

REPORT TO CONSTITUTION COMMITTEE

REPORT OF: Operations Director

REPORT NO: ODES03

DATE: 8 September 2014

TITLE:	Delegation of Powers relating to Anti-Social Behaviour	
KEY DECISION OR POLICY FRAMEWORK PROPOSAL:	Amendment of the Constitution to enable delegated authority for the implementation of the Anti-social Behaviour, Crime and Policing Act 2014	
PORTFOLIO HOLDER: NAME AND DESIGNATION:	Councillor John Smith Portfolio: Healthy Environment	
CONTACT OFFICER:	<p>Ian Yates – Operations Director Tel: 01476 40 60 80 (Ext. 6201) E-mail: i.yates@southkesteven.gov.uk</p> <p>Mark Jones – service manager Community Safety and Licensing Tel: 01476 406080 (Extn 6297) E-mail: m.jones@southkesteven.gov.uk</p>	
INITIAL IMPACT ANALYSIS: Equality and Diversity	<p>Carried out and Referred to in paragraph (7) below. This is nationally applicable legislation. SKDC is implementing the requirements of the Statute.</p>	<p>Full impact assessment Required: No</p>
FREEDOM OF INFORMATION ACT:	This report is publicly available via the Your Council and Democracy link on the Council's website: www.southkesteven.gov.uk	
BACKGROUND PAPERS	<p>Anti-social Behaviour, Crime and Policing Act 2014 http://www.legislation.gov.uk/ukpga/2014/12/contents/enacted</p> <p><i>The Constitution</i> http://moderngov.southkesteven.gov.uk/mgConvert2PDF.aspx?ID=13333</p>	

1. RECOMMENDATIONS

1.1 Amendment of the Constitution to delegate to the Operations Director the authority to use the powers set out in Appendix 1 of this report, to enable use of the powers introduced by the Anti-social Behaviour, Crime and Policing Act 2014 (which comes into force on 20th October 2014), as follows:-

- *Constitution – Part 3 Operations Director – “Waste Services” paragraph 1, after “.....in respect of the following statues” insert:-*

“including the provisions as provided and amended by the Anti-Social Behaviour, Crime and Policing Act 2014 “

- *Constitution – Part 3 – Operations Director “Waste Services” at the end of paragraphs 3,4 and 5 insert:-*

“as provided and amended by the Anti-Social Behaviour, Crime and Policing Act 2014 “

- *Constitution – Part 3 – Operations Director “Community Safety” remove paragraph 1 and replace with:-*

“Authorised and to authorise Officers to exercise any of the powers in relation to anti social behaviour as set out in the Anti-Social Behaviour, Crime and Policing Act 2014 (and any amendments) and authorised to delegate power to officers and Lincolnshire Police (including Police Community Safety Officers) to issue Fixed Penalty Notices on behalf of the Council.”

- *Constitution – Part 3 “Head of Housing & Neighbourhood” at the end of paragraph 12 insert :-*

“including the provisions as provided and amended by the Anti-Social Behaviour, Crime and Policing Act 2014”

2. PURPOSE OF THE REPORT

2.1 This report outlines the details of the Anti-social Behaviour, Crime and Policing Act 2014 including proposals for implementation and recommendations for delegations.

3. DETAILS OF REPORT

3.1 The Anti-social Behaviour, Crime and Policing Act 2014 streamlines the existing tools and powers used to tackle a wide range of anti-social behaviour. These should be simpler, more effective and provide better protection for victims and communities. Nineteen existing tools and powers are streamlined into six new tools.

3.2 The table below shows in summary the relevant changes that the Act will bring:

Existing Tools	New Tools
PEOPLE 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	Criminal Behaviour Order (CBO) Injunction
PLACES 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
POLICE POWERS S30 Dispersal Powers S27 Direction to leave	Dispersal Power

3.3 These six new tools will commence on the 20th October 2014. A brief overview of these new tools and powers is provided below (excluding dispersal powers).

CRIMINAL BEHAVIOUR ORDER

- Applies where a person (the offender) has been convicted of a criminal offence
 - Only the prosecution can apply for the order
- There are two tests:
- The person has engaged in behaviour that caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household
 - The court considers that making the order will help in preventing the offender in engaging in such behaviour
- The order can:
- Prohibit the respondent from doing anything prescribed in the order
 - Require the respondent to engage in positive activities

CIVIL INJUNCTION

- Early intervention to prevent individuals from engaging in anti-social behaviour quickly
- Civil order for anyone over 10 years of age
- Civil burden of proof – on the balance of probabilities

A civil injunction will be granted if the following tests have been met:

- The person has 'caused, or was likely to cause, harassment, alarm or distress to any person'
- The court considers it is just and convenient to grant the injunction to prevent the person engaging in ASB

However, a civil injunction will also be granted if:

The Nuisance test

- The person 'engaged in or threatened to engage in' 'conduct capable of causing nuisance and annoyance to any person' and
- The applicant is the local authority, housing provider or police and the ASB relates to the victim's occupation of residential premises

The injunction can:

- Prohibit the respondent from doing anything prescribed in the order
- Require the respondent to engage in positive activities

COMMUNITY PROTECTION NOTICE

An authorised person can issue a CPN to an individual aged over 16 if they are satisfied that:

- The conduct of the individual or body is having a detrimental effect on the quality of life of those in the locality
- The conduct is of a persistent nature *and*
- The conduct is unreasonable

The notice imposes the requirement to:

- Stop doing specified things
- Do specified things
- Take reasonable steps to achieve specified results

The only requirements that can be imposed are those that are reasonable to:

- Prevent the detrimental effect from continuing or recurring
- Reduce the detrimental effect or reduce the risk of its continuance or recurrence

The notice can only be issued when:

- A written warning has been given that the notice will be issued unless the conduct ceases to be detrimental
- The officer is satisfied that despite having had enough time to deal with the matter the conduct is still having an effect

PUBLIC SPACE PROTECTION ORDER

This allows the local authority to stop individuals or groups committing ASB in public places. The local authority will identify the area that is to be covered by the order – known as the ‘restricted area’.

The PSPO can:

- Prohibit specified things being done in the area
- Require specified things to be done in the area

The prohibitions or requirements can be framed so that they:

- Apply to all persons, or only persons in specified categories, or to all persons except those in specified categories
- Apply at all times, or only at specified times, or at all times except those specified
- Apply in all circumstances, or only in specified circumstances, or in all circumstances except those specified

The following conditions must be met before making the order:

- Activities carried out in a public place within the local authority’s area have a detrimental effect on the quality of life of those living in the locality *or*
- It is likely that activities will be carried out in a public place within the area that will have such an effect

The effect, or likely effect of the activities:

- Is, or is likely to be, of a persistent or continuing nature
- Is, or is likely to be, such as to make the activities unreasonable *and*
- Justifies the restrictions imposed by the order

In order to commence such a process a consultation will need to be undertaken. This decision will be taken by the Cabinet Portfolio Holder for Healthy Environment. The decision to make a PSPO could be delegated by Cabinet to a portfolio holder.

CLOSURE POWERS

This power allows the police or council to act quickly to close premises (prohibit access) that are being used, or are likely to be used to commit nuisance and disorder. There are two stages to this process:

- Closure notice – closes the premises for 24/48 hours

- Closure order – this is used if you wish to close the premises for longer

Closure Notice

The premises can be closed if the police or council are satisfied on reasonable grounds that the following has occurred, or will occur if the premises are not closed:

- Nuisance to the public *or*
- Disorder near the premises

The closure can prohibit access:

- By all persons, or by all persons except those specified or of a specified description
- At all times, or at all times except those specified
- In all circumstances, or in all circumstances except those specified

It cannot prevent access to those who own or live in the premises

Closure Order

This is made, on application, to the Magistrates Court. The application for an order must be made within 48 hours of the Closure Notice being issued. The court will make the order if it is satisfied that:

- A person has engaged, or if the order is not made, is likely to engage in disorderly, offensive or criminal behaviour in the premises *or*
- The use of the premises has resulted in, or if the order is not made, is likely to result in serious nuisance to members of the public *or*
- There has been, or if the order is not made, there is likely to be disorder near the premises associated with the use of the premises

The closure can prohibit access:

- By all persons, or by all persons except those specified or of a specified description
- At all times, or at all times except those specified
- In all circumstances, or in all circumstances except those specified

It can prevent access to those who own or live in the premises

The order will last for 3 months and can be extended by the court if there is a need to prevent recurrence, occurrence or continuance of the behaviour. The order may not last longer than 6 months in total

The closure may:

- Be made in respect of the whole or part of the building
- May include provision about access to a part of the building or structure of which the premises form part

A person who, without reasonable excuse, remains or enters a premises in contravention of a closure order commits an offence

4. OTHER OPTIONS CONSIDERED

- 4.1 The Anti-Social Behaviour, Crime and Policing Act 2014 (the Act) gives power to local authorities to use the enforcement tools referred to in the Act. The only other option is to refer every matter to Full Council to seek authority to take action under the new powers given in the Act.

5. RESOURCE IMPLICATIONS

- 5.1 The use of the authority requested in this report can be provided within the existing resources of the Council. This Authority will work with its colleagues in the county wide Community Safety partnership to ensure the powers are used effectively and consistently.

6. RISK AND MITIGATION

- 6.1 There are significant risks if we fail to implement. There is a statutory obligation to implement the new legislation.

7. ISSUES ARISING FROM IMPACT ANALYSIS

- 7.1 This report puts forward changes to the constitution to reflect new legislation and therefore no impact assessment has been undertaken.

8. CRIME AND DISORDER IMPLICATIONS

- 8.1 The new legislation has been introduced to reduce anti-social behaviour, crime and disorder. The new legislation reinforces the Council's priorities in creating an environment to keep South Kesteven district clean, green and healthy.

9. COMMENTS OF FINANCIAL SERVICES

- 9.1 There are no financial implications.

10. COMMENTS OF LEGAL AND DEMOCRATIC SERVICES

- 10.1 The Anti-social Behaviour, Crime and Policing Act 2014 comes into force on 20th October 2014. it is appropriate to have a scheme of delegation in order for the Council to implement the powers in an effective and expedient manner.

11. COMMENTS OF OTHER RELEVANT SERVICES

11.1 Head of Housing and Neighbourhoods

The proposed amendments to the delegated authority of the Head of Housing and Neighbourhoods is intended to ensure that the scope for enforcement of tenancy-related matters includes the provisions of the 2014 Act.