

Executive Report

Report of Head of Executive Head of Organisational Development

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Anti-Social Behaviour, Crime and Policing Act 2014

Executive Summary

The Anti-Social Behaviour, Crime and Policing Act 2014 brings in new provisions and powers relating to anti-social behaviour.

The Act implements measures that aim to:

- focus the response to anti-social behaviour on the needs of victims;
- empower communities to get involved in tackling anti-social behaviour;
- ensure professionals have access to fast, effective powers to protect the public; and
- speed up the eviction of the most anti-social tenants.

The provisions in the Act consolidate 19 existing anti-social behaviour powers into six more flexible powers. Two new measures, the community trigger and community remedy, have been introduced to help focus the response to such behaviour on the needs of victims. The new powers came into effect on 20 October 2014. The Home Office published guidance on implementation in July 2014.

Recommendation to Executive

- (1) That the Executive Head of Housing and Health and Executive Head of Environment be authorised to exercise the Council's functions and enforcement powers under the Anti-Social Behaviour, Crime and Policing Act 2014, including:
 - (i) securing civil injunctions;
 - (ii) issuing closure notices and securing closure orders;
 - (iii) issuing community protection notices;
 - (iv) implementing public space protection orders; and
 - (v) appointing authorised officers.
- (2) That the Managing Director be authorised to extend a closure notice to 48 hours.

Reason for Recommendation:

To enable the implementation of measures and use of powers contained in the Anti-Social Behaviour, Crime and Policing Act 2014.

1. Purpose of Report

- 1.1 The Anti-Social Behaviour, Crime and Policing Act 2014 (“the Act”) was given Royal Assent on 13 March 2014. Parts 1-6 of the Act relating to anti-social behaviour came into effect in October 2014. This report seeks authority for officers to use relevant anti-social powers contained in the Act.

2. Strategic Framework

- 2.1 The Act provides tools that will support our sustainability priority of providing a safe, clean and attractive environment for the borough.

3. Background

- 3.1 Many of our existing powers to tackle anti-social behaviour came into force through the Crime and Disorder Act. The Act included provisions relating to 19 anti-social behaviour powers (notices and orders). Examples included anti-social behaviour orders, dispersal orders and crack house closures. The Act consolidates these measures with a smaller number of new powers as summarised in Appendix 1. The new powers are described in more detail the following paragraphs.

Civil Injunction

- 3.2 Part 1 of the Act makes provision for a civil injunction to prevent nuisance and annoyance. This power can be applied for by councils, social housing landlords, police and others. It offers a quicker and more effective protection to victims and communities, stopping the perpetrator’s behaviour from escalating. Cases will be heard in a County Court where, if the behaviour meets the nuisance and annoyance test (using civil standard of proof on the balance of probabilities), an injunction will prohibit an individual from certain behaviours for two years. It can also require them to do something to address their behaviour, such as addressing a substance misuse problem with support services. A breach of the order can result in a maximum of two years imprisonment as it is considered to be a contempt of court.

Criminal Behaviour Orders

- 3.3 Part 2 of the Act makes provision for an order on conviction to prevent behaviour which causes harassment, alarm or distress. These orders are issued by any criminal court against a person who has been convicted of an offence, and will tackle the most persistently anti-social individuals who are also engaged in criminal activity. Orders will include prohibitions to stop the anti-social behaviour and positive requirements to get offenders to address root causes of their offending.
- 3.4 The police or council can request that the Court considers adding a criminal behaviour order where an individual is being charged with a criminal offence. In practice, we expect that the police or Crown Prosecution Service will request an order when dealing with a conviction, so there are limited resource implications for us.

Dispersal Powers

- 3.5 Part 3 of the Act contains a power for the police to disperse people causing harassment, alarm or distress. This will enable officers to require a person who has committed, or is likely to commit, anti-social behaviour to leave a specified area and not return for up to 48 hours. This is a police only power and is not available to us.
- 3.6 Unlike Section 30 of the Anti-Social Behaviour Act 2003, the power does not require the pre-designation of a 'dispersal zone' in which the power can be used by a police officer or PCSO. While the new power mirrors aspects of Section 27 of the Violent Crime Reduction Act, it does not restrict the use of powers to alcohol-related harm.
- 3.7 Authority of an Inspector (or above) is required before a dispersal notice can be issued. This safeguard is deemed necessary given the new dispersal power is a much broader, more powerful tool that is not restricted to alcohol related anti-social behaviour.

Community Protection Notices (CPNs)

- 3.8 Community protection notices are intended to deal with particular ongoing problems or nuisances which negatively affect the community's quality of life by targeting those responsible e.g. graffiti, rubbish and noise. Councils are identified as the lead authority for issuing these kinds of notices, which are similar to, but do not replace the powers and procedures operating within Environmental Health for offences such as smoke nuisance from bonfires, noise and fly tipping under the statutory nuisance powers of the Environmental Protection Act 1990.
- 3.9 A community protection notice can be issued where responsible authorities have reasonable grounds to be satisfied that the conduct is:
- having a detrimental effect on the quality of life of those in the locality
 - persistent or continuing in nature
 - unreasonable
- 3.10 The process involves three stages - an initial warning, a formal notice and, finally, a sanction for non-compliance. Issuing a community protection notice does not discharge the Council from its duty to issue an abatement notice where the behaviour constitutes nuisance under the Environmental Protection Act 1990.
- 3.11 Where appropriate, councils can designate registered social landlords (RSLs) in their areas to use these powers. However, the police and RSL need to consult with relevant agencies before using these powers and, in particular, Environmental Health, to ensure the behaviour is not a statutory nuisance.
- 3.12 Additionally, when a fixed penalty notice is issued by the police or RSL, the Council retains responsibility for prosecuting for the non-payment of the notice and any further sanctions.

- 3.13 Failure to comply with a community protection notice is an offence. There are five possible sanctions for a breach:
- a fixed penalty notice can be issued by the council or police of no more than £100 and can specify two amounts (e.g. a lower amount for early settlement);
 - remedial action, whereby works can be carried out by the council or RSL and recharged to the offender;
- 3.14 If necessary, the lead agency can apply to the court to stop the behaviour by issuing one or more of the following:
- remedial orders, whereby a court order is made for remedial work to be undertaken;
 - forfeiture orders, requiring the offender to forfeit any equipment that contributed to the anti-social behaviour (e.g. sound equipment, spray paints); and
 - seizures, a court issued warrant to seize items that have been used to commit offences.

Closure Notice and Orders

- 3.15 This power allows for the closure of any premises that are causing nuisance or disorder to communities (including licensed premises). The closure notice can be issued for a 24 hour period by councils or police (a Superintendent or council chief executive can extend this initial period to 48 hours where necessary). An extended period of closure can be made upon application for an order to the Magistrates' Court within 48 hours of the original notice being served.

Public Space Protection Orders

- 3.16 Public space protection orders are intended to deal with particular nuisance or problems in an area that is detrimental to the local community's quality of life by imposing conditions on the use of the area. They are designed to ensure the law-abiding majority can enjoy public spaces. This power is applied for by councils.
- 3.17 Councils can make an order on any public space within their area. An order can cover a multitude of prohibitions, replacing other such orders on public spaces such as dog control orders. There must be consultation with local community groups, police, parish and county councils. Types of circumstances for these orders include banning the use of alcohol and ensuring dogs are kept on leads.
- 3.18 This order replaces Designated Public Place Orders (DPPO). There is currently a DPPO covering Guildford town centre and, whilst the new powers came into force from October 2014, unless changes are required to the current DPPO, it will automatically become a PSPO after three years.

- 3.19 Any breach of the order makes the offender liable on summary conviction to a maximum fine of £1,000, but it is most likely that a fixed penalty notice would be applied. Council officers and the police can issue fixed penalty notices, but would need to witness the breach and have given the offender a previous warning to correct behaviour.

New Absolute Grounds for Possession

- 3.20 The Act introduces a new absolute ground for possession of secure and assured tenancies where serious anti-social behaviour or criminality has already been proven by another court. This includes where a tenant, a member of the tenant's household or a person visiting the property has been convicted of a serious offence (specified in Schedule 2A to the Housing Act 1985), found by the court to have breached a civil injunction, convicted for breaching a criminal behaviour order or noise abatement notice or the property has been closed for more than 48 hours under a closure order for antisocial behaviour.
- 3.21 Unlike the existing discretionary grounds for possession, the landlord will not be required to prove to the court that it is reasonable to grant possession. This means the court will be more likely to determine cases in a single, short hearing.

Community Trigger

- 3.22 The community trigger gives victims and communities the right to require agencies to deal with persistent anti-social behaviour that they feel has previously been ignored. The process starts with a review of their case where the defined threshold is met. A victim or third party acting on behalf of the victim can activate this process.
- 3.23 The basic procedure for a trigger involves:
- A victim, or third party, making an application to use the trigger.
 - The relevant bodies deciding whether the threshold has been met.
 - If yes, then relevant bodies share information about the case, consider if further information is needed and review what previous actions have been taken. Where further action can be taken, a plan is agreed and activity monitored with regular updates being provided to the victim.
- 3.24 A Surrey Community Trigger Framework has been developed by the Surrey Anti-Social Behaviour Strategy Group following consultation with the police, councils and community safety partnerships. This group is led by Surrey Police and has representatives from across Surrey who work in the antisocial behaviour field. Its work incorporates the statutory thresholds for the community trigger, as follows:
- a victim has made three reports to the council, police or registered social landlord about the same issue in the last six months and no action has been taken; or

- five individuals have separately reported the same issue in the last six months and no action has been taken.
- 3.25 A single point of contact in each district/borough must be identified for all submissions. This is to be agreed by the relevant community safety partnership. In Guildford's case, this is the Council's Neighbourhood and Community Safety Officer.
- 3.26 The Community Safety Officer (or representative) will initially review the case in consultation with partners as required. If the community trigger criteria are met, a referral will be made to the Safer Guildford Partnership's multi-agency Community Incident Action Group (CIAG) or Joint Action Group (JAG) to ensure a multi-agency approach to the issue raised. The CIAG or JAG will review the case, consider how the problem could be resolved and respond to the victim with a comprehensive action plan.
- 3.27 The community trigger provisions came into effect on 20 October 2014 and victims have been able to submit applications online or by hard copy since then. To date, one referral has been made and this case is currently being reviewed and addressed by relevant agencies. We will work with partners to further publicise the community trigger process.

Community Remedy

- 3.28 This new power gives victims of low-level crime and anti-social behaviour a say in the punishment of offenders as an alternative to the need for court action. This means that victims will get justice quickly and the offender has to face immediate and meaningful consequences for their actions.
- 3.29 This provision is a duty for the Police and Crime Commissioner (PCC) and is enacted by the local investigating police officer. Surrey's Police and Crime Commissioner is undertaking public consultation on methods of dealing with offending and this will inform local implementation of the community remedy.

Enforcement

- 3.30 The new powers come with enforceable penalties and, in some cases, we are the lead authority. We are also the prosecuting authority for any breaches of public space protection orders and community protection notices. Both orders have sanctions for fixed penalty notices (up to £100) for breaches where a warning letter has previously been issued. We will receive all income from any enforcement activity, including fixed penalty notices.

Next Steps

- 3.31 We have been working with relevant internal services and partner agencies to develop and agree processes for the implementation of these new powers. These arrangements will be put into place in the event that the relevant authority is received from the Executive. We will also work with partners to publicise these new powers, including information on the community trigger.

- 3.32 The new powers impact on a number of areas of our work. Some orders replace existing ones such as the Designated Public Place Order (DPPO) and others work alongside existing powers, such as abatement notices. Where this is the case, close communication will be required to ensure that duplication is avoided and that the right power is utilised to deal with the problem.
- 3.33 Surrey's Community Safety team has prepared a training course for community safety partnerships on the new powers. Training will also be arranged for relevant frontline staff.

4. Financial Implications

- 4.1 We will implement the provisions of the Act within existing resources. However, there may be financial implications and we will keep this under review. Potential costs include:
- staff costs for enforcement;
 - legal costs for undertaking more anti-social behaviour related action; and
 - staff training costs.
- 4.2 We will bring a further report to the Executive should these resource implications require additional financial provision.

5. Legal Implications

- 5.1 The Act provides us with new provisions and powers for dealing with anti-social behaviour. These are explained in the report. The recommendations will ensure that our officers are properly authorised to exercise the available powers.
- 5.2 Use of the powers contained in the Act may result in additional legal action by the Council. For example, we will become the prosecuting authority for any breaches of public space protection orders and community protection notices.

6. Human Resource Implications

- 6.1 Enforcement of the new powers will have implications for frontline staff. There may also be an impact on our Legal Services team if more anti-social behaviour related action is taken. These impacts cannot be assessed accurately at this time and, as referred to in the financial implications section, will be discussed in a further report to the Executive if required.

7. Conclusion

- 7.1 The Act includes new mechanisms and tools for dealing with anti-social behaviour. The Act consolidates nineteen existing powers into six new powers. It also introduces the community trigger and community remedy as described in this report.
- 7.2 To enable us to continue to have a whole range of tools available for dealing with anti-social behaviour in the borough, the reports asks that the officers be

authorised to exercise the Council's functions and enforcement powers under the Act.

8. Background Papers

Anti-Social Behaviour, Crime and Policing Act 2014

<http://www.legislation.gov.uk/ukpga/2014/12/contents/enacted>

Anti-Social Behaviour, Crime and Policing Act 2014: Reform of Anti-Social Behaviour Powers – Statutory Guidance for Frontline Professionals (July 2014)

<https://www.gov.uk/government/publications/anti-social-behaviour-crime-and-policing-bill-anti-social-behaviour>

9. Appendices

Appendix 1: Table showing existing and new powers

More Effective Powers

The table below details current powers that are being dissolved and new powers that will replace them. The powers highlighted in bold are those at our disposal.

Outgoing Tools/Powers	New Power
Anti-Social Behaviour Order (ASBO) ASBO on Conviction Drinking Banning Order (DBO) DBO on Conviction Anti-Social Behaviour Injunction (ASBI) Individual Support Order (ISO) Intervention Order	Civil Injunction Criminal Behaviour Order (CBO)
Litter Clearing Notice Street Litter Clearing Notice Graffiti/Defacement Removal Notice Designated Public Place Order Gating Order Dog Control Order ASB Premises Closure Order Crack House Closure Order Noisy Premises Closure Order Section 161 Closure Order	Community Protection Notice (CPN) Public Spaces Protection Order (PSPO) Closure Notice and Order
Section 30 Dispersal Order Section 27 Direction to Leave	Dispersal Powers
No existing power	Absolute Grounds for Possession