

Report of:	Chief Executive; Head of Housing and Waste Mgmt.; and Head of Environmental Health
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Portfolio Leaders:	Crime and Partnerships; Housing; Environment
Key Decision:	No
Report Track:	Cabinet: 18/12/14

CABINET
18 DECEMBER, 2014
ANTI SOCIAL BEHAVIOUR, CRIME AND POLICING ACT, 2014

1 Purpose of Report

- 1.1 To consider the changes introduced by the Anti Social Behaviour, Crime and Policing Act 2014 and to outline the Council's role in delivering responses to these changes
- 1.2 To outline proposed amendments to the Council's Scheme of Delegations in order to ensure that the Council is positioned to deliver an effective and timely response

2 Recommendations

- 2.1 That in order that certain provisions of the Anti Social Behaviour, Crime and Policing Act, 2014 can be implemented, Cabinet authorise the delegations set out in Appendix 1.
- 2.2 That the single Fixed Penalty Notice fee of £100 is agreed.
- 2.3 That the extended application of the Dangerous Dogs Act, 1991 is noted.
- 2.4 That the following community trigger threshold for the District is agreed:
- “Three qualifying complaints to a statutory agency within a six month period, with the last incident being no longer than one month prior to the Trigger being requested”.

3 Key Issues and Reasons for Recommendation

- 3.1 The Anti Social Behaviour, Crime and Policing Act received Royal Assent in March 2014 and much of this Act came into force on 20th October 2014. This Act replaces previous anti social behaviour legislation and places new duties on Local Authorities.
- 3.2 Parts 1-7 of the Act have particular implications for Local Authorities and these are summarised in Section 5 of this report.
- 3.3 In order that certain provisions of the Act can be implemented it is necessary to amend the Scheme of Delegations in order that appropriate officers have the required authority to exercise its powers. A schedule of suggested changes is set out as Appendix 1.
- 3.4 The Act enables the Council to issue a Fixed Penalty Notice for offences involving a breach of a Community Protection Notice or a Public Spaces Protection Order in order to discharge a liability to conviction. The maximum penalty that can be imposed is £100 and this must be paid within 14 days of service of the FPN.
- 3.5 A lesser penalty may be imposed for early payment and it is for each authority to decide their penalty in the absence of statutory guidance. However, this is likely to give rise to a degree of confusion that will result in an additional administrative burden on the Council in connection with under or overpayment of the Penalty Fees.
- 3.6 A single Fixed Penalty fee of £100 is proposed with no discount for early payment
- 3.7 Part 6 of the Act concerns the “Community Trigger”, this is a mechanism for victims of persistent anti social behaviour to formally request a multi-agency case review. The Act places a statutory duty on relevant bodies, including Local Authorities to agree a threshold, criteria and mechanism for implementing the Community Trigger locally.

4 Relationship to Corporate Priorities

- 4.1 The new powers to respond to ASB will contribute to all service aims within the Crime and Partnerships section of the agreed 2014-15 “Place” Priority Delivery Plan

5 Report Detail

- 5.1 The Anti-Social Behaviour, Crime and Policing Act, 2014 replaces previous ASB legislation and places new duties on Local Authorities. Parts 1-7 of the Act are of particular relevance to the Council as follows:

5.2 Part 1 – Civil Injunctions

Part 1 of the Act makes provisions for civil injunctions for ASB. These replace the previous Anti Social Behaviour Orders (ASBOs) and will be available in County Court (adults) and the Youth Court (10-17 year olds). They will allow a range of agencies including the Police and Local Authorities to deal quickly with ASB.

An injunction would require the agreement of local organisations and it is proposed that the mechanism for raising an injunction be made through the Partnership “hub” meetings held weekly. The Police and Crime Commissioner has committed to funding all injunction applications made for the first year (once this process comes into effect in January 2015) subject to the application being raised through the agreed mechanism locally.

It is therefore proposed that the Chief Executive is authorised, through an amendment to the Scheme of Delegations, to raise and/or agree to an injunction through the proposed mechanism at the Partnership Hub meeting.

5.3 Part 2 – Criminal Behaviour Orders

Part 2 of the Act makes provision for an order on conviction to prevent behaviour which causes harassment, alarm or distress. Criminal Behaviour Orders (CBOs) replace Criminal ASB Orders (CRASBOs). CBOs will be available following conviction for any criminal offence and a breach of a CBO will be a criminal offence with a maximum prison terms of five years for an adult.

An amendment to the Scheme of Delegations is recommended to enable the Chief Executive to authorise an application for a Criminal Behaviour Order made through the agreed local mechanism.

5.4 Part 3 – Dispersal Orders

Part 3 of the Act contains powers for the police to disperse people causing, or likely to cause, harassment, alarm or distress. Any person required to leave a specified area under this power will not be permitted to return within a 48 hour period.

5.5 Part 4 – Community Protection Notices and Public Space Protection Orders

Part 4 of the Act contains powers for councils, the police and Registered Social Landlords (RSLs) to respond more rapidly and effectively by making/issuing:

- (i) **Community Protection Notices (CPNs)** which replace litter clearing notices, defacement removal notices and street litter control notices and can be issued to individuals and businesses causing anti-social behaviour that spoils a community’s quality of life.
- (ii) **Public Spaces Protection Orders (PSPOs)** deal with a nuisance or problem in a particular area which is detrimental to the local community’s quality of life by imposing conditions on the use of that area. The new

power also replaces the previous provisions regarding Gating Orders and Dog Control Orders.

- (iii) **Closure Notices/Orders** provide a two-stage process to address disorder and nuisance from licensed and non licensed premises. The Notice cannot last for more than 48 hours and may be followed by a Closure Order issued by the court and can last up to three months. Closure Notice/Order will automatically trigger premises reviews and replace s.161 and s.165 of the Licensing Act 2003

5.6 There are a number of gating orders, dog control orders and orders restricting consumption of alcohol operating in various areas across the District that will automatically expire on 20th October 2017. Should the Council wish to exercise similar controls moving forward, these will need to be in the form of Public Spaces Protection Order(s). Once an order is made it will be the subject of a formal 3 yearly review by the relevant committee in order to extend the order for it to remain in force.

5.7 It is not proposed to amend any existing orders at present.

5.8 **Part 5 – Absolute Grounds for Possession**

Part 5 of the Act amends section 84A of the Housing Act 1985, to provide a new absolute ground for possession for the most serious cases of anti-social behaviour. This came into effect on 20 October 2014.

The aim of the new absolute ground is to speed up the possession process where anti-social behaviour or criminality has already been proven by another court. As a result, a court must grant possession (subject to any human rights defence) provided that the landlord has followed the correct procedure and at least one of the following conditions has been met;-

- (i) The tenant, a member of the tenant's household, or a person visiting the property has been:
 - a. convicted of a serious offence (for example, murder, manslaughter specified offences against the person and the possession of controlled drugs with the intent to supply)
 - Or
 - b. Found by a court to have breached a civil injunction.
 - Or
 - c. Convicted for breaching a criminal behaviour order
 - Or
 - d. Convicted for breaching a noise abatement notice or order.
 - Or
- (ii) The tenant's property has been closed for more than 48 hours under a closure order for anti-social behaviour.

5.9 The process for seeking possession under the new absolute ground is similar to the process for ending introductory tenancies. Landlords are required to serve a notice of proceedings, (containing specified information), within 12 months of the

relevant conviction or court finding or within three months where a tenants home has been closed under a closure order. Council tenants then have the right to request a review of the decision within seven days of the notice being served.

- 5.10 Subject to the original decision being upheld by the review, the landlord can apply to court for a possession order. As previously stated, although tenants are entitled to a court hearing, the court must grant possession (subject to any human rights defence) provided that the landlord has followed the correct procedure.
- 5.11 The “statutory guidance for frontline professionals” (which accompanies the Anti-Social Behaviour, Crime and Policing Act, 2014) states that “the new absolute ground is intended for the most serious cases of anti-social behaviour and landlords should ensure that the ground is used selectively”. It is not therefore expected that the new absolute ground will be used extensively but in order that it can be used it is necessary to determine the review procedure which would be operated.
- 5.12 The Scheme of Delegations authorises the Head of Housing and Waste Management to hear and determine appeals in respect of introductory tenancies. As the possession process for the new absolute ground is similar to that for introductory tenancies, it is suggested that the Head of Housing and Waste Management is further authorised to consider any requests for a review of the decision to seek possession under the new absolute ground.

5.13 **Part 6 – Community Trigger**

Part 6 of the Act deals with the “Community Trigger”. The Community Trigger allows victims of persistent ASB to request a multi agency case review. The Act requires the relevant bodies to share information, discuss previous action taken and decide on any further action required. There is a statutory duty for a threshold, criteria and mechanism for the Community Trigger to be published. Applicants must be informed of the outcome and advised of the arrangements for reviewing the process if they are not satisfied.

- 5.14 The Act does not dictate what the criteria for meeting the Trigger threshold should be, however guidance on the Act has been used by local partners to propose the following requirement:

Three qualifying complaints to a statutory agency within a six month period, with the last incident being no longer than one month prior to the Trigger being requested.

A qualifying complaint is one that was reported within a month of the ASB occurring.

- 5.15 It is proposed that Council are requested to approve the suggested criteria for the Community Trigger.

5.16 Part 7 – Dangerous Dogs

Part 7 of the Act extends the scope of the Dangerous Dogs Act 1991 to deal with dogs that are “dangerously out of control” in all places, including dogs on private property with a specific exemption for incidents involving trespassers whilst inside or in the process of entering a dwelling.

5.17 The broad range of powers conferred in Parts 1 - 5 of the Act are available to address aspects of irresponsible dog ownership, including fouling, stray dogs and dog-on-dog attacks.

5.18 Fixed Penalty Notices

The Act enables the Council to issue a Fixed Penalty Notice for offences involving a breach of a Community Protection Notice or a Public Spaces Protection Order in order to discharge a liability to conviction. Fixed penalties will only be offered where it is considered appropriate to do so and in any case in line with the council’s adopted Enforcement Policy.

5.19 Subject to the FPN being paid in full within 14 days, the recipient is not liable to prosecution by the council for the relevant offence. If the FPN remains unpaid after the 14 days, the offender will normally be prosecuted by the Council in line with the Council’s adopted Enforcement Policy.

5.20 The maximum penalty that can be imposed is £100 and this must be paid within 14 days of service of the FPN.

5.21 A lesser penalty may be imposed for early payment and it is for each authority to decide their penalty in the absence of statutory guidance. However, this is likely to give rise to a degree of confusion that will result in an additional administrative burden on the Council in connection with under or overpayment of the Penalty Fees.

5.22 A single Fixed Penalty fee of £100 is proposed with no discount for early payment.

6 Implications

6.1 Financial

6.1.1 There are no direct financial implications for the Council as a result of this report; any costs being contained within existing approved budgets. Potential financial implications in relation to the future use of injunctions are set out in 5.2 of this report. At the time of writing, it is unknown whether the PCC will continue to fund injunctions beyond January 2016 and therefore there could potentially be cost implications for the Council in the future for which a further report would be required.

6.1.2 The imposing of the various Fixed Penalty Notices may result in some additional income for the Council, however as the number of fines imposed cannot be estimated then any additional income generated cannot be quantified at this moment in time.

6.2 Legal

The legal implications are contained within the report.

6.3 Human Resources

None

6.4 Section 17 (Crime Prevention)

Effective use of new powers available through the Act ensure that the Council meets its requirements under s.17

6.5 Human Rights Act

None

6.6 Data Protection

None

6.7 Risk Management

None.

6.8 Equality & Diversity

None.

6.9 Best Value

None

7 Appendices to the Report

Appendix 1 Proposed amendments to the Scheme of Delegations

Previous Consideration

Background Papers

Home Office: Reform of anti-social behaviour powers
statutory guidance for frontline
professionals

Appendix 1: Proposed amendments to the Scheme of Delegations

Function	Exercised By
<p>Part 1 Injunctions:</p> <p>Applications for an injunction/interim injunction/variation of an injunction/discharge of an injunction (Part 1, sections 5-8)</p> <p>Arrest warrant and prosecution of a breach of an injunction (Part 1, section 10)</p> <p>Application for arrest warrant and authority to prosecute</p> <p>Consultation on injunction (Part 1, section 14)</p>	<p>Chief Executive</p>
<p>Part 2 Criminal Behaviour Order</p> <p>Application for CBO/interim CBO/variation of CBO/discharge of CBO (Part 2, sections 23,26,27)</p> <p>Consultation with Youth Offending Team prior to application for CBO on under 18's (Part 2, section 29)</p> <p>Review of CBOs imposed on under 18's</p> <p>Duty to co-operate with Chief Officer of Police in review of orders imposed on under 18's (Part 2,sections 28-29)</p>	<p>Chief Executive</p>
<p>Part 4, Chapter 1 Community Protection Notices</p> <p>Issuing and consulting on CPN's prior to service. wer to issue community protection notices to persons over 16 or a body (Part 4, Chapter 1, Section 53)</p> <p>Obligation to inform anybody or individual that the serving officer sees fit prior to issuing a community protection notice (Part 4, chapter 1)</p> <p>Authority to take remedial action to comply with CPN</p> <p>Authority to undertake remedial action for failure to comply with a CPN (Part 4, Chapter 1, Section 47)</p>	<p>Relevant Head of Service</p> <p>Relevant Head of Service</p> <p>Relevant Head of Service</p> <p>Relevant Head of Service</p> <p>All Environmental Health Officers and</p>

<p>Power of entry in respect of CPN Power of entry to undertake remedial action work (Part 4, Chapter 1, section 47)</p> <p>Cost recovery for remedial action in default of CPN Issue of notice of costs to defaulter for remedial action (Part 4, Chapter1, section 47)</p> <p>Prosecution proceedings in respect of CPN Authorisation of proceedings for failing to comply with a CPN (Part 4, Chapter 1, section 48)</p> <p>Remedial order Application to court for remedial order (Part 4, Chapter 1, section 49)</p> <p>Seizing items involved in breach of CPN Seizure of items used in the commission of suspected offence under section 48 (Part 4, Chapter 1, section 51)</p> <p>Fixed Penalty Notice for non-compliance with CPN Service of FPN for offence of failing to comply with a CPN which is an offence under section 48 (Part 4, Chapter 1, section 52)</p>	<p>appropriately qualified Technical staff. Agents acting on behalf of the Authority expressly authorised by the relevant Head of Service</p> <p>Head of Service whose officers initiated the remedial action</p> <p>Head of Environmental Health</p> <p>Relevant Head of Service</p> <p>Environmental Health Officers, Technical Assistants and Enforcement Officers authorised in writing</p> <p>Environmental Health Officers, Technical Assistants and Enforcement Officers authorised in writing</p>
<p>Part 4, Chapter 2 Public Spaces Protection Orders</p> <p>Making a PSPO Power to make PSPO (Part 4, Chapter 2, section 59)</p> <p>Publishing PSPO Publishing of PSPO in accordance with regulations made by the Secretary of State (Part 4, Chapter 2, section 59 (8))</p> <p>Extension to PSPO Extension of PSPO beyond 3 years (Part 4, Chapter 2, section 60)</p> <p>Publishing extension to PSPO Publishing extension to PSPO beyond 3</p>	<p>Head of Environmental Health or Licensing and Public Protection Committee</p> <p>Head of Environmental Health</p> <p>Head of Environmental Health or Licensing and Public Protection Committee</p> <p>Head of Environmental Health</p>

<p>years (Part 4, Chapter 2, section 60) Publishing of extension to PSPO in accordance with regulations made by Secretary of State (Part 4, Chapter 2, section 60 (3))</p>	
<p>Variation and discharge of PSPO Variation and discharge of current PSPO (Part 4, Chapter 2, section 61)</p>	<p>Head of Environmental Health or Licensing and Public Protection Committee</p>
<p>Publishing of variation or discharge of PSPO Publishing of variation to or discharge of PSPO in accordance with regulations made by Secretary of State (Part 4, Chapter 2, section 61 (5)/section 61 (6))</p>	<p>Head of Environmental Health</p>
<p>Power in relation to consumption of alcohol Power to require a person not to consume alcohol or to require surrender of alcohol or containers for alcohol contrary to requirements of PSPO (Part 4, Chapter 2, section 63 (2))</p>	<p>Environmental Health Officers, Technical Assistants and Enforcement Officers authorised in writing</p>
<p>Authorisation of prosecution proceedings relating to PSPO for alcohol Authorisation for prosecution proceedings for failure to comply with a requirement to not consume alcohol or to require surrender of alcohol or containers for alcohol (Part 4, Chapter 2, section 63(6))</p>	<p>Head of Environmental Health and Chief Executive</p>
<p>Authorisation of prosecution proceedings for failure to comply with PSPO Authorisation of prosecution proceedings for failure to comply with anything either prohibited or required by a PSPO(Part 4, Chapter 2, section 67)</p>	<p>Head of Environmental Health and Chief Executive</p>
<p>FPNs for failing to comply with PSPO Power to issue a FPN for offences of not complying with a PSPO under section 63 (Consumption of alcohol in breach of an order) or section 67 (failing to comply with an order) (Part 4, Chapter 2, section 68)</p>	<p>Environmental Health Officers, Technical Assistants and Enforcement Officers authorised in writing</p>
<p>Convention rights, consultation, publicity and notification Duty to have regard to the rights of</p>	

<p>freedom of expression and freedom of assembly set out in articles 10 and 11 of the European Convention on Human Rights before making, extending, varying or discharging a PSPO Duty to carry out consultation, publicity and notification before making, extending, varying or discharging a PSPO</p>	<p>Head of Environmental Health</p>
<p>Part 4, chapter 3 – Closure of Premises associated with nuisance or disorder</p>	
<p>Power to issue closure notices for up to 24 hours Power to issue closure notices for up to 24 hours where use of particular premises has resulted, or is likely to soon result in nuisance to members of the public or there has been, or is likely to soon be, disorder associated with the use of the premises (Part 4, Chapter 3, section 76)</p>	<p>Chief Executive and Head of Environmental Health</p>
<p>Duty to consult prior to service of closure notice Duty to consult anybody or individual prior to service of closure notice (Part 4, Chapter 3, section 76 (6)) Power to extend closure notice beyond 24 hours to 48 hours (Part 4, Chapter 3, 76-77)</p>	<p>Chief Executive and Head of Environmental Health</p>
<p>Cancellation or variation of closure notice Power to vary or cancel a closure notice (Part 4, Chapter 3, section 78)</p>	<p>Originating Officer or in their absence the Chief Executive</p>
<p>Power of court to make closure orders Application to a magistrate’s court for a closure order within 48 hours of service of closure notice (unless closure notice has been cancelled) (Part 4, Chapter 3, section 80)</p>	<p>Head of Environmental Health</p>
<p>Entry to premises to fix closures orders Fixing closure orders in at least one prominent place on premises, to each normal means of access and outbuildings which appear to be associated with premises (Part 4, Chapter 3, section 79(2))</p>	<p>All Environmental Health Officers and appropriately qualifies technical staff. Agents acting on behalf of the Authority expressly authorised by the relevant Head of Service</p>
<p>Extension of Closure Orders Application to the court for an extension of</p>	

