

West Lothian Council

Response to Scottish Executive Consultation, April 2005

'Supporting Police, Protecting Communities: Proposals for legislation'

1. Introduction

West Lothian Council welcomes the opportunity to respond to the wide range of issues covered by the consultation document. The Council supports the intention of the Scottish Executive to make Scotland's communities safer and stronger and welcomes many of the proposals covered in this consultation and in related community safety and anti-social behaviour initiatives.

The Council welcomes the intention to tackle the cycle of repeat offending, to reform aspects of the organisation of common police services and to address issues of knife crime and drug-related crime.

This response limits its comments in detail to those specific questions which were raised by the consultation and on which local comment was given.

2. Supporting the Scottish Police Service - the national delivery of services

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

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

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

Question 4: Have we identified all the initial functions to be provided by the new Service Authority? **No view**

Question 5: Do you agree with the proposed division of responsibilities between the Service Authority and the Scottish Ministers for the provided common police services? **Yes**

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

Question 7: Do you agree that the Service Authority Board should comprise representatives from ACPOS, Police Conveners and lay members, and

do you have any views on the proposed composition of the Board?
Agreed

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

With regard to future developments (para 2.31 and Question 8) the point is made that considerable demand is already being made on the provision of forensic science services as currently delivered. Centralisation of services would have to ensure adequate provision to meet growing demands on this work.

Question 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?

We agree that the funding could be simplified by providing a 50:50 split between central and local government assuming the change in funding arrangements was cost neutral to the authority. In addition we can see no reason why Ministers should not be able to direct additional funding if necessary.

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

Question 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? **No**

3. Knife Crime

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

Yes we believe this will provide a further deterrent and that the penalty should be aligned with that relating to carrying an offensive weapon.

Question 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?

Yes, we believe this is in the public interest.

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

Yes we agree that this is a helpful move and will assist retailers and provide a consistent message. The use of the internet by individuals purchasing knives was raised as a matter of concern and one that presents enforcement difficulties.

We would comment on para 3.13 regarding the possibility of a national licensing scheme: Which agency would be charged with enforcing this scheme?

4. Football Banning Orders

Question 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?

Question 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?

Question 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?

Whilst agreeing with the thrust of these proposals, we raise questions regarding the enforceability of these measures.

Question 18: Do you agree with the proposed length of a banning order and the proposed penalty for breach of a banning order?

The criminal standard of proof may be difficult to apply in cases of a breach of a banning order.

The resource issues in enforcing these must be fully considered and there is particular concern at the number of banning orders that may aggregate over the years.

Question 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? **Yes** If not, which games do you think they should apply to?

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

Whilst we agree with the proposal, we think that it is unlikely that only civilian support staff will be used for this purpose.

5. Marches and Parades

Question 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?

The Council respects the rights that organisations and individuals have to organise marches and parades but believe these should be balanced in some way with the needs of the communities in which the march is set, and the need to ensure public safety. The Council would argue that the existing statutory framework set out in the Civic Government (Scotland) Act 1982 should continue to apply in so far as the local authority should continue to have the statutory responsibility for deciding whether or not a march or parade should go ahead. However the Act does require some amendment, in that the period of notice specified within the Act, seven days is insufficient.

In line with this Council's response to Sir John Orr's review it is suggested on behalf of the Council that an application should be submitted to allow this to take place a minimum of six weeks before the date of the event.

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

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

On local government reorganisation in 1996 the Council formally adopted the Orders made by the former Lothian Regional Council which set out the types of parades/processions for which a notification is required to the Council.

In addition the Council at their Environmental and Protective Services Committee on 26th March 1996 delegated the powers to Officers to authorise the following processions without referring them to Committee:-

- (a) All non-controversial processions, including juvenile sectarian processions of a minor nature.**
- (b) All non-controversial adult sectarian processions with no more than 500 people taking part which were recommended for approval by the Chief Constable;**
- (c) Imposing a temporary ban or restriction on traffic on roads for public safety or convenience under Section 62 of the Roads (Scotland) Act 1984.**

The Committee ruled that the following types of application require to be referred to Committee for consideration:-

- (a) Adult sectarian parades with 500 or more participants.**
- (b) Parades by an independent loyal orange lodge.**
- (c) Parades by James Connolly Society.**
- (d) Parades by British National Party.**
- (e) Parades by the National Front and Combat 18; and**
- (f) Any application which requires closure of a major road.**

Furthermore Committee ordered that local members should be consulted on all street processions and parades taking place in their areas.

At the Environmental and Protective Services Committee on 27th May 1997, the Committee ruled that applications submitted by uniformed organisations such as the Salvation Army, the Boys Brigade, the Scouts and Guides Association need not apply to the Council for approval. They ruled that these organisations simply should advise their local police station of the proposed parade/march.

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

Question 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?

Yes. There is no formal right to object or comment contained in the Civic Government (Scotland) Act 1982. The only community involvement in the process is through the local member and the police at present. The Council would recommend that the Act is amended to allow Communities to comment on proposed marches. Community input could be sought through public advertisement, although this would have a cost implication for the Council. Further clarification on the meaning of 'community views' would be helpful.

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

Question 27: Do you agree that local authorities should be able to impose wider conditions on procession notifications? **Yes**

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

We believe that the local authority in consultation with the police should prepare the code of conduct.

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

6. Mandatory Drug Testing

Question 30: Do you agree that police should have powers to require persons arrested for certain trigger offences to undergo a drug test?

We would raise the point that 'theft' is a high volume offence and the implication for resources if this is a 'trigger offence' could seem considerable. This action may also raise possible 'human rights' issues.

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

We would foresee this creating a greater strain on testing resources due to the possible numbers involved.

Question 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 drugs use?

We would comment that very few agencies will engage with clients who are compelled to attend. Again, this action may also raise possible 'human rights' issues.

Question 33: Do you agree that theft and drugs offences should be the main trigger offences for testing? **Yes** Should any other offences be included? **No**

Question 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?

We are concerned that the provision for a senior officer to authorise testing and referral in 'non-trigger' offences can be seen as unnecessary 'net-widening'. We would question the basis of this provision.

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

We would make the point that the ASBO limit is 12 years old. We would question whether there may be a deterrent aspect for applying this to 12 - 16 year olds.

Question 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?

We believe that many of those tested will already be 'in the system'. We would like to see more research to substantiate this claim.

7. Police power to take fingerprints at a place other than a police station

Question 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?

On advice from Police colleagues, we question the practical application of this proposal and the limited usage that it may have. Again, on advice from Police colleagues, we believe there may be 'civil liberties' objections on the basis that this may permit inappropriate and illegitimate intrusion into personal freedoms.

We agree in principle, however, with the intention to limit the amount of time police officers are away from the 'front line'.

Will this proposal also be further extended to the sampling of DNA and detailed personal searches away from a police station?

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

No. On advice from Police colleagues, we believe this extension of the current practice is unwarranted and could result in what have been described as 'fishing-trips'.

8. Date and place of birth

Question 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?

Yes, we believe this is reasonable for the purposes of ensuring accuracy and increasing crime detection.

9. Independent Police Complaints Body

Question 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? **Yes**

Question 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? **Yes**

Question 42: If not, what alternative or additional powers do you think are needed?

10. Incentives for providing information or evidence for use against others

Question 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?

Yes, although we see this as formalising a current informal procedure. We would ask how the system would operate for reduced sentences in community based disposals e.g probation. Would there be a scale of sentences to which this proposal would apply?

Question 44: Do you agree with the features of the system proposed?

See q.43 response above. We believe that the system should be one of 'open disclosure' ie the other accused should also be informed of co-operation by a co-accused.

Question 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?

We would raise the question of the level of subjectivity that this involves. We note also that there are no assurances given.

We do not see why this option of declaring past co-operation should not also be open to the defence.

Re' information to a judge "in confidence" - we would raise the point that in most cases courts and their proceedings are open to the public, and information should be public unless there is a very good reason against it.

Question 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? **Yes**

ENDS