

ROTHERHAM BOROUGH COUNCIL – REPORT TO MEMBERS

1.	Meeting:	The Cabinet
2.	Date:	15th October 2014
3.	Title:	Anti-social Behaviour, Crime and Policing Act 2014; Delegation of Powers
4.	Directorate:	NAS

5. Summary

This report provides an overview of the Anti-Social Behaviour (ASB), Crime and Policing Act 2014, the measures and remedies made available within the Act to tackle ASB and crime and the work taking place to implement these measures in Rotherham.

The report also highlights the amendments required to the current Scheme of Delegation to accommodate the new measures within the Act.

The paper was presented to and approved by the Strategic Leadership Team on Monday 6th October 2014.

5. Recommendations

That the Cabinet:

- (1) Notes the new powers in the Anti-Social Behaviour (ASB), Crime and Policing Act 2014**
- (2) Recommends the proposed amendments to the Scheme of Delegation detailed in Section 7.3 of this report to Council.**

7. Proposals and Details

7.1 Background

In 2010, the Home Office carried out a review of the measures available to practitioners for responding to anti-social behaviour (ASB). The review concluded that:

- There were too many potential remedies available and practitioners tended to rely on the ones that they were most familiar with.
- Some of the formal options available, particularly the Anti-Social Behaviour Order (or ASBO), were bureaucratic to administer, slow and expensive, which was becoming a potential deterrent to their use;
- The growing number of people who breached their ASBO suggested they were not acting as a deterrent to a persistent minority from continuing their anti-social or criminal behaviour; and
- The methods that were designed to help perpetrators deal with underlying causes of their anti-social behaviour were rarely used.

The Home Office subsequently consulted on proposals to reform the policy framework for dealing with ASB in 2011. This led to the publication of a White Paper, "Putting Victims First – More Effective Responses to Anti-Social Behaviour", in 2012.

The Home Office indicated that the intention of its proposals was to "*move away from having a tool for every different problem*" to a new approach designed to ensure that local authorities, the police and partners have "*faster, more flexible tools*" to respond to problems with "*victims at the heart of the response*".

The Anti-Social Behaviour, Crime and Policing Bill subsequently progressed through Parliament and the resulting Act received Royal Assent on 13th March 2014. It comes into force on 20th October 2014.

The Act covers a range of matters, which can be summarised as follows:

- Parts 1 to 6 introduce new measures for responding to anti-social behaviour;
- Part 7 addresses dangerous dogs;
- Part 8 relates to firearms;
- Part 9 covers protection from sexual harm and violence;
- Part 10 relates to forced marriage;
- Part 11 deals with various policing matters;
- Part 12 amends the Extradition Act 2003;
- Part 13 introduces changes to criminal justice and court fees; and
- Part 14 is a general section covering amendments, commencement, etc.

This report gives an overview of the new measures for tackling anti-social behaviour and to consider the implications for the Council.

7.2 New Measures for Tackling Anti-Social Behaviour

7.2.1 New Tools and Powers

The Act replaces nineteen pre-existing measures with six new measures for tackling anti-social behaviour. The new measures are listed below.

A detailed summary of each measure is attached as Appendix 1.

- Injunction to deal with anti-social behaviour
- Criminal Behaviour Order (CBO).
These measures replace the existing ASBO; ASBO on conviction; Drinking Banning Order; Drinking Banning Order on conviction; ASB Injunction; Individual Support Order and Intervention Order.
- Dispersal Power.
This measure replaces the existing Section 30 Dispersal Order and Section 27 Direction to Leave.
- Community Protection Notice (CPN).
- Public Spaces Protection Order (PSPO).
- Closure Power.
These measures replace the existing 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 and Section 161 Closure Order.

7.2.2 Absolute Ground For Possession

The Act also introduces a new absolute ground for possession of Secure and Assured tenancies, associated with anti-social behaviour or criminality.

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 be granted a possession order, but instead courts must grant possession if the landlord followed the correct procedure and can demonstrate at least one of the specified conditions below is met. These are:

- A conviction for a serious criminal offence
- A court order finding a person in contempt of court for breaching an injunction made under the Act
- Breach of a Criminal Behaviour Order
- Obtaining a premises closure order
- A conviction for breach of an abatement notice

In such cases, the tenancy would be reviewed in the same way that an existing Introductory Tenancy would be reviewed prior to a decision being made to seek to recover possession of the property.

7.2.3 Litter from Vehicles

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.

7.2.4 Community Remedies

The Act requires each local policing body 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.

An action is considered appropriate to be carried out by a person only if it has one or more of the following objectives:

- assisting in the person's rehabilitation;
- ensuring that the person makes reparation for the behaviour or offence in question;
- punishing the person.

In preparing the document, the local police must consult with the local authority and carry out whatever other public consultation that it considers appropriate.

The Act also sets out rules for out-of-court disposals for anti-social behaviour and conditional cautions. This includes a duty to consult victims before deciding what conditions to attach to a conditional caution.

7.2.5 Response to Complaints about Anti-Social Behaviour – ‘Community Trigger’

The White Paper, *'Putting Victims First'*, stated that the aim of the ‘Community Trigger’ was to give victims and communities the right to demand that agencies who had ignored repeated complaints about anti-social behaviour take action.

The relevant bodies in an area (Police, Council, Clinical Commissioning Group and providers of social housing) must carry out an ASB case review if someone makes an application for a review and the local threshold for a review is met. If a review is triggered, the relevant bodies must carry out the review and then inform the applicant of the outcomes of that review and any recommendations emerging from the review.

There is a requirement for relevant bodies to produce “review procedures” for carrying out any ASB case reviews and ensure that the current review procedures are published. Relevant bodies must also report the number of applications received, the number of times the threshold was met, the number of reviews carried out and the number of reviews that resulted in recommendations being made.

A report detailing local arrangements for managing the 'Community Trigger' process was presented to the Cabinet Member for Safe and Attractive Neighbourhoods on 29th September.

7.3 RMBC Scheme of Delegation

The implementation of the Act will require amendments to operational processes and procedures, and supporting documentation etc. These matters are being addressed. However, the changes to the powers within the Act will also require amendments to the RMBC Scheme of Delegation. It is recommended that the following wording be added to the Scheme of Delegation:

"The Anti-social, Crime and Policing Act 2014 is added to the list of statutes delegated to the Director of Housing and Neighbourhoods.

The following powers are delegated to the Director of Housing and Neighbourhoods:

Authorise any appropriate legal action available to the Council in respect of breaches of the Council's tenancy agreements and other legal measures against any perpetrators of harassment, crime and anti-social behaviour committed in the Borough of Rotherham. Such legal action includes, but is not limited to:

- Applications for a possession order in relation to Council properties whether on discretionary or mandatory grounds (including the service of any notice as a pre-requisite to such application) and action required to enforce such an order
- Applications for injunctions (including but not limited to those under Part 1 of the Anti-social Behaviour, Crime & Policing Act 2014 ("the 2014 Act"))
- Applications for Criminal Behaviour Orders (Part 2 of the 2014 Act)
- The issuing of Community Protection Notices (including the statutorily required prior written warnings) , the taking of any related remedial action, and applications for seizure of items used in the breach of a notice (Part 4 of the 2014 Act)
- The making, extension, variation and discharge of a Public Spaces Protection Order (Chapter 4 of the 2014 Act)
- The issuing of a closure notice (including a related variation and cancellation notice) and application for a closure order (including a related extension and discharge) (Part 4 of the 2014 Act)

Applications to enforce the breach of any orders obtained or notices served to deal with anti-social behaviour and crime, including, but not limited to

- Committal proceedings for breach of injunctions
- Prosecution proceedings for breach of Criminal Behaviour Orders, Community Protection Notices, Public Spaces Protection Orders, Closure Notices/Orders (including the issue of available fixed penalty notices)

To act on behalf of the Council in deciding whether the threshold for an anti-social behaviour case review is met in any given case in accordance with section 104 of the Act and the relevant review procedures, and if so, carrying out a review.

To act on behalf of the Council to carry out any formal consultation required in relation to:

- Injunctions (Part 1 of the 2014 Act)
- Closure Orders (Part 4 of the 2014 Act)
- Community Remedy (Part 6 of the 2014 Act)

Authorise officers to:

- Issue any notice as a pre-requisite to an application for a possession order (whether on discretionary or mandatory grounds) in relation to Council properties.
- Issue Community Protection Notices, prior written warnings and any related fixed penalty notices for breach
- Enforce a Public Spaces Protection Order (including the giving of a direction or issuing a fixed penalty notice)
- Enforce a closure order (including the seeking of an order for reimbursement of costs)

Authorise appropriate publicity by the Council for the purposes of advising members of the public that court orders have been made to deal with anti-social behaviour or crime and to encourage the reporting of any breaches of those orders to promote their effectiveness.

The Following Powers be Delegated to the Anti-social Behaviour Review Panel:
To undertake the statutory reviews of the Council's decisions to seek a possession order of a Council tenancy on the absolute ground of ant-social behaviour, as required by section 85ZA of the Housing Act 1985.

The Dangerous Dogs Act 1991 (as amended) be added to the list of statutes delegated to the Director of Streetpride."

8. Finance

There are no immediate financial implications arising from the changes and operational implementation of the new powers will be accommodated within existing budgets and resources.

9. Risks and Uncertainties

Tackling ASB and responding to the vulnerable within our communities is a priority for both South Yorkshire Police and the council in keeping people safe and protecting the most vulnerable.

In terms of implementation, we are advised by the national Social Landlords Crime and Nuisance Group, that there will be a delay to the introduction of Part 1 of the Act;

the civil injunction. This will allow unavoidable and necessary changes to be made to the civil legal aid system, to ensure that applications for advocacy assistance can be assessed for those involved in civil injunction hearings. This will require amendments to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) which should be completed by the end of January 2015 at the latest. Once this is completed we will be in a position to commence the civil injunction and a commencement date will be advised to us.

Until the LASPO provisions are in force and the Part 1 Civil Injunction is commenced, the 'ASBO on application' remedy will remain in place and we will continue to use anti-social behaviour housing injunctions (ASBIs).

It is also worth noting that the new anti-social behaviour powers can be used more flexibly than the current powers, for example, it might be appropriate in some cases to use a Community Protection Notice where an ASBO on application might currently be considered. It is for local authorities to apply the most appropriate remedy, to the situation in hand.

Parts 2-6 of the Anti-social Behaviour, Crime and Policing Act 2014 will commence on 20 October as planned. This includes: the criminal behaviour order, dispersal power, community protection notices, public spaces protection order, closure power, new absolute ground for possession, community remedy and the community trigger.

The introduction of the new powers requires several risks to be addressed these include development of processes, training of staff, shared understanding with the Police both in terms of the introduction and implementation of the powers, and case specific information sharing protocols between enforcement services (including the Police) to avoid duplication and effectiveness of the use of powers. These risks are managed Implementation Plan which links to the South Yorkshire Police's plans.

10. Policy and Performance Agenda Implications

- CP2 - Protecting our most vulnerable people and families, enabling them to maximise their independence
- CP3 - Ensuring all areas of Rotherham are safe, clean and well maintained

11. Background Papers and Consultation

- Anti-Social Behaviour, Crime & Policing Act 2014
- Home Office document – 'Reform of anti-social behaviour powers – Statutory guidance for frontline professionals'
- 'Community Trigger' Report, Cabinet Member for Safe and Attractive Neighbourhoods, 29th September 2014
- Advice and guidance from the Head of Legal Services

The Commencement Order for the new Act can be found using the following link:
<http://www.legislation.gov.uk/id/uksi/2014/2590>.

Contact Name : Steve Parry, RMBC Crime & Anti-Social Behaviour Manager
Tel (3)34565, steve.parry@rotherham.gov.uk

Appendix 1.

Anti-Social Behaviour, Crime & Policing Act 2014 New Measures for Tackling Anti-Social Behaviour

1. Injunction to Prevent Nuisance and Annoyance

The Injunction to deal with ASB is a civil power which can be applied for by a range of agencies to deal with anti-social individuals. Agencies that can apply for Injunction to deal with ASB include district councils, housing providers and the Police. Applications must be made to a youth court for those aged under 18 and to the county court or High Court in all other cases. The Injunction to deal with ASB can prohibit the offender from doing proscribed things (prohibitions) and require them to do certain things (requirements). The requirements should aim to tackle the underlying causes of the anti-social behaviour and could include such things as attending an anger management course, participating in substance misuse awareness sessions, or attending a job readiness course.

Breach of an Injunction to deal with ASB is not a criminal offence. For adults, a breach is dealt with by a civil contempt of court and breach proceedings for under 18s are dealt with in the youth court.

2. Criminal Behaviour Order (CBO).

The CBO is available on conviction for any criminal offence in any criminal court. It is similar to the Injunction to deal with ASB and can include prohibitions and requirements. However, unlike the Injunction to deal with ASB, it is a criminal offence to fail to comply with an order without reasonable excuse. Breaches of CBO by those aged under 18 will be dealt with in the youth court. In all other cases, the offence will be considered by the magistrates' court or Crown Court.

These measures replace the existing ASBO; ASBO on conviction; Drinking Banning Order; Drinking Banning Order on conviction; ASB Injunction; Individual Support Order and Intervention Order.

3. Directions Power.

The power can be used by the police to disperse anti-social individuals and provide immediate short-term respite to the local community. Police officers can also confiscate any item that they believe has been used, or is likely to be used, in anti-social behaviour. Failure to comply with the direction is an offence, which can result in imprisonment or a fine.

This measure replaces the existing Section 30 Dispersal Order and Section 27 Direction to Leave.

4. Community Protection Notice (CPN).

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. It can be issued against any person over the age of 16 or a body, including a business. The Home Office note that councils already take the lead in dealing with these kinds of issues. In addition to designated council officers, CPNs can also be issued by police officers and police community support officers. A person found guilty of failing to comply with a notice without reasonable excuse is liable to a fine of up to £2,500 (£20,000 in the case of a body).

5. Public Spaces Protection Order (PSPO).

The PSPO is 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. Local authorities will be responsible for making a PSPO but police officers and police community support officers can also play a role in enforcing the orders. It is an offence to fail to comply with an order without reasonable excuse and can result in a fine of up to £1,000.

The Act provides the ability for authorised local authority officers, police and police community support officers to issue a fixed penalty notice for failure to comply with both a CPN and a PSPO as an alternative to prosecution. The amount of the fixed penalty notice can be set by the local authority but cannot exceed £100.

6. Closure Power.

The closure power can be used by local authorities and the police to close premises that are causing nuisance or disorder. The power comes in two stages. The closure notice can be used out of court to provide short term relief up to a maximum of 48 hours. The notice can then be extended upon application for a closure order to the magistrates' court for a period of up to three months. At any time before the expiry of the closure order, an application may be made to the court for an extension (or further extension) of the order up to a total of six months.

These measures replace the existing 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 and Section 161 Closure Order.

7. Dangerous Dogs

The Act amends the the Dangerous Dogs Act 1991 and strengthened shared powers with the Police relating to the keeping dogs under control. It makes it an offence for a dog to be dangerously out of control in all places, including inside the dog owner's home – protecting people such as postal workers, health and housing professionals and children. It also provides for the seizure of any dog which appears to be dangerously out of control whilst not in a public place.

The Act therefore, complements previous legislation:

- it is now an offence under section 3 for a person to be an owner or in charge of a dog, that is dangerously out of control in any place in England or Wales and now covers those situations where postal workers are entering gardens.

- puts a duty on dog owners to ensure that their dogs are under proper control at all times and do not cause menace to those that may have cause to enter the boundaries of their property
- includes consideration of the owner in relation to whether the dog is a danger
- increase in the maximum sentence for an offence
- extends the aggravated form of an offence to injury to assistance dogs as well as their owners
- any dog that appears to be dangerously out of control may be seized from anywhere, not just public places