

REPORT TO: THE MORAY COUNCIL WEDNESDAY 2 JULY 2008

SUBJECT: BYELAWS

BY: CHIEF LEGAL OFFICER

1. REASON FOR REPORT

- 1.1 To provide an interim report on communications with the Scottish Government on byelaws regarding unauthorised encampments and the banning of the free issue of polythene carrier bags throughout Moray respectively.
- 1.2 This report is submitted to the meeting in terms of Section II(5) of the Council's Administrative Scheme relating to the enactment of byelaws.

2. RECOMMENDATION

- 2.1 **The meeting note the initial advice and, that communications continue with the Scottish Government. The outcome will be the subject of a further report once the Government has come to a final view.**

3. BACKGROUND

- 3.1 The Council at its meeting in July 2007 agreed to the promotion of a local byelaw to prohibit the overnight parking of cars, caravans etc on Council owned lands and parks within Moray unless such locations are authorised by the Council. The meeting also agreed that such a byelaw should not be implemented until the Council has an official travelling site in place (Para 5 of Minute of Meeting of 4 July 2007 refers).
- 3.2 The meeting of Council on 30 January 2008 considered a written question from Councillor J Hogg regarding the probability of Scottish Ministerial approval of a byelaw banning the free issue of polythene carrier bags throughout Moray. The meeting decided the most appropriate response to the question would be for the Chief Legal Officer to seek the advice and guidance of the Scottish Ministers in respect of both the expediency and legality of such a byelaw (Para 4 of the Minute of Meeting dated 30 January 2008 refers).

4. REPORT

UNATHORISED ENCAMPMENTS

- 4.1 The initial response of the Local Government Division of the Scottish Government is that Policy regarding the housing needs for gipsy/travellers is contained in Scottish Planning Policy 3 : Planning for Housing. The Consultation Draft Policy states that Planning Authorities such as Moray should identify suitable sites for gipsy and traveller sites and set out policies for dealing with Planning Applications for small privately owned sites. Moray's concern relates however to the enforcement of unauthorised encampments.
- 4.2 The Division's initial advice is that this concern could be addressed by the use of new planning enforcement provisions. The Scottish Government have been consulting on draft provisions which exclude the use of a Stop Notice against caravans being used as a main residence except when the Planning Authority considers "that the risk of harm to a compelling public interest arising from the stationing of the caravan is so serious so as to outweigh any benefit to the occupier of the caravan, in the stationing of the caravan for the period for which the Temporary Stop Notice has effect".
- 4.3 Enforcement powers relating to unauthorised development currently exist under the Town and Country Planning (Scotland) Act 1997 as amended by the Planning etc (Scotland) Act 2006. Enforcement of Planning controls primarily is the responsibility of the relevant Planning Authority. The 1997 Act sets out a range of powers available to enforce Planning control. Current powers allow Planning Authorities to issue a Stop Notice (in conjunction with an Enforcement Notice) requiring a developer to cease an activity. A Stop Notice must specify the date on which it takes effect which must generally be no later than 3 days after the date it is served.
- 4.4 Section 26 of the 2006 Act introduces new sections into the 1997 Act which provide Planning Authorities with the power to issue a Temporary Stop Notice as a means of speeding up and simplifying the procedure for stopping unauthorised development. These Notices are valid for up to 28 days and could be effective from the time they are served, without requiring an Enforcement Notice. Such a Notice would be valid for 28 days before a formal Enforcement Notice and Stop Notice would require to be served. There would be no right of appeal.

FREE ISSUE OF POLYTHENE CARRIER BAGS

- 4.5 The Local Government Division is in addition taking legal advice on the question of whether banning the free issue of polythene carrier bags throughout Moray can be judged in law to be a "nuisance" in terms of the Local Government (Scotland) Act 1973 and accordingly whether the Council would have the power to make a byelaw to this effect.

5. SUMMARY OF IMPLICATIONS

(a) Corporate Development Plan/Community Plan/Service Improvement Plan

None.

(b) Policy and Legal

Byelaws can be made by the Council under specific byelaw making powers contained in individual acts and under a General Byelaw Making Power at Section 201 of Local Government (Scotland) Act 1973.

In the case where the General 1973 Act powers are being used it should be noted that it is the Scottish Government's policy not to confirm byelaws unless management rules (Section 112 of the Civic Government Act 1982) have been tried and failed or there are good reasons for moving straight to byelaws.

Contact between the Scottish Government and Local Authorities is encouraged at the earliest possible stage. This allows the Scottish Government to advise whether it would be prepared to support the introduction of the byelaws in principle before any unnecessary work is undertaken by the Local Authority. For example, the proposed byelaws may duplicate existing legislation or may not be acceptable on policy grounds.

In law, byelaws need to be fair and reasonable.

(c) Resources (Financial, Risks, Staffing and Property)

None in terms of this interim report.

(d) Consultations

See paragraph 5(b) above regarding contact being made at the earliest possible stage between the Scottish Government and Local Authorities.

6. CONCLUSION

- 6.1 Contact has been made with the Scottish Government at the earliest possible stage and is ongoing to allow the Government to advise whether it would be prepared to support the introduction of the byelaws in principle before any unnecessary work is undertaken by the Council.**

Author of Report: Roddy Burns, Chief Legal Officer

Background Papers: Scottish Government Guidance Notes and the Minutes referred to.

Ref: RDB/SJ