



PRCC.17 14/15
Committee Prosperous
Date 2 <sup>nd</sup> September 2014

**D**

**Subject: Anti-Social Behaviour Crime and Policing Act 2014**

Report by:	Kathryn Hearn Community Action Officer – Community Safety
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Purpose / Summary:	To notify members to the changes likely to affect West Lindsey District Council under the Anti-Social Behaviour, Crime and Policing Act 2014, and to approve recommendations made for the implementation and management of new powers under the said Act.

**RECOMMENDATION(S):**

- 1. That members recommend to full council the amendments to the constitution as detailed in Section 3(a) and Section 3(c)**
- 2. That members recommend to P&R approval of use of fixed penalties as detailed in Section 3(b)**
- 3. That members recommend to P&R, as part of the budget setting process, that the amended charging schedule for fixed penalty notices, as detailed in Section 3(b), is adopted with effect from 1 April 2015**

## IMPLICATIONS

**Legal: Anti-Social Behaviour is a statutory function under the Crime and Disorder Act 2008. The changes to legislation will significantly affect how we carry out this statutory function, and prior preparation and approval will allow for better use of legal remedies.**

**Failure to implement and use the legislation could leave the council open to legal challenge.**

### **Financial : FIN/49/15**

**Cost implications from need for new literature, publicity, and staff resource in preparation, training and using the legislation. These should be minimal.**

**Possible higher legal costs associated with Civil Injunction breaches.**

**Amended fixed penalty notices will be effective from 1st April 2015, as detailed in Section 3b, and will be incorporated within the fees and charges schedule, subject to approval by P&R through the budget setting process for 2015/16.**

**Staffing : Staff will require training. This will be provided by the county partnership and internally. There should be no impact on staff grades.**

**Staff from several different departments will be affected. Managers have been involved with consultation and will be involved in developing processes.**

**Delegation of new powers will be required to relevant staff.**

### **Equality and Diversity including Human Rights :**

*NB: A full impact assessment **HAS TO BE** attached if the report relates to any new or revised policy or revision to service delivery/introduction of new services.*

### **Risk Assessment :**

**Climate Related Risks and Opportunities : None**

### **Title and Location of any Background Papers used in the preparation of this report:**

Home Office Report: Anti-social Behaviour, Crime and Policing Act 2014: Reform of anti-social behaviour powers. Statutory guidance for frontline professionals.

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/332839/StatutoryGuidanceFrontline.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/332839/StatutoryGuidanceFrontline.pdf)

**Call in and Urgency:**

**Is the decision one which Rule 14 of the Scrutiny Procedure Rules apply?**

**Yes**

**No**

**Key Decision:**

**Yes**

**No**

## 1. Introduction

The Anti-Social Behaviour, Crime and Policing Act was given Royal Assent on 13<sup>th</sup> March 2014. The Act has rewritten much of the legislation currently in use by local authorities for dealing with matters of anti-social behaviour, environmental crime and other enforcement. The new legislation comes in to force on 20<sup>th</sup> October 2014.

Work has been on-going at a county level to prepare for the new legislation, with a set of draft guidelines currently out for consultation. This will be the basis of the new procedures and processes to be used internally, to establish some continuity with other authorities in Lincolnshire.

The legislation will impact on the following functions:

- Anti-Social Behaviour and CCTV
- Environmental Protection
- Planning and Housing Enforcement
- Home Options
- Safeguarding
- Domestic Abuse
- Empty Properties
- Building Control
- Customer Services

Training will be arranged via the county partnership for those most affected by the changes. Internal training and awareness sessions will be planned for those not directly using the powers or needing only an awareness of the new powers.

## 2. The new legislation

### Civil Injunction

This will replace the Anti-Social Behaviour Order (ASBO) that we currently use. The main differences include:

- Civil order instead of criminal – lower burden of proof
- Breach not a criminal offence; treated as contempt of court. We as the applicant responsible for dealing with a breach not the CPS. Possible higher legal fees resulting from this.
- Positive requirements e.g. drugs treatment order or families working together referral can be added to the order as well as prohibitions i.e. what the respondent must not do.

### Criminal Behaviour Order

This will replace the ASBO on conviction. The CPS will continue to apply for and deal with breaches of these orders. The only real change will be the ability to add positive requirements.

### Community Protection Notice (CPN)

This will replace Litter Clearing Notices (litter and refuse on private property), Street Litter Clearing Notices, Graffiti and defacement notices. The test for a CPN may also allow us to use it for noise which does not constitute statutory nuisance and waste offences. There may be further options with the CPN, but these will have to be considered individually.

Failure to comply with a CPN can result in a fixed penalty notice of no more than £100, and/or prosecution and/or works in default.

Registered Social Landlords will only have the power to use CPNs on their own land/properties if the power is delegated from the local authority. It is not yet clear if RSLs will wish to have this power. Breaches of CPNs issued by RSLs still have to be dealt with by the local authority.

### Public Spaces Protection Order (PSPO)

This will replace Dog Control Orders (regulations regarding dogs on leads, dogs entering land – not dangerous dogs), Gating Orders and Designated Public Place Orders (drinking in public places). Some main changes will include:

- Only the local authority will be able to make PSPOs. This means any Dog Control Orders made by Parish or Town Councils, once they expire, will only be renewable by WLDC.
- Gating powers, formerly held by Highways, will now be available to WLDC
- Failure to comply with a PSPO can result in a fixed penalty notice of no more than £100 or prosecution
- PSPOs will not be considered as local byelaws

It has been recommended by the county partnership that the final decision to put in place a PSPO sit with a cross party group of elected members.

The legislation appears to identify PSPOs as different to local bye-laws, and they will not therefore need to follow current council bye-law procedure.

### Closure Power

These will remain similar to the current closure powers with the main difference being that a 48 hour closure can be put in place by the council without having to apply for full closure to court. Full closure will be for three months, with a further three month extension period.

Closure can be placed on residential, business or licenced premise.

The new legislation will not affect the following:

- Fly tipping legislation
- Dog fouling legislation (under Dogs (Fouling of Land) Act 1996)
- Littering legislation
- Prevention of Damage by Pests Act
- Section 215 actions under Town and Country Planning Act
- Statutory Nuisance Legislation

### **3. Actions and decision required**

From a review of the legislation it has been noted that changes in the constitution will be required to allow for delegation to appropriate officers. Failure to delegate powers prior to the Act coming in to force could leave the council open to legal challenge or damage the councils' reputation by leaving officers unable to use the legislation to tackle anti-social behaviour.

#### **a) Changes to the Constitution**

We propose that the Constitution of the Council is amended as follows:

Part 4, page 30, under Head of Public Protection, paragraph 3, insert Anti-Social Behaviour, Crime and Policing Act 2014 into list of legislation delegations can be made under.

Part 4, page 32, under Head of Localism, insert paragraphs 2 and 3 to read as follows:

2. To appoint, authorise, nominate, named persons or organisations to
- (a) Administer, exercise powers, give direction, exercise the powers of entry, agree notices, act, take enforcement action including prosecutions, serving notice, carrying out work in default, including cost recovery
  - (b) Act as inspectors
  - (c) Act as a competent person
  - (d) Act in a statutory role
  - (e) Administer the provisions
  - (f) Determine confidential matters

Under the provisions in the acts, regulations, and any associated orders and regulations listed in paragraph 3 below.

3. The powers in paragraph 2 above apply to the following legislation:

- Anti-Social Behaviour Act 2003
- Anti-Social Behaviour, Crime and Policing Act 2014

The wording in Paragraph 2 would allow delegation to RSLs of power to issue CPN if decided on at a later date.

Although this legislation supersedes and amends sections of other Acts it does not repeal any Act. There will therefore be no Act to be removed from these sections of the Constitution.

b) Fixed penalty notices

The Act introduces two new pieces of legislation for which fixed penalty notices may be used as an alternative to prosecution; the legislation does not prescribe the amount of each fixed penalty except to give an upper limit of £100, nor does it make use of the fixed penalties compulsory. We are able to make the decision as to whether we adopt and use the new fixed penalty notices and set the amount locally.

The current amounts of fixed penalty used which will be affected are as follows:

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|--|------|
| - Failure to comply with a Litter Clearing Notice or Street Litter Clearing Notice | £100 |
| - Graffiti and fly posting   | £75  |
| Early Payment (within 10 days)   | £50  |

These are both replaced by Community Protection Notice.

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| - Failure to comply with the requirements of a Dog Control Order | £75 |
| Early payment (within 10 days)                                   | £50 |

This is replaced by Public Space Protection Order

Fixed penalty notices are a valuable tool to our enforcement officers, enabling us to take clear action on an offence without a full court action, but also leaving the door open to prosecution if not paid. They are a good deterrent to others. As such we recommend that these fixed penalty notices are adopted.

It is also recommended, to avoid confusion or error, that fixed penalty notices for both CPNs and PSPOs are set at £75, with an early payment incentive to reduce cost to £50 if paid within 10 days.

This is recommended to become live from 1 April 2015.

c) Decision making body for PSPOs

It has been recommended by the county ASB partnership that a cross party body of members be responsible for taking the final decision on use of a PSPO. As council structures vary across the county, this has been left to each authority to decide where this decision should be taken.

The aim of the PSPO is to bring relief to a community, and therefore the process should not be unnecessarily slowed down. The officer leading the case in question would be responsible for gathering all relevant evidence, carrying out consultation and producing a report with a recommendation.

Workload is not anticipated to be high, however with Parish and Town councils unable to reapply for Orders in their areas the amount of applications may increase once current orders have expired.

It is recommended that the Licencing and Regulatory Committee be the responsible body for the granting of PSPOs, and that this function be added to its Terms of Reference.

#### **4. Communications**

It will be important to ensure that Parish and Town Councils, plus residents of West Lindsey, are aware of the changes in the legislation and receive clarity on the responsibilities of different agencies and departments. Work will be on-going with the communications team to ensure messages are delivered effectively., which will include updating of the information on the website, and production of new literature.

Internally, training and awareness sessions will be held to ensure the new processes and powers and understood and consistent across all departments.

#### **5. Conclusion**

The implementation of the new legislation offers West Lindsey an opportunity to set an example as a leader in the management of anti-social behaviour and environmental crime. The steps as detailed in this report will assist in setting the framework that the internal procedures and processes for use of the powers will be based on. By ensuring we have altered our constitution in good time we will ensure the reputation of the council is not damaged and officers are able to take all actions possible as part of their statutory function.