

NEWCASTLE-UNDER-LYME BOROUGH COUNCIL
EXECUTIVE MANAGEMENT TEAM REPORT TO CABINET

Date: 15th OCTOBER 2014

Title: Update on the Anti-Social Behaviour, Crime and Policing Act 2014

Submitted by: Head of Business Improvement, Central Services & Partnerships
Head of Environmental Health

Portfolio: Safer Communities, Environment & Recycling

Ward(s) affected: All

Purpose of the Report

This report provides an overview of the changes introduced by the Anti Social Behaviour, Crime and Policing Act 2014.

The report also outlines the Borough Council's role in delivering appropriate responses to these changes, in particular, Part 6 (the 'Community Trigger').

The report also seeks approval to amend the Council's scheme of delegation to enable the relevant provisions of the Act to be enforced.

The report also seeks approval of the fixed penalty fees for non-compliance with a Community Protection Notice and a Public Spaces Protection Order including a maximum fee and discounted fee for early payment.

Recommendation

That Cabinet notes the contents of this report and

- **Approves the proposed 'Community Trigger' threshold and mechanism for use in the Borough;**
- **To recommend that Council approves the proposed changes to the Scheme of Delegation; and**
- **To recommend that Council approves the proposed fixed penalty fees as set out in this report, with these fees to be approved by Council in the first instance and to delegate to Public Protection Committee any further alternations to these fees**

Reason

The Anti Social Behaviour, Crime and Policing Act (2014) provides new powers to local authorities and their partners, and places a number of statutory obligations on councils when responding to incidents of anti-social behaviour (ASB).

It should be noted that the contents of this report were presented to the Cleaner, Greener and Safer Communities Scrutiny Committee at its meeting on 1st October. A summary of the discussion which took place at this meeting and the questions raised by Members of the Committee can be found at Appendix B of this report. It should also be noted that the Chair of the Cleaner, Greener and Safer Communities Scrutiny Committee has requested that she attend Cabinet to contribute to this item.

1. Background

- 1.1 ASB is defined as “someone acting in a manner that has caused, or is likely to cause, harassment, alarm or distress to one or more persons not of the same household”.
- 1.2 The (national) Government pledged they would review the way ASB is dealt with via new legislation. The resulting Anti-Social Behaviour, Crime and Policing Act 2014 which is scheduled to come into effect from 20th October 2014 and replaces current ASB legislation, placing new duties on local authorities, including aspects of the Crime and Disorder Act 1998 and Anti-Social Behaviour Act (2003).
- 1.3 Parts 1 -7 are of most interest to local authorities and these can be summarised as follows;
 - Part 1 makes provision for a civil injunction for ASB
 - Part 2 makes provision for an order on conviction to prevent behaviour which causes harassment, alarm or distress
 - Part 3 contains powers for police to disperse people causing or likely to cause harassment, alarm or distress or likely to cause crime or disorder in a specified area and not return for up to 48 hours
 - Part 4 covers new powers to deal with community protection and makes provision for Community Protection Notices (CPN), Public Space Protection Orders (PSPOs) and to close premises associated with nuisance or distress.
 - Part 5 makes provision for possession of homes on ASB grounds (by RSLs)
 - Part 6 contains provisions to establish a community remedy document and responding to complaints of ASB (the ‘Community Trigger’)
 - Part 7 amends the powers under the Dangerous Dogs Act (1991).
- 1.4 The Council’s Partnerships Team has responsibility for community safety and related partnership work within the Newcastle Partnership and administers the Community Safety Partnership (CSP) to discharge statutory obligations, including ASB.
- 1.5 The Council’s Environmental Health service has responsibility for discharging the Council’s statutory duties – including dealing with complaints/enquiries regarding licensing, noise nuisance dangerous dogs, inappropriate storage of trade waste, litter enforcement
- 1.6 The Council’s Legal service provides advice and assistance in relation to ASB and Environmental Health including the enforcement of civil proceedings.

2. Further information

- 2.1 As outlined above the new Act replaces a number of existing provisions:
 - Part 1 – civil injunctions replace the current ASB Orders and will be available in the county court (adults) and the youth court (10-17 year olds). They will allow agencies such as Police, councils and RSLs to deal quickly with ASB
 - Part 2 – Criminal Behaviour Orders (CBOs) replace the current Criminal ASB Orders (CRASBOs). CBOs will be available following conviction for any criminal offence, addressing the underlying causes of ASB via new, positive requirements. A breach will be a criminal offence with a maximum of up to five years in prison for adults
 - Part 3 - powers to enable police to require people who have committed/likely to commit ASB to leave a specified area and not return for up to 48 hours.
 - Part 4 – Community Protection, including:

- Community Protection Notices (CPNs) – replace litter clearing notices, defacement removal notices and street litter control notices and can be issued by councils, police and RSLs to individuals/businesses.
- Public Spaces Protection Orders (PSPOs) – deal with a nuisance or problem in a particular area detrimental to the local community's quality of life by imposing conditions on the use of that area
- Closure Notices/Orders – two-stage process covering licensed and non licensed premises. 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

These new powers are intended to be faster, more effective and available to more agencies to tackle a range of place-specific ASB and criminal behaviour

- Part 5 – to be used by RSLs for the recovery of possession of dwelling houses. ASB can have a negative impact on neighbourhoods/communities and RSLs have a key role. Provisions in the Act introduce a new ground for possession to speed up the process in the most serious ASB cases, thereby potentially bringing faster relief to victims and communities.
- Part 6 – seeks to involve the community/victims in both punishment and remedies for ASB. The Police and Crime Commissioner (P & CC) must prepare a Community Remedy Document listing possible remedies to be carried out by offenders/perpetrators. These remedies can be accepted and undertaken without going to court as an alternative to prosecution. The P & CC must consult with the Police, Local Authorities and the wider public during the preparation of the document and then publicise when it is finalised. Part 6 also introduces the 'Community Trigger' (or ASB case review) allowing victims of persistent ASB to request a case review. In that case, the relevant bodies must share information, discuss previous action taken and decide on any further action. There is a statutory duty for the threshold, criteria and mechanism for the community trigger to be published by councils. Applicants must be informed of the outcome and advised of the arrangements for reviewing the process if they are not satisfied.

3. Part 6 – The Community Trigger

- 3.1 The plan for Newcastle-under-Lyme is to adopt a 'community trigger' threshold of 'three complaints from one complainant (or somebody on their behalf) to a statutory agency (see 3.2 below) within a six month period regarding three separate ASB incidents' or alternatively an immediate trigger if the complaints are deemed to be hate crime related in line with the minimum statutory requirement.
- 3.2 The Borough Council, County Council, Staffordshire Police, Health or RSLs may all be approached by a victim of persistent ASB to instigate the trigger.
- 3.3 Partners will co-ordinate trigger requests via the Partnership Hub, which meets on a weekly basis to provide assistance/solutions to vulnerable residents.
- 3.4 The appeal process for victims of persistent ASB who are not satisfied with the trigger review will be determined within the partner organisation with which the review was requested. For example if received by the Borough Council then the appeal would progress to the Head of Business Improvement, Central Services and Partnerships and if received by a Registered Provider it would progress to the appropriate Head of Service in that organisation. This follows the principle adopted elsewhere in the County and provides some independence to the decision making process and the person considering the appeal should not have had any previous involvement in the case or subsequent investigation.

- 3.5 Partners have been consulted on the proposal and have all agreed to adopt the Community Trigger threshold and accompanying procedure in their respective organisations.

4. Scheme of Delegation

- 4.1 It is necessary to add to the Council's Scheme of Delegation to enable the Council to make use of the various provisions within the Act. The Scheme of Delegation relating to this Act has been designed to facilitate the use of the statutory provisions provided to the Council in a timely manner.
- 4.2 The proposed additions to the scheme of delegation are detailed within Appendix A.

5. Fixed Penalty Notices

- 5.1 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.
- 5.2 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.
- 5.3 The maximum penalty that can be imposed is £100 and this must be paid within 14 days of service of the FPN. However, it is possible to impose a lesser penalty for early payment and it for each authority to decide their penalty in the absence of statutory guidance.
- 5.4 Accordingly the following Fixed Penalty amounts are proposed:
- Payment of FPN within 10 days of issue £70
 - Payment of FPN between 10 and 14 days of issue £100

In accordance with the Council's Scheme of Delegation, these fees will be set in the first instance by Full Council and any subsequent amendments to be delegated to Public Protection Committee.

6. Gating orders / Designated Restrictions on Alcohol Consumption and Dog Control Orders replaced by Public Spaces Protection Orders

- 6.1 There are a number of gating orders, dog control orders and orders restricting consumption of alcohol operating in various areas across the Borough
- 6.2 These orders will automatically expire at the end of 3 years once Chapter 2 of the Act comes into force. 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.
- 6.3 It is not proposed to amend any existing orders at present.

7. Outcomes Linked to Corporate Priorities

- 7.1 Performing the statutory duties under the Anti Social Behaviour, Crime and Policing Act 2014 contributes to meeting the Council's Corporate Priorities of Creating Healthy

and Active Communities; Creating a Cleaner, Safer and Sustainable Borough; and Delivering a Co-operative Council.

8. Legal and Statutory Implications

- 8.1 The Anti Social Behaviour, Crime and Policing Act 2014 places statutory duties on and gives powers to local authorities in challenging ASB in the community.
- 8.2 The application of any enforcement powers under the Act will also take into account any statutory guidance / regulations and will reflect the requirements of the Act and the council's adopted Enforcement Policy.
- 8.3 The proposed additions to the council's scheme of delegation give clarity and legal certainty over who is able to exercise the various powers within the Act which fall within the remit of the Council (see appendix A).

9. Equality Impact Assessment

- 9.1 An Equality Impact Assessment is being developed for this area of work.

10. Financial and Resource Implications

- 10.1 There are no specific financial implications or commitments required at this stage as a result of this report, although these new powers could result in increased workloads for some Council Officers. This will be managed within existing resources.
- 10.2 Following the introduction of the new powers, Officers will keep the resourcing position under review via the Joint Operations Group (JOG), chaired by the Safer Communities Portfolio Holder. This will also enable the Partnership to ensure that all partners are responding properly to requests for the Community Trigger and using the new powers appropriately, in order to contribute to the agreed overall partnership approach.
- 10.3 Staff who may be involved in the application of the new powers will receive training in their application and use prior to being authorised.
- 10.4 Enforcement of the new legislation is predominantly civil and it is anticipated that this may therefore have financial implications for the Council in terms of increased legal costs. The potential increase expected is unknown at this time but Officers will provide further information when available. In the short term this will be managed by existing resources but kept under review.
- 10.5 At this stage there does not appear to be any direct resource implications for any other Borough Council services from the changes set out in this report.

11. Major Risks

- 11.1 Failure to take appropriate action regarding the new powers and legislation in relation to ASB may result in the Council being unable to perform its statutory duties, thereby leaving it open to legal challenge.
- 11.2 There is also a risk of reputational damage to the Council if it does not deliver its statutory duties lawfully and effectively.

12. Key Decision Information

- 12.1 This report can be considered a key decision in the following ways: -

- It requires the Borough Council to commit existing and additional resources for the function to which the decision relates and;
- It impacts on communities living or working in an area comprising two or more electoral wards in the Borough.

13. Earlier Cabinet/Committee Resolutions

13.1 None

14. List of Appendices

14.1 Appendix A – Proposed amendments to the scheme of delegation

15. Background Papers

15.1 None

Implications included	Head of Service agreed report, signed & dated	Financial Implications signed & dated	Legal & risk implications signed & dated
Financial			
Legal			
Risk			
Corporate format used			

Proposed amendments to the adopted scheme of delegation

	FUNCTION	EXERCISED BY
Anti-Social Behaviour, Crime and Policing Act 2014 Functions		
	Part 1 Injunctions	
	<p>Injunctions Application for Injunction / Interim injunction / Variation of Injunction / Discharge if injunction (Part 1 sections 5, 6, 7, 8)</p> <p>Arrest warrant and prosecution of injunction Application for arrest warrant and authority to prosecute (Part 1, section 10)</p> <p>Consultation on injunction Requirements to consult etc. (Part 1, section 14)</p>	Head of Business Improvement, Central Services and Partnerships
	Part 2 Criminal Behaviour Orders	
	<p>Application for CBO, Interim order, variation, discharge Application for criminal behaviour order / interim order / Variation of order / Discharge of criminal behaviour order (Part 2 sections 23, 26, 27)</p> <p>Consultation with YOT prior to application for CBO on under 18's Requirement to consult with YOT if offender is under 18 (Part 2 section 29)</p> <p>Review of CBOs imposed on under 18's Duty to cooperate with chief officer of police in review of orders imposed on under 18's (Part 2 sections 28/29)</p>	Head of Business Improvement, Central Services and Partnerships
PART 4 CHAPTER 1 - COMMUNITY PROTECTION NOTICES		
	<p>Issuing and consulting on CPN's prior to service Power 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 section)</p>	<p>Head of Business Improvement, Central Services and Partnerships</p> <p>Head of Environmental Health</p> <p>Head of Operations</p> <p>All Environmental Health Officers and appropriately qualified Technical Staff</p> <p>(officer initiating CPN)</p>
	<p>Authority to take remedial action to comply with CPN</p> <p>Authority to undertake remedial action for failure to comply with a community protection notice section (Part 4 Chapter 1 section 47)</p>	<p>Head of Environmental Health</p> <p>Head of Business Improvement, Central Services and Partnerships</p> <p>Head of Operations</p>

	Power of entry in respect of CPN Power of entry to undertake remedial action work under (Part 4 Chapter 1 section 47)	All Environmental Health Officers and appropriately qualified Technical Staff. And agents acting on behalf of the authority expressly authorised by the relevant Head of Service
	Cost recovery for remedial action in default of CPN Issue of notice of costs to defaulter for remedial action (Part 4 Chapter 1 section 47)	Head of Service whose officers initiated remedial action
	Prosecution proceedings in respect of CPN Authorisation of proceedings for failing to comply with a community protection notice (Part 4 Chapter 1 section 48)	Public Protection Committee
	Remedial order Application to court for a remedial order (Part 4 Chapter 1 section 49)	Head of Business Improvement, Central Services and Partnerships
	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)	Environmental Health Officers, Technical Assistants and Enforcement Officers authorised in writing
	Fixed penalty notice for non-compliance with CPN Service of fixed penalty notice for offence of failing to comply with a Community Protection Notice which is an offence under section 48 (Part 4 Chapter 1 section 52)	Environmental Health Officers, Technical Assistants and Enforcement Officers authorised in writing
	PART 4 CHAPTER 2 PUBLIC SPACES PROTECTION ORDERS	
	Making a PSPO Power to make Public Spaces Protection Orders (Part 4 Chapter 2 section 59)	Public Protection Committee
	Publishing PSPO Publishing of Public Spaces Protection Order in accordance with regulations made by Secretary of State (Part 4 Chapter 2 section 59(8))	Head of Business Improvement, Central Services and Partnerships
	Extension to PSPO Extension of Public Spaces Protection Orders beyond 3 years (Part 4 Chapter 2 section 60)	Public Protection Committee
	Publishing extension to PSPO Publishing of extension to Public Spaces Protection Order in accordance with regulations made by Secretary of State (section 60(3))	Head of Business Improvement, Central Services and Partnerships
	Variation and discharge of PSPO Variation and discharge of current Public Spaces Protection Orders (Part 4 Chapter 2 section 61)	Public Protection Committee
	Publishing of variation or discharge of PSPO Publishing of variation to or discharge of Public Spaces Protection Order in accordance with regulations made by Secretary of State (Part 4 Chapter 2 section 61(5) /section 61(6))	Head of Business Improvement, Central Services and Partnerships
	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 public spaces protection order (Part 4 Chapter 2 section 63(2))	Environmental Health Officers, Technical Assistants and Enforcement Officers authorised in writing
	Authorisation of prosecution proceedings relating to PSPO for alcohol Authorisation of prosecution proceedings for failure to comply	Public Protection Committee

	with a requirement to not to consume alcohol or to require surrender of alcohol or containers for alcohol Part 4 Chapter 2 section 63(6))	
	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 public spaces protection order (Part 4 Chapter 2 section 67)	Public Protection Committee
	Fixed penalty notices for failing to comply with PSPO Power to issue a fixed penalty notice for offences of not complying with a public spaces protection order 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)	Environmental Health Officers, Technical Assistants and Enforcement Officers authorised in writing
	Convention rights, consultation, publicity and notification Duty to have regard to the rights of 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 public spaces protection order Duty to carry out consultation, publicity and notification before making, extending, varying or discharging a public spaces protection order	Head of Business Improvement, Central Services and Partnerships
	Part 4 Chapter 3 – CLOSURE OF PREMISES ASSOCIATED WITH NUISANCE OR DISORDER	
	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 soon to be disorder associated with the use of premises (Part 4 Chapter 3 section 76)	Chief Executive or person designated by him or her Head of Business Improvement, Central Services and Partnerships Head of Environmental Health
	Duty to consult prior to service of closure notice Duty to consult anybody or individual prior to service of closure notice (Part 4 Chapter 2 section 76(7))	Chief Executive or person designated by him or her Head of Business Improvement, Central Services and Partnerships Head of Environmental Health
	Power to extend closure notice beyond 24 hours to 48 hours (Part 4 Chapter 2 section 76(77))	Chief Executive or person designated by him or her
	Cancellation or variation of closure notice Power to vary or cancel a closure notice (Part 4 Chapter 3 section 78)	Officer who originally signed notice or in their absence the Chief Executive or person designated by him or her
	Power of court to make closure orders Application to a magistrates' 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)	Head of Business Improvement, Central Services and Partnerships

	Entry to premises to fix closure 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))	All Environmental Health Officers and appropriately qualified Technical Staff. And agents acting on behalf of the authority expressly authorised by the relevant Head of Service
	Extension of closure orders Application to the court for an extension of period of a closure order or further extension (Part 4 Chapter 3 section 82)	Head of Business Improvement, Central Services and Partnerships
	Discharge of closure orders Application to the court to discharge a closure order. (Part 4 Chapter 3 section 83)	Head of Business Improvement, Central Services and Partnerships
	Enforcement of closure orders Access to a premises etc. to enforce closure order, to secure premises against entry and carrying out essential maintenance or repairs. (Part 4 Chapter 3 section 85)	Environmental Health Officers, Technical Assistants and Enforcement Officers authorised in writing
	Proceedings for breach of closure notice / order Application to court for prosecution for breach of closure order (Part 4 Chapter 3 section 86)	Public protection committee

	FUNCTION	EXERCISED BY
The Dangerous Dogs Act 1991		
	Section 5 Seizure / entry to premises and evidence	
	Seizure of dangerous dogs in any place power of entry onto premises to seize a dangerous dog	Environmental Health Officers, Technical Assistants and Enforcement Officers authorised in writing