

ANTI-SOCIAL BEHAVIOUR CRIME & POLICING ACT 2014

Cabinet **13 November 2014**

Report of Chief Officer Communities and Business

Status: For decision

Key Decision: Yes

Executive Summary: The Anti-social Behaviour, Crime and Policing Act 2014 (the Act) received Royal Assent on 13th March 2014 and will start to take effect from 20th October 2014.

The Act replaces nineteen pre-existing measures with six new measures for tackling anti-social behaviour and providing protection for victims and communities.

This report supports the Key Aim of a safe environment.

Portfolio Holder Cllr. Michelle Lowe

Contact Officer(s) Kelly Webb Ext. 7474

Recommendation to Cabinet: That

- a) the new powers available to the Council are noted,
- b) delegations to Officers are approved as follows:
 - (i) To the Chief Officer Communities & Business to authorise the Council's actions under the Act with reference to Civil Injunctions, Criminal Behaviour Orders, Public Spaces Protection Orders, Closure Notices and Closure Orders and the Community Trigger
 - (ii) To the Chief Officer Environmental and Operational Services to authorise the Council's actions under the Act relating to Community Protection Notices and the power to enforce penalty notices (£75) for dropping litter from a vehicle; and
- c) Community Trigger arrangements as set out in paragraph 15 and Appendix A are approved.

Introduction and Background

- 1 The Anti-Social Behaviour Crime & Policing Act 2014 Act 2014 introduces powers to tackle anti-social behaviour and provide protection for victims and communities. Most of the Anti-Social Behaviour elements of the Act will be in place on 20

October 2014. The exception to this is the Civil Injunction which will not come into force until the early Spring of 2015.

- 2 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. This reports deals only with the anti-social behaviour elements of the legislation.
- 3 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*'.
- 4 The kind 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.

New measures for tackling anti-social behaviour

- 5 The Act replaces nineteen pre-existing measures with six new measures for tackling anti-social behaviour. Each of the new measures is listed below.
- 6 Civil Injunctions
 - To stop or prevent individuals engaging in anti-social behaviour quickly. It is a civil order for anyone over the age of 10yrs old. A civil rather than criminal standard of proof is required – it is awarded on balance of probabilities that the person has engaged or is threatening to engage in behaviour capable of causing nuisance and annoyance
 - Can prohibit individuals from engaging in certain behaviour and can require them to engage in positive interventions
 - Applicants – Local Authority, Social landlords, Police, Transport for London, Environment Agency, NHS Protect
 - Power of arrest can be applied
 - Can be fixed or indefinite period for adults but can be a maximum of 12 months for under 18s
- 7 Criminal Behaviour Order (CBO)
 - Issued by any criminal court against a person who has been convicted of an offence to tackle the most persistently anti social individuals who are also engaged in criminal activity
 - The court must be satisfied beyond reasonable doubt that they have engaged in behaviour that has caused or likely to cause harassment, alarm or distress and that the Order will help prevent them from engaging in such behaviour.
 - The applicant can only be Prosecution in the criminal case (usually CPS) but can apply for a Criminal Behaviour Order at the request of the Police or Council

who would then become responsible for the cost of the Criminal Behaviour Order

- The anti-social behaviour does not need to be part of the criminal offence the individual are in court for.
- Will prohibit individuals from engaging in certain behaviour and can also require them to engage in positive interventions
- Can be fixed for a period of not less than 2 years or for an indefinite period

8 Dispersal Power

- 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 Council is not able to use this power
- There is no statutory requirement to consult the local council with the new dispersal power, but the authorising officer may consider doing so in some circumstances.
- Must specify the area to which it relates and can determine the time and the route to leave the area by
- Can confiscate any item that could be used to commit anti-social behaviour, crime or disorder
- Use in a specified locality must be authorised by a police inspector and can last for up to 48 hours
- A direction can be given to anyone who is, or appears to be, over the age of 10
- A person who is under 16 and given a direction can be taken home or to a place of safety. The community should be considered before using the dispersal power
- Breach is a criminal offence
- Failure to comply with a direction to leave: up to a level 4 fine and/or up to three months in prison although under 18s cannot be imprisoned
- Failure to hand over items: up to a level 2 fine (£1000)

9 Community Protection Notice (CPN)

- To stop a person, business or organisation committing anti-social behaviour which spoils the community's quality of life
- Behaviour has to have a detrimental effect on the quality of life in the locality, be of a persistent or continuing nature and be unreasonable
- Imposes requirements to stop doing specified things, requirements to do specified things and a requirement to take reasonable steps to achieve specified results
- Written warning has to be issued informing the perpetrator of the behaviour, requesting them to stop and the consequences of continuing
- Council Officers, Police Officers, PCSOs, if they have delegated powers and social landlords

10 Public Spaces Protection Order (PSPO)

- Designed to stop individuals or groups committing anti-social behaviour in a public space
- Behaviour has to have a detrimental effect on the quality of life in the locality, be of a persistent or continuing nature and be unreasonable
- Restrictions and requirements set by the council after consultation with Police, PCC and other relevant bodies
- Can be blanket restrictions/requirements or targeted against certain behaviours/times
- Can be enforced by Police Officer, Council Officers and PCSOs, if they have delegated powers
- Breach is a criminal offence
- The maximum duration of a PSPO is 3 years. They can also be varied if other problems are faced in the area during that time.

11 Closure Power Notice & Order

Closure Notice

- To allow the Police or Council to quickly close premises which are being used, or likely to be used, to commit nuisance or disorder
- To be used if the following has occurred or will occur if power not used – nuisance to the public or disorder near premises
- Last for up to 48 hours
- Can be served out of court but cannot prevent owner or occupants accessing premises

Closure Order

- To allow the Police or Council to quickly close premises which are being used, or likely to be used, to commit nuisance or disorder
- To be used if the following has occurred or will occur if power not used – disorderly, offensive or criminal behaviour, serious nuisance to the public or disorder near the premises
- Needs to be applied for through the courts after Notice has been served
- Can close a premise for up to 6 months and can restrict all access

The Act also introduces two new measures that aim to give victims a greater say in the way their concerns are dealt with via a new Community Remedy and the anti-social case reviews (the Community Trigger) process.

The community trigger and community remedy will empower victims and communities, giving them a greater say in how agencies respond to complaints of anti-social behaviour and out-of-court sanctions for offenders.

12 New Absolute Grounds for Possession

- 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
- The new absolute grounds for possession will be available to social and private landlords
- 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
- Convicted of a serious offence (specified in Schedule 2A to the Housing Act 1985)
- Found by a court to have breached a civil injunction
- Convicted for breaching a criminal behaviour order (CBO)
- Convicted for breaching a noise abatement notice
- The tenant's property has been closed for more than 48 hours under a closure order for anti-social behaviour

13 Other Measures

- 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

14 Community Remedy

- 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.
- 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.
- 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:
 - engaged in anti-social behaviour or has committed an offence; and
 - is to be dealt with for that behaviour or offence without court proceedings
- 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

15 Anti-social Behaviour Case Reviews (Community Trigger)

- The Act also enables members of the public to request a review of the actions taken by the Community Safety Partnership to deal with anti-social behaviour complaints, referred to as the Community Trigger. Government has conducted various pilots around the Country to test how differing criteria may be applied 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.
- The arrangements are to be determined at District level. In Kent this means that there is the possibility of having 13 different criteria for Kent & Medway. Whilst the legislation allows for this, a Kent approach is being encouraged to avoid confusion.
- The proposed trigger in Appendix A is broadly in line with the trigger for other districts and boroughs in Kent and is based on the legislation and Home Office Guidance as follows:
- The trigger for a review should apply when there have been 3 or more complaints of the behaviour in the previous 6 month period; the anti-social behaviour was reported within 1 month of taking place and the application to use the trigger is made within 6 months of the most recent report of anti-social behaviour taking place. In deciding whether the trigger has been met, the following can also be taken into account: the persistence of the anti-social behaviour; the harm or potential harm caused by the anti-social behaviour; the adequacy of response to the anti-social behaviour.
- The Council will be involved in case reviews not only as an organisation whose action, or lack of action, may be the subject of a review, but also in reviewing the response of other partners when reviews are requested in respect of them. The intention is that this should be a multi-agency approach and partner organisations may be brought together in the form a peer review. After the members of the review group have reviewed the handling of a matter, they can make recommendations, for example that certain steps be taken in that particular matter.
- The anti-social behaviour case review will not replace Sevenoaks District Council's complaints procedures and individuals can still complain through the Council's usual processes if they are unhappy with the service received from a Sevenoaks District Council service.
- It is proposed that the Council's Community Safety Unit will be the first point of contact for members of the public requesting a review of their case. If a second stage review is requested, senior Community Safety Partnership representatives will be involved and it is recommend that the District Council's

Community Safety Portfolio Holder would also be involved at a second stage review.

- The legislation states that relevant bodies must publish prescribed information on the number of reviews, the number of applications, etc and as well as being publically available information, it is proposed these are reported to the Community Safety Partnership on a quarterly basis for review and scrutiny.

Key Implications

Financial

The Council is likely to incur legal costs when applying for the new Civil Injunction or Criminal Behaviour Orders for example, or if it prosecutes an individual, or body, for failure to comply with a notice. Such applications or prosecutions will be made only on the basis of appropriate evidence, where the action is justified, proportionate and necessary and in consultation with legal colleagues.

Income from payment of a fixed penalty to the Council may be used to offset some of the costs associated with prosecution.

Some training may be required for individual staff within the Council and partner agencies and this would be match funded by the organisations concerned and with external funding if available.

It is anticipated that the powers will be used by existing staff, initially within current budgets. Based on previous experience with existing legislation, there is unlikely to be a sustained heavy use of the new powers. Partners have always worked together in the Sevenoaks District to deal with anti-social behaviour in its earliest stages. However, the new powers are intended to give Councils and partners a simpler way of dealing with anti-social behaviour and their availability may put additional pressure on the Council to use the legislation, resulting in new expenditure. Officers will monitor the use of the new powers and the effect that they may have on the Community Safety and Legal team's budgets.

Legal Implications and Risk Assessment Statement.

The Crime and Disorder Act 1998, places a duty upon local authorities to seek to prevent crime and disorder in its area in carrying out its duties. The Anti-social Behaviour and Policing Act 2014, provides a new set of powers for tackling anti-social behaviour.

The majority of these powers are unlikely to be used frequently by the Council, as they are in many cases a last resort, where other options have been tried and failed. However in some circumstances their use may be proportionate, justified and appropriate.

Equality Impacts

| Consideration of impacts under the Public Sector Equality Duty: | | |
|---|--------|---|
| Question | Answer | Explanation / Evidence |
| a. Does the decision being made or recommended through this paper have potential to disadvantage or discriminate against different groups in the community? | No | All the powers promote equal opportunity and any enforcement would take the Equalities Act into consideration |
| b. Does the decision being made or recommended through this paper have the potential to promote equality of opportunity? | Yes | |
| c. What steps can be taken to mitigate, reduce, avoid or minimise the impacts identified above? | | N/A |

Conclusions

The Anti-Social Behaviour Police and Crime Act 2014 provides new powers that enable the Council to tackle anti-social behaviour, working co-operatively with the police, social landlords and other agencies.

The Government make it clear that their reforms are designed to put victims at the heart of the response to anti-social behaviour and give professionals the flexibility they need to deal with any given situation.

In guidance issued by the Home Office, it is made clear that the new powers are designed to be flexible, allowing professionals to adapt them to protect victims in a wide range of situations. There is also an expectation of increased partnership working, sharing of information and using early and informal interventions.

The proposed scheme of delegations will enable Officers to use the new powers. Members will be notified when Orders initiated by the Council are being taken forward in their ward.

Appendices

A - Community Trigger Proposal

Background Papers:

Home Office guidelines

Lesley Bowles
Chief Officer Communities and Business