

Supplementary Committee Agenda



Overview and Scrutiny Committee Monday, 11th April, 2011

Place: Council Chamber, Civic Offices, High Street, Epping

Time: 7.30 pm

Committee Secretary: Simon Hill, Senior Democratic Services Officer, The Office of the Chief Executive
email: shill@eppingforestdc.gov.uk Tel: 01992 564249

9. OFFICER DELEGATION - 2010/11 REVIEW (Pages 3 - 26)

(Councillor M McEwen – Chairman, Constitution and Members Services Scrutiny Panel) Reprinted because of printing problems on original agenda.

10. REVIEW OF CONTRACT STANDING ORDERS (Pages 27 - 34)

(Councillor M McEwen – Chairman, Constitution and Members Services Scrutiny Panel) Reprinted because of printing problems on original agenda.

12. HOME OFFICE CONSULTATION - 'MORE EFFECTIVE RESPONSES TO ANTI-SOCIAL BEHAVIOUR' (Pages 35 - 50)

(Chairman, Safer Cleaner Greener Scrutiny Standing Panel) Reprinted because of printing problems on original agenda.

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Report to the Overview and Scrutiny Committee



Date of meeting: 11 April 2011

Report of: Constitution and Member Services SSP

Subject: Officer Delegation – 2010/11 Review

Chairman: Councillor Mrs M McEwen

Recommendations:

- (1) That a report be submitted to the Council recommending that the schedule of changes to Council delegation (Appendix 1) be approved;**
- (2) That the Schedule of Executive Delegations set out in Appendix 4 be recommended to the Leader of the Council for approval;**
- (3) That the revised schedules be incorporated in the Constitution once the approval of the Council and the Leader is given;**
- (4) That the schedules of delegation be re-configured on a Directorate basis in future; and**
- (5) To review the position regarding householder applications in Appendix 3.**

Report:

1. Introduction

- 1.1 We have carried out the usual annual review of officer delegation. This review is designed to keep these documents up-to-date and to reflect current statutory requirements and operational needs.
- 1.2 Such delegated authorities are agreed in one of two ways:
 - (a) approval by the Council in respect of Council (i.e. non-executive and regulatory) functions; or
 - (b) approval of the Leader of the Council for Executive (or Cabinet) functions.
- 1.3 This report brings forward updates to the delegation schedule, including those which have already been approved by the Council during the last 12 months.

2. Proposed Changes

- 2.1 Appendix 1 sets out changes to delegation of Council functions. Appendix 4 shows proposals for Executive Functions. The remaining appendices show changes which have already been approved in each category.

2.2 We are recommending that the format for the officer delegations used in respect of the Planning Directorate (see Appendix 3) should be used for the entire schedule in future. We feel that this is more user friendly for the public, officers and members and will also make the updating of the schedule easier.

3. Planning Delegation (Appendix 3)

3.1 During our review, we noted the decisions of the District Development Control Committee on delegation to officers as set out in Appendix 3. It was queried whether the reference on the last page of that Appendix at paragraph (f)i actually reflected the decision of the Committee regarding householder applications. We asked the Assistant to the Chief Executive to check the position after our meeting and include an explanation in this report. There was also a feeling that the wording used in the Appendix at paragraph (f) needed clarification.

3.2 Paragraph (f)i is drafted in such a way that, even if two expressions of objection material to planning merits are received, a householder application would still be dealt with at officer level. Some Panel members were concerned that the intention of the Committee was that all householder applications would be referred to members and not determined under delegated powers.

3.3 The draft minutes of District Development Control Committee do not record any discussion on paragraph (f)i. there is no indication that the schedule was not approved as presented.

3.4 The Director of Planning and Economic Development advises that he accepts that the schedule is complex, however the intention is clear. For reasons of efficiency and to assist with achieving members' performance targets, the position as agreed is that neighbour objections do not trigger referral of Householder applications to the Area Planning Subcommittees. This is not a change to the current situation. Indeed householder applications have been dealt with in this way for many years. The alterations to the schedule were intended to update and clarify the existing position last agreed by the District Development Control Committee of March 2010..

3.3 In view of this the Committee is asked to decide how to deal with the situation. The Committee could:

(a) refer the matter to the District Development Control Committee, with or without a suggested change; or

(b) ask the Planning Scrutiny Panel to look at the issue.

3.4 It should be said that officers will currently refer any householder application which attracts 5 or more valid objections for decision by members. However, this is an informal guideline not reflected in the scheme of delegation. At this level the approach serves to keep to a minimum the number of such applications which are referred for Committee decision so as to maintain performance at target levels.

4. Next Steps

4.1 The Committee is asked to consider the proposed changes and to:

- (a) recommend the changes in Appendix 1 to the Council so as to amend the Constitution (subject to review of Appendix 3); and
- (b) recommend the changes in Appendix 4 for approval by the Leader of the Council and publication in the Constitution.

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NEW AND REVISED OFFICER DELEGATION PROPOSALS – COUNCIL FUNCTIONS

NO.	DELEGATION REF/STATUS	PRESENT WORDING/ DELEGATED OFFICER(S)	PROPOSED CHANGE
1	CL39 (Freedom of Information) REVISED	<p>The present delegation in respect of FOI applications does not cover the Re-Use of Public Sector Information Regulations 2005.</p> <p>Officer Delegated: Assistant to the Chief Executive.</p> <p>In addition, in view of the increasing number of applications under the 2005 regulations for data collected from the Council's CCTV installations by the Police, Legal Firms and Insurance Companies, it is recommended that the Director of Environment and Street Scene be delegated to deal with those applications.</p>	<p>ADD additional paragraphs as follows:</p> <p>“To be responsible in accordance with the Council's policy for administering requests for information under the Re-Use of Public Sector Information Regulations 2005, including the level of fees and charges to be made if information supplied is to be re-used”.</p> <p>(Officer Delegated: Assistant to the Chief Executive).</p> <p>“To be responsible for administering requests under the 2005 Regulations in respect of use of CCTV data, taking account of the Council's policy and charging arrangements”.</p> <p>(Officer Delegated: Director of Environment and Street Scene).</p>
2	CL/78 (Staff Vacancies Review) REVISION – approved by the Cabinet on 31.1.11.	Replacement of existing procedures for reviewing staff vacancies which are delegated to the Management Board/CEF with a new arrangement linked to freezing of external recruitment.	<p>See Appendix 2 to the report.</p> <p>RECOMMENDED: That this delegated authority be transferred to the Executive Functions Schedule.</p>

NO.	DELEGATION REF/STATUS	PRESENT WORDING/ DELEGATED OFFICER(S)	PROPOSED CHANGE
3	NEW – Planning Delegation Approved by District Development Control Committee on 7.12.10 (Minute 30).	Consolidation of various delegated authorities exercised by the Director of Planning and Economic Development under one Directorate Heading.	See Appendix 3 to the report. SEE RECOMMENDATION (5) AND SECTION 3 OF COVERING REPORT

Report to the Cabinet

Report reference: C-061-2010/11
Date of meeting: 31 January 2011



**Epping Forest
District Council**

Portfolio: Leader
Subject: External Recruitment Freeze
Responsible Officer: Derek Macnab (01992 564050).
Democratic Services Officer: Gary Woodhall (01992 564470)

Recommendations/Decisions Required:

- (1) That a freeze on external staff recruitment be implemented for all vacant posts, subject to the exceptions set out in recommendation (3) below;**
- (2) That all posts be advertised internally in the first instance, with all permanent and temporary staff being eligible to apply but with agency staff excluded;**
- (3) That, in the event that internal recruitment to a vacant post is unsuccessful, a procedure be introduced whereby Directors may seek authority recruit externally to posts which meet one or more of the following exception criteria;**
 - (a) when not to appoint would expose the authority to a quantifiable risk with respect to Health and Safety requirements;**
 - (b) where it can be demonstrated that the post is necessary for the generation of significant or surplus income to the Council; and**
 - (c) where the post is wholly or largely externally funded; and**
- (4) That the Acting Chief Executive in consultation with the relevant Portfolio Holder and the Leader of the Council, be authorised under the procedure set out in recommendation (3) to determine the vacant posts meeting the exception criteria which may be recruited externally.**

Executive Summary:

In light of reductions in grant to the Council as a result of the Comprehensive Spending Review, this report sets out the rationale behind the proposed implementation of a freeze on external recruitment to control costs, mitigate the risk of redundancy and retain flexibility in the delivery of future services.

Reasons for Proposed Decision:

The Council is facing an extremely challenging Medium Term Financial Forecast requiring significant levels of savings to be achieved over the next few years. Employee costs are a

large area of controllable expenditure. The Council has a skilled and committed workforce, in which it has invested heavily in terms of training and development. An external recruitment freeze will assist in controlling costs, retain flexibility and help protect existing employees.

Other Options for Action:

To continue to recruit externally to posts. This would not prove to be sustainable in the current financial circumstances. Alternatively, a freeze could be implemented on all recruitment. However this would be counter productive in terms of risk, income generation and service delivery.

Report:

1. The Council's annual budget process commenced in September 2010, with the consideration of the Medium Term Financial Forecast. The forecast was prepared against a backdrop of anticipated cuts in public expenditure and ongoing difficulties with the economy. Following the headline Comprehensive Spending Review announcement in October 2010, the Council did not receive the detailed settlement figures until mid December. Members will be considering the full implications of what has transpired to be, a poor grant settlement, for the authority, elsewhere on the agenda. It is clear that the Council will need to identify significant savings to compensate for the loss of some £2.2M of government funding, over the next two financial years.

2. Currently the Council employs approximately 650 staff engaged in the delivery of a wide range of services to local residents. At a cost of some £20M per annum, this represents a major area of expenditure for the authority. As such, in recent years there has been rigour applied in terms of granting permission to fill vacant posts, with Service Directors having to make a clear justification for the need to make an appointment, demonstrating that other options to cover the duties have been explored. The current procedure requires authorisation by the Acting Chief Executive, relevant Portfolio Holder and the Leader of Council. This process has served well in the lead up to the anticipated outcome of the Comprehensive Spending Review.

3. However, with the settlement being poorer than anticipated, it is proposed that it is now necessary to take further action in order to not only control expenditure, but also to protect wherever possible, the Council's existing workforce, mitigate the risk and costs of redundancy and to retain flexibility, pending any future service reviews to deliver the challenging levels of savings required.

4. A proposal to implement a freeze on external recruitment was discussed at the joint meeting of the Cabinet and Management Board in December 2010. The rationale was agreed in principle and officers were tasked with developing a policy to be formally adopted by the Cabinet. This is now detailed below.

Vacant Post Recruitment Policy:

(i) In the first instance vacant posts can only be advertised internally, with all existing permanent and temporary staff entitled to apply. Agency staff will not be eligible to apply.

(ii) In the event that internal recruitment is unsuccessful an application can be made to recruit externally, if the post satisfies any of the following exception criteria:

(a) When not to appoint to the post would expose the authority to a quantifiable risk with respect to Health and Safety.

(b) *When it can be demonstrated that the post is necessary for the generation of significant or surplus income to the Council.*

(c) *When the post is wholly or largely externally funded.*

(iii) *The authorisation for the exception posts will be in line with the current system of permission to fill vacant posts i.e. Acting Chief Executive, in conjunction with the relevant Portfolio Holder and Leader.*

5. Whilst it is acknowledged that the freeze on external recruitment will place additional pressure on existing staff to maintain the quality of the Council's services, the measure will encourage managers to be creative in how to best utilise their existing staffing resources and could open up developmental opportunities such as secondments. At present, temporary posts currently due to expire have been extended to the 31 March 2011, but will be subject, thereafter to the new arrangements.

Resource Implications:

The Council's financial position is detailed in the Budget Report and Capital Strategy elsewhere on the agenda. The Council's salary costs are some £20M per annum.

Legal and Governance Implications:

The Council's Human Resources Policies reflect current Employment Law.

Safer, Cleaner and Greener Implications:

No specific implications identified.

Consultation Undertaken:

Staff have been advised of the External Recruitment Freeze.

Background Papers:

Notes of Joint Cabinet/Management Board December 2010

Impact Assessments:

Risk Management

Exception criteria is contained within the proposal to reduce risk with respect to Health and Safety.

Equality & Diversity

There are no Equality & Diversity issues raised by the report.

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Planning & Economic Development Delegations Schedule Number 1: Development Control

Function:	Principal Relevant Legislation (*see note)	Relevant Details:	Exceptions:
Care of the environment.	<p>Town and Country Planning (Environmental Impact Assessments) (England and Wales) Regulations 1999</p> <p>Planning (Hazardous Substances) Act 1990, Section 36</p> <p>Planning (Hazardous Substances) Regulations 1992</p>	<p>To determine the need for and scope of environmental impact assessments required under the Town and Country Planning Acts.</p> <p>To determine applications for hazardous substances consent except those where there are objections from interested parties, which shall be determined by the relevant Area Planning Sub-Committee.</p> <p>To obtain and use necessary powers of entry to the land in relation to the above.</p>	No
Development Control	<p>Town and Country Planning Act 1990 Section 70, 70(A), 191-3 etc</p> <p>Planning and Compensation Act 1991, Section 10</p> <p>Town and Country Planning (Listed Buildings and Conservation Areas) Act 1990, Part 1, Reg. 16-19</p> <p>Town and Country Planning (Development Management Procedure) (England) Order 2010, Part 6, Article 35</p> <p>Town and Country Planning (Control of Advertisements) (England) Regulations 2007, Part 3, Reg. 14-15</p> <p>Town and Country Planning General Permitted Development Order 1995, Part 6 and Part 31 of Schedule 2</p>	<ol style="list-style-type: none"> 1. Subject to Schedule A below, which are matters to be determined by committee, to determine or decline to determine any: <ol style="list-style-type: none"> a. planning applications, b. applications for approval of reserved matters, c. applications arising from any condition imposed on any consent, permission, order or notice, d. advertisement consents, e. listed buildings and conservation areas consents, f. discharge of conditions and g. non-material and minor material amendments. 2. To agree the precise wording of additional/ revised conditions to be attached to planning permissions, at members' request. 3. To determine whether prior approval of the method of any proposed demolition and any proposed site restoration is required and to give such approval where required except where objections from interested parties are received, which shall be determined by the Area Plans Sub-Committees. 4. In relation to telecommunications equipment, to determine, after prior consultation with ward Councillors, whether the prior approval of the Council should be required to the siting and appearance of notified development. 5. In relation to agricultural development, to determine whether to require the formal submission of details. 6. To determine applications in relation to certificates of lawful use and development. 	Yes

		7. To obtain and use necessary powers of entry to the land in relation to the above.	
Enforcement	<p>Town and Country Planning Act 1990 (as amended), Part 8, section 171-190, 196a,b,c, 215-219, 224, 324 and 325.</p> <p>Town and Country Planning (Control of Advertisements) (England) Regulations 2007, Part 5, sections 27 and 30</p> <p>Planning (Listed Buildings and Conservation Areas) Act 1990, Chapter 4, sections 38 and 88.</p>	<p>Authority for Director of Planning & Economic Development or Director of Corporate Support Services to:</p> <ol style="list-style-type: none"> 1. Issue Stop notices, Temporary Stop Notices, Enforcement Notices, Breach of Conditions Notices, Building Preservation Notices, Listed Buildings Enforcement Notices, Conservation Area Notices, Discontinuance Notices in respect of advertisements and Section 215-219 Notices for all breaches of planning legislation, in accordance with the Council's adopted enforcement policy. 2. Prosecute the unauthorised display of advertisements, unauthorised works to a listed building, and non-compliance where enforcement action has previously been authorised. 3. Take appropriate enforcement action, including serving an injunction where the Director of Planning and Economic Development and/or the Director of Corporate Support Services, or their nominee, having regard to the evidence considers the circumstances to require urgent action. 4. Vary the requirements for compliance with notices already authorised, including altering the period required for compliance, service of further notices and withdrawal of notices. 5. Determine when action is not expedient in relation to breaches of control considered inconsequential or insignificant. 6. Obtain and use powers of entry necessary in relation to the above. 	No

- Note: the authority to be updated to take into account changes in the relevant legislation. All references are to the legislation as currently amended.

Schedule A: Matters to be Determined by the Relevant Committee

- (a) applications contrary to the provisions of an approved draft or Development Plan, and which are recommended for approval;
- (b) applications contrary to other approved policies of the Council, and which are recommended for approval;
- (c) applications for major commercial and other developments, (e.g. developments of significant scale and/or of wide concern) and which are recommended for approval;
- (d) applications for residential development consisting of 5 dwellings or more (unless approval of reserved matters only) and which are recommended for approval)
- (e) the councils own applications on its land or property which are for disposal;
- (f) those applications recommended for approval where there are more than two expressions of objection material to the planning merits of the proposal to be approved and received, apart from:
 - 1. approvals in respect of householder developments and
 - 2. "other" category developments (i.e. changes of use, advertisements, listed building consents, Conservation Area consents, lawful development certificates, agricultural notifications, as well as telecommunications masts, shop fronts and vehicle crossovers),.
- (g) applications recommended for approval contrary to an objection from a local council which are material to the planning merits of the proposal;
- (h) applications which a Councillor representing a ward within the relevant Area Plans Sub-Committee area requests in writing within four weeks of notification in the Council Bulletin should be referred to the appropriate Sub-Committee provided that the member concerned has notified the Ward Councillor in advance;
- (i) applications where recommendation conflicts with a previous resolution of a Committee;
- (j) applications submitted by or on behalf of a Councillor of the Authority (and/or spouse/partner) or on behalf of a member of staff of Planning and Economic Development (and/or spouse/partner) and also in those cases where a councillor is an objector in a purely personal capacity;
- (k) any other application which the Director of Planning and Economic Development considers it expedient or appropriate to present to committee for decision (e.g. those raising issues not covered by existing policies, or of significant public interest, or those with a significant impact on the environment)
- (l) an application which would otherwise be refused under delegated powers by the Director of Planning and Economic Development but where there is support from the relevant local council and no other overriding planning consideration necessitates refusal.

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NEW AND REVISED OFFICER DELEGATION PROPOSALS – EXECUTIVE FUNCTIONS

NO.	DELEGATION REF/STATUS	PRESENT WORDING/DELEGATED OFFICERS	PROPOSED CHANGE
1	Council Garages/NEW	N/A	<p>In April 2010, the Portfolio Holder for Housing agreed a new policy for sales of Council-owned garages. As part of this policy, the following delegation to the Director of Housing was introduced:</p> <p>“To sell isolated garages in accordance with the Council’s policy”.</p> <p>(See Appendix 5).</p>
2	EX/34 (Land Drainage and Flood Defence) REVISION	<p>The present delegation is based on certain of the Epping Forest District Land Drainage Byelaws 2005, allowing officers to take action. Not all of the current byelaws are listed and it is thought preferable that the delegation should refer to the Byelaws overall not just selected provisions.</p> <p>Delegated Officers:</p> <p>Director of Environment and Street Scene.</p> <p>Assistant Director (Technical Services)</p> <p>Drainage Manager (and relevant staff delegated on their behalf)</p>	Listing of individual byelaws deleted. Heading retained.

NO.	DELEGATION REF/STATUS	PRESENT WORDING/DELEGATED OFFICERS	PROPOSED CHANGE
3	EX47 (Private Sector Housing) REVISION	<p>The present delegation authorises the Director and Assistant Director (Private Sector and Resources) to exercise the powers and duties set out in Appendix A to EX47 and the relevant Portfolio Holder to authorise updates to the legislation listed in Appendix A.</p> <p>However the present delegation does not authorise powers of entry under warrant when required. It is recommended that the delegation be amended to cover this point. Most of the legislation listed in Appendix A specifies entry by warrant but in some cases this is not the case and a separate delegated authority regarding warrants is recommended.</p>	<p>Under a previous Portfolio Holder decision (HSG/012/2010/11) an additional delegation to the officers listed was added as set out in Appendix 6.</p> <p>“To exercise the powers and duties set out in Appendix A, including powers of entry by warrant where this is not specified in the legislation listed.”</p>
4	EX53 (Safer, Cleaner, Greener Legislation – Authorisation of Officers) REVISION	<p>EX53 authorises the Director of Environment and Street Scene to exercise functions on behalf of the Council under the schedule of legislation set out in Appendix B.</p> <p>Many of these statutes involve powers of entry via warrants and are duplicated under EX71.</p> <p>Delegated Officers:</p> <p>Director of Environment and Street Scene (or in his absence the Assistant Directors) (Environment) and (Technical) or suitably qualified officers authorised by those postholders.</p>	<p>AMEND EX53 (first paragraph of delegation) to read as follows:</p> <p>“To exercise those functions relating to the management and provision of the Environmental Health Service set out in the list of environmental health legislation as set out in Appendix B, including, where necessary, powers of entry by warrant”.</p>

Portfolio Decision

Notification of Decision Taken Under delegated arrangement



Portfolio: Housing Portfolio Holder

Decision Reference: HSG-029-2009/10

Subject: DELEGATED AUTHORITY - SALE OF GARAGES

Decision Taken: 6 APRIL 2010

1. That, on request, isolated Council-owned garages, which are located immediately adjacent to an existing residential property be sold to the owner of the adjacent property (regardless of its orientation to the property), provided they are the garage tenant, or the garage is vacant and the owner is the next eligible garage applicant;
2. That any sale of an isolated garage be subject to a restrictive covenant being included in the sale agreement preventing any change of use;
3. That the full open market value be paid for any garage sale, and that this be non-negotiable;
4. That the Director of Housing be granted delegated authority to sell isolated garages in accordance with the policy; and
5. That garages not be sold if they form part of any garage block.

Call-in deadline: 22 Apr 2010

Full details of the portfolio decision can be found in the accompanying document(s) to this decision. These can be found at the bottom of the web page for this decision.

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Decision by Portfolio Holder



Report reference: HSG-012-2010/11
Date of report: 08-November-2010

**Epping Forest
District Council**

Portfolio: Housing – Councillor D Stallan

Author: Sally Devine (Ext) 4149 Democratic Services: Philippa Sewell

Subject: Private Sector Housing- Review of Delegated Authority for Officers.

Decision:

1. That the existing delegation to the Director of Housing and the Assistant Director of Housing (Private Sector and Resources) in relation to Private Sector Housing (Ref EX47) be amended by adding the following to the schedule of delegation:

‘ To authorise suitably qualified officers or specialist external personnel appointed by the Council, to exercise those functions relating to the management and provision of the private sector housing service as set out in Appendix A’,

2. That Section 215- 219 of the Town and Country Planning Act 1990 (as amended) and Section 196A-196C of the Planning and Compensation Act 1991 be added to the legislation listed in Appendix A of the Delegations

ADVISORY NOTICE: <i>A Portfolio Holder may not take a decision on a matter on which he/she has declared a prejudicial interest. A Portfolio Holder with a personal interest must declare that interest when exercising delegated powers.</i>	
I have read and approve/do not approve (delete as appropriate) the above decision:	
Comments/further action required:	
Signed:	Date:
<i>Personal interest declared by Portfolio Holder/ conflict of interest declared by any other consulted Cabinet Member:</i>	<i>Dispensation granted by Standards Committee: Yes/No or n/a</i>
Office use only: Call-in period begins:	Expiry of Call-in period:

**After completion, one copy of this pro forma should be returned to
Democratic Services IMMEDIATELY**

Reason for decision:

To confirm the existing routine for the Director and Assistant Director of Housing to authorise relevant officers within the Private Sector Housing Service of the Housing Directorate and any specialist external personnel appointed by the Council to have delegated authority to exercise their duties.

To ensure that the powers contained within the Town and Country Planning Act 1990 (as amended) to deal specifically with unsightly land and buildings affecting the amenity of an area; and the power held within the Planning and Compensation Act 1991 providing rights of entry are available for enforcement purposes.

Options considered and rejected:

There are no other options other than not to utilise the powers under the Town and Country Planning Act concerned. This would not be in the best interest of proper enforcement.

Background Report:

1. Part 25 of the Council's Constitution sets out the Schedules of Delegation from the Executive to Officers to enable them to undertake their duties without continual recourse to Cabinet or Portfolio Holders.
2. Within Part 25 is the list of delegations expressly given by the Leader of the Council known as Executive Delegations. Executive Delegation 47 (EX47 – see attached) delegates the Director of Housing and the Assistant Director of Housing (Private Sector and Resources) authority to exercise the statutory powers and duties set out in Appendix A (attached)
3. Currently, the Director and Assistant Director exercise their discretion by authorising Officers of the Private Sector Housing Team to carry out those functions relating to the management and provision of the Private Sector Housing Service on their behalf and it is proposed that the Schedule of Delegation should specify this.
4. The relevant officer will then have a 'Schedule of Officer Authorisation', signed by the Director of Housing, which reflects the powers set out in Appendix A which are appropriate for the post concerned. This will assist to prove in court, if necessary, that the officer is properly authorised
5. In addition to direct employees of the Council, specialist personnel are appointed from time to time to support existing staff and / or carry out specific tasks. In these cases they too need to be given the appropriate delegated authority to exercise functions on behalf of the Council for the period of their appointment.
6. As previously mentioned, Appendix A details the list of legislative powers delegated to the Director of Housing and Assistant Director of Housing (Private Sector and Resources). Approval is being sought to add the provisions of Section 215 – 219 of the Town and Country Planning Act 1990 (as amended) and Section 196A-196C of the Planning and Compensation Act 1991 to Appendix A. Likewise a further delegated authority to the relevant Portfolio Holder is proposed to allow these changes to be approved in the future.
7. Section 215 – 219 of the Town and Country Planning Act 1990 (as amended) allows a local authority a discretionary power to take steps to require land (including buildings) to be cleaned up when its condition adversely affects the amenity of an area. Section 196A-196C of the Planning and Compensation Act 1991 gives authorised officers the right of

entry onto land for enforcement purposes .The legislation can be used in respect of large vacant industrial sites, town centre frontages, derelict buildings and more appropriately for Private Sector Housing, rundown residential properties, including empty properties and overgrown gardens. The scope of the works that can be required is wide and may include clearance, tidying, demolition, re-building, external repairs and repainting.

8. This legislation is particularly useful to officers dealing with problematic empty properties which are left neglected, fall into disrepair, become unsightly and may attract vandalism and fly tipping. Taking enforcement action under the proposed legislation will secure improvements to the external appearance of the property and hopefully focus the owner into providing a long term solution into bringing the property back to use.

Resource Implications: There may be cases where works required by statutory notice are not complied with and are initiated in default by the Council. If the costs cannot be recovered immediately they will remain as a charge on the property until such time as the costs are paid or the property sold. However, in the case of empty properties, specific monies are currently available through the PLACE scheme (funded by Central Government grant), to absorb the complete costs incurred by the Council in carrying out enforcement works in default.

Legal and Governance Implications: Changes to Part 25 of the Council's Constitution as it applies to Executive Delegated Authorities. Any decisions to embark upon legal action will, in accordance with existing arrangements, be subject to review by the Director of Corporate Support Services and will rely on properly drafted delegated authorities.

Safer, Cleaner and Greener Implications: The additional delegated power will enable officers to deal more effectively with the unsightly appearance of buildings and land and will assist in encouraging owners to bring empty properties back to use. This is in accordance with the Council's 'Safer, Cleaner, Greener' strategy

Consultation Undertaken: None

Background Papers: Town and Country Planning Act 1990 Section 215 (Best Practice Guidance)

Impact Assessments:

Risk Management

Equality and Diversity:

Did the initial assessment of the proposals contained in this report for relevance to the Council's general equality duties; reveal any No potentially adverse equality implications?

Where equality implications were identified through the initial assessment process, has a formal Equality Impact Assessment been N/A undertaken?

What equality implications were identified through the Equality Impact Assessment process?

N/A

How have the equality implications identified through the Equality Impact Assessment been addressed in this report in order to avoid discrimination against any particular group?

N/A

Key Decision Reference (Y/N): No

Appendix A

SCHEDULE OF DELEGATION TO OFFICERS

Building Act 1984

Sections 59-62; 63; 64; 66; 67; 68; 70; 71; 76; 79; 84-85; 91-115.

Caravan Sites & Control of Development Act 1960

Sections 1; 2; 3; 4-5; 8-11; 12; 23; 24; 25; 26.

Caravan Sites Act 1968

Sections 3; 14.

Civil Evidence Act 1995

Section 9.

Clean Neighbourhoods & Environment Act 2005

Sections 102; 103.

Criminal Procedure & Investigations Act 1996

Section 26.

Environmental Protection Act 1990

Sections 79-82; Schedule 3

Home Energy Conservation Act 1995

Sections 2; 5.

Home Safety Act 1961

Section 1.

Housing Act 1985

Sections: 17; 54; 265-275; 289; 290-297; 300- 306; 308; 309; 319; 320; 324- 340; 435-443; 523;

535-537; 540-542; 544-546; 584A; 584B; 596; 597; 609; 611; 617.

Housing Grants, Construction & Regeneration Act 1996

Sections: 1-3; 19; 21-24; 29-31; 34-44; 51; 52; 55-57; 95.

Housing Act 2004

Sections 4; 5; 7; 8; 10; 11; 12; 16; 17; 20; 21; 25-29; 31-32; 40-43; 46; 47; 49; 50; 55-62; 64-67; 69; 70; 73; 74; 102-107; 110-113; 115; 116; 121; 122; 127; 129-131; 133; 136-140; 144; 210; 225, 232; 232-236; 239; 243; 255; 256.

Landlord & Tenant Act 1985 -

Sections 1; 2; 4; 8; 11; 12; 20; 34.

Local Government Act 1974

Section 36

Local Government & Housing Act 1989

Sections 89-93; 95; 97; 169.

Local Government (Miscellaneous Provision) Act 1976

Section 13; 15; 16; 33; 35.

Local Government (Miscellaneous Provision) Act 1982

Sections 27; 29; 30; 31; 32; 33; 37; 41.

Prevention of Damage by Pests Act 1949

Sections 4-7; 10; 22; 26.

Protection from Eviction Act 1977

Sections 6; 7.

Protection from Harassment Act 1997

Sections 1; 6; 7.

Public Health Act 1936

Sections 1; 45; 48-50; 83; 84-87; 264; 265; 268-270; 275; 276; 278; 284; 287; 290; 291; 293; 298.

Public Health Act 1961

Section 17; 22; 34; 36; 37; 73; 74.

Regulation of Investigatory Powers Act 2000

Section 3; 5; 11; 43; 45; 47; 49; 58; 72.

Report to the Overview and Scrutiny Committee



Date of meeting: 11 April 2011

Report of Constitution and Member Services SSP

Subject: Review of Contract Standing Orders (CSOs)

Chairman: Councillor Mrs McEwen

Recommending:

That a report be submitted to the Overview and Scrutiny Committee and the Council recommending:

- (a) that the schedule of amendments to Contract Standing Orders set out in the Appendix to this report be approved; and**
- (b) that the proposed changes to CSOs C4(1)(g) (Contract Renewals) and C7(6)(a) (Ad Hoc Tender Lists) be reviewed in 2012/13; and**
- (c) that Contract Standing Orders and Financial Regulations be reviewed in alternate years in future, viz**

2011/12 – Financial Regulations

2012/13 – Contract Standing Orders

1. Introduction

- 1.1 This report deals with our annual review of Contract Standing Orders on which a cross-directorate Officer Working Party submits recommendations for changes to Contract Standing Orders. The Working Party's report also made recommendations on future reviews and the need for new officer guidance and training.

2. Review of Contract Standing Orders

- 2.1 The Appendix to this report sets out detailed changes to Contract Standing Orders arising from this year's review. The Appendix excludes a number of minor textual changes (renumbering, typographical errors and various cross references) which can be made by officers when the Contract Standing Orders are prepared for publication.
- 2.2 None of the changes proposed represent fundamental differences with the version which has been in use for a number of years. The Panel's attention is however drawn to the more significant proposals, namely:

- (a) provision for tender acceptance terms to be agreed in advance avoiding the need for the Cabinet or a Portfolio Holder to accept tenders (C19(2));

(b) introduction of a 10% tolerance when comparing pre-quotation estimates with the value of quotations received in determining whether a Portfolio Holder needs to accept the lowest tender (C20(3));

(c) transfer of responsibility for approving ad hoc tendering lists from Portfolio Holders to Chief Officers so as to maintain confidentiality (C7(6)(a));

(d) more controls on sub-contracting by main contractors; and

(e) definition of "arithmetical errors" in relation to C7(6)(a) (Ad Hoc Tenders).

2.3 The changes recommended under 2.2(a) and (e) above are proposed to be reviewed again in 2012/13 to assess whether these have been effective.

3. Guidance and Training for Staff Engaged in Procurement

3.1 The review of Contract Standing Orders was accompanied by the usual consultation with Directorates. Although some changes resulted from this feedback, the main message received by the Officer Working Party was that improved guidance on procurement is required. The Essex Procurement Hub is now available to the Council but there remains some lack of clarity as to how Contract Standing Orders relate to that system.

3.2 The Officer Working Party is now working on a flowchart which will be an operational document, guiding procurement officers through the steps and choices in the process. It will also be used as an on line training aid. We were happy to support this initiative.

4. Future Reviews of Contract Standing Orders and Financial Regulations

4.1 We were advised that reviews of Contract Standing Orders and Financial Regulations are currently carried out once a year. In the case of Financial Regulations, very few changes have arisen in recent years. For Contract Standing Orders, there has been a number of changes but this trend is now regarded as counter-productive in some ways because the various changes have merely served to increase the need for clarification with relevant staff.

4.2 We recommend that reviews of Financial Regulations and Contract Standing Orders should be in alternate years, with the next review of Contract Standing Orders taking place in 2012/13 and Financial Regulations during 2011/12. This will provide more stable rules and give greater weight to training and guidance as the means of dealing with problems. Procurement via Contract Standing Orders will increasingly be secondary to use of the Essex Procurement Hub and our view is that the Council should not need to review these procedures so often.

4.3 Changes to Contract Standing Orders require an amendment to the Constitution, requiring approval of this Committee and the Council. We therefore recommend as set out at the commencement of this report.

REVIEW OF CONTRACT STANDING ORDERS (CSOs)

CSO Number/Subject	Present Wording	Proposed Amendment	Comments
C1(6)(a) (Definitions)	“For the purposes of these Standing Orders, the expression (a) “Chief Officer” means the Chief Executive, the Deputy Chief Executive or a Service Director.”	ADD “Assistant Service Director”	To reflect current operational practice and Directorate delegation arrangements.
C1(12) (Definitions)	“These Contract Standing Orders apply to procurement of goods and services...”	DELETE “goods and services”. SUBSTITUTE “goods, services or works”.	To clarify the range of activities involved.
C2(1) (Selection of Tendering Method)	“(1) A chief Officer is required, prior to the invitation of tenders or quotations, to determine the correct procurement procedure in accordance with the provisions of Standing Orders, based on the best estimate available at that time of the contract sum.”	ADD new paragraph (to be numbered (2)) as follows: “(2) A Chief Officer who is of the opinion that tenders or quotations are only likely to be available from a single source, shall compile and record auditable evidence which justifies his or her decision not to pursue procurement by competition.”	Single source procurement is not available as an option in Contract Standing Orders. However, the new paragraph (2) introduces this means of procurement as this situation does arise in practice. The Chief Officer is required to compile evidence which justifies his or her decision.
C4 (1)(g) (Contract Renewals)	“Where the Council has procured services, supplies or works through a competitive process and the services, supplies or works are considered to represent best value in terms of quantity and price, then the relevant Chief Officer should be enabled to continue for a period of no more than 4 years... to appoint that service provider...”	DELETE: “4 years” and SUBSTITUTE: “2 years”	Contract renewals over a period of up to 4 years put value for money at risk due to changes in the market. Renewals should be limited to two years only, after which the market should be tested once more. This change should be subject to further review in 2012/13 when CSO’s are recommended to be reviewed again.

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CSO Number/Subject	Present Wording	Proposed Amendment	Comments
C4 (3) (Notification of Contracts to Chief Internal Auditor)	“Chief Officers will notify the Chief Internal Auditor of all individual purchases and contracts... over £25,000 in value whatever the period of the contract...”	ADD new sentence to C4(3) as follows: “These requirements shall apply equally to procurement under the Essex Procurement Hub or Contract Standing Orders.”	Additional reference to the Essex Procurement Hub is to clarify that all contracts are to be notified.
C6(1) (Restricted Tendering – for Contracts Exceeding £50,000 in Value)	“... A Chief Officer will resolve that invitation to tender for a contract be limited to those persons or bodies whose names are on Constructionline...”	ADD new paragraph to C6 (to be numbered (1)) as follows: “(i) For the purposes of this Standing Order restricted tendering is defined as any procurement where large numbers of applicants to join a tendering process are anticipated. Such tendering arrangements will consist of: (a) the pre-qualification stage – where potential suppliers are required to demonstrate their financial standing and technical ability to meet the Council’s requirements. Account will be taken at this stage of the potential suppliers’ past performance experience in equivalent contracts with the Council or similar bodies, health and safety, environmental and equality procedure checks and any references thought appropriate. (b) the tendering stage – where suppliers shortlisted at the pre-qualification stage are invited to tender.	Definition of “restricted tendering” will assist interpretation of requirements by Chief Officers.

CSO Number/Subject	Present Wording	Proposed Amendment	Comments
<p>C7(6)(a) (Ad Hoc Tender Lists – Contracts over £2 million)</p>	<p>“After the expiry of the period specified in the public notice and the contract notice, invitations to tender for the Contract shall be sent to</p> <p>(a) not less than five persons or bodies who have applied for permission to tender and who have been selected as suitable by the appropriate Portfolio Holder”</p>	<p>DELETE: “Portfolio Holder” in (a) and</p> <p>SUBSTITUTE: “Chief Officer”</p> <p>ADD after “Portfolio Holder” the following:</p> <p>“but only in respect of contracts valued in excess of £50,000 but less than the EU procurement thresholds”</p> <p>NB A clerical amendment of “four” to “ five” will be made.</p> <p>ADD new paragraph 6(d) as follows:</p> <p>“(d) In exercising their delegated authority under paragraph (a) above, Chief Officers will record the criteria used in decisions on the ad hoc list of tenderers and be required to supply a copy to the Chief Internal Auditor for audit purposes.</p>	<p>C7(6)(a) relates to approval of ad hoc tendering lists after public notice. Authority is currently required from Portfolio Holders but it is recommended that this should be amended to refer to the appropriate Chief Officer. This will avoid premature disclosure of the list of competitors via the Portfolio Holder decision process. Clarification of the contracts which are involved is also recommended, namely those contracts above £50,000 in value but below the EU limit</p> <p>It is proposed that a new paragraph (d) be added requiring Chief Officers to record their decisions for audit purposes.</p> <p>It is also recommended that this change in procedure be reviewed in 2012/13.</p>
<p>C8(2) (Open Tendering)</p>	<p>“For the purposes of this Standing Order, procedures should comply with the requirements of... C16 (Opening of Tenders)”</p>	<p>ADD new paragraph (to be numbered (3)) as follows:</p> <p>“(3) The procedures for the opening of tenders may be varied in accordance with CSO 19 (relating to pre-tender estimates).”</p>	<p>To clarify that arrangements for tender opening and the circumstances where a Portfolio Holder need not supervise (see CSO 19 below).</p>

CSO Number/Subject	Present Wording	Proposed Amendment	Comments
C10(a)(1)(i)(Contractor Selection – All Contracts Valued at More Than £25,000)	<p>“(1) For contracts in excess of £25,000, under no circumstances shall an invitation to quote be given to any person or body:</p> <p>(i) whose names do not appear on Constructionline unless the trade required is not included on Constructionline...”</p>	DELETE (i)	This section is unduly restrictive and does not reflect the procurement options available via the Essex Procurement Hub and Contract Standing Orders. Constructionline remains an option for some types of contract.
C12 (Sub Contractors and Nominated Suppliers)	ADD NEW PARAGRAPH TO BE NUMBERED (3)	ADD new paragraph as follows: “(3) Any contractor appointed by the Council to perform any contract shall not appoint a Sub Contractor to perform any part of that contract or any supplier without the prior written consent of the Council”.	This Contract SO relates to a Sub Contractor or supplier which may be nominated by the relevant Chief Officer to the appointed contractor. Any such Sub Contractor or supplier may only be nominated by the Chief Officer if competitive quotations are obtained in according with contract standing orders. At present this CSO does not deal with a main contractor who wishes to sub contract. The proposed amendment is proposed in order to require that any such appointment is approved in advance by the Council.
C14(1) (Appointment of Consultants)	“... The Council’s standard forms of appointment for consultants shall apply in all cases unless the Director of Corporate Support Services directs otherwise. These are set out on the Council’s intranet.”	ADD new sentence at the conclusion of paragraph (1) as follows: “All Chief Officers shall be required to take advice from the Council’s legal staff on the form of contract to be used and specific provisions to be included therein before any contract is executed.”	Places a responsibility on Chief Officers to consult fully with legal staff throughout the contract process so as to avoid complications at a later stage.

CSO Number/Subject	Present Wording	Proposed Amendment	Comments
C14(2) (Engagement of Consultants)	“The engagement of consultants shall be in accordance with Standing Orders...”	ADD reference in (2) to C14(1) (Legal Advice on Contracts) – see preceding item	Ditto
C18 (Alterations)	<p>“(a) Quotations and tenders shall not be altered after the date stipulated for their return, save that the relevant Chief Officer shall permit correction of arithmetical errors if he is satisfied that such errors were made inadvertently.</p> <p>(b) If an error is identified before the closing date for the return of tenders, all the tenderers shall be informed of the error and invited to adjust their tenders.</p> <p>(c) If an error in the specification is identified after the closing date for the return of tenders, all tenderers shall be given details of the error and afforded the opportunity of withdrawing the offer or submitting an amended tender.”</p>	<p>ADD following note after (c):</p> <p>“NOTE: For the purposes of paragraph (a) above the term “arithmetical error” is defined as an error in addition, subtraction, multiplication or division which has no impact on the results of the tendering exercise. Where omissions or similar errors occur in the tender which, if corrected would change the outcome of the tendering exercise, such corrections will not be undertaken except as a result of further consultation with all tenderers. “</p>	Definition of what is an arithmetical error would assist in the interpretation of this CSO. Arithmetical error should not include errors which affect the value of the tender (e.g. major omissions from the costed tender specification).

CSO Number/Subject	Present Wording	Proposed Amendment	Comments
<p>C19(2) (Acceptance of Quotations £25,000 - £50,000)</p>	<p>“(1) A Chief Officer may accept the lowest quotation received in respect of a contract not exceeding £50,000 in value or amount; a quotation other than the lowest received shall not be accepted until the relevant Portfolio Holder has considered a report...”</p> <p>(2) Paragraph (1) above shall not apply where: ...</p>	<p>ADD new paragraphs (to be numbered (2)(c) and (d)) as follows:</p> <p>“(c) the relevant Chief Officer has obtained approval in advance of the terms under which quotations will be accepted from the Cabinet or the relevant Portfolio Holder and acceptance of a quotation is fully in compliance with that decision.</p> <p>(d) in cases where quotations received exceed the limit of £50,000, provided that the lowest quotation exceeds the pre-contract estimate by no more than 10%</p>	<p>Currently C19(2) requires a Chief Officer to obtain the approval of the Portfolio Holder if other than the lowest price quotation is to be accepted.</p> <p>This applies to quotations in the range of £25,000 - £50,000. To avoid delays in letting contracts, it is recommended that, provided that the Chief Officer has agreed the terms of acceptance in advance including the basis of evaluation and the proposal to accept a tender other than the lowest accords with those terms, the Chief Officer may make the decision.</p> <p>New paragraph (d) would enable the Chief Officer to accept the lowest quotation even if it exceeds the £50,000 limit, provided it is no more than 10% above the pre-tender estimate.</p>
<p>C20(3) (Acceptance of Tenders – Contracts Exceeding £50,000)</p>	<p>“(3) A tender other than the lowest received may only be accepted after acceptance by the Cabinet or the Council on the recommendation of the appropriate Chief Officer to the Portfolio Holder concerned.”</p>	<p>AMEND first sentence of (3) by the addition of the following:</p> <p>“... unless the terms for accepting a tender have been approved in advance and the acceptance of other than lowest tender is fully in compliance with that approval.”</p>	<p>See above.</p> <p>The same exception is applied to tendering for contracts in excess of £50,000. Contracts over £1 million are excluded however as still requiring Cabinet or Council approval.</p>



SCRUTINY



Report to Safer, Cleaner, Greener Scrutiny Panel

Date of meeting: 7th April 2011

Subject: Home Office Consultation – “More effective Responses to Anti-Social Behaviour”

Officer contact for further information: C Wiggins

Committee Secretary: A Hendry

Recommendations/Decisions Required:

- (1) To note the receipt of the Home Office consultation paper on more effective responses to Anti-social Behaviour;**
- (2) To consider responses to the questions set by the consultation document; and**
- (3) To make appropriate recommendations to the Overview & Scrutiny Committee.**

Report:

Introduction

1. On the 7th February 2011 the Home Secretary, Theresa May MP, launched a consultation document entitled “More Effective Responses to Anti-Social Behaviour”. This consultation follows the Government’s stated intention to review the way anti-social behaviour is dealt with by police and professionals and to ensure they have the tools and powers they need to deal with this type of behaviour providing the type of service that local communities wish to see.

2. The consultation runs until the 3rd May 2011, and this Panel’s responses will go forward to Overview and Scrutiny Committee on the 11th of April. The Community Safety Partnership may also choose to submit its own response as well as individual partners within the partnership, such as the police.

3. The consultation document is divided into six parts and the report which follows sets them out with a summary of the main issues. The full consultation document has been circulated with the agenda. The consultation document poses a number of questions, which are set out in tabulated form towards the end of the report, with suggested responses for discussion and consideration.

The Consultation

Chapter 4.1 The Criminal Behaviour Order

The Government proposes to streamline many of the varied statutory powers currently available to deal with all forms of ASB. The proposed powers are designed to cut bureaucracy and improve effectiveness and flexibility in dealing with complaints. They are designed to be used against persons who are above the age of criminal responsibility, that is 10 years and above.

Chapter 4.2 The Crime Prevention Injunction

This will be a civil order available on conviction for any criminal offence. It will include both prohibitions and support to stop ASB. It will be very similar to the ASBO with breaches dealt with in the same way. Maximum penalty for breach proposed is 5 years imprisonment.

Chapter 4.3 The Community Protection Order

Community Protection Order Level 2 (CPO)

This power will be available to police and local authorities to restrict the use of a place or close premises linked to persistent ASB. Breaches would be a criminal offence.

This power replaces Dog Control Order, Gating Order, Designated Public Place Order, Premises Closure Order, Crack House Closure Order and Brothel Closure Order.

Community Protection Order Level 1 (CPO)

This power will relate to council and housing association staff. It will take the form of a notice to stop persistent ASB affecting quality of life. It will carry a financial penalty for non-compliance together with other sanctions such as the power to seize noise making equipment.

This power will replace Litter Clearing Notice, Noise Abatement Notice and Graffiti/Defacement Removal Notice.

Chapter 4.4 Police Direction Power

This power allows any police officer to direct any individual causing or likely to cause crime and disorder away from a particular place and confiscate relevant items, such as alcohol. It will be available to police and PCSOs. The power will exclude individuals from a defined geographic area for up to 48 hours. It would also include the power to return home youths under 16.

This power would replace the Direction to Leave (Section 27 Violent Crime Reduction Act 2006) and Groups Dispersal Order.

Chapter 4.5 Informal tools and out-of-court disposals

Home Office and Ministry of Justice are exploring informal tools for dealing with ASB taking a more rehabilitative and restorative approach. This would require greater community engagement to make enhance the restorative approach. For example by introducing Acceptable Behaviour Contract (ABC) piloting panels chaired by trained local volunteers. Restorative solutions for low level ASB which would address community issues would take perpetrators outside the criminal justice system providing immediate and proportionate responses and saving time and money.

A Green paper proposes amending the Penalty Notice for Disorder (PND) scheme to allow suspects to pay to attend appropriate educational courses as an alternative to paying a financial penalty.

It is proposed to end the current system of automatic escalation of out of court disposals for young persons (under 18). It is proposed to return discretion to front line professionals which will slow the pace of young persons being put into the court and custody more rapidly than should be the case. Out of court disposals for young people will include restorative sanctions with consequences for non-compliance.

Chapter 4.6 The Community Trigger

This will be a new power given to local residents to ensure ASB is being dealt with by the relevant authorities in their area. It would apply when:-

- 5 different households in the same area complained about the same ASB and no action is taken; **or**
- The ASB has been reported to authorities on 3 separate occasions and no action has been taken; **and**
- A CSP could reject the complaint if it was deemed to be malicious.

Complaints meeting this criteria would trigger a collective duty on the statutory partners of the CSP to take action and address the problem. Any proposed planned responses would have to be sent to the Police and Crime Commissioner (PCC).

Consultation Responses

Each chapter of the consultation has within it a number of questions. These, with some suggested responses, are set out in following table. The responses have been put forward from a district council perspective and not from that of the Community Safety Partnership which may well have a different response in some areas.

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More effective responses to anti-social behaviour – Home Office proposals on changes to legislation

Section 4: Reforming the toolkit

Q1	<i>What do you think of our proposals for reform? In particular, do you think merging existing powers into the new orders proposed is a good idea?</i>	Legislation available currently has been around for some time and is well known. Some of the proposed legislation appears to be change for change sake. The Criminal Behaviour Order is an ASBO by another name. It has become more confused by trying to introduce positive conditions which all have to be resourced. In times of tight fiscal budgets this is unlikely to generate positive conditions as there will be no-one to monitor and manage them
Q2	<i>Are there other tools and powers for dealing with anti-social behaviour you think should be repealed? If so, why?</i>	No
Q3	<i>Do you think these proposals will reduce bureaucracy for front line professionals? Will they have other benefits as well?</i>	It is unlikely that these proposals will reduce bureaucracy particularly in the court environment.
Q4	<i>Do you think there are risks related to the introduction of any of the new orders?</i>	There needs to be consistent application of the new tools and powers nationally so as not to de-value their effectiveness by scatter-gun type use. This means some accurate guidelines on their use. When ASBOs were initially introduced they were subject to target quotas which were set by government. This quotas immediately devalued ASBOs as many applications were poorly thought through and were made to hit a target. This also produced negative publicity and an opportunity to restore public confidence was lost. Courts became more demanding on the standard of evidence that was required as a result.
Q5	<i>Do you think these proposals risk particular groups being disadvantaged in a disproportionate way? If so, how?</i>	No more than already exists, that is to say young people can be disadvantaged by ASB legislation and therefore any use of the powers would need to be closely monitored for justification and proportionality.

Q6	<i>Because community safety is a nondevolved matter in Wales, are there any specific issues there that should be recognised</i>	N/A
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4.1: Criminal Behaviour Order

Q 1	<i>What do you think of the proposal to create a Criminal Behaviour Order?</i>	This is very similar to an ASBO on conviction. The ASB is proved to the criminal standard on the guilty finding of committing a crime and therefore negates the need to provide witness testimony from those who may have been intimidated or threatened by the actions of the perpetrator. The difference seems to be the introduction of positive conditions into the CBO. This would require resources to oversee and monitor. In times of strict budget control positive conditions are only likely to succeed if there is provision to oversee and manage them.
Q2	<i>Thinking of existing civil orders on conviction, are there ways that you think the application process for a Criminal Behaviour Order could be streamlined?</i>	There does not seem to be a provision for applying for ex-parte urgent interim orders to provide a degree of immediate control on serious cases of ASB, particularly when involving vulnerable victims. Urgent interims although not streamlining the process do provide an opportunity for immediate action.
Q3	<i>What are your views on the proposal to include a report on the person's family circumstances when applying for an order for someone under 16?</i>	This would appear to be similar to pre-sentence reports that are ordered by a court. It is not clear who would carry out the writing of such a report and whether they would be independent to the partner organisations applying for the order. This may cause undue delay and also a conflict with the reasons for the application. There may be some professional conflicts of interest.
Q4	<i>Are there other civil orders currently available on conviction you think should be incorporated in the Criminal Behaviour Order? (for example the Drinking Banning Order)</i>	Drinking Banning Orders are part of a large amount of specific legislation which would be easy to incorporate into a CBO. This is particularly the case if there are to be positive conditions. DBOs are not widely used as they cannot be obtained against alcohol dependant individuals.

Q5	<i>Should there be minimum and maximum terms for Criminal Behaviour Orders, either for under 18s or for over 18s? If so, what should they be, and should they be different for over or under 18s?</i>	There needs to be minimum terms for CBOs, both for under 18 and over 18 particularly when there is a support plan concerning positive conditions. This will allow support agencies to engage with the individual and a sanction that can be applied should there be a lack of co-operation on the perpetrator's part. The CBO is there to convince a perpetrator to moderate his or her behaviour and therefore should be in place until that behaviour is moderated to the satisfaction of the court.
Q6	<i>Should the legislation include examples of possible positive requirements, to guide applicant authorities and the courts?</i>	This would provide guidelines to applicants and also identify a consistency nationally in the type of positive requirements required. Many support orders are not applied for now as there are insufficient resources to manage them.
Q7	<i>Are there examples of positive requirements (other than formal support provided by the local authority) which could be incorporated in the order?</i>	
Q8	<i>Do you think the sanctions for breach of the prohibitive elements of the order should be different to those for breach of the positive elements?</i>	Sanctions applied to any breach should be the same this will provide a consistent standard and unnecessary complication of the legislation. It will also be easier for the perpetrator to understand.
Q9	<i>In comparison to current orders on conviction, what impact do you think the addition of positive requirements to a Criminal Behaviour Order will have on the breach rate?</i>	If the positive aspects of the order are properly resourced this may have an effect of reducing the breach rate. Positive requirements will only have a positive effect if they are properly resourced. Most orders on conviction are used as a last resort when all other interventions have failed and therefore are needed to provide some degree of public protection, this normally means that the individual is highly likely to breach. The CBO would not require the proof of other interventions being tried and failed and this may address behaviour quicker. However, this may create a practice of applying for a CBO before trying less intrusive but just as effective interventions. It is not the intention to unnecessarily criminalise members of the community by not taking a proportionate response. Members of some organisations could

		abuse this process which would eventually lead to a de-valuation of the effectiveness of the order through misuse and therefore additional requirements from the court before the order was granted generating more bureaucracy.
Q10	<i>In comparison to current orders on conviction, what do you think the impact would be of the Criminal Behaviour Order on i) costs and ii) offending outcomes?</i>	Costs may increase, particularly where positive conditions need to be resourced. Offending outcomes may reduce should positive conditions be resourced and this in turn would reduce costs, so overall there may be cost neutral.
Q11	<i>In comparison to current orders on conviction, how many hours, on average, of police and practitioner time do you think it would take to prepare and apply for a Criminal Behaviour Order?</i>	Each order is different and it is impossible to give any quantitative response.

4.2: Crime Prevention Injunction

Q1	<i>What do you think of our proposals to replace the ASBO on application and a range of other court orders for dealing with anti-social individuals with the Crime Prevention Injunction?</i>	This would provide a more consistent and streamlined application
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Q2	<i>Which test should the court apply when deciding whether to impose a Crime Prevention Injunction – that the individual’s behaviour caused ‘harassment, alarm or distress’ or the lower threshold of ‘nuisance or annoyance’?</i>	The lower threshold of nuisance or annoyance would be easier to prove in court and would be understood by other departments such as housing and legal services who currently apply for injunctions.
Q3	<i>Do you think the Crime Prevention Injunction should be heard in the County Court or the Magistrates Court?</i>	The ability to hear the injunction at either venue would then allow for more high risk applications to be heard at Magistrates Court (sitting in their civil capacity) who have security arrangements already in place. Simple applications could be heard in County Court.
Q4	<i>If you think that the injunction should be heard in the Magistrates’ Court, do you think the Crime Prevention Injunction for those under the age of 18 should be heard in the Youth Court?</i>	If the court is sitting in it’s civil capacity it should make no difference.
Q5	<i>Should the Crime Prevention Injunction carry a minimum and/or maximum term. If so, how long should these be, and should they be different for over or under 18s?</i>	There needs to be minimum terms for CPIs, both for under 18 and over 18 particularly when there is a support plan concerning positive conditions. This will allow support agencies to engage with the individual and a sanction that can be applied should there be a lack of co-operation on the perpetrator’s part. The CPI is there to convince a perpetrator to moderate his or her behaviour and therefore should be in place until that behaviour is moderated to the satisfaction of the court.
Q6	<i>Should there be a list of possible positive requirements in the primary legislation to provide guidance to judges?</i>	This would provide guidelines to applicants and also identify a consistency nationally in the type of positive requirements required. Many support orders are not applied for now as there are insufficient resources to manage them.

Q7	<i>Are there examples of positive requirements (other than formal support provided by the local authority) which could be incorporated in the order?</i>	
Q8	<i>What are your views on the proposed breach sanctions for over 18s and for under 18s for the Crime Prevention Injunction?</i>	If the breach of a CPI occurred and was serious the circumstances of the breach may also include criminal offences which would need to be dealt with separately. Breach sanctions appear logical.
Q9	<i>In comparison to current tools, what do you think the impact would be of the Crime Prevention Injunction on i) costs and ii) offending outcomes?</i>	(i) No change. (ii) Unable to say
Q10	<i>What impact do you think the inclusion of positive requirements would have on the Crime Prevention Injunction breach rate?</i>	Unable to say at this stage.
Q11	<i>Thinking of other civil injunctions available, how many hours, on average, of police and practitioner time do you think it would take to prepare and apply for a Crime Prevention Injunction?</i>	Unable to answer.

4.3: Community Protection Order

Q1	<i>What do you think of the proposal to bring existing tools for dealing with persistent place-related anti-social behaviour together into a single Community Protection Order?</i>	Orders will be easier to secure as a considerable amount of diverse legislation dealing with individual situations can be confusing. This will definitely streamline the process and provide more consistency of approach when obtaining necessary evidence and presenting it to a court.
Q2	<i>Are there problems with the existing tools you think should be addressed in the Community Protection Order?</i>	
Q3	<i>Are there other existing tools you think should be included, such as a Special Interim Management Order?</i>	
Q4	<i>Who should be given the power to use a Level 1 Community Protection Order?</i>	Police, local authority, extended policing/local authority accredited officers
Q5	<i>In comparison to current tools, what do you think the impact of the Community Protection Order would be on (i) costs and (ii) offending outcomes?</i>	Not known
Q6	<i>In your area, is there any duplication of current orders issued to deal with the problems tackled by either level of the Community Protection Order? If so, could you indicate the extent of duplication.</i>	Not known

Q7	<i>What impact do you think the introduction of the proposed Community Protection Order would have on the number of orders issued?</i>	Not known
Q8	<i>Thinking of current orders to tackle environmental disorder, how many hours do you think it would take to prepare and issue a Level 1 Community Protection Order? Is this more or less than the time taken to issue current notices aimed at tackling the same problems?</i>	
Q9	<i>Thinking of the place-related orders that it would replace, how many hours do you think it will take, on average, to prepare, issue, and implement a Level 2 Community Protection Order?</i>	Not known

4.4: The Direction Power

Q1	<i>What do you think of the proposal to combine these existing police powers for dealing with anti-social behaviour into a single Directions power?</i>	These are likely to be more operationally effective and specifically targeted to a identified problem. There would be no consultation requirements as with the current Groups Dispersal Order due to the fact that the power would only be exercised when there was a specific problem.
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Q2	<i>Do you think the power should be available to PCSOs as well as police officers?</i>	PCSOs can currently seize alcohol but cannot carry out arrests. If PCSOs are to exercise this power they must have the ability and means to enforce it. This would mean a fundamental review of PCSO powers.
Q3	<i>What safeguards could be put in place to ensure that this power is used proportionately and does not discriminate against certain groups, particularly young people?</i>	Police to complete paperwork with the individuals details and reasons why they are being directed to leave. They should also be able to specify what areas are covered in the direction which would allow breaches to be proved. This should include a description of the action witnessed to issue the direction.
Q4	<i>What do you think would be the most appropriate sanction for breach of the new Direction power?</i>	Arrest. PND fine, prison
Q5	<i>Thinking of existing powers to leave a locality, how much police and local authority time do you think would be saved by removing the requirement of having a designated area from which to move individuals or groups from?</i>	Considerable amount of time would be saved particularly when instigating a Sec 30 Groups Dispersal application. Responses would be immediate and targeted and therefore proportionate to what they seek to achieve.
Q6	<i>What do you think the impact would be of removing the need for a pre-designated area on the volume of Directions issued?</i>	The benefit of a pre-designated area is that the public are notified through various newspapers, notice boards and web sites as to the intention to disperse, the reason to disperse, the locality the power will be exercised, the start date of the order and the consequences of non-compliance. The power is quite draconian and not particularly targeted. This will now be carried out by individual officers responding to events. However because the power is exercised as required it may reduce the number of directions issued.

Q7	<i>Do you expect there to be a change in the use of the Direction power (compared to the use of existing tools)? If so, what do you estimate the change would be and what proportion of the Direction powers used will be aimed at those under 18?</i>	The direction power is likely to be exercised more when needed and in a specifically targeted way making it more proportional to Human Rights issues.
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4.5: Informal Tools and Out-of-court disposals

Q1	<i>How do you think more restorative and rehabilitative informal tools and out-of-court disposals could help reduce antisocial behaviour?</i>	Informal tools when used in conjunction with housing powers and anti-social behaviour enforcement legislation can be compelling and persuasive. They can also make perpetrators face up to the consequences of their actions.
Q2	<i>What are the barriers to communities getting involved in the way agencies use informal and out-of-court disposals in their area?</i>	For communities to get involved this requires strong guidance and leadership from partner agencies to set structures. Community engagement could identify Neighbourhood agreements and priorities which communities could agree to manage. This may involve litter clearance, graffiti removal or grass cutting. Community pay-back schemes could be used to help this also engagement in Final Warning Clinics by those Neighbourhood Groups could set local restorative justice punishment for low level offending. This would engage communities in the problem setting objectives and problem solving outcomes.
Q3	<i>Are there any other changes to the informal and out-of-court disposals that you think could help in tackling anti-social behaviour?</i>	Far more involvement in reprimands and warnings with some form of community payback punishment as a condition of receiving the reprimand or warning.

4.6: The Community Trigger

Q1	<i>What do you think of the proposal to introduce a duty on Community Safety Partnerships to deal with complaints of persistent anti-social behaviour?</i>	CSPs can deal when they have the ability. If the complaint involved a lack of action from a registered social landlord this would allow the RSL to stand back and let the local authority, under their statutory responsibility, deal with the issues that should have been resolved by the RSL. There would also need to be the ability to filter out malicious complaints without committing too many resources to investigate.
Q2	<i>Do you think the criteria for the Community Trigger are the right ones? Are there other criteria you think should be added?</i>	No other criteria.
Q3	<i>Do you think this proposal risks particular groups being disadvantaged in a disproportionate way? If so, what measures could be put in place to prevent this?</i>	No.

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