| Report of: | Laraine Manley, Executive Director, Communities  
|           | Simon Green, Executive Director, Place |
| Report to: | Cabinet Member for Homes and Neighbourhoods |
| Date:      | 5th January 2015 |
| Subject:   | Implementing the Anti-Social Behaviour, Crime and Policing Act 2014 |
| Author of Report: | Jim Dee |

**Summary:**
- The Anti-Social Behaviour, Crime and Policing Act 2014 has replaced existing powers to tackle anti-social behaviour with new and revised powers.
- The powers are available to various bodies such as Local Authorities, the Police and Registered Housing Providers.
- Use of some of the powers requires authorisation by officers of an appropriate grade.
- Most of powers contained in the act came into force on the 20th October 2014.

**Reasons for Recommendations:**
To ensure the City Council can make effective use of the powers granted under the Anti-Social Behaviour, Crime and Policing Act 2014.

**Recommendations:**
It is recommended that the Cabinet Member for Homes and Neighbourhoods:
1. Notes the contents of this report.
2. Delegates authority to the Director of Housing and Neighbourhood Services and to the Director of Business Strategy & Regulation to take
the necessary steps, having regard to the contents of the report, to implement the powers given to Council by the Anti-Social Behaviour, Crime and Policing Act 2014, including designation of officers at appropriate levels to exercise the functions.

3. Sets the amount of Fixed Penalties under Section 52 and 68 of the act at £75 (discounted to £50 if paid within 14 days).

4. Confirms that the officers designated by the Directors of Housing and Neighbourhood Services and Business Strategy & Regulation to issue Fixed Penalty Notices are authorised by the Local Authority for that Purpose.

5. Refers the question of making of a Public Space Protection Order to the Leader so that she may consider the appropriate level of decision-making and make such arrangements in her Scheme of Delegation as are necessary.

Background Papers: Appendix 1: ASB Act 2014 - Summary of powers

Category of Report: OPEN

If Closed add – ‘Not for publication because it contains exempt information under Paragraph... of Schedule 12A of the Local Government Act 1972 (as amended).’

* Delete as appropriate
# Statutory and Council Policy Checklist

## Financial Implications

<table>
<thead>
<tr>
<th>YES</th>
<th>Cleared by:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Karen Jones (HRA funding) 17/12/14</td>
</tr>
<tr>
<td></td>
<td>Alison Chambers (General funding) 17/12/14</td>
</tr>
</tbody>
</table>

## Legal Implications

| YES | Cleared by: Andrea Simpson 17/12/14 |

## Equality of Opportunity Implications

| NO | Cleared by: Louise Nunn 21/10/14 |

## Tackling Health Inequalities Implications

| NO |

## Human rights Implications

| NO |

## Environmental and Sustainability implications

| NO |

## Economic impact

| NO |

## Community safety implications

| YES |

## Human resources implications

| NO |

## Property implications

| NO |

## Area(s) affected

| All |

## Relevant Cabinet Portfolio Leader

| Cabinet Member for Homes and Neighbourhoods |

## Relevant Scrutiny Committee if decision called in

| Safer and Stronger Communities |

## Is the item a matter which is reserved for approval by the City Council?

| NO |

## Press release

| NO |
Report to the Cabinet Member for Homes and Neighbourhoods

REPORT TITLE Implementing the Anti-Social Behaviour, Crime and Policing Act 2014

1.0 SUMMARY

1.1 The Anti-Social Behaviour, Crime and Policing Act 2014 brings into force new and revised powers to tackle anti-social behaviour for bodies including local authorities, police and social landlords.

1.2 This report describes the powers given to local authorities and their impact on the Council.

1.3 The report seeks delegated authority to officers to implement the powers and describes how this authority may be used.

1.4 The Act emphasises the importance of partnership working between the Council and external partners.

1.5 There is an Implementation Group in Sheffield comprising officers from the relevant Council teams and external partners. This group will ensure coordination between teams.

1.6 Most of the local authority powers contained in the Act became available on the 20th October 2014. The Civil Injunction power has been delayed until January 2015.

2.0 WHAT DOES THIS MEAN FOR SHEFFIELD PEOPLE

2.1 The Council will be better able to tackle anti-social behaviour by making full and appropriate use of the powers contained in the Anti-Social Behaviour, Crime and Policing Act 2014

3.0 OUTCOME AND SUSTAINABILITY

3.1 An improved response to anti-social behaviour will lead to a better outcome for victims and witnesses as well as the wider community.

3.2 Successful implementation of the Act will therefore contribute to the following key outcomes in the Corporate Plan:

• A Great Place to Live
• Safe and Secure Communities

4.0 MAIN BODY OF THE REPORT
Including Legal, Financial and all other relevant implications (if any)

4.1 The Anti-Social Behaviour, Crime and Policing Act 2014 includes several new and revised powers to tackle anti-social behaviour. The relevant powers as they affect the Council are described in the table at Appendix 1
4.2 The powers will mainly be authorised and used by officers in a way that is similar to the use of existing powers. The key differences are explained in Appendix 1.

4.3 The Act will require some changes to the operating procedures of teams across the council.

There is an Implementation Group in Sheffield which is comprised of officers representing the following Council services:
• Council Housing Service
• Environmental Regulation Service
• Community Youth Teams
• Youth Justice Service
• Safer Communities Team
• Legal Services
• Private Sector Housing

It also includes representatives of the following organisations:
• South Yorkshire Fire & Rescue
• South Yorkshire Police

The aim of the group is to ensure the powers are used successfully across Sheffield and that the right processes and links are in place to ensure effective partnership working across teams.

5.0 LEGAL IMPLICATIONS

The Anti-Social Behaviour, Crime and Policing Act 2014 enables the Council to use enforcement powers to tackle anti-social behaviour.

The legal implications for each of the powers are described below:

5.1 Civil Injunctions

A Civil Injunction is an order made by the Court which places restrictions and requirements on people to address their anti-social behaviour. A breach of an injunction is contempt of court which may result in a fine or imprisonment. Civil Injunctions replace Anti-Social Behaviour Injunctions (ASBIs) and Anti-Social Behaviour Orders (ASBOs) and the application process will be similar.

The decision to apply for an ASBI is made by a Team Leader in the Tenancy Management and Enforcement Team in the Council Housing Service. It is recommended that the decision to apply for Civil Injunctions will be made at a similar level.

An ASBI can only be granted against an adult, but Civil Injunctions may also be issued, by the Youth Court, against children 10-17 years old. It is a requirement that the applicant (which could be the Council) must consult
with the Youth Offending Team prior to making the application. Breach of a Civil Injunction by a minor may result in a Supervision Order or, depending on the severity or extent of the breach, a Detention order of up to 3 months for 14-17 year olds.

The Civil Injunction power is not yet in force because of the effect on minors; they must have access to legal aid to defend proceedings which requires an amendment to the Legal Aid Sentencing and Punishment of Offenders Act 2012. The power is expected to come into force in January 2015 but this has not yet been confirmed.

5.2 Criminal Behaviour Order

A Criminal Behaviour Order (CBO) is issued by a criminal court against a person who has been convicted of an offence and engaged in persistent anti-social behaviour (not necessarily linked to the offence). Breach of a CBO is a criminal offence. The prosecutor can ask the court to make an order after the offender has been convicted. In most cases the prosecutor will be the Crown Prosecution Service but it could also be the Council (e.g. prosecution for breaching a noise abatement notice). The Council can ask the prosecutor to apply for a CBO. The CBO sets out prohibitions and positive requirements to stop anti-social behaviour and address underlying causes.

CBOs can also be sought against Children aged 10-17 but it is a statutory requirement that the prosecutor must “find out the views” of the Youth Offending Team (not merely “consult” them) before making the application.

5.3 Dispersal Power

This is a police power and has no direct legal implications for the Council, although the police may consult the Council on its use.

5.4 Community Protection Notice

A Community Protection Notice (CPN) can be issued by the Council to a person aged 16 or over, or a business or organisation, to stop them from committing anti-social behaviour which spoils the community’s quality of life. An appropriate written warning must be given prior to issuing a CPN. It can be used to tackle issues such as noise, rubbish and animal nuisance where existing powers, such as those under the Environmental Protection Act 1990 (EPA), are not appropriate or applicable to the situation.

Breaching a CPN is a criminal offence. Potentially therefore a CPN has the effect of creating a criminal offence, without the oversight of the court, for behaviour which otherwise would not be criminal. This is a significant legal implication for the Council. The CPN must therefore only be used in appropriate circumstances and consideration must be given to the
appropriate level of officer in the Environmental Regulation Service and Housing Service who should be authorised to issue them.

Breaches can be dealt with by way of serving a Fixed Penalty Notice or by prosecution in the Magistrates Court. The Council can also take remedial action to carry out works in default to remedy the breach (such as clearing a garden of rubbish) and recharge the cost to the offender.

The Home Office has issued an Information Note suggesting that CPNs could be used to address the issue of Japanese Knotweed and other invasive non-native plants. The notice could be used to require someone to control or prevent the growth of Japanese knotweed or other plants that are capable of causing serious problems to communities. Further work is needed to define the Council's roles and responsibilities on tackling Japanese Knotweed and other invasive plants. This piece of work will be carried out by the Environmental Protection Service and will include policy development and detailed work on the financial implications and be the subject of a further Executive Report.

5.5 Public Space Protection Order

A Public Space Protection Order (PSPO) may be made by the Council after consultation with the Police, Police & Crime Commissioner and any other relevant bodies, groups or individuals (such as community leaders or users of a particular area/facility).

The order places restrictions and/or requirements on people using the area covered by the PSPO. These can be blanket restrictions or targeted at particular groups (such as dog walkers), or apply at certain times. Breach of a PSPO is a criminal offence.

PSPOs replace Designated Public Place Orders (DPPOs), orders made under the Criminal Justice and Police Act 2001 which concern the misuse of alcohol. The power to make a DPPO is a non-executive function which is reserved to Licencing Committee in the Council's Constitution. The making of a PSPO is an executive function. Given that

- the Council decided that the decision of whether to make a DPPO should be considered by a committee of members,
- making a PSPO has the effect of creating a criminal offence, without the oversight of the court, for behaviour which otherwise would not be criminal, and
- appeals against a PSPO are heard in the High Court.

It is proposed that this matter should be referred to the Leader for her to consider the appropriate level of decision-making for a PSPO decision and to make such arrangements in her Scheme of Delegation as are necessary.

5.6 Closure Power

The Closure Power allows the Council or police to quickly close residential
or commercial premises which are being used to commit nuisance or disorder. The Council (or the police) may issue a Closure Notice, which makes it a criminal offence for anyone other than the owner and people habitually resident to enter the property for at least 24, and up to 48, hours. An application to the Magistrates Court for a Closure Order must be made at the same time as issuing the notice.

The Act specifies that a Closure Notice of up to 48 hours duration, or an extension to a 24 hour notice of a further 24 hours, must be authorised by the Chief Executive of a local authority or someone designated by him. The statutory guidance explains that “the level or role of employee within the Council who can issue a notice for up to 24 hours has not been specified due to the different structures locally. In considering who should be authorised as designates of the chief executive officer for the issuing of the 48 hour notice, Councils will also want to consider who is delegated to issue the closure notice for 24 hours and consider whether the extension to 48 hours should be authorised by an officer of greater seniority, as is the case for the police. This may take into consideration the need for the power to be used quickly, its flexible nature, and equivalent requirement for a police inspector to issue a closure notice for 24 hours.”

A Closure Order is made by the Magistrates Court. The Order makes it a criminal offence for anyone, including the owner and residents, to enter the property. The Order lasts for 3 months and may be extended by the court for a further 3 months. The Council does not have to proceed with the application for a Closure Order if the Closure Notice has solved the problem, but must notify the Court where this is the case.

5.7 Absolute Ground for Possession

The Absolute Ground for Possession enables the Council to seek eviction of its tenants where their anti-social behaviour meets one or more of the following criteria, linked in a specified way to the dwelling-house, locality or landlord:

2. Found by a court to have breached a Civil Injunction
3. Convicted for breaching a Criminal Behaviour Order
4. Convicted for breaching a noise abatement notice
5. The tenant’s property has been closed for more than 48 hours under a closure order for anti-social behaviour.

The criteria mean that a court must have made a decision in respect of the behaviour, but the decision on whether a tenant should lose their home as a result may be made by the landlord with only limited opportunities for further legal scrutiny of this decision. The tenant may seek a review of the decision by a more senior officer in accordance with a procedure set out in regulations.
The landlord must follow the requirements of the Protection from Eviction Act 1977 and apply to court for a possession order but, subject to the relevant considerations under the Human Rights Act and the Equality Act, a Judge has no discretion over whether or not to grant possession. If one of the above criteria is met and the correct process has been followed the Judge must grant possession of the property.

The effect of the Absolute Ground is therefore that the Council can decide whether a tenant should be evicted without judicial oversight or involvement of the court. The statutory guidance is clear that this power is intended to be used in only the “most serious” cases. Therefore any decision making delegation should be properly restricted in order to reflect the seriousness of such a decision and it should be done in consultation with Legal Services. It is proposed that the decision to serve a possession notice should be restricted to managers in the Council Housing Service Tenancy Management & Enforcement Team, as the team that leads on anti-social behaviour and decisions on issuing possession proceedings against Council Housing tenants.

5.8 **Fixed Penalty Notice**

Breach of a Community Protection Notice or Public Space Protection Order is a criminal offence which may be dealt with by way of a Fixed Penalty Notice (FPN). FPNs can be served by designated Council Officers and by the Police. Any revenue from an FPN comes directly to the Council, even if it is issued by the Police.

The Act provides that the level of the Fixed Penalty is at the local authority’s discretion up to a maximum of £100. Unlike similar statutory provisions it does not set a default amount. It is proposed that the Fixed Penalty for offences under the Act should be set at £75 (discounted to £50 if paid within 14 days) as this is in line with the Fixed Penalty payable under FPNs currently issued by the Council for offences such as littering under the Environmental Protection Act 1990.

5.9 **“Community Trigger”**

The Community Trigger is not an enforcement power but a mechanism by which complainants about an anti-social behaviour issue can request a review of how the issue has been dealt with (an “ASB case review”).

The review must be carried out by the “relevant bodies” in an area: the Council, the police, the Clinical Commissioning Group and any social landlords who have been co-opted to be included in the relevant bodies. Other social landlords must be consulted in the review if they have been involved in the case.

The relevant bodies must agree and publish review procedures, describing the locally agreed threshold for a review and how a review will
be carried out.

The applicant(s) for the review must be informed of the outcome and any recommendations made as a result.

6.0 FINANCIAL IMPLICATIONS

Use of the enforcement powers contained within The Anti-Social Behaviour, Crime and Policing Act 2014 will have financial implications in terms of officers preparing case work, seeking legal advice, litigation and the risk of incurring costs in defending appeals.

The teams which will use the new powers are those which already have the resources and authority to use existing powers (Environmental Regulation Services and the Council Housing Service). Use of the new powers will therefore be managed within existing Housing Revenue Account and General Fund budgets.

Revenue generated by use of Fixed Penalty Notices will come directly to the Council and be administered in the same way as existing Fixed Penalty Notice income.

However, the Act brings some new financial risks and issues to the Council which need further consideration.

First of all the use of works in default powers to remedy issues will cause the Council to incur costs. There is provision within the Act to recover these charges from the person responsible. It is not clear in the legislation whether there is provision to secure these costs on the property as a land charge to enable recovery should the person responsible not pay. Consequently the Council would have to issue debt recovery proceedings in court and issue a charging order in order to recover the costs. The Council is seeking legal advice, and further clarification from the government, on this matter. This issue will not result in greater costs to the Council than is currently the case; however it could result in less money being recovered and affect Environmental Regulation Service budgets.

The issue of Japanese Knotweed and other invasive non-native plants described in greater detail at paragraph 5.4 of this report carries additional financial risks. These will be analysed and addressed in the future Executive Report on this subject. There are therefore no financial implications arising from Japanese Knotweed and other invasive non-native plants as a result of the contents of this report.

7.0 ALTERNATIVE OPTIONS CONSIDERED

7.1 Not taking the necessary steps to implement the Act would leave the Council unable to use all of the available powers and therefore weaken our ability to tackle anti-social behaviour and protect the community.
8.0 REASONS FOR RECOMMENDATIONS

8.1 To ensure the City Council can make effective use of the powers granted under the Anti-Social Behaviour, Crime and Policing Act 2014.

9.0 RECOMMENDATIONS

9.1 It is recommended that the Cabinet Member for Homes and Neighbourhoods:
   1. Notes the contents of this report.

  2. Delegates authority to the Director of Housing and Neighbourhood Services and to the Director of Business Strategy & Regulation to take the necessary steps, having regard to the contents of the report, to implement the powers given to Council by the Anti-Social Behaviour, Crime and Policing Act 2014, including designation of officers at appropriate levels to exercise the functions.

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  5. Refers the question of making of a Public Space Protection Order to the Leader so that she may consider the appropriate level of decision-making and make such arrangements in her Scheme of Delegation as are necessary.

Author  Jim Dee
Job Title  Assistant Manager
Date  5\textsuperscript{th} January 2015