

Cheltenham Borough Council
Cabinet meeting – 17th March 2015

Proposed implementation of
The Anti-social Behaviour, Crime and Policing Act 2014

Accountable member	Councillor Andrew McKinlay – Cabinet Member Development & Safety
Accountable officer	Sarah Clark, Public & Environmental Health Team Leader
Ward(s) affected	All
Key Decision	Yes
Executive summary	<p>The Anti-social Behaviour, Crime and Policing Act 2014 (ASBCPA) introduced simpler, more effective powers to protect victims and communities from anti-social behaviour (ASB) and put them at the heart of the response to ASB. In order to utilise the provisions to deal with ASB and other issues adversely affecting individuals, communities and businesses (such as irresponsible dog ownership), officers of the council's Public Protection team would need to be authorised through an updated Scheme of Delegation.</p> <p>The Act also provides for the use of fixed penalty notices (FPN) as an alternative to prosecution and Cabinet may wish to implement these locally.</p> <p>In order to ensure the council can lawfully use the powers contained within the Act, and take action pursuant to it, it is necessary to update the Scheme of Delegations in the council's Constitution to ensure that the functions of the council under the ASBCPA 2014 are included within the Scheme.</p>
Recommendations	<ol style="list-style-type: none"> 1. That Cabinet note the new powers available to the authority under the Anti-social Behaviour, Crime and Policing Act 2014; 2. That the provisions of the community trigger/ASB case review are noted; 3. That Cabinet gives a standing delegation to the Director of Environmental and Regulatory Services to, following appropriate consultation (to include the relevant Cabinet Member and ward councillors), adopt and publish Public Spaces Protection Orders where the area covered by the proposed Order is within the borough and subject to the statutory requirements for the making of an Order being satisfied; 4. That Cabinet authorises the Director of Environmental and Regulatory Services, under the Anti-social Behaviour, Crime and Policing Act 2014, to designate officers as authorised persons under the Act; 5. That the use of fixed penalty notices is introduced for breaches

of the Act, with the amount set at £80, reduced to £50 for early payment; and

6. That Cabinet authorises the Director of Environmental and Regulatory Services to take such actions and steps as are necessary for effective implementation of the preceding recommendations.

Financial implications	None – all expenditure will be within existing budgets Contact officer: Nina Philippidis, nina.philippidis@cheltenham.gcsx.gov.uk, 01242 264121
Legal implications	As contained in the body of the report. Contact officer: Vikki Fennell, vikki.fennell@tewkesbury.gov.uk, 01684 272015
HR implications (including learning and organisational development)	Training of officers will be managed within existing resources – see note for finance above. Contact officer: Richard Hall, Richard.hall@cheltenham.gov.uk, 01242 774972
Key risks	As identified in the appended risk assessment.

Corporate and community plan Implications

Strengthening our economy: Cheltenham will be a safer more attractive place to work or set up a new business if the full range of ASB and environmental crime tools and flexibilities are utilised.

Strengthening our communities: The very nature of the ASBCPA 2014 means its implementation will have a positive impact on all elements of community safety.

The benefits will extend to all our communities and businesses, as well as to visitors to the town and users of the night time economy. This will encourage a safe day and night environment and should therefore reduce the fear of crime.

It is possible that the number of reported offences will go up in relation to the new powers being exercised – in particular breaches of the Public Space Protection Order – but over time the number of complaints to the council and partners about related issues should decrease in those areas.

All types of housing sectors and tenures are included within the remit of the new powers. Householders experiencing poor quality of life within the domestic environment because of ASB or related issues will be better protected under the new legislation.

A safer environment means people are more likely to engage in outside physical activity and use public spaces and parks.

Cycling and walking tend to be more popular modes of transport in areas of perceived safety.

The most vulnerable people in our communities will be better protected through the use of the new powers, and the perpetrators themselves will benefit from the positive requirements of some of the Notices/Orders – for example the ability to now be able to address drug or alcohol problems.

Victims and communities are placed at the heart of the response to ASB under the new legislation. They have a say in how the harm should be remedied, as well as being able to trigger a review of the case, if certain criteria are met.

Community representatives will be consulted before any PSPO is established to ensure the varying needs of those in the community are balanced. This will promote community cohesion through opportunities to improve localities because of shared wants or ambitions. Whatever the ‘thorn in the side’ of the community is, the new tools should provide a more effective way to work together to tackle it.

The flexibilities of the Act will provide increased opportunities for safeguarding, and existing partnership structures and information sharing protocols will be utilised.

Operational staff have undertaken a joint training package with the police to ensure they have the right skills and knowledge.

The very nature of the Environmental Health and Community Protection services promote a culture of safeguarding.

<p>Environmental and climate change implications</p>	<p>Use of new powers should make it quicker and more effective to deal with environmental offences and ASB. This will help keep public and private land clear of litter and dog fouling, subject to consultation.</p> <p>The new ASB tools allow for better protection of the natural and built environment from envirocrime and associated blight, eg through Public Space Protection Orders.</p> <p>Environmental noise pollution can be tackled more effectively (non-statutory nuisance).</p>
---	---

1. Background

1.1 In March 2014, the Anti-social Behaviour, Crime and Policing Act (ASBCPA) was enacted. The provisions it contained have been introduced slowly, with the Civil Injunction being the last one to be implemented on 23rd March 2015.

1.2 The aim of the Act in the words of the Home Office is ‘to put victims at the heart of the response to ASB, and give professionals the flexibility they need to deal with any given situation’ (*Statutory guidance for frontline professionals, Home Office, July 2014*)

1.3 Early intervention is a key principle, and the Act replaces 19 existing police, council and registered housing provider powers with six broader ones. Appendix 1 provides a table to demonstrate this.

1.4 ASB is not defined in the Act, but there are specific evidential tests that must be met for each of the new powers. The accompanying guidance is not statutory and still leaves points open to interpretation – which will be tested through the legal system in the fullness of time. The Chartered Institute of Environmental Health (CIEH) has provided detailed practitioner guidance for one of the powers – the Community Protection Notice – but dates for any further guidance are yet to be announced.

1.5 Sections of the Act most relevant to the council are:

1.5.1 Section 1: Civil Injunction

This power replaces Anti-social Behaviour Orders (ASBOs) and Anti-social Behaviour Injunctions (ASBIs). The purpose is to stop or prevent individuals from engaging in anti-social behaviour quickly to prevent problems from escalating.

A Home Office summary of this power is reproduced on the following page.

The Civil Injunction

Purpose	To stop or prevent individuals engaging in anti-social behaviour quickly, nipping problems in the bud before they escalate.
Applicants	<ul style="list-style-type: none"> • Local councils; • Social landlords; • Police (including British Transport Police); • Transport for London; • Environment Agency and Natural Resources Wales; and • NHS Protect and NHS Protect (Wales)
Test	<ul style="list-style-type: none"> • On the balance of probabilities; • Behaviour likely to cause harassment, alarm or distress (non-housing related anti-social behaviour); or • Conduct capable of causing nuisance or annoyance (housing-related anti-social behaviour); and • Just and convenient to grant the injunction to prevent anti-social behaviour.
Details	<ul style="list-style-type: none"> • Issued by the county court and High Court for over 18s and the youth court for under 18s. • Injunction will include prohibitions and can also include positive requirements to get the perpetrator to address the underlying causes of their anti-social behaviour. • Agencies must consult youth offending teams in applications against under 18s.
Penalty on breach	<ul style="list-style-type: none"> • Breach of the injunction is not a criminal offence, but breach must be proved to the criminal standard, that is, beyond reasonable doubt. • Over 18s: civil contempt of court with unlimited fine or up to two years in prison. • Under 18s: supervision order or, as a very last resort, a civil detention order of up to three months for 14-17 year olds.
Appeals	<ul style="list-style-type: none"> • Over 18s to the High Court; and • Under 18s to the Crown Court.
Important changes/differences	<ul style="list-style-type: none"> • Available to a wider range of agencies than Anti-Social Behaviour Injunctions. • Obtainable on a civil standard of proof unlike Anti-Social Behaviour Orders (ASBOs). • No need to prove "necessity" unlike ASBOs. • Breach is not a criminal offence. • Scope for positive requirements to focus on long-term solutions.

1.5.2 Section 22 Criminal Behaviour Orders

This power can deal with a wide range of ASB following an individual's conviction for a criminal offence. Examples of ASB it could tackle are threatening violence against others in the community, and being persistently drunk and aggressive in public. This power is only available to the Police or Council via the Crown Prosecution Service.

Purpose	Issued by any criminal court against a person who has been convicted of an offence to tackle the most persistently anti-social individuals who are also engaged in criminal activity.
Applicants	The prosecution, in most cases the Crown Prosecution Service (CPS), either at its own initiative or following a request from the police or council.
Test	<ul style="list-style-type: none"> • If the court is satisfied beyond reasonable doubt that the offender has engaged in behaviour that has caused or is likely to cause harassment, alarm or distress to any person; and • The court considers that making the order will help prevent the offender from engaging in such behaviour.
Details	<ul style="list-style-type: none"> • Issued by any criminal court for any criminal offence. • The anti-social behaviour does not need to be part of the criminal offence. • Order will include prohibitions to stop the anti-social behaviour but it can also include positive requirements to get the offender to address the underlying causes of the offender's behaviour. • Agencies must find out the view of the youth offending team (YOT) for applications for under 18s.
Penalty on breach	<ul style="list-style-type: none"> • Breach of the order is a criminal offence and must be proved to a criminal standard of proof, that is, beyond reasonable doubt. • For over 18s on summary conviction: up to six months imprisonment or a fine or both. • For over 18s on conviction on indictment: up to five years imprisonment or a fine or both. • For under 18s: the sentencing powers in the youth court apply.
Appeals	<ul style="list-style-type: none"> • Appeals against orders made in the magistrates' court (which includes the youth court) lie to the Crown Court. • Appeals against orders made in the Crown Court lie to the Court of Appeal.
Important changes/ differences	<ul style="list-style-type: none"> • Consultation requirement with YOTs for under 18s. • No need to prove "necessity" unlike Anti-Social Behaviour Orders. • Scope for positive requirements to focus on long-term solutions.

1.5.3 Section 53 Community Protection Notice (CPN)

This power will be key to local authorities. It is intended to deal with ongoing problems which have a detrimental effect on a community's quality of life, by targeting those responsible for the problems. A written warning must precede the service of a Notice to allow the alleged offender the opportunity to put right the wrong/harm. Notices can require the recipient to both stop doing certain behaviours or to start doing positive actions. The local authority is not discharged from its duty to issue an Abatement Notice to deal with statutory nuisances under Part 3 of the Environmental Protection Act 1990 just because it has issued a CPN. The practitioner guidance from the professional body for environmental health makes a distinction between when primary legislation should be used (for specific issues such as statutory nuisance) and for when the new ASB powers should be used (for overarching ASB issues that do not fit a direct offence in other primary legislation). At Cheltenham Borough Council, environmental health officers and community protection officers (who would be authorised to use the powers) are in the same team which reduces the risk of a new provision being used by a non-EHO when a statutory nuisance does exist, or could exist in future. Registered social landlords, the police and PCSOs can also be designated by the council to issue FPNs for breaches of council-issued CPNs.

Purpose	To stop a person aged 16 or over, business or organisation committing anti-social behaviour which spoils the community's quality of life.
Who can issue a CPN	<ul style="list-style-type: none"> • Council officers; • Police officers; • Police community support officers (PCSOs) if designated; and • Social landlords (if designated by the council).
Test	Behaviour has to: <ul style="list-style-type: none"> • have a detrimental effect on the quality of life of those in the locality; • be of a persistent or continuing nature; and • be unreasonable.
Details	<ul style="list-style-type: none"> • Written warning issued informing the perpetrator of problem behaviour, requesting them to stop, and the consequences of continuing. • Community protection notice (CPN) issued including requirement to stop things, do things or take reasonable steps to avoid further anti-social behaviour. • Can allow council to carry out works in default on behalf of a perpetrator.
Penalty on breach	<ul style="list-style-type: none"> • Breach is a criminal offence. • A fixed penalty notice can be issued of up to £100 if appropriate. • A fine of up to level 4 (for individuals), or £20,000 for businesses.
Appeals	<ul style="list-style-type: none"> • Terms of a CPN can be appealed by the perpetrator within 21 days of issue. • The cost of works undertaken on behalf of the perpetrator by the council can be challenged by the perpetrator if they think they are disproportionate.
Important changes/differences	<ul style="list-style-type: none"> • The CPN can deal with a wider range of behaviours for instance, it can deal with noise nuisance and litter on private land open to the air. • The CPN can be used against a wider range of perpetrators. • The CPN can include requirements to ensure that problems are rectified and that steps are taken to prevent the anti-social behaviour occurring again.

1.5.4 Section 59 Public Space Protection Order (PSPO)

This power can only be used by local authorities. Restrictions (eg not to drink alcohol) or positive requirements (eg to keep dogs on a lead) can be put on designated areas of land where behaviour has, or is likely to have, a detrimental effect on the local community. The ASB must be persistent or continuous in nature, be unreasonable and justify the restrictions imposed. There is a three year transition period for councils to move existing dog control orders (and other orders being replaced to PSPOs, if there is still an evidenced need. Each PSPO can be put in place for a maximum of three years before review. In Cheltenham it is proposed that a report is compiled for each proposed PSPO to be approved by the Head of Public Protection, Director and Cabinet Member before consultation commences with the Police & Crime Commissioner, community representatives and other stakeholders such as Ward Members. There are Regulations which accompany this Order which prescribe the consultation process.

Purpose	Designed to stop individuals or groups committing anti-social behaviour in a public space
Who can make a PSPO	<ul style="list-style-type: none"> Councils issue a public spaces protection order (PSPO) after consultation with the police, Police and Crime Commissioner and other relevant bodies.
Test	<p>Behaviour being restricted has to:</p> <ul style="list-style-type: none"> be having, or be likely to have, a detrimental effect on the quality of life of those in the locality; be persistent or continuing nature; and be unreasonable.
Details	<ul style="list-style-type: none"> Restrictions and requirements set by the council. These can be blanket restrictions or requirements or can be targeted against certain behaviours by certain groups at certain times. Can restrict access to public spaces (including certain types of highway) where that route is being used to commit anti-social behaviour. Can be enforced by a police officer, police community support officers and council officers.
Penalty on breach	<ul style="list-style-type: none"> Breach is a criminal offence. Enforcement officers can issue a fixed penalty notice of up to £100 if appropriate. A fine of up to level 3 on prosecution.
Appeals	<ul style="list-style-type: none"> Anyone who lives in, or regularly works in or visits the area can appeal a PSPO in the High Court within six weeks of issue. Further appeal is available each time the PSPO is varied by the council.
Important changes/ differences	<ul style="list-style-type: none"> More than one restriction can be added to the same PSPO, meaning that a single PSPO can deal with a wider range of behaviours than the orders it replaces.

1.5.5 Section 104: The ASB case review (also known as the ‘community trigger’)

This provides victims or their representatives with the right to ask local agencies to review how they have responded to previous ASB complaints, if they have met a locally agreed threshold.

A summary of the ASB case review pilot in Cheltenham and Tewkesbury is attached as Appendix 3. The pilot is now ‘business as usual’. The locally defined threshold for Cheltenham is ‘ASB that has been reported three times in the previous 6 month period and the victim feels they have not received a satisfactory service’. The trigger can be activated by three complaints from one person, or by five individual complaints from a neighbourhood about the same behaviour.

Purpose	Gives victims and communities the right to request a review of their case and bring agencies together to take a joined up, problem-solving approach to find a solution.
Relevant bodies and responsible authorities	<ul style="list-style-type: none">• Councils;• Police;• Clinical Commissioning Groups in England and Local Health Boards in Wales;• Registered providers of social housing who are co-opted into this group.
Threshold	To be defined by the local agencies but not more than: <ul style="list-style-type: none">• three complaints in the previous six month period. May also take account of: <ul style="list-style-type: none">• the persistence of the anti-social behaviour;• the harm or potential harm caused by the anti-social behaviour;• the adequacy of response to the anti-social behaviour.
Details	<ul style="list-style-type: none">• When a request to use the Community Trigger is received, agencies must decide whether the threshold has been met and communicate this to the victim;• If the threshold is met, a case review will be undertaken by the partner agencies. Agencies will share information related to the case, review what action has previously been taken and decide whether additional actions are possible. The local Community Trigger procedure should clearly state the timescales in which the review will be undertaken;• The review encourages a problem-solving approach aimed at dealing with some of the most persistent, complex cases of anti-social behaviour;• The victim is informed of the outcome of the review. Where further actions are necessary an action plan will be discussed with the victim, including timescales.
Who can use the Community Trigger?	<ul style="list-style-type: none">• A victim of anti-social behaviour or another person acting on behalf of the victim such as a carer or family member, Member of Parliament or councillor.• The victim can be an individual, a business or a community group.

1.5.6 Section 101: the Community Remedy

This section of the Act gives victims a say in what out-of-court punishment would be appropriate for low level crime and ASB.

The police and crime commissioner for Gloucestershire has produced the community remedy document – <http://www.gloucestershire-pcc.gov.uk/anti-social-behaviour-crime-policing-act-2014-community-remedy-document/>

1.5.7 Part 3: Dispersal power

This power can only be used by the police but a summary is reproduced below for reference.

Purpose	Requires a person committing or likely to commit anti-social behaviour, crime or disorder to leave an area for up to 48 hours.
Used by	<ul style="list-style-type: none"> • Police officers in uniform; and • Police Community Support Officers (if designated the power by their chief constable).
Test	<ul style="list-style-type: none"> • Contributing or likely to contribute to members of the public in the locality being harassed, alarmed or distressed (or the occurrence of crime and disorder); and • Direction necessary to remove or reduce the likelihood of the anti-social behaviour, crime or disorder.
Details	<ul style="list-style-type: none"> • Must specify the area to which it relates and can determine the time and the route to leave by. • Can confiscate any item that could be used to commit anti-social behaviour, crime or disorder. • Use in a specified locality must be authorised by a police inspector and can last for up to 48 hours. • A direction can be given to anyone who is, or appears to be, over the age of 10. • A person who is under 16 and given a direction can be taken home or to a place of safety.
Penalty on breach	<ul style="list-style-type: none"> • Breach is a criminal offence. • Failure to comply with a direction to leave: up to a level 4 fine and/or up to three months in prison although under 18s cannot be imprisoned. • Failure to hand over items: up to a level 2 fine.
Appeals	A person who is given a direction and feels they have been incorrectly dealt with should speak to the duty inspector at the local police station. Details should be given to the person on the written notice.
Important changes/differences	<ul style="list-style-type: none"> • It is a more flexible power; it can be used to provide immediate respite to a community from anti-social behaviour, crime or disorder. • An area does not need to be designated as a dispersal zone in advance. • Although there is no requirement to consult the local council, the authorising officer may consider doing so in some circumstances before authorising use of the dispersal. • Police Community Support Officers may use all elements of the dispersal power (if designated the power by their chief constable).

1.5.8 Chapter 3: Closure powers

There are two stages – a Closure Notice which is issued out of Court and then backed up with an application to court within 48 hours for a Closure Order of up to 3 months. A temporary notice is available that closes premises for up to 24 hours (which can be extended to 48 hours) and the Head of Paid Service is the only council officer who could be authorised to do this.

Purpose	To allow the police or council to quickly close premises which are being used, or likely to be used, to commit nuisance or disorder.
Applicants	<ul style="list-style-type: none"> Local council. Police.
Test	<p>The following has occurred, or will occur, if the closure power is not used:</p> <p>Closure notice (up to 48 hours):</p> <ul style="list-style-type: none"> Nuisance to the public; or Disorder near those premises. <p>Closure order (up to six months):</p> <ul style="list-style-type: none"> Disorderly, offensive or criminal behaviour; Serious nuisance to the public; or Disorder near the premises.
Details	<ul style="list-style-type: none"> A closure notice is issued out of court in the first instance. Flowing from this the closure order can be applied for through the courts. Notice: can close a premises for up to 48 hrs out of court but cannot stop owner or those who habitually live there accessing the premises. Order: can close premises for up to six months and can restrict all access. Both the notice and the order can cover any land or any other place, whether enclosed or not including residential, business, non-business and licensed premises.
Penalty on breach	<p>Breach is a criminal offence.</p> <ul style="list-style-type: none"> Notice: Up to three months in prison; Order: Up to six months in prison; Both: Up to an unlimited fine for residential and non-residential premises.
Who can appeal	<ul style="list-style-type: none"> Any person who the closure notice was served on; Any person who had not been served the closure notice but has an interest in the premises; The council (where closure order was not made and they issued the notice); The police (where closure order was not made and they issued the notice).
Important changes/differences	<ul style="list-style-type: none"> A single closure power covering a wider range of behaviour. Quick, flexible and can be used for up to 48 hours out of court.

1.5.9 Section 94: Mandatory grounds for possession of a dwelling house

Unlike existing discretionary grounds for possession, landlords will not need to prove to the court that it is reasonable to grant possession. The condition that must be met is that the tenant or member of their household must have been found guilty of ASB or criminality in the locality of the property.

This power should expedite the process as the court should be able to hear the application in one sitting. Council tenants will still have a statutory right to request a review of the landlord's decision to seek possession under the new absolute ground.

Overview	The Act introduces a new absolute ground for possession of secure and assured tenancies where anti-social behaviour or criminality has already been proven by another court.
Purpose	To expedite the eviction of landlords' most anti-social tenants to bring faster relief to victims.
Applicants / Who can use the new ground	<ul style="list-style-type: none"> • Social landlords (local authorities and housing associations). • Private rented sector landlords.
Test	<p>The tenant, a member of the tenant's household, or a person visiting the property has met one of the following conditions:</p> <ul style="list-style-type: none"> • convicted of a serious offence (specified in Schedule 2A to the Housing Act 1985); • found by a court to have breached a civil injunction; • convicted for breaching a criminal behaviour order (CBO); • convicted for breaching a noise abatement notice; or • the tenant's property has been closed for more than 48 hours under a closure order for anti-social behaviour.
Details	<ul style="list-style-type: none"> • Offence/breach needs to have occurred in the locality of the property or affected a person with a right to live in the locality or affected the landlord or his or her staff/ contractors; • Secure tenants of local housing authorities will have a statutory right to request a review of the landlord's decision to seek possession. Private registered providers are encouraged to adopt a similar practice.
Result of action	<ul style="list-style-type: none"> • If the above test is met, the court must grant a possession order (subject to any available human rights defence raised by the tenant, including proportionality) where the correct procedure has been followed.
Important changes/ differences	<ul style="list-style-type: none"> • Unlike the existing discretionary grounds for possession, the landlord will not be required to prove to the court that it is reasonable to grant possession. This means the court will be more likely to determine cases in a single, short hearing; • This will offer better protection and faster relief for victims and witnesses of anti-social behaviour, save landlords costs, and free up court resources and time; • It will provide new flexibility for landlords to obtain possession through this faster route for persistently anti-social tenants; • The court will not be able to postpone possession to a date later than 14 days after the making of the order except in exceptional circumstances, and will not be able to postpone for later than six weeks in any event.

1.5.10 The remainder of the Act deals with policing, extradition, court fees and criminal justice.

1.6 Fixed penalty notices (FPNs) – the Act provides for the amount to be set locally by councils for breaches of the CPN and PSPO. The maximum amount is £100 but it is suggested they are set at £80 reduced to £50 for early repayment within 10 working days, for the reasons identified in the risk assessment covering this report. FPNs are a valuable tool to enforcement officers as they allow for prompt and proportionate action on an offence, but prosecution can still be taken if the fine is not paid, or if there are repeat offences. They also act as a good deterrent. Although the Act does not make the use of FPNs compulsory, it is recommended that the council adopts their use. Income from FPNs must be spent on services related to the offence.

1.6.1 Three offences in the new Act are enforceable through use of FPNs as an alternative to prosecution: a breach of a community protection notice; an alcohol related breach of a Public Spaces Protection Order; and a non-alcohol related breach of a Public Space Protection Order.

1.6.2 County approach to FPNs: Cheltenham led with Gloucestershire Police to encourage a county wide approach to the use of FPNs. The hope was for councils to use the flexibilities of the new Act to allow police and PCSOs to issue FPNs on their behalf for council imposed powers, across Gloucestershire. If this had been successful, recommendations would have been made to the respective Cabinets to designate social landlords (and perhaps parish councils in the fullness of time) to also issue FPNs on their behalf. Whilst this would certainly promote the spirit of the Act in that the community would work together to tackle ASB, and would have provided enhanced enforcement capability, there has been concern about the administrative element of FPNs as the legal work for non-payment would fall to the local authority. As such, there is no plan to review this as a County, mainly because of the current situation with shared Public Protection services in Gloucestershire. Cheltenham Borough Council's Public Protection team have well established working relationships with the police and Cheltenham Borough Homes (as well as other social landlords) which it will continue to utilise with regard to early intervention, evidence gathering, enforcement action, evidencing breaches and any subsequent prosecutions. We will continue to operate the ASB case review with procedures developed jointly with Tewkesbury. The 'trigger' for this does not replace the council's complaints systems and cannot be used to report general crime or matters that do not reach the threshold.

1.7 County approach to implementing the new Act

1.7.1 As well as leading one of the first ASB case review pilots in the country with Tewkesbury, Cheltenham have contributed strongly to the multi-agency working group based at Waterwells to map new business process, agree a joint approach and design training. However, the capability and will to implement a joint approach has understandably declined whilst the 20/20 shared public protection service model is progressed. The co-ordinating group for ASB matters in Cheltenham remains the ASB steering group, although this will be relaunched and rebranded to promote the ethos of the new Act. There are particularly strong links between Cheltenham Borough Council, the local policing team and Cheltenham Borough Homes. Joint training has maximised these links.

1.8 Meeting evidential tests and enforcing subsequent terms of Notices/Orders

- 1.8.1** The powers are only to be used in situations where there is significant and demonstrable detriment at a wider community level (as indicated by Parliament's use of the word 'those' rather than 'anyone'). They are also not to be used for low level or trivial matters. Existing information sharing protocols and working procedures will be used to consult with other stakeholders about the most appropriate course of action. It is interesting to note the CIEH guidance on CPNs and how they should be handled to avoid any possible conflict with existing or future Abatement Notices served for statutory nuisance under the Environmental Protection Act 1990. This should not be an issue in Cheltenham as the council officers who would be authorised under the new legislation work in the same team and use the same database.
- 1.8.2** The comprehensive detail around multi-team in Cheltenham Borough Council will be established pending the current review and restructure of the Environmental & Regulatory Service Division. Existing mechanisms will more than suffice until that point.

2. Reasons for recommendations

- 2.1** Cheltenham's residents, businesses and communities would be better protected from ASB and related issues such as noise and irresponsible dog ownership, through the use of the new council powers, specifically the Community Protection Notice and Public Space Protection Order. The associated evidential tests are not to the standard of statutory nuisance, for example, and enforcement may be more proportionate and prompt, in many cases.
- 2.2** The Scheme of Delegations would need to be updated before the council could exercise its functions, should Cabinet so wish. It should be noted that only the Chief Executive has authority through the Act to issue a Closure Notice for more than 24 hours (section 76) with the maximum being 48 hours. Local discussions have indicated the need for this would be extremely limited as working arrangements mean police partners would already have been involved and would usually lead.
- 2.3** **Noise complaints:** for the year 2013/14, Environmental Health Officers dealt with a total of 361 noise complaints, with 67.86% arising from domestic premises. The existing legislative powers for dealing with statutory noise nuisance are the use of restorative justice or the service of an Abatement Notice under the Environmental Protection Act 1990. Statutory noise nuisance must be proved to the criminal standard of proof – that is, beyond all reasonable doubt, because a successful prosecution for a breach of the Notice criminalises the offender. Gathering evidence to this standard is usually time consuming, and can be hard on the complainant. ASB is frequently an element of complaints of alleged statutory noise nuisance but cannot be dealt with through the use of an Abatement Notice. This currently results in parallel investigations undertaken by a council Environmental Health Officer and ASB case officer. 31 separate ASB complaints were received in the same period, often involving multiple complainants.
- 2.4** **Dog control orders:** Existing dog control orders in the borough (such as direction to put a dog on lead; not to have a dog loose in one of the named formal gardens) will expire within three years of the Public Space Protection Order coming into effect – i.e. October 2017. If the new powers are not implemented, the council will lose much of its enforcement capability in respect of irresponsible dog ownership, as well as missing the opportunities offered by the Act to tackle ASB. DCOs can be reviewed

before the end of this three year period.

2.5 Gating orders: will similarly expire in October 2017.

3. Alternative options considered

3.1 Do nothing – this is not an option as local authorities have a statutory duty to respond to the requirements of the ASBCPA through the ASB case review. In addition, the council would be left with insufficient enforcement powers to adequately deal with the range of ASB and environmental issues experienced by its communities.

3.2 Engage with partners to encourage their use of powers, without implementing them ourselves – this is not an option for the reasons in 3.1 above. Also, the PSPO can only be determined by a local authority.

4. Consultation and feedback

4.1 The council’s pilot of the ASB case review did not receive any ‘triggers’, nor was any feedback received. No consultation is required in order to delegate the new powers to appropriate officers of the council. Consultation would take place for the specific Public Space Protection Order power, in accordance with the accompanied Regulations, should Cabinet agree the recommendations of this report. The relevant Cabinet Deputy and Ward Members would be consulted from an early stage, but it is not proposed to seek approval from Cabinet before establishing each PSPO because the Act promotes prompt use of ASB powers.

5. Performance management –monitoring and review

5.1 Individual cases investigated under the new legislation, and use of the legislative tools would be monitored through usual line management responsibilities.

5.2 Monitoring of ASB case reviews would occur through the existing ASB steering group.

Report author	Contact officer: Sarah Clark, Public & Environmental Health Team Leader , sarah.clark@cheltenham.gov.uk, 01242 264226
Appendices	<ol style="list-style-type: none">1. Risk Assessment2. Table to show the range of new powers under the act with a comparison to the previously held range of powers3. Summary of ASB case review pilot

Background information

1. ASB Crime and Policing Act 2014:
<http://www.legislation.gov.uk/ukpga/2014/12/contents/enacted>
2. Statutory guidance for front line professionals on the ASB Crime and Policing Act 2014:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/352562/ASB_Guidance_v8_July2014_final_2_.pdf
3. Chartered Institute of Environmental Health (CIEH) Professional Practice Note – “Guidance on the use of Community Protection Notices under Part 4 of the Anti-Social Behaviour, Crime and Policing Act 2014”:
<http://www.cieh.org/WorkArea/showcontent.aspx?id=54768>

Risk Assessment

Appendix 1

The risk				Original risk score (impact x likelihood)			Managing risk					
Risk ref.	Risk description	Risk Owner	Date raised	Impact 1-5	Likelihood 1-6	Score	Control	Action	Deadline	Responsible officer	Transferred to risk register	
1	If the council does not use all of the legal provisions available to it to tackle ASB and related issues, then the most vulnerable in our communities will be the least protected. This may give rise to ASB case reviews through the community trigger in cases where the criteria is met, but could also result in Ombudsman complaint or judicial review, as well as damage to the council's reputation.	SC	23.02.15	3	2	6	Reduce	Recommend implementation of new powers	19.03.15	SC		
2	If fixed penalty notices are set at the maximum level, then there may be a higher number of non-payment prosecutions as a result. This could result in additional work for the authority and its legal service, as well as potentially criminalising people in financial hardship because breach of a CPN or PSPO is criminal offence. £80 should still be a sufficient deterrent.	SC	23.02.15	1	2	3	Accept					

	If the council does not utilise the new provisions, then current dog control orders and gating orders will expire in October 2017, leaving the council without 'teeth' to fully enforce environmental and ASB offences.	SC	23.02.15	3	3	9	Reduce	Implement new provisions if Cabinet approval given, or use 'patchwork' of existing powers and accept complaints			

Explanatory notes

Impact – an assessment of the impact if the risk occurs on a scale of 1-5 (1 being least impact and 5 being major or critical)

Likelihood – how likely is it that the risk will occur on a scale of 1-6

(1 being almost impossible, 2 is very low, 3 is low, 4 significant, 5 high and 6 a very high probability)

Control - Either: Reduce / Accept / Transfer to 3rd party / Close

Table to show the range of new powers under the act with a comparison to the previously held range of powers

New Power	Old Powers	Test	Details
Civil Injunction	<ul style="list-style-type: none"> ▪ Anti-social Behaviour Order (ASBO) on application ▪ Anti-Social Behaviour Injunction (ASBI) ▪ Drinking Banning Order (DBO) on application ▪ Individual Support Order (ISO) ▪ Intervention Order 	<ul style="list-style-type: none"> • On the balance of probabilities; • Behaviour likely to cause harassment, alarm or distress (non-housing related anti-social behaviour); or • Conduct capable of causing nuisance or annoyance (housing-related anti-social behaviour); and • Just and convenient to grant the injunction to prevent anti-social behaviour. 	<ul style="list-style-type: none"> • Civil order in County Court or High Court for over 18s and Youth Court for 10-17yr olds. • Positive requirements can be included aimed at getting the perpetrator to address the underlying causes of their anti-social behaviour. • Local councils, social landlords, police (including BTP), Transport for London, Environment Agency & NHS Protect can apply. • Breach is not a criminal offence.
Criminal Behaviour Order (CBO)	<ul style="list-style-type: none"> ▪ Anti-Social Behaviour Order on conviction (CRASBO) ▪ DBO 	<ul style="list-style-type: none"> • If the court is satisfied beyond reasonable doubt that the offender has engaged in behaviour that has caused or likely to cause harassment, alarm or distress to any person; and • The court considers that making the order will help prevent the offender from engaging in such behaviour. 	<ul style="list-style-type: none"> • Issued by any criminal court for any criminal offence. • Crown Prosecution Service (CPS) is most likely to be the applicant whether through their own initiative or following a request from the police or council. • Breach is criminal offence and must be proved to a criminal standard of proof, that is, beyond reasonable doubt.. • The ASB does not have to relate to the criminal offence being dealt with but maybe linked as a cause/effect. • Consultation requirement with Youth Offending Teams for under 18s

<p>Dispersal Power (Police power)</p>	<ul style="list-style-type: none"> ▪ Dispersal Order ▪ Direction to leave 	<ul style="list-style-type: none"> • Contributing or likely to contribute to members of the public in the locality being harassed, alarmed or distressed (or the occurrence of crime and disorder); and • Direction necessary to remove or reduce the likelihood of the anti-social behaviour, crime and disorder. 	<ul style="list-style-type: none"> • Powers for Police Officers in uniform and PCSOs if designated by the Chief Constable • Dispersal for up to 48 hours within a specified area • Under 16s can be returned home or taken to a place of safety • Powers to confiscate any item that could be used to commit ASB, crime or disorder • Breach is a criminal offence
<p>Community Protection Notice (CPN)</p>	<ul style="list-style-type: none"> ▪ Litter clearing notice ▪ Street litter control notice ▪ Defacement removal notice 	<p>Behaviour has to:-</p> <ul style="list-style-type: none"> • Have a detrimental effect on the quality of life of those in the locality; • Be of a persistent or continuing nature; and • Be unreasonable 	<ul style="list-style-type: none"> • Applies to individuals aged 16 and over, organisations & businesses • Council officers, police officers, PCSOs (if designated) & social landlords (if designated by the council) can issue them • CPN follows a written warning when behaviour persists • Breach is a criminal offence
<p>Public Spaces Protection Orders (PSPO)</p>	<ul style="list-style-type: none"> ▪ Designated Public Place Order (DPPO) ▪ Gating order ▪ Dog control order 	<p>Behaviour being restricted by the order has to:-</p> <ul style="list-style-type: none"> • Be having, or be likely to have, a detrimental effect on the quality of life of those in the locality; • Be persistent or continuing in nature; and • Be unreasonable. 	<ul style="list-style-type: none"> • Council makes a PSPO after consultation with the police, P&CC and other relevant bodies (These may be requested by Parish Councils but would be made by CBC.) • Can be enforced by police officers, PCSOs & council officers • Breach is a criminal offence • Will replace any existing DPPOs & need to be renewed after 3 years • Order must be published in accordance with regulations (usually by notice in local paper).

<p>Closure Power</p>	<ul style="list-style-type: none"> ▪ Premises Closure order ▪ Crack house closure order ▪ Noisy Premises Closure order ▪ S161 Closure Order 	<p>The following has occurred, or will occur, if the closure power is not used:-</p> <p>Closure notice (up to 48 hours)</p> <ul style="list-style-type: none"> • Nuisance to the public; or • Disorder near those premises. <p>Closure order (up to 6 months)</p> <ul style="list-style-type: none"> • Disorderly, offensive or criminal behaviour; • Serious nuisance to the public; or • Disorder near the premises. 	<ul style="list-style-type: none"> • Police and Council can move quickly to close premises which are being used, or likely to be used, to commit nuisance or disorder. • Closure notice - up to 48hrs (can be issued by CBC) • Closure Order - up to 3 months in first instance, can be extended to six months (Both require Magistrates approval). • Breach is a criminal offence
<p>Absolute Ground for Possession (social and private landlord power)</p>	<p>NEW POWER</p>	<p>The tenant, a member of the tenant's household, or a person visiting the property has met one of the following conditions:-</p> <ul style="list-style-type: none"> • Convicted of a serious offence (specified in Schedule 2A to the Housing Act 1985); • Found by a court to have breached a civil injunction; • Convicted for breaching a Criminal Behaviour Order (CBO); • Convicted for breaching a noise abatement notice; or • The tenant's property has been closed for more than 48 hours under a closure order for ASB 	<ul style="list-style-type: none"> • Social landlords and private sector landlords can apply • Can apply to the tenant, a member of the tenant's household or a person visiting the property • Grounds include: <ul style="list-style-type: none"> i. Convicted of a serious offence ii. Found by a court to have breached a civil injunction iii. Convicted for breaching a CBO iv. Convicted for breaching a noise abatement notice v. Tenant's property has been closed for more than 48hrs under a closure order for ASB