
Subject: **IMPLEMENTATION OF THE ANTI-SOCIAL BEHAVIOUR, CRIME AND POLICING ACT 2014**

Meeting and Date: **Cabinet – 3 November 2014**

Report of: **Roger Walton, Director of Environment and Corporate Assets
David Randall, Director of Governance**

Portfolio Holder: **Councillor Susan Chandler, Portfolio Holder for Housing, Children's Services and Safeguarding, Youth and Community Safety**

Decision Type: **Key Decision**

Classification: **Unrestricted**

Purpose of the report: To inform Cabinet of the changes introduced by and potential implications of the Anti-social Behaviour, Crime and Policing Act 2014 and obtain approval for the recommendations.

Recommendation:

1. That Cabinet note the introduction of the Anti-social Behaviour, Crime and Policing Act 2014 and the changes that came into effect on 20th October 2014.
2. That the criteria for the anti-social case reviews, as presented in Appendices 11 - 12, are adopted and that arrangements be developed with neighbouring districts in order to meet the local review requirement.
3. That Cabinet recommend that the Leader of the Council makes the changes to the Council's Scheme of Officer Delegations as set out in the table at Appendix 13

1. Summary

1.1 The Anti-social Behaviour, Crime and Policing Act 2014 (the Act) received Royal Assent on 13 March 2014 and the most important aspects (with the exception of the civil injunction) took effect from 20 October 2014.

1.2 The Act replaces nineteen pre-existing measures with six new measures for tackling anti-social behaviour and these are detailed in Parts 1-6 of the Act. It also introduces a new absolute ground for possession of secure and assured tenancies associated with anti-social behaviour or criminality.

1.3 In making the above recommendations, consideration has been given to equality issues. It is not anticipated that this will adversely affect any of the protected groups.

2. Introduction and Background

2.1 The Anti-social Behaviour, Crime and Policing Act 2014 received Royal Assent on 13 March 2014. The Home Office aim is that reforms within the Act will *"put victims at the heart of the response to anti-social behaviour and give professionals effective powers that are quick, practical and easy to use, providing better protection for victims and communities and a real deterrent to perpetrators"*.

- 2.2 The type of anti-social behaviour the Act is aimed at is that which causes harassment, alarm, or distress. Such a wide range of behaviours means that responsibility for dealing with anti-social behaviour is shared between a number of agencies, particularly the police, councils and social landlords.
- 2.3 Victims can often feel helpless, particularly if their case is referred between agencies. In many cases, the behaviour is aimed at the most vulnerable in our society and even what is perceived as 'low level' anti-social behaviour, when targeted and persistent, can have devastating effects on a victim's life. Consequently, the Act introduces the Community Remedy, which gives victims a say in the out-of-court punishment of perpetrators for low level crime and anti-social behaviour, and the Community Trigger, which gives victims the ability to demand action, starting with a review of their case where the locally defined threshold is met. These measures are explained in more detail in Appendices 9 to 12.
- 2.4 The Act also repeals a range of earlier legislation, and as far as local authorities are concerned the most notable of these are the Crime and Disorder Act 1998 (Anti-social Behaviour Orders), the Criminal Justice and Police Act 2001 (alcohol consumption in designated public places), Anti-Social Behaviour Act 2003 (closure of premises, dispersal of groups, removal of graffiti) and Clean Neighbourhoods and Environment Act 2005 (Gating Orders and Dog Control Orders). However, the aim of this act is to strengthen the above provisions and therefore they have been replaced by similar powers with the aim of making them easier to obtain.
- 2.5 The Act broadens existing powers to enable Police and Crime Commissioners to provide or commission support services for victims and witnesses of, and those affected by, crime and anti-social behaviour. The Act also covers a range of other matters relating to firearms; protection from sexual harm and violence; forced marriage; amends the Extradition Act 2003; introduces changes to criminal justice and court fees; and amends various policing provisions. These matters are listed for information purposes only.
- 2.6 To assist frontline professionals the Home Office issued statutory guidance on the Act in July 2014.

New measures for tackling anti-social behaviour

- 2.7 The Act replaces nineteen pre-existing measures with six new measures for tackling anti-social behaviour and introduces a new absolute ground for possession of secure and assured tenancies associated with anti-social behaviour or criminality. Each of the new measures is considered in turn below and further information is provided in the appendices.
- 2.8 A summary of the existing powers to be replaced is provided in Appendix 1.
- 2.9 The aim of this new legislation has been to simplify the powers available to tackle anti-social behaviour, make them available to a wider range of agencies (including local authorities), and make it easier to apply for and obtain them. Consequently, it is likely that this will have resource implications for local authorities who will undoubtedly be expected to utilise their newly available powers.

Civil Injunctions

- 2.10 The injunction under Part 1 of the Act is a civil power which can be applied for to deal with anti-social individuals. The injunction is designed to be a fast and effective

protection for victims and communities and set a clear standard of behaviour for perpetrators, stopping the person's behaviour from escalating.

- 2.11 Although the injunction is a civil power, it is still a formal sanction and it is expected that officers will want to consider informal approaches before resorting to court action, especially in the case of under 18 year olds. However, where informal approaches have not worked or officers decide that a formal response is needed more quickly, the Act can be used.
- 2.12 Civil injunctions can be applied for by local councils and will be issued by the County Court or High Court on the balance of probabilities, unlike ASBOs which use the criminal burden of proof. An injunction will include a range of prohibitions and positive requirements designed to make the perpetrator address the underlying causes of their anti-social behaviour.
- 2.13 See Appendix 2 for more information.
- 2.14 It should be noted that there will be a delay to the introduction of the civil injunction. This is to allow for unavoidable and necessary changes to be made to the civil legal aid system to ensure that applications for advocacy assistance can be assessed and so will require amendments to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 which should be completed by the end of January 2015. Until these provisions are in place, the ASBO will remain and social landlords will be able to continue to apply for anti-social behaviour housing injunctions under the provisions of the Housing Act 1996.

Criminal Behaviour Order (CBO)

- 2.15 The CBO is an additional sanction a criminal court can impose during sentencing following a conviction for any criminal offence. Applications for a CBO will be made by the prosecutor, either at its own initiative or following a request from either the police or the council.
- 2.16 The court must be satisfied beyond reasonable doubt that the offender has engaged in behaviour that has caused or is likely to cause harassment, alarm or distress to any person and the court considers that making such an order will help prevent the offender from engaging in such behaviour. However, the anti-social behaviour does not need to be part of the criminal offence for which the offender is being sentenced.
- 2.17 See Appendix 3 for more information.

Dispersal Power

- 2.18 The dispersal power is a flexible power which the police can use in a range of situations to disperse anti-social individuals and provide immediate short-term respite to a local community. The power is preventative as it allows an officer to deal instantly with someone's behaviour and address the problem before it escalates. In areas where there are regular problems, the police force is expected to work with the local council to find sustainable long-term solutions. In all instances, the impact on the local community should be considered before using the dispersal power.
- 2.19 These powers do not sit with the Local Authority. The dispersal power can be used by police officers in uniform but must be authorised by an officer of at least Inspector rank before use. Police Community Support Officers (PCSOs) can also use this

power if designated by their Chief Constable; Kent Police has not yet made a decision on this aspect.

- 2.20 See Appendix 4 for more information.

Community Protection Notice (CPN)

- 2.21 The CPN is intended to deal with particular, on-going problems or nuisances that negatively affect the community's quality of life by targeting those responsible. CPNs can be used to tackle a wide range of problem behaviours including graffiti, rubbish and noise, and are designed to deal with short or medium-term issues. It can be issued against any person over the age of 16 or a body, including a business.
- 2.22 The Home Office notes that in many areas, councils already take the lead in dealing with these kinds of issues and they will continue to be able to issue the new notice. In addition to designated council officers, CPNs can also be issued by police officers and police community support officers. Where it is appropriate, local councils can designate social landlords in their area to issue CPNs.
- 2.23 Issuing a CPN does not discharge the council from its duty to issue an Abatement Notice where the behaviour constitutes a statutory nuisance for the purposes of Part 3 of the Environmental Protection Act 1990.
- 2.24 Failure to comply with a CPN is an offence. There are a number of options for the issuing authority to address any such breach, including the issuing of a Fixed Penalty Notice (FPN) by a police officer, PCSO, council officer or, if designated, a social landlord.
- 2.25 DDC will need to produce a working procedure and suitably worded CPNs, together with FPNs if this is an option to be used to tackle any breach of a council issued CPN.
- 2.26 See Appendix 5 for more information.

Public Spaces Protection Order (PSPO)

- 2.27 PSPOs are intended to deal with a particular nuisance or problem in a particular area that is detrimental to the local community's quality of life, by imposing conditions on the use of the area which apply to everyone. This could include, but is not restricted to, placing restrictions on the use of parks, alleyways, or communal areas to prevent problems with misuse of alcohol, dogs or noise. More than one restriction can be added to the same PSPO, meaning that a single PSPO can deal with a wider range of behaviours than the orders it replaces. PSPOs are designed to ensure that the law-abiding majority can use and enjoy public spaces, safe from anti-social behaviour.
- 2.28 District Councils will be responsible for making the new PSPO after consultation with the police, the Police and Crime Commissioner and other relevant bodies. County Councils will undertake the role only where there is no district council. The new power is not available to parish councils and town councils in England. Council officers, police officers and police community support officers will be responsible for enforcing the orders. If anybody is witnessed by a council officer, police officer or PCSO breaching the order, their behaviour will be challenged. If the individual does not then comply, they commit a criminal offence which can be dealt with by a Fixed Penalty Notice or fine.

2.29 DDC will need to produce a working procedure and suitably worded PSPOs, together with FPNs if this is an option to be used to tackle any breach of a PSP.

2.30 See Appendix 6 for more information.

Closure Power

2.31 The closure power is a fast and flexible power that can be used by local authorities and the police to quickly close premises that are being used, or likely to be used, to commit nuisance or disorder. Premises include licensed premises, those enclosed or open, residential and business.

2.32 The power comes in two stages: the closure notice and the closure order. A closure notice can be issued for 24 hours if the council or police officer (of at least the rank of Inspector) is satisfied that such a notice is necessary. The closure notice can be issued in the first instance for 48 hours or extended from 24 hours up to a maximum of 48 hours by the Council's Chief Executive Officer or designate thereof, or by a police superintendent.

2.33 Unless the notice is cancelled in accordance with the provisions of section 78 of the Act, application must be made to the magistrates' court for a closure order, initially for a period of 3 months which can be extended by the Court for a further period of up to 3 months.

2.34 See Appendix 7 for more information.

New Absolute Grounds for Possession

2.35 The purpose of the new absolute ground for possession is to speed up the possession process in cases where anti-social behaviour or criminality has already been proven in another court. Landlords will no longer have to prove that it is reasonable to grant possession but, instead, courts must grant possession if the landlord followed the correct procedure and at least one of the specified conditions is met.

2.36 Social landlords (local authorities and housing associations) or private rented sector landlords can apply for possession where the tenant, a member of the tenants' household or a person visiting the property has been convicted of a serious offence, or found by a court to have breached a civil injunction, or convicted for breaching a criminal behaviour order, or convicted for breaching a noise abatement notice, or the tenant's property has been closed for more than 48 hours under a closure order for anti-social behaviour.

2.37 However, it should be noted 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. These powers will sit with East Kent Housing, who exercise the management of the Council's housing stock.

2.38 See Appendix 8 for more information.

Other Measures

2.39 Under Section 154, the Act also introduces the power for the Secretary of State to make regulations under which the keeper of a vehicle may be required to pay a fixed penalty where litter has been thrown, dropped or otherwise deposited from the

vehicle. Currently, a fixed penalty notice can only be issued when litter is thrown from a car if the person responsible for throwing the litter can be identified. This new provision would bring the legislation for littering offences in line with that for fly-tipping with the keeper of a vehicle being deemed responsible for any offences committed by those within the vehicle. No date is yet appointed for the commencement of this section.

Delegations

- 2.40 Cabinet will see (at Appendix 13) the proposed changes to the Scheme of Officer delegations which are considered necessary in order to make use of the new powers within the Act. In accordance with section 9E of the Local Government Act 2000, it is for the Leader of the Council to make arrangements for the delegation of these powers to officers so Cabinet is requested to recommend that the Leader make the changes to the scheme. Members will specifically note the exclusions in column 3 of the Appendix 13 and those matters which are reserved to the Executive.

Community Remedy

- 2.41 The Act requires each local policing body (and therefore not the Council) to prepare a community remedy document for its area with a list of actions to be carried out by a person who has:
- (a) engaged in anti-social behaviour or has committed an offence; and
 - (b) is to be dealt with for that behaviour or offence without court proceedings.
- 2.42 The community remedy document will be used by the police as part of the existing process for delivering community resolutions. It is proposed that this will give victims of low-level crime and anti-social behaviour a say in the punishment of perpetrators out of court. The community remedy may also be used by the police when a conditional caution or youth conditional caution is given, as a means of consulting the victim about the possible conditions to be attached to the caution.
- 2.43 The Police and Crime Commissioner (PCC) has recently consulted with members of the public, community groups and local authorities on the options to be included in a community remedy menu. A community remedy allows victims to request how the perpetrator is dealt with when a community resolution is used. If the victim asks for a community remedy to be used, the offender must agree and the police officer has to agree it is proportionate and appropriate as well.
- 2.44 The PCC needs to have the community remedy document in place by October 2014 and the findings from the consultation will support the development of the final proposals to be agreed between the PCC and Chief Constable. See Appendix 9 for more information.
- 2.45 See Appendix 9 for more information.

Anti-social Behaviour Case Reviews (Community Trigger)

- 2.46 The White Paper, "Putting Victims First", stated that victims and communities should be given the right to demand that agencies who had ignored repeated complaints about anti-social behaviour take action.
- 2.47 The Act introduces the "Community Trigger" which gives victims (both individuals and those acting on behalf of a group) an opportunity to demand action, starting with a

review of their case. The "relevant bodies" will have a duty to undertake a case review when someone requests one and the case meets a locally defined threshold. The Community Trigger can be used by a person of any age and by any person on behalf of a victim although consent should be sought by the person using the Community Trigger on someone else's behalf.

2.48 The relevant bodies are those organisations which have a statutory duty to have a Community Trigger procedure and to undertake case reviews when a person asks for one and the local threshold is met. The relevant bodies are:

- District Councils;
- Police Forces;
- Clinical Commissioning Groups; and
- Social Housing Providers who are co-opted into the group.

2.49 The Act states that the relevant bodies must decide that the threshold for a review is met where an application for a review has been made and at least three qualifying complaints have been made about the anti-social behaviour to which the application relates.

2.50 See Appendices 10 - 12 for more information.

2.51 The Coalition Government have conducted various pilots around the country (Manchester, Brighton and Hove, West Lindsey and Boston, and Richmond upon Thames) to test how differing criteria would be activated and how the review process would work in practice. The decision is left to all local authorities to decide what the criteria for their area will be and how the review process will take place.

2.52 Kent has a total of 13 district councils, which means there is the possibility of having 13 different criteria for Kent. Whilst the legislation allows for this, it is widely agreed that this would be confusing for the public and for agencies such as Kent Police and social housing providers that work across the county. A pan Kent approach or similar approaches between neighbouring districts may be seen as more beneficial and the proposed trigger in Appendix 11 is in line with the trigger for other councils in Kent. The PCC has also been consulted and is in agreement both with the approach and the proposed threshold.

2.53 It is important to note that the ASB case review will not replace Dover District Council's or any other organisation's complaints procedures. Individuals will still be able to complain to the relevant bodies if they are dissatisfied with the service received from an individual or agency.

2.54 The Council will be involved in case reviews not only as an organisation against whom a review has been requested, but also in reviewing the response of other partners when reviews are requested in respect of them. One of the benefits of the review process is that different partner organisations will be brought together to examine cases, identify issues and make recommendations for improvement which will be of benefit to victims and members of our communities.

2.55 It is proposed that Dover District Council's Community Safety Unit (CSU) will be the first point of contact for members of the public requesting a review of their case. A member of the CSU will contact the person to find out as much detail as possible and

then request information from the agencies involved. At least two of the relevant bodies will then determine if the threshold has been met, based on the evidence available.

- 2.56 If the threshold is met, the person requesting a review will be informed. The review will be carried out by the relevant bodies who will develop an action plan if appropriate and make a response to the originator of the review.
- 2.57 If the threshold is not met, the person making the Community Trigger request will be told.
- 2.58 The legislation stipulates that the review procedures must include provision for the applicant to express their dissatisfaction regarding the way the relevant bodies dealt with the application for a review, or the review itself. Under such circumstances, it is proposed that one of the Community Safety Partnership's (CSP) in Kent be requested to undertake an independent secondary review. All CSPs in Kent are willing to do this.
- 2.59 The legislation states that relevant bodies must publish at least annually prescribed information relating to the Community Trigger. It is proposed to include this data in the annual presentation to the relevant Scrutiny committee, to report on this to the Dover CSP and the PCC, and to make this information publically available.

3. Identification of Options

- 3.1 Option 1: to accept the recommendations made in this report.
- 3.2 Option 2: not to accept the recommendations.

4. Evaluation of Options

- 4.1 The preferred option is Option 1, as this will ensure that Dover District Council makes full use of the new powers available to tackle anti-social behaviour promptly to the benefit of victims and our communities.
- 4.2 Option 2 is not recommended as this will not result in proper use of the available powers and have an adverse impact on victims and our communities.

5. Resource Implications

- 5.1 Members of the Community Safety Unit have been trained on the implications and requirements of the Act at no cost to Dover District Council.
- 5.2 It is anticipated that a number of the enforcement measures contained within the Act will have financial implications. However, further research will be conducted and an additional report submitted when the precise implications can be forecast.

6. Corporate Implications

- 6.1 Comment from the Section 151 Officer: Finance has been consulted and has no further comments to add. SG
- 6.2 Comment from the Senior Solicitor to the Council: The Senior Solicitor has been involved in the preparation of this report and has no further comment to make.

6.3 Comment from the Equalities Officer: This report does not specifically highlight any equalities implications however, in discharging their responsibilities members are required to comply with the public sector equality duty as set out in section 149 of the Equality Act 2010 <http://www.legislation.gov.uk/ukpga/2010/15>

7. **Appendices**

Appendix 1 – Change of powers summary

Appendix 2 – Civil injunction

Appendix 3 – Criminal Behaviour Order

Appendix 4 – Dispersal power

Appendix 5 – Community Protection Notice

Appendix 6 – Public Spaces Protection Order

Appendix 7 – Closure power

Appendix 8 – New absolute grounds for possession

Appendix 9 – Community Remedy

Appendix 10 – Community Trigger

Appendix 11– DDC Community Trigger process

Appendix 12 – Community trigger process map

Appendix 13 – Proposed amendments to the scheme of officer delegations

8. **Background Papers**

None

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