satisfied that it would help reduce football-related *disorder*, specifically the stirring up of hatred against others or threatening, abusive or insulting behaviour at or in connection with a football match?**

Response. In effect the proposals mirror anti-social behaviour legislation and in this case the banning order is effectively an ASBO. It will however be difficult to prove repeated actions of football related disorder since it is accepted that it would not be practical to ban everyone who behaves in this manner at football matches.

- 18. Do you agree with the proposed length of a banning order and the proposed penalty for breach of a banning order?**

Response. No. It is suggested that terms of 5 years, 2 years and 1 year would be more effective in producing results and has a greater chance of being enforced and complied with.

- 19. Do you agree that banning orders should apply to all competitive and friendly games involving the Scottish national team and SPL and SFL clubs? If not, which games do you think they should apply to?**

Response. It is agreed that banning orders should apply to all competitive and friendly games involving the Scottish National team, SPL and SFL clubs. However, consideration should also be given to including junior clubs and even

amateur leagues since disorder can also be prevalent at this level, particularly in cup matches.

**20. Do you agree that the Scottish Police should take on the administration of the banning orders?**

Response. Yes. It is recognised that this will have financial and manpower implications. It is also important to ensure the sport governing bodies have an input perhaps through clubs.

**Marches and Parades**

**21. Do you agree that organisers should be required to give local authorities and the police 28 days notice of their intention to hold a procession?**

Response. Yes. There is little doubt that the existing timescale of seven days is far too short and therefore the proposal to extend this to twenty eight days is welcomed. This will allow proper consultation and verification of the application.

**22. Do you agree that the 28 days notice period should be dispensed with in limited circumstances?**

Response. Yes. There are a number of reasons why the twenty eight day period should be dispensed with in certain circumstances and therefore the proposal would provide a degree of flexibility. Applications for a reduced notification period will have to be considered on an individual basis. For example, it may be that a march could be used to highlight a local issue on which feelings are high.

**23. Do you agree that organisers of all marches and parades should give notice of their intention to local authorities and the police?**

Response. Yes. This will avoid any misunderstandings on the scope of the legislation. It may also lead to increased public safety.

**24. Do you agree there should be regulations setting out the key steps and timetable for taking decisions on notifications?**

Response. No. It should be for each local authority to consider how the legislation should be implemented. It may be that a national guidance framework is the way ahead rather than the more prescriptive step of legislation.

It is also important to recognise that whatever the outcome that there will be resource implications for both Police and Local Authorities.

**25. Do you agree that local authorities should be able to take into account wider views, including community views, when taking decisions on procession notifications and that they should put in place transparent procedures as to how those views will be considered?**

Response. Yes. This is important in ensuring the decision on any application is sound and not open to challenge.

- 26. Do you agree that local authorities should be able to take into account wider issues when taking decisions on procession notifications?**

Response. Yes. For the same reasons as outlined in Questions 25.

- 27. Do you agree that local authorities should be able to impose wider conditions on procession notifications?**

Response. Yes. Subject to the caveats of reasonableness and proportionality. The conditions must also be justifiable.

- 28. Do you agree that there should be a code of conduct prepared by the police and local authorities?**

Response. Yes. This template would provide clear guidance to groups on what is expected. It may also assist in event planning and subsequent discussions.

In many respects this proposal supports the suggestion that regulations are not necessary (Question 24).

- 29. Do you agree that organisers and participants in breach of the new statutory requirements remain subject to the same penalties as currently?**

Response. Yes. However it is suggested that this could be reviewed in light of experience having regard to the content of Sir John Orr's report and any legislative changes.

### **Mandatory Drug Testing and Assessment**

- 30. Do you agree that police should have powers to require persons arrested for trigger offences to undergo a drug test?**

Response. Yes. With very strict criteria and with appropriate safeguards to protect vulnerable individuals who may need support from other agencies.

- 31. Do you agree that drug testing should be applied to those *arrested* for certain offences rather than *on charge*?**

Response. Yes. Again this would result in more referrals for support and have financial and manpower implications.

- 32. Do you agree that powers should be taken to enable the police to require those who test positive for a Class A drug to attend an assessment of their drug use?**

Response. Yes. This could assist in providing support to the individual concerned.

- 33. Do you agree that theft and drugs offences should be the main trigger offences for testing? Should any other offences be included?**

Response. Yes. It is suggested that prostitution; persons arrested under the influence of drugs; and persons arrested in possession of drug paraphernalia be included in the list of offences. There is evidence to suggest clear links between prostitution and substance abuse.

- 34. Do you agree that there should be a power for a senior police officer to authorise a drug test where there are reasonable grounds to suspect that the misuse of a Class A drug has caused or contributed to a non-trigger offence?**

Response. No. With the addition of the additional offences specified in the response to Question 33 it is felt that the list is comprehensive.

- 35. Do you agree that the minimum age at which these proposals take effect should be 16 or should a lower limit be set?**

Response. It is difficult to be age specific but it is felt that 16 is the minimum age at which these proposals should take effect. If a lower age limit is introduced a wide range of safeguards and support procedures through Social Work must also be introduced at the same time. Testing may allow early intervention and introduction of treatment. It is important that support and intervention services are fully resolved.

- 36. Do you agree that mandatory drug testing will provide access to a key group of clients that might not otherwise engage successfully in treatment services?**

Response. Yes. It will provide access to a group who might not otherwise engage in treatment services. However many drug users openly admit to their addiction but refuse treatment. Mandatory testing will identify this group and by monitoring and analysing the information gathered, patterns or trends may be identified and initiatives developed to address the problems of the persons who fall into this group. Undoubtedly there will be resource implications for the Council and these will require to be funded in full by the Scottish Executive.

### **Police Power to Take Fingerprints at A Place Other Than a Police Station**

- 37. Do you agree that the police be given the power to take fingerprints outside of a police station in order to confirm a person's identity?**

Response. Yes. It is felt that this could result in a considerable time saving to the Police and the Courts. However members of the public would have to be

assured and appropriate procedures built in, to ensure that prints would be destroyed if no proceedings were taken or not guilty verdict given.

- 38. Do you agree that officers should be able to conduct on-the-spot checks, other than for identity verification, in specified circumstances?**

Response. No. It is felt that this may infringe personal rights and may be open to challenge.

### **Date and Place of Birth**

- 39. Do you agree that the police should be given a power to ask for date of birth and place of birth information from suspects?**

Response. Yes. This proposal is to be welcomed as it will lead to greater efficiency and effectiveness in dealing with a range of issues and thereby make better use of resources.

### **Independent Police Complaints Body**

- 40. Do you agree that the proposed measures at paragraph 9.11 are the most effective ways in which to raise the profile of the role of the Procurator Fiscal in investigating criminal complaints made against the police?**

Response. Yes. It is felt that the proposals may address public concerns and perceptions that complaints about the Police are investigated by the Police and therefore there is the potential to not fully investigate the complaint or in some way distort the outcome. In many ways this will secure the same level of independence apparent in other public services.

- 41. Are you satisfied that the powers and duties outlined at paragraph 9.15 will be sufficient to allow the new body to play an effective role in ensuring that Scotland has a modern and transparent police complaints system?**

Response. Yes. It would appear that the proposed powers are comprehensive.

- 42. If not, what alternative or additional powers do you think are needed?**

Response. Not applicable.

### **Incentives For Providing Information Or Evidence For Use Against Others**

- 43. Do you agree that a statutory system should be established to seek to increase the number of accused who plead guilty and provide co-operation against other accused in return for a reduced sentence?**

Response. Yes.

- 44. Do you agree with the features of the system proposed?**

Response. Information given to a Judge or Sheriff should remain confidential and not divulged to the defences. Regardless of information given by an accused the conviction should still be recorded on the list of convictions.

- 45. Do you agree that the prosecutor in Scotland should be able to inform the trial judge in confidence of unrelated co-operation which an accused has provided in the past and for the judge to be able to take that into account in sentencing?**

Response. It is considered that discussions must be based on individual cases and blanket provisions are not acceptable. In other words, this would be a matter for the judge to consider having regards to the information available.

- 46. Do you agree that the prosecutor's power to offer immunity from prosecution in return for co-operation should be put on a statutory basis and that the prosecutor should be able to commence or recommence proceedings where the degree of co-operation has not been provided?**

Response. No. Whilst agreeing that a reduction in sentence may be worthwhile, immunity from prosecution should only be considered if a minor offence has been committed by the person supplying the information provided is of considerable value i.e. involving serious or organised crime.

William Stafford  
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9<sup>th</sup> March 2005