

Report To:	COUNCIL
Date:	10 October 2017
Executive Officer:	Member/Reporting Officer: Councillor Allison Gwynne – Executive Member Clean and Green Ian Saxon – Assistant Director (Environmental Services)
Subject:	REQUEST FOR THE COUNCIL'S CONSTITUTION TO BE AMENDED TO ADOPT NEW POWERS UNDER THE ANTI-SOCIAL BEHAVIOUR CRIME AND POLICING ACT 2014
Report Summary:	This report provides an update on the Anti-Social Behaviour Crime and Policing Act 2014 and seeks support for new powers contained under the Act to be adopted within the Councils Constitution under the Terms of Reference and Scheme of Delegation.
Recommendations:	That Council agrees to adopt new powers contained under the Anti-Social Behaviour Crime and Policing Act 2014 into the Councils Terms of Reference and Scheme of Delegation.
Links to Community Strategy:	The Anti-social Behaviour Crime and Policing Act 2014 supports the priorities of the Council's corporate plan: Supporting economic growth and opportunity Increasing self-sufficiency and resilience of individuals and families Protecting the most vulnerable
Policy Implications:	Any decisions to subsequently apply any of the new powers contained in this report will be taken within the context of Council and Strategic Neighbourhood Partnership policies.
Financial Implications: (Authorised by the Section 151 Officer)	There are no direct financial implications arising from this report.
Legal Implications: (Authorised by the Borough Solicitor)	The Anti-Social Behaviour Crime and Policing Act 2014 (the Act) provides Council officers with a number of enforcement powers which can be used in tackling a wide variety of anti-social behaviour. These powers are identified in the body of the report and at Appendices 2 and 3 to the report. Council Officers have to be authorised by the Council's Constitution to use these powers. Any use of these powers without authorisation would be ultra vires. Any prosecution brought by the Council alleging a failure to comply with a notice issued under the Act, would therefore fail on the grounds that the Council officer had no authority to serve a notice in the first place. Likewise any application to the County Court for an Injunction under the Act would therefore fail on the grounds that the Council officer had no authority to issue a claim. The Council's Constitution would therefore need to be amended to extend the scheme of delegation;

- a) To include matters relating to those duties and responsibilities imposed on the Council by the Anti-Social Behaviour, Crime and Policing Act 2014; and
- b) To authorise Council enforcement officers (who may be from any service area) to carry out enforcement powers in accordance with the Anti-Social Behaviour, Crime and Policing Act 2014.

Should the constitution be amended then officers would need to be adequately trained to ensure that the powers are used in an appropriate, proportional and reasonable way.

Risk Management:

Risk assessments would be carried out whenever consideration is being given to using these new powers. There is a real risk – if these new powers are not adopted – that the Council will find itself unable to deal adequately with issues relating to ant-social behaviour.

Access to Information:

The background papers relating to this report can be inspected by contacting Ian Saxon, Assistant Executive Director (Environmental Services)



Telephone:0161 342 3470



e-mail: ian.saxon@tameside.gov.uk

1 INTRODUCTION

- 1.1. The purpose of this report is to recommend that the Council adopts, through its' Constitution, new powers under the Anti-Social Behaviour Crime & Policing Act 2014. This Act can be used to help tackle anti-social behaviour, environmental anti-social behaviour and criminal activities.
- 1.2. Section 3 of this report outlines the 6 new powers contained under the Anti-Social Behaviour Crime & Policing Act. The new powers are designed to be flexible and faster and easier to use to tackle anti-social behaviour across a range of legislation.
- 1.3. The Council's constitution exists to allow the Council to provide clear and effective leadership and create clear decision making processes. The Councils Constitution ensures that those with the power to make decisions on behalf of the Council are clearly identifiable and are accountable to the residents of Tameside. It is important that the Constitution is occasionally updated with regards to changes in legislation which effect how the Council operates and carries out its daily business.

2 BACKGROUND

- 2.1. Tackling anti-social behaviour (ASB) is a key priority for the Council and its partners and a number of approaches are already in place to help tackle ASB.
- 2.2. In 2010 the Council established the Anti-Social Behaviour Risk Assessment Conference (ASBRAC) process. This was in response to the learning from the Serious Case Review and ensures that victims receive the support they need by all partners, giving them a voice through a Victim's Champion.
- 2.3. In 2012 the Council worked with Partners to establish Restorative Justice in Tameside through Neighbourhood Resolution Panels. The Panels are made up of trained community volunteers and staff, who bring together both the victim (harmd) and the offender (harmer), and through mediation and dialogue work together to reach agreed outcomes outside of the criminal justice system. This process has proved to be successful for a wide range of low-level crime types and is used as an example of best practice across Greater Manchester.
- 2.4. In 2016 Neighbourhood Services officers transferred into two Integrated Neighbourhood Service Hubs, one in Ashton Police Station and one in Hyde Police Station. These meet on a daily basis to discuss issues, including ASB, that are placing a strain on communities and front line services. A range of early intervention methods are employed, including the use of Anti-Social Behaviour Contracts (ASC's), to address a range of ASB issues.
- 2.5. In addition, officers within the Council's Public Protection arm, including Environmental Health, Trading Standards, Licensing, Housing Enforcement and Environmental Protection, are in the process of moving towards a Single Regulatory Service which will encompass a wide range of place-related regulatory functions within a single unit.

3 ANTI-SOCIAL BEHAVIOUR CRIME AND POLICING ACT 2014

- 3.1. The Anti-Social Behaviour Crime and Policing Bill received Royal Assent on 13 March 2014 and is now an Act of Parliament. The Act brings together a number of changes to the tools and powers available to the various organisations, agencies and practitioners who tackle anti-social behaviour.

- 3.2. The reforms contained within the Anti-Social Behaviour Crime and Policing Act replaced 19 existing powers with 6 new ones and has been designed to provide better protection for victims and communities and ensure that professionals have effective powers that are quick, practical and easy to use. A diagram showing the 6 new powers and the 19 powers they replaced can be seen at **Appendix 1** of this report.
- 3.3. The 6 new powers contained under the Anti-Social Behaviour Crime and Policing Act are designed not only to provide effective respite for victims and communities, but also to stop future anti-social behaviour by the offender. Through the inclusion of 'positive requirements', perpetrators may be required to address the underlying causes of their behaviour, for example, substance misuse, anger management or problem drinking.
- 3.4. Under the Anti-Social Behaviour Crime and Policing Act, anti-social behaviour is defined as:
- *Conduct that has caused or is likely to cause harassment, alarm or distress to any person, or*
 - *Conduct capable of causing nuisance or annoyance to a person in relation to that persons occupation of residential premises, or*
 - *Conduct capable of causing housing-related nuisance or annoyance to any person.*
- 3.5. A summary of the 6 new powers, the powers they have replaced and the category they fall under is set out below. A full description of the powers can be seen at **Appendix 2** of this report.

Power to grant Injunctions (People)

- 3.6. The legislation allows several agencies, including local authorities, to make applications to the court for Injunctions relating to individuals. Examples of when this tool may be used include vandalism, public drunkenness, irresponsible dog ownership and noisy or abusive behaviour towards neighbours.
- 3.7. Breach of an injunction by an adult will amount to contempt of court, punishable by the county court by a term of imprisonment of up to 2 years or an unlimited fine. Breach of injunction by someone under 18 could result in the youth court imposing a supervision or detention order.

Criminal Behaviour Order (People)

- 3.8. A Criminal Behaviour Order will be an order on conviction and will be available for the most seriously anti-social individuals through the criminal courts.
- 3.9. A Criminal Behaviour Order could include prohibitions which are designed to stop an offender from engaging in problematic behaviour. An Order can also include requirements for the offender to engage in activities to address the causes of their offending. Compliance with the Order would be monitored by the National Probation Service or the Community Rehabilitation Company.

Community Protection Notice (Place)

- 3.10. A Community Protection Notice is intended to address a wide range of behaviours that negatively affect the quality of life for a community living in a particular area. It can apply to any individual who is over the age of 16 or a business / organisation. However, it does not replace the statutory nuisance regime.
- 3.11. A Community Protection Notice may be used, for instance, in a situation where a dog was repeatedly escaping from its owners back garden due to a broken fence; the owner could be issued with a notice requiring that they repair the fence to avoid further escapes.

- 3.12. 'Authorised Persons' can issue a Community Protection Notice, including; a police officer, the relevant Local Authority or a person designated by the relevant Local Authority, such as a Registered Social Landlord.

Public Spaces Protection Order (Place)

- 3.13. A Public Spaces Protection Order is intended to deal with a particular nuisance in an area which negatively affects the community's quality of life. Unlike the Community Protection Notice, it will apply to everyone using that geographical area and will impose conditions on the use of that area (e.g. restricting the use of a highway late at night by groups of people or the drinking of alcohol in a public space). Orders will last for up to 3 years, after which they will require review.

- 3.14. Local authorities may issue Public Spaces Protection Orders where they reasonably believe that the behaviour is detrimental to the local community's quality of life and that the issuing of the order is a reasonable response.

- 3.15. The order prohibits certain named behaviours from taking place in a defined geography, for example drinking alcohol or allowing dogs to be off the leash.

Closure Notice (Place)

- 3.16. A Closure Notice can be issued by the Police or Local Authority in cases of possible or actual public nuisance associated with a particular premise, for a maximum of up to 48 hours.

- 3.17. A Closure Notice can also be designed to prohibit access to people at particular times, such as an anticipated party that had been advertised through social media.

Police Dispersal Power (Police Powers)

- 3.18. Under the Police Dispersal Powers, persons aged 10 and above who have committed, or are likely to commit anti-social behaviour can be directed to leave a specified area, and not return for a specified period of up to 48 hours. This does not replace the power to return a child under the age of 16 (who is on the streets between 9pm and 6am without an adult) home or to a place of safety.

- 3.19. The Police Dispersal Power may be used in cases where there is intelligence to indicate that there is likely to be anti-social behaviour on a particular housing estate during the weekend.

Community Remedy

- 3.20. The Community Remedy is a statement of options, developed in consultation with the public, that aims to give victims a say in the out of court punishment for offenders of low level crime and anti-social behaviour. The Act places a duty on the Police and Crime Commissioner to consult with the public and community representatives.

- 3.21. It is anticipated that The Community Remedy will provide an overarching commitment to a consistent approach to tackling anti-social behaviour whilst also supporting options available through Restorative Justice.

Adopting the new powers

- 3.22. In order to use these new powers, the Council will need to adopt the Anti-Social Behaviour Crime and Policing Act within the framework of its constitution under its Terms of Reference and Scheme of Delegation

- 3.23. The Councils Terms of Reference and Scheme of Delegation currently place the delegated authority for use of the powers that have been replaced with the Executive Director (Place). In order to use the new powers to their maximum effect the Council could consider

adopting the new powers contained within the Anti-social Behaviour Crime and Policing Act under the delegated authority of the same Executive Director.

4. RECOMMENDATIONS

- 4.1. As stated on the report cover

**ASB Crime and Policing Act 2014
(New Powers)**

Existing powers under various legislation

Appendix 1

People



Places



Additional Police Powers



The Anti-social Behaviour, Crime and Policing Act 2014

1. Power to grant Injunctions (People)

- 1.1 The power to grant injunctions replaces the Anti-social Behaviour Injunction (ASBI), Anti-social Behaviour Order (ASBO), Individual Support Order (ISO), Intervention Order and Drink Banning Order (DBO).
- 1.2 The Injunction will be available in the county court for adults and in the youth court for under 18's. There is a wider range of potential applicants or the new injunction than the current ASBI. This is intended to help reduce the burden falling on any particular agency to make applications on behalf of others. There is a formal requirement for the applicant to consult with the local Youth Offending Team if the injunction is against someone under the age of 18, however, this does not give a VETO power to the local Youth Offending Team.
- 1.3 There is no minimum or maximum term for an injunction for adults but in the case of under 18s, the maximum term is 12 months. This will provide victims and communities with the respite they deserve, send a strong message to perpetrators that their behaviour is not acceptable and provide sufficient time for them to work with local agencies to address any underlying issues driving the behaviour.
- 1.4 The court could also include 'positive requirements' in the injunction to get the perpetrator to address the underlying reasons for their anti-social behaviour potentially reducing breach rates in the longer term. Where an injunction imposes requirements, the court must receive evidence from the applicant of the suitability and enforceability of the requirements and who is responsible (an individual or organisation) for supervising compliance. An example could include the local authority, youth offending teams, recognised providers of substance misuse recovery or dog training providers for irresponsible dog owners.
- 1.5 In granting an Injunction to a housing provider, local authority or the police, the court may attach a power to exclude the respondent from their home or a specified area if it thinks they have been violent or threatened violence to other persons, or if there is a significant risk of harm to others. In the case of a housing provider, exclusion can only relate to the property owned or managed by them, there is no such limitation in the case of the police or local authority and exclusion would be tenure neutral.
- 1.6 Breach of an Injunction by an adult will be contempt of court, punishable in the usual way by the county court by a term of imprisonment of up to two years or an unlimited fine. Breach of injunction by someone under 18 could result in the youth court imposing a supervision order or a detention order.
- 1.7 Examples of when this tool may be used include vandalism, public drunkenness, and irresponsible dog ownership, noisy or abusive behaviour towards neighbours.

2. Criminal Behaviour Order (People)

- 2.1 The Criminal Behaviour Order replaces the Anti-social Behaviour Order on Conviction (CRASBO) and Drink Banning Order on Conviction.
- 2.2 The Criminal Behaviour Order will be an order on conviction, and will be available for the most seriously anti-social individuals and could be applied for on conviction for any criminal offence in any criminal court. This will replace the ASBO on conviction and the drink

banning order on conviction. The Criminal Behaviour Order can only be made on the application of the prosecutor, in most cases the Crown Prosecution Service, either at their own initiative or at the request of the police or local authority. Unlike the current process, local authorities would be able to apply directly to the prosecution without requesting the permission of the police.

- 2.3 The court may make a Criminal Behaviour Order against the offender if two conditions are met. The first condition is that the court is satisfied, beyond reasonable doubt that the offender, has engaged in behaviour that caused or is likely to cause harassment, alarm or distress to any person. The second condition is that the court considers that making the order will help in preventing the offender from engaging in such behaviour. Hearsay evidence (which may not have been admissible in the criminal proceedings) is allowed in Criminal Behaviour Order proceedings.
- 2.4 Where the offender is under the age of 18, the police or local authority must consult the local Youth Offending Team (YOT) and must inform the prosecutor of the views of the team. The consultation requirement does not give the Youth Offending Team a VETO power over applications for Criminal Behaviour Orders.
- 2.5 The Criminal Behaviour Order could include prohibitions and/or positive sanctions that assist in preventing the offender from engaging in behaviour that could cause harassment, alarm or distress in the future. If an order includes a requirement the court must receive evidence from the applicant of the suitability and enforceability of the requirements and who is responsible (an individual or organisation) for supervising compliance.
- 2.6 Where a court adjourns a hearing for an order, it can place an interim order on the offender that lasts until the final hearing of the application if the court thinks it is just to do so.
- 2.7 A person who without a reasonable excuse does anything that she or he is prohibited from doing or fails to do anything that she or he is required to do under the conditions of the order commits an offence and is liable on summary conviction to imprisonment for up to six months or to a fine or both and on conviction on indictment, to imprisonment for a period up to 5 years or to a fine, or both.

3. Community Protection Notice (Place)

- 3.1 The Community Protection Notice replaces Litter Clearing Notice, Street Litter Clearing Notice, Graffiti/Defacement Removal Notice.
- 3.2 The Community Protection Notice is intended to deal with unreasonable, ongoing problems or nuisances which negatively affect the community's quality of life by targeting the person responsible. The notice can direct any individual over the age of 16, business or organisation responsible to stop causing the problem and it could require the person/s responsible to take reasonable steps to ensure that it does not occur again. For example where a dog was repeatedly escaping from its owners back garden due to a broken fence, the owner could be issue with a notice requiring that they fix the fence to avoid further escapes.
- 3.3 An authorised person may issue a Community Protection Notice to an individual aged 16 or over, or a body, if satisfied on reasonable grounds that;
 - The conduct of the individual or body is having a detrimental effect, of a persistent or continuing nature, on the quality of life of those in the locality, and
 - The conduct is unreasonable.
- 3.4 Authorised Persons include; a police constable, the relevant local authority or a person designated by the relevant local authority for the purposes of this section for example a Registered Social Landlord.

- 3.5 A Community Protection Notice is a notice that imposes any of the following requirements on the individual or body issued with it -
- A requirement to stop doing specified things
 - A requirement to do specified things
 - A requirement to take reasonable steps to achieve specified results
- 3.6 Before a Community Protection Notice can be issued a written warning must be given advising what the behaviour is and that unless the individual/body's conduct ceases to have a detrimental effect a Community Protection Notice will be issued. The authorised person must also be satisfied that despite the individual or body having had enough time to deal with the matter, their conduct is still having a detrimental effect.
- 3.7 This notice will replace current measures such as litter clearing notices, defacement removal notices and street litter control notices. It is not meant to replace the statutory nuisance regime, for example a Community Protection Notice cannot be used against noise that is classified as 'statutory nuisance', which will still have to be dealt with by environmental health officers. However, there is no legal bar for it to be used where behaviour is such as to amount to a statutory nuisance under section 79 of the Environmental Protection Act 1990, for example, a local authority could issue a Community Protection Notice to address anti-social behaviour while investigating whether it constitutes statutory nuisance.
- 3.8 The notice should be issued to someone who can be held responsible for the anti-social behaviour, for example if a small shop were allowing litter to be deposited outside the property and not dealing with the issue, a notice could be issued to the business owner, whereas if a large national supermarket were to cause a similar issue, the company itself or the store manager could be issued with a notice.
- 3.9 A Community Protection Notice is different from the powers they replace in that they cover a wider range of behaviour i.e. all behaviour that is detrimental to the local community's quality of life rather than specifically stating the behaviour covered e.g. litter or graffiti. Noise disturbance could be tackled, particularly if it is demonstrated to be occurring in conjunction with other anti-social behaviour. The notice can be issued by a wider range of agencies; the police, local authorities and private registered providers of social housing (if approved by local authorities), thereby enabling the most relevant agency to deal with the situation. The notice can apply to businesses and individuals (which is the same as for some of the notices they replace but not all).
- 3.10 Breach of any requirement in the notice, without reasonable excuse, would be a criminal offence, subject to a Fixed Penalty Notice or prosecution. On summary conviction an individual would be liable to a fine of up to £2,500 or in the case of a business up to £20,000.

4. Public Spaces Protection Order (Place)

- 4.1 The Public Spaces Protection Order replaces Designated Public Place Order, Gating Order and Dog Control Order
- 4.2 The Public Spaces Protection Order will replace the Designated Public Place Order, the Gating Order and the Dog Control Order. The new order is intended to deal with a particular nuisance in a particular area which negatively affects the community's quality of life. Unlike the Community Protection Notice, it will apply to everyone and will impose conditions on the use of a particular area (e.g. restricting the use of a highway late at night by groups of people or the drinking of alcohol in a public space). The Public Spaces Protection Order could also be used to deal with likely future problems

- 4.3 Only local authorities may issue Public Spaces Protection Order. The authority must reasonably believe that the behaviour is detrimental to the local community's quality of life and that the impact of the behaviour warrants restrictions being implemented. The behaviour must be ongoing or persistent (or there must be a reasonable belief that future behaviour will be ongoing or persistent).
- 4.4 Public Spaces Protection Orders will last for up to three years before requiring a review, there is no limit on the number of times an order can be reviewed and renewed.
- 4.5 A local authority must carry out the necessary consultation, publicity and notification before making a Public Space Protection Order or extending/varying the order, this includes consulting with the chief officer of police and the local policing body and any representatives of the local community they consider appropriate for example a local residents group or a community group that regularly uses the public space.
- 4.6 The Public Spaces Protection Order can prohibit certain things for example drinking alcohol or keeping dogs on leashes or both. Unlike the orders this power will replace, only one order will be required to deal with a specific place, with one consultation. For instance, a single order could be used to prohibit drinking in a specific park as well as ensuring dogs were kept under control, through either being kept on a leash or limiting the number of dogs an individual can walk at one time.
- 4.7 Where an Public Spaces Protection Order restricts access to a public right of way, the local authority should also consider the wider impact on those in the locality and the availability of other routes e.g. an alleyway between houses and a key local amenity (shops etc) should not be closed where there is no other reasonable route for people to use. The local authority must also inform those in the locality of any proposed order.
- 4.8 The Breach of an order without reasonable excuse is a criminal offence, subject to a Fixed Penalty Notice or prosecution.

5. Closure Notice (Place)

- 5.1 The Closure Notice replaces ASB Premises Closure Order, Crack House Closure Order, Noisy Premises Closure Order and S161 Closure Order. Both the Police and Local Authorities will be entitled to apply for such an order.
- 5.2 A Closure Notice may be made if the Police or Local Authority reasonably believes that there is a public nuisance or there is likely to be disorder imminently in the vicinity of, and related to, the premises and that the order is necessary to prevent the occurrence or reoccurrence of such disorder or behaviour.
- 5.3 A Closure Notice is issued out of court, can be issued for a maximum of 48 hours, and cannot prohibit access by the owner of the premises or people who habitually live on the premises. The notice can also be designed to prohibit access to particular people at particular times. For example, where a property is closed in anticipation of a party publicised through social media, the family who lived there would not be prohibited, and additional people could also be exempted such as other family members where appropriate.
- 5.4 A Closure Notice that lasts for up to 24 hours may be issued by a police officer of at least the rank of Inspector or a local authority. A notice can be issued for or extended up to a maximum of 48 hours if agreed by a police officer of at least the rank of superintendent and can be extended by the Magistrates Court for up to 3 months.
- 5.5 Breach of the Closure Notice, without a reasonable excuse, will be a criminal offence and could be liable to an unlimited fine and/or up to three months imprisonment if in breach of a notice and up to six months imprisonment if in breach. Also any person guilty of obstructing

an officer in the process of closing a property also commits an offence and is liable to a fine and/or up to three months imprisonment.

6. Police Dispersal Power (Police Powers)

- 6.1 The Police Dispersal Power replaces S.30 of ASB Act 2003 Dispersal Order and S.27 of Violent Crime Reduction Act 2006, Direction to Leave
- 6.2 The dispersal power will enable police officers and police Community support officers to direct a person aged 10 and above who has committed, or is likely to commit anti-social behaviour to leave a specified area, and not return for a specified period of up to 48 hours. The officer must also judge that issuing the direction is necessary for the purpose of removing or reducing the likelihood of anti-social behaviour or crime and disorder.
- 6.3 The Police Dispersal Power can only be used where an officer of at least the rank of Inspector has authorised its use in a specified locality.
- 6.4 The dispersal would in most instances be given in writing to ensure that those individuals being dispersed are clear where they are being dispersed from, where this is not reasonably practicable, the direction would be given orally.
- 6.5 As with the current powers a person who is directed to leave under the power has not committed a criminal offence but refusal to comply with the direction is a criminal offence. Non-compliance carries a maximum penalty of a fine or three months detention. The power to return a child under the age of 16 (who is on the streets between 9pm and 6am without an adult) home or to a place of safety is being retained.
- 6.6 This Police Dispersal Power may be used for example if the Inspector has intelligence to indicate that there is likely to be anti-social behaviour on a particular housing estate during the weekend and authorises the use of the dispersal power for 48 hours. Alternatively, in a situation where an officer needs to use the dispersal power in an area that has not been authorised, the officer can contact an inspector for authorisation and describe the circumstances to him or her.
- 6.7 Failure to comply with the direction would be a criminal offence and would carry a maximum penalty of up to £2,500 and/or three months imprisonment.
- 6.8 For example the police may have intelligence to indicate that there is likely to be anti-social behaviour on a particular housing estate during the weekend and authorises the use of the dispersal for 48 hours.