

CABINET

6TH MAY 2004

LICENSING & PROTECTION PANEL

12TH MAY 2004

**ANTI-SOCIAL BEHAVIOUR ACT 2003
(Report by Director of Operational Services)**

1. PURPOSE

- 1.1 To consider the implications of the Anti-Social Behaviour Act 2003.

2. BACKGROUND

- 2.1 In March 2003, the Government published a white paper outlining its proposals for tackling anti-social behaviour. "Respect and Responsibility – Taking a Stand Against Anti-Social Behaviour" focused on providing local authorities and the police with a wider, more flexible range of powers to meet their existing responsibilities and respond to the needs of their local communities.

- 2.2 The Act also provides powers for local authorities and those working with them to tackle anti-social behaviour in local communities. It extends landlords' powers to deal with anti-social behaviour in social housing, including developing the use of injunctions and demoted tenancies. It also includes provisions aimed at dealing with noise nuisance. It develops the sanctions that are available for use against those who engage in anti-social behaviour and extends the range of agencies that can use them. It provides a means for schools, local authorities and youth offending teams to work with the parents of children who are behaving anti-socially and creates the mechanisms for enforcing this work. The Act extends local authorities' powers in relation to cleaning land. It extends the measures that can be taken to remove graffiti, and restricts the sale of aerosol paint to children. The Act also gives local authorities powers to intervene in disputes over high hedges.

- 2.3 The annex to this report sets out in more detail the parts of the Act which have relevance to or require action by the local authority.

3. COMMENTS ON THE ACT

- 3.1 Some of the relevant Sections of the Act have already come into force. The others will come into force at different times during 2004, but it is already apparent from contact with communities that their expectations are rising concerning active involvement by the Local Authority in resolving issues covered by this Act.

- 3.2 The particular implications for the Local Authority include:

- (a) Part 1 relating to the closure of premises where drugs are used unlawfully requires the Police to consult with the Local Authority for the area in which the premises are situated. The Cabinet is recommended to delegate this power to the Chief Executive. Part 1 has several other sub-sections where the Local Authority is involved including closure order discharges, serving of

notices and appeals. It is recommended the Chief Executive deals with all these matters, or in his absence the Head of Legal Services.

- (b) Part 4 relating to dispersal of groups, requires the Police to consult the Local Authority before an authorisation is made or withdrawn of the authorisation. It is recommended that the Director of Operational Services as part of her community safety work, is delegated to exercise those powers.
- (c) The need for a co-ordinated approach to the reporting of and response to complaints of anti-social behaviour by individual agencies and across agencies to ensure there is both an elimination of duplication of effort and also a cross-agency approach to those cases that require more than one agency to be involved. The Community Safety Partnership is currently addressing this issue, and will use case workers to undertake the work generated by the more complex Anti-Social Behaviour issues.
- (d) Part 6 of the Act allows the Chief Executive of a Local Authority the powers of closure of premises (that have been granted a license or where a temporary events notice has been serviced under the Licensing Act 2003) because of noise. This overcomes the anomaly created by the Licensing Act whereby only a Police Officer and not an Environmental Health Officer could close licensed premises. As the Act provides the power specifically to the Chief Executive (and other Officers to whom he delegates the power) there is no need to seek any further delegations.
- (e) Part 6 also amends the Noise Act 1996 regarding dealing with noise affecting domestic premises at night and enables the Local Authority (but does not require it) to arrange for an Officer to take reasonable steps to investigate the complaint. The new powers were designed to be complementary to the existing nuisance powers but which the Council had not adopted due to the requirement to provide a 24-hour night noise service. These general provisions of the Noise Act 1996 (as amended by the ASB Act 2003) can now be adopted by the Local Authority but Members need to be clear that this does not mean that a 24 hour service can be provided. If the Members wish this service to be on a 24 hour basis then there are resource implications which will need to be assessed.
- (f) Part 6 also provides the Local Authority with powers to issue Fixed Penalty Notices for graffiti, fly-tipping and fly-posting. It also provides powers for authorised Local Authority Officers to serve graffiti removal notices and recover expenditure. The Council does not currently issue fixed penalty notices for these offences and will need to consider the staff resources required as well as the possibility of a Service Agreement with PCSOs. It is suggested that a report on this issue be brought to Cabinet in due course.

- (g) Part 6 also amends the Town and Country Planning Act Display of Adverts in Contravention of Regulations. As this is already covered by delegation to the Head of Planning, it is recommended that the delegation is extended to cover Part 6 of this Act.
- (h) Part 7 regarding powers to move trespassers – the Police may direct a person to leave property/land/remove vehicles, if they are trespassing and they have at least one vehicle and intend to reside for any period and if there is a pitch available on a caravan site. The Police must liaise with the Local Authority to determine if a pitch is available. This liaison can be undertaken with the Head of Environmental Health.
- (i) The new powers in Part 8 relating to high hedges have been enacted but not yet been implemented and there is government consultation paper out at present. It will require a procedure to be developed and implemented. It is recommended that the powers when available be delegated to the Director of Operational Services, and in her absence either to the Head of Planning Services or Head of Operations Division. This will enable further work to be undertaken as to the exact way that the work will be done.

3.3 The need to review our approach to Fixed Penalty Notices will be undertaken in the next 6-9 months as part of a 'street-scene' review.

4. CONCLUSION

4.1 The new Act requires Local Authorities to be much more pro-active in dealing with matters classed as anti-social behaviour. The impact of this in terms of staff time will need to be carefully reviewed.

5. RECOMMENDATION(S)

5.1 That delegated authority be given to:

- (a) The Chief Executive or in his absence the Director of Operational Services, after consultation with the Executive Councillor for Environment under Part 1 of the Anti-Social Behaviour Act relating to the closure of premises where drugs are used unlawfully.
- (b) The Chief Executive or in his absence the Director of Operational Services after consultation with the Executive Councillor for Environment under Part 4 of the Anti-Social Behaviour Act 2003 to respond to requests to designate areas for the purposes of dispersal of groups.
- (c) That the powers of the Noise Act 1996 (as amended by the Anti-Social Behaviour Act 2003) be adopted by the District Council and that the Chief Executive, and in his absence, the Director of Operational Services be delegated to appoint Officers to investigate complaints of night-time noise and to issue warning or fixed penalty notices. The Chief Executive or in his absence the Director of Operational Services after

consultation with the Chairman of Licensing and Protection Panel be delegated to institute legal proceedings.

- (d) The Director of Operational Services or in her absence the Head of Operations Division, after consultation with the Executive Councillor for Environment under Section 48 of the Anti-Social Behaviour Act 2003 to issue Graffiti Removal Notices and recover expenditure.
- (e) The Director of Operational Services or in her absence the Head of Operations Division, after consultation with the Executive Councillor for Environment under Section 56 of the Anti-Social Behaviour Act 2003 to enter land to clear litter and recover expenditure.
- (f) The Director of Operational Services or in her absence the Head of Planning Services or Head of Operations Division, after consultation with the Executive Councillor for Environment under Part 8 of the Anti-Social Behaviour Act 2003 to issue Orders to remedy problems associated with high hedges, to enter neighbouring land to carry out functions under this Act and to undertake any other subsequent works necessary to implement this part of the Act.

5.2 A further report is submitted to Cabinet related to the implementation of Fixed Penalty Notices.

BACKGROUND INFORMATION

❖ Anti-Social Behaviour Act 2003

Contact Officer: Mrs E Wilson, Director of Operational Services
☎ 01480 388301

ANNEX A – ANTI-SOCIAL BEHAVIOUR ACT 2003

1. PART I – PREMISES WHERE DRUGS ARE USED UNLAWFULLY (Implemented in January 2004)

- 1.1 This part took effect on 20th January 2004 and grants the police the power to close down premises being used for the supply, use or production of Class A drugs where there is associated serious nuisance or disorder. Service of a notice temporarily closes the premises to all of the public except the owner or those who habitually reside there, until a magistrates' court decides whether to make a closure order. The court must consider the notice within 48 hours. If it is satisfied the relevant conditions are met, the court can make a closure order which closes the premises altogether for a period of up to 3 months, with possible extension to a maximum of 6 months.
- 1.2 *Subsection (1)* sets out the test which must be met before a police superintendent (or officer of higher rank) can authorise the issue of a closure notice. *Subsection (2)* requires that the superintendent must be satisfied that the local authority has been consulted and that reasonable steps have been taken to identify those living on the property or with an interest in it before the authority for the issue of the notice is given.
- 1.3 *Subsection (4)* sets out the contents of the closure notice. These must include details of the time and place of the court hearing in relation to a closure order and a statement that access to the property during the period of the notice is prohibited to anyone other than someone who is usually resident in or the owner of the premises. It must also contain information about local sources of housing and legal advice.
- 1.4 *Subsection (6)* allows a constable, the local authority, persons on whom the closure notice was served under section 1 and any other person with an interest in the closed premises to apply for the order to be discharged at any time.

2. PART 2 - HOUSING

- 2.1 This part gives local authorities (with landlord functions), housing action trusts and social landlords registered with the Housing Corporation new powers to deal with anti-social behaviour. The Bill also introduces a new duty on social landlords to publish their anti-social behaviour policies so that tenants and members of the public are informed about the measures that social landlords will use to address anti-social behaviour in their stock.
- 2.2 Section 12 introduces a new section 218A into the Housing Act 1996. This requires social landlords to prepare and publish policies and procedures on anti-social behaviour, and to make them available to the public. This section repeals sections 152 and 153 of the Housing Act 1996 and introduces new provisions allowing social landlords to apply for injunctions to prohibit anti-social behaviour which relates to or affects their management of their housing stock.

2.3 New section 153A(2) to (5) sets out the conditions that have to be met before an injunction against anti-social behaviour can be granted. An injunction may be granted against any person whose behaviour could cause nuisance or annoyance to anyone in any of classes of people listed in S153A(4). These include:

- ❖ Anyone who has a right to live in property owned or managed by the landlord (for example, tenants, licensees, long leaseholders and their families).
- ❖ Anyone who has a right to live in any other property in the neighbourhood (for example owner occupiers, tenants of other landlords).
- ❖ Anyone else lawfully in such property or in the neighbourhood. This could include anyone visiting family or friends, using local facilities, passing through, or working in the neighbourhood.
- ❖ Staff employed in connection with the management of the landlord's stock.

The conduct need not cause any such nuisance or annoyance to any specific individual. It is sufficient that it is capable of having that effect.

3. PART 3 – PARENTAL RESPONSIBILITIES

3.1 This part relates to Parenting Orders and Penalty Notices for parents in cases of truancy.

4. PART 4 – DISPERSAL OF GROUPS

4.1 Section 30 contains new police powers to disperse groups of 2 or more and return young people under 16 who are unsupervised in public places after 9pm to their homes.

4.2 These new powers will only be available where an authorisation has been made by an officer of at least the rank of superintendent regarding a designated area. *Subsection (1)* sets out the conditions which need to exist before this authorisation can be made. Before giving an authorisation, the officer must be satisfied that significant and persistent anti-social behaviour has occurred in the locality and that intimidation, harassment, alarm or distress has been caused to members of the public by the presence or behaviour of groups in that locality. *Subsection (2)* provides for an authorisation to be given for a period which does not exceed 6 months.

4.3 Section 31 sets out the process by which an authorisation can be made to designate an area for the purposes of the powers outlined in section 30. *Subsection (1)* sets out that the authorisation must be in writing, signed and specify the locality, the period of the authorisation and the grounds for giving it. *Subsection (2)* ensures that the local authority must agree to any authorisation before it is given by the relevant officer. *Subsection (3)* details the publicity arrangements for the authorisation and *subsection (5)* ensures that it is published before the beginning of the authorisation period. *Subsections (6) to (9)* deal with withdrawal of an authorisation.

5. PART 5 - FIREARMS

- 5.1 This part of the Act introduces a number of changes to the Firearms Act 1968 with a view to tackling the misuse of air weapons and imitation firearms, and introducing stricter controls over especially dangerous air weapons.

6. PART 6 – THE ENVIRONMENT – NOISY PREMISES

- 6.1 This part of the Act took effect from 20th January 2004.
- 6.2 *Subsection (2)* sets out the process by which the chief executive officer of a local authority can authorise environmental health officers to issue closure orders. *Subsection (3)* defines terms used in this section and in section 40.
- 6.3 Section 42 amends the Noise Act 1996, which currently gives powers to deal with noise at night (by way of warning notices, fixed penalties etc.). These powers have previously only applied to a local authority (in England, Wales or Northern Ireland) that adopts to apply them in its area. *Subsection (2)* removes the adoptive nature of the powers in respect of England and Wales, thereby bestowing these powers on all English and Welsh local authorities. *Subsection (3)* removes the previously associated duty (once the powers had been adopted) to take reasonable steps to investigate a complaint, and substitutes a discretionary power to take such steps in response to a complaint. *Subsection (4)* removes a provision that applied to the situation where one authority had adopted powers under the Act but a neighbouring authority had not, as this will no longer apply. *Subsection (5)* makes provision as to what local authorities can do with penalty receipts.

Graffiti & Fly-Posting – Part 6

- 6.4 Sections 43 took effect on 20th January 2004 and gives authorised local authority officials the ability to issue fixed penalty notices to offenders who have perpetrated acts of graffiti or fly posting as an alternative to prosecution. The intention is to levy the penalties only on the persons actually committing these acts, and not in the case of fly-posting on the person (unless he is one and the same) whose goods or services are advertised on the poster. The fixed penalty notice does not apply to religious or racial hostility offences.
- 6.5 *Subsection (3)* restricts the possibility of being issued with a fixed penalty notice in lieu of prosecution for an offence under s.224(3) Town and Country Planning Act 1990 to the person personally affixing or placing the unlawful advertisement in question. *Subsection (4)(a)* provides that offenders have 14 days in which to pay the penalty, after which prosecution for the offence may be initiated. *Subsection (4)(b)* sets out that no proceedings may be brought where payment of the fixed penalty has been made within the 14 day period. *Subsection (5)* provides that in issuing a fixed penalty a local authority officer must provide a written statement setting out the particulars of the offence. *Subsection (6)(a), (b) and (c)* sets out that the notice setting out the particulars of the offence must state that legal proceedings will not be initiated until after 14 days, the amount

of the fixed penalty and details of where and to whom the penalty should be paid.

- 6.6 *Subsection (1)* of Section 46 amends Schedule 4 to the Police Reform Act 2002 to include powers for a community support officer to issue penalty notices in respect of graffiti and fly posting (as they currently have for issuing penalties in respect of littering and dog fouling). *Subsection (2)* amends Schedule 5 to the Police Reform Act 2002 in respect of powers of accredited persons to issue fixed penalty notices to include being able to do so in respect of graffiti and fly-posting.
- 6.7 Section 48 enables a local authority to serve a "graffiti removal notice" on the owners of street furniture, statutory undertakers and educational institutions whose property is defaced with graffiti that is either detrimental to the amenity of the area or offensive. *Subsection (3)* sets out that the notice will require them to remove the graffiti within a specified period of time, a minimum of 28 days. *Subsections (4)* and *(5)* state that if the person responsible for the property fails to remove the graffiti, the local authority can intervene and clean up the graffiti. *Subsection (6)* requires that the notice should detail the consequences of non-compliance and *subsection (7)* sets out the process for serving a notice. *Subsection (8)* allows that the local authority may affix a notice to the offending surface if they are unable to locate the person responsible. *Subsections (9)* and *(10)* define the surfaces covered, *subsection (11)* sets out whom the notice should be served upon and *subsection (12)* provides the definition of remaining terms.
- 6.8 Section 55 gives waste collection authorities (as defined in section 30(3)(a), (b) and (bb) of the Environmental Protection Act 1990) in England and Wales a strategic role for dealing with the illegal deposit or other disposal of waste (or "fly-tipping"), facilitates the definition of this role further to the receipt of statutory directions and extends the range of powers available to them. This should lead to better enforcement of current legislation, a significant increase in investigation activity, better detection of the perpetrators of the crime and, eventually, a reduction in levels of unlawfully deposited waste.
- 6.9 *Subsection (5)* amends section 71 of the Environmental Protection Act 1990 so as to provide that any of these authorities may be required to supply the Secretary of State with such information as he shall specify in relation to the categories and quantities of waste that they have dealt with whether under section 59 or under any other enactment in respect of any unlawful deposit or disposal of waste in contravention of section 33 of the 1990 Act. *Subsection (10)* provides that this power and the power under subsection (5) is exercisable by the National Assembly for Wales in Wales. *Subsections (6)* to *(9)* amend section 108 of the Environment Act 1995 to give waste collection authorities certain powers relating to the investigation of incidents of unlawfully deposited waste.
- 6.10 Section 56 amends section 92(10) of the Environmental Protection Act 1990 to remove the barrier which currently prevents local authorities from entering relevant land (Crown land or land owned by a Statutory Undertaker), clearing that land of litter, and recovering its

costs through the courts. Exceptions will still apply to land occupied for naval, military or air force purposes.

7. PART 7 – PUBLIC ORDER AND TRESPASS

- 7.1 Section 14 of the Public Order Act 1986 gives a senior police officer power to impose conditions on public assemblies. Before doing so, he must reasonably believe that serious public disorder, serious damage to property or serious disruption to the life of the community might result, or that the purpose of a demonstration is the intimidation of others with a view to compelling them to act in a particular way. Conditions include the location of the assembly, its maximum duration or the maximum number of persons who may constitute it. At present these provisions only apply to groups of 20 or more persons.
- 7.2 Section 58 amends section 63 of the Criminal Justice and Public Order Act 1994 (the 1994 Act) to extend it to cover raves where 20 or more persons are present. At present, section 63 of the 1994 Act only applies to raves where 100 or more persons are present.
- 7.3 Section 59 amends sections 68 and 69 of the Criminal Justice and Public Order Act 1994 (the 1994 Act) to extend provisions relating to the offence of aggravated trespass to cover trespass in buildings, as well as in the open air. The result is that the offence of aggravated trespass will be constituted where a person trespassing, whether in a building or in the open air, does anything which is intended to intimidate or deter persons from engaging in a lawful activity, or to obstruct or disrupt that activity.
- 7.4 This section inserts a new section 62A into the Criminal Justice and Public Order Act 1994 so as to create a new power for a senior police officer to direct a person to leave land and remove any vehicle or other property with him on that land. *Subsection (2)* sets out the conditions that the senior police officer must believe to be satisfied before he can give a direction to leave the land to a person. At least two persons must be trespassing on land; they must have between them at least one vehicle; they must be present on the land with the intent of residing there; and the occupier of the land must have asked the police to remove them. In addition, it must appear to the senior police officer, after consultation with the local authority, that there are relevant caravan sites with suitable pitches available for the trespassers to move to. *Subsections (6) and (7)* enable the Secretary of State to make an order subject to the negative resolution procedure to change the definition of 'relevant site manager'.

8. PART 8 – HIGH HEDGES

- 8.1 Part 8 gives local authorities the powers to deal with complaints about high hedges which are having an adverse effect on a neighbour's enjoyment of his property. Such a system was favoured by the majority of respondents to the 1999 consultation paper 'High hedges: possible solutions'. Complaining to the local authority would always be a last resort and neighbours would be expected to have made every effort to resolve the issue amicably. If the local authority, having taken all views into account, found that the hedge was having an adverse effect it could order the hedge-owner to take action to

remedy the problem and to prevent it recurring. Failure to comply with such an order could result in a fine not exceeding level 3 on the standard scale in the Magistrate's Court. The local authority would have the power to go in and do the work itself, recovering the costs from the hedge-owner.

- 8.2 Complaints must be made by the owner or occupier of a domestic property, on the grounds that his reasonable enjoyment of that property is being adversely affected by the height of a high hedge situated on land owned or occupied by another person (the "neighbouring land"). Even if the property is currently unoccupied, the owner may still bring a complaint under the amendments (subsection (2)). Complaints about the effects of roots are specifically excluded (subsection (4)).
- 8.3 A "high hedge" is defined as so much of a barrier to light or access as is formed wholly or predominantly by a line of two or more evergreen or semi-evergreen trees or shrubs and rises to a height of more than two metres above ground level.
- 8.4 Complaints must be made to the local authority whose area contains the land on which the hedge is situated. Complaints must also be accompanied by any fee set by the authority. The level of such a fee must not exceed the amount specified in regulations made under this section (subsection (7)).
- 8.5 The local authority may reject the complaint if they consider that the complainant has not taken all reasonable steps to resolve the matter without involving the authority, or if they consider that the complaint is frivolous or vexatious (subsection (2)). If the local authority decide, on this basis, not to proceed with the complaint, they must inform the complainant as soon as is reasonably practicable and must explain the reasons for their decision (subsections (5) and (6)).
- 8.6 Where the local authority proceed with the complaint, they must decide in the first place whether the height of the high hedge is adversely affecting the complainant's reasonable enjoyment of his property. If so, the authority must then consider what, if any, action to require to be taken in relation to the hedge in order to remedy the adverse effect and to prevent it recurring (subsection (3)).
- 8.7 The authority must, as soon as is reasonably practicable, inform the parties of their decision and the reasons for it. If the authority decide that action should be taken, they must also issue a remedial notice (under section 69).
- 8.8 This section sets out rights of appeal against the local authority's decisions under sections 68 and 70, and against any remedial notice issued by them. The appeal authority is the Secretary of State in respect of appeals relating to hedges situated in England, and the National Assembly for Wales in respect of appeals relating to hedges situated in Wales.

- 8.9 This section gives local authorities and the appeal authority powers to enter the neighbouring land in order to carry out their functions under the Bill. They must give 24 hours' notice of their intended entry and, if the land is unoccupied, leave it as effectively secured as they found it. Intentionally obstructing a person exercising these powers is an offence punishable on summary conviction by a fine not exceeding level 3 on the standard scale.

9. PART 9 – MISCELLANEOUS POWERS

- 9.1 *Subsection (4)* of Section 85 inserts new subsections (10A) and (10B) into section 1 of the 1998 Act. Section 1(10A) will allow a local authority to prosecute for breach of an order where it is the relevant authority which obtained the order or where the person subject to the order resides or appears to reside in the authority's area. The Crown Prosecution Service will retain discretion to prosecute in relation to breach of an ABSO; this section confers a concurrent power on local authorities.
- 9.2 *Subsections (3) and (6)* of this section amend the Police Reform Act 2002 by adding to the powers that can be conferred on community support officers and accredited persons. They have already been given the power to issue fixed penalty notices for cycling on the pavement. This amendment makes it easier to enforce this power by conferring power to stop cyclists. It only applies when the community support officer or accredited person believes that an offence of cycling on the pavement has been committed. Failing to stop a cycle when required to do so is an offence under the Road Traffic Act 1988 and is liable to a fixed penalty notice of £30.