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**REPORT FOR: CABINET**

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<b>Date of Meeting:</b>	19 November 2015
<b>Subject:</b>	Delegation of authority to authorise a Public Spaces Protection Order (PSPO)
<b>Key Decision:</b>	No
<b>Responsible Officer:</b>	Venetia Reid-Baptiste, Divisional Director of Commissioning
<b>Portfolio Holder:</b>	Councillor Graham Henson, Portfolio Holder for Environment, Crime and Community Safety
<b>Exempt:</b>	No
<b>Decision subject to Call-in:</b>	Yes
<b>Wards affected:</b>	All
<b>Enclosures:</b>	Appendix A – ASB, Crime and Policing Act 2014 Guidance Appendix B - EQIA

**Section 1 – Summary and Recommendations**

This report proposes to delegate authority to authorise Public Spaces Protection Orders as set out under the Anti-Social Behaviour, Crime and Policing Act 2014

**Recommendations:**

1. Delegate authority to the Corporate Director (Community) to authorise, where appropriate, any proposed Public Spaces Protection Order affecting up to 3 bordering wards following consultation with the Portfolio Holder for Environment, Crime and Community Safety.

**Reason: (For recommendation)**

A PSPO is used to address ongoing, and sometime urgent, anti-social behaviour and crime matters, and delegation would allow a timely process for suitable PSPOs to be created and implemented, where appropriate to do so.

## **Section 2 – Report**

### **Introduction**

The administration has a key priority of making a difference to families, communities and the vulnerable. Key to this is tackling matters of crime and anti-social behaviour.

In March 2014, Parliament passed the Anti-Social Behaviour, Crime and Policing Act 2014, with commencement of various provisions from 20<sup>th</sup> October 2014. One of the aims of the Act was to reduce the bureaucracy associated with tackling Anti-Social Behaviour (ASB), and put the focus firmly on giving the power back to communities to raise issues and expect action.

One of the major factors is to enable authorities to act at a much earlier stage, including early intervention before something becomes a problem.

### **Overview**

The Act has 14 parts, being:

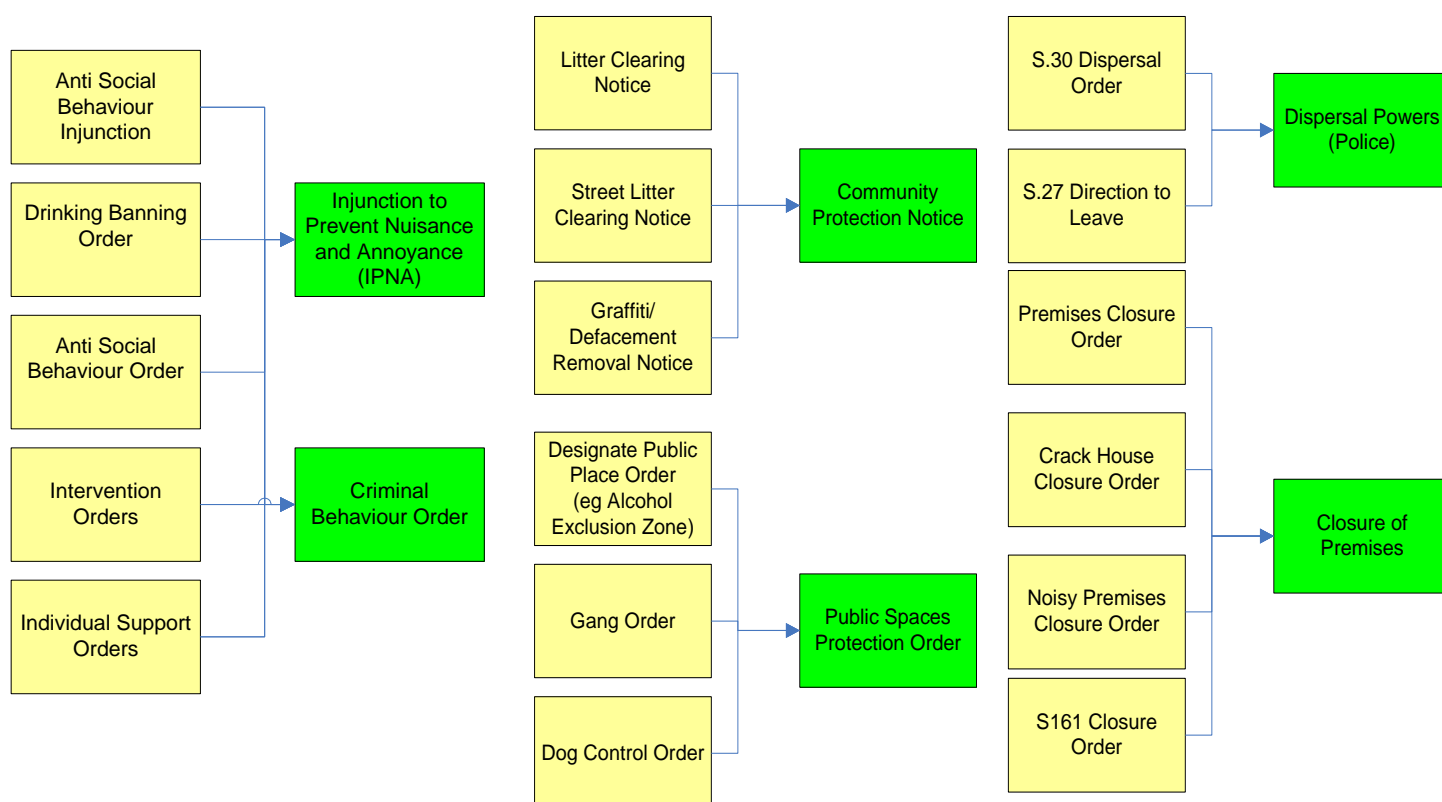
- Part 1-6 deals with ASB
- Part 7-10 covers dangerous dogs, firearms, protection from sexual offences and prohibitions on forced marriages
- Part 11-14 Policing, Extradition, Criminal Justice and Court Fees, and General

Prior to the Anti-Social Behaviour, Crime and Policing Act 2014, there were 19 ASB powers in place which have been condensed down to 6 broader powers, which will allow the addressing of a much wider remit of ASB. These are:

- Civil Injunction to Prevent Nuisance and Annoyance (IPNA)
- Criminal Behaviour Order

- Dispersal Power (Police)
- Community Protection Notice
- Public Spaces Protection Order
- Closure Power

The diagram below demonstrates how these 19 powers relate to the new powers



Additionally, the legislation sets out a new aspect of a “Community Trigger”, which underpins community involvement in getting action against ASB matters. This gives victims the ability to demand action, starting with a review of their case, where the locally defined threshold is met.

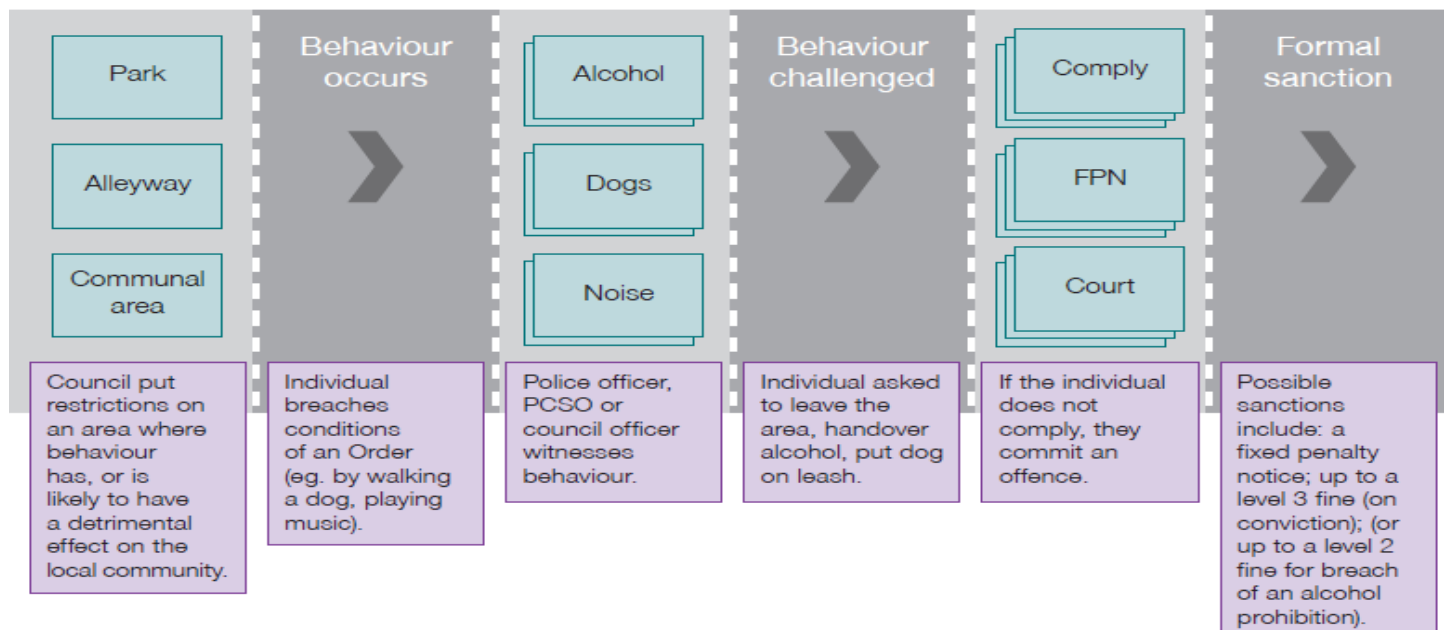
The Act puts most responsibilities on the Council, Social Landlords and the Police. With the use of the Community Trigger, responsibilities are monitored by other partners, with them able to intervene should the appropriate action not take place. For instance, if a Social Landlord does not address matters of reported ASB, the Council can seek to take action and recover costs.

## Public Spaces Protection Orders

Public Spaces Protection Orders provide a power to deal with particular nuisance or problems that directly affect an area.

An overview of the process is shown below, taken directly from the Official Guidance that accompanies the legislation.

## Public spaces protection order



In February 2015, Cabinet approved the use of Fixed Penalty Notices as an option in relation to Community Protection Notices and Public Spaces Protection Orders.

## Options considered

In relation to the recommendation in this report:

### 1. Cabinet retains full authority for all proposed PSPOs

This would require that every proposed PSPO has to be authorised by Cabinet.

The issue with such an approach is that implementing a PSPO would take longer (as the Cabinet approval process and procedures would have to be followed), and in some situations quick action to implement one would be desirable.

Additionally, some proposed PSPOs would be for very localised issues (e.g. stopping the use of a part of an alley way for purposes of preventing crime), and exercising delegated authority in such a circumstance would seem more appropriate.

### 2. Cabinet delegates full authority for all proposed PSPOs

This is not considered appropriate as some proposed PSPOs should come before Cabinet to determine due to possible significant issues or unusual features etc. As above, Cabinet could retain approval for

those PSPOs that would impact more than 3 bordering wards, or 2 or more separate wards, due to the wider impact and to ensure a consistent and reasonable approach Borough wide. This could be used for PSPOs such as one that proposes to introducing an possibly wide ranging alcohol exclusion zone, or similar.

Approval of PSPOs for matters that are localised to affecting up to three bordering wards could be delegated to the Chief Executive to ensure a speedy and timely approach to community needs.

### **3. Delegate authority to the Chief Executive to authorise, where appropriate, a proposed PSPO following consultation with the Portfolio Holder**

It is proposed that where a PSPO affects up to three bordering wards in the borough this has to be considered for approval by Cabinet but where a proposed PSPO affects only one ward, that the Chief Executive having consulted with the Portfolio Holder be authorised to approve a PSPO for implementation. The exercise of this power would be subject to considering factors such as:

- any unusual features of the proposed PSPO
- political or other significant issues
- particular sensitivity around the proposed PSPO
- significant individual impact

In order to create a PSPO the council has to be satisfied as to the issues that are occurring are causing a detrimental, continuing/persistent effect on persons in the area and it has to consult with the police and those community representatives that the council feels appropriate. These requirements as to consultation will also assist the delegated officer (and Portfolio Holder) when considering whether the delegated power should be exercised or the matter referred to Cabinet.

This option of the Chief Executive being able to authorise some PSPOs would allow a more timely operational approach for those PSPOs which do not have unusual features or other issues of significance and will enable prompt action to address the issues being faced by persons in the locality.

This is the preferred option.

### **4. Do Nothing**

Doing nothing would mean that all proposed PSPOs would need Cabinet approval.

## Implications of the Recommendation

### Resources

The process of providing the evidence to justify the need for a Public Spaces Protection Order will be managed within the Community Protection Team, Public Protection. This, as well as the other powers under the legislation, is already happening and is scrutinised through a series of meetings that ultimately report to Safer Harrow Board.

In line with the legislation, such actions will be carried out in partnership, especially with the Police.

No additional resources are required for the purpose of what this report sets out.

### Legal comments

Chapter 2 of the Anti-Social Behaviour, Crime and Policing Act 2014 deals with Public Spaces Protection Orders. .

Sections 59 – 61 inclusive deal with the power to make such orders, their duration, and their variation and discharge.

#### **59 Power to make orders**

- (1) A local authority may make a public spaces protection order if satisfied on reasonable grounds that two conditions are met.
- (2) The first condition is that—
  - (a) activities carried on in a public place within the authority's area have had a detrimental effect on the quality of life of those in the locality, or
  - (b) it is likely that activities will be carried on in a public place within that area and that they will have such an effect.
- (3) The second condition is that the effect, or likely effect, of the activities—
  - (a) is, or is likely to be, of a persistent or continuing nature,
  - (b) is, or is likely to be, such as to make the activities unreasonable, and
  - (c) justifies the restrictions imposed by the notice.
- (4) A public spaces protection order is an order that identifies the public place referred to in subsection (2) (“the restricted area”) and—
  - (a) prohibits specified things being done in the restricted area,
  - (b) requires specified things to be done by persons carrying on specified activities in that area, or

- (c) does both of those things.
- (5) The only prohibitions or requirements that may be imposed are ones that are reasonable to impose in order—
- (a) to prevent the detrimental effect referred to in subsection (2) from continuing, occurring or recurring, or
  - (b) to reduce that detrimental effect or to reduce the risk of its continuance, occurrence or recurrence.
- (6) A prohibition or requirement may be framed—
- (a) so as to apply to all persons, or only to persons in specified categories, or to all persons except those in specified categories;
  - (b) so as to apply at all times, or only at specified times, or at all times except those specified;
  - (c) so as to apply in all circumstances, or only in specified circumstances, or in all circumstances except those specified.
- (7) A public spaces protection order must—
- (a) identify the activities referred to in subsection (2);
  - (b) explain the effect of section 63 (where it applies) and section 67;
  - (c) specify the period for which the order has effect.
- (8) A public spaces protection order must be published in accordance with regulations made by the Secretary of State.

Under Section 60 of the Act, a PSPO cannot have effect for longer than 3 years unless extended.

Sections 62 and 63 covers aspects relating to PSPOs prohibiting the consumption of alcohol.

Sections 64 and 65 deal with orders restricting public rights of way over the highway.

Section 66 specifically provides an interested party (as defined in the Act) the ability to challenge the validity of a PSPO, or its variation, by application to the High Court. The grounds for such a challenge are that the local authority did not have the power to make or vary the order or include certain prohibitions/requirements, or that a requirement under the relevant part of the Act was not complied with.

There is a 6 week time limit to make such an application from the date of the order or variation. Pending full determination, the High Court can suspend the operation of the order, or variation. Upon determining the application, the Court, if it finds that the authority did not have the

power to do what it did/required under the order, or that the interests of the applicant have been substantially prejudiced by a failure to comply with a requirement of the Act in relation to PSPOs, can quash or vary the order or any prohibitions or requirements under it.

When considering any proposed PSPOs, the authority must consider any equality issues pursuant to its duty under section 149 of the Equality Act 2010.

## **Financial Implications**

None

## **Performance Issues**

Performance issues not identified.

## **Environmental Impact**

Environmental Impact issues not identified.

## **Risk Management Implications**

This scheme does not feature in the Directorate or any other corporate risk register.

The use of the Public Spaces Protection Order, in any capacity, is subject to rules governing applicability and consultation. As long as these are met, the risk is relatively low to the Council.

## **Equalities implications / Public Sector Equality Duty**

Pursuant to section 149 of the Equality Act 2010 (“the Act”), the council, in the exercise of its functions, has to have ‘due regard’ to (i) eliminating discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act; (ii) advancing equality of opportunity between those with a relevant protected characteristic and those without; and (iii) fostering good relations between those who have a relevant protected characteristic and those without.

The relevant protected characteristics are age, race, disability, gender reassignment, pregnancy and maternity, religion or belief, sex and sexual orientation. The duty also covers marriage and civil partnership, but to a limited extent.



In line with this, an initial Equalities Impact Assessment (EqIA) was completed but did not find that a full EqIA was required as no potential adverse impacts in relation to the decision for this report were likely..

Going forward, when considering proposed PSPOs, equality issues will be considered in respect of those proposals by way of EqIAs being completed, and any consultation responses will feed into these and guide the decision making process.

## Council Priorities

The Council's vision:

### Working Together to Make a Difference for Harrow

The use of the PSPO aids in meeting the priorities of the Council including:

#### **Making a difference to communities:**

Fundamental to the intention of the legislation which aims to put victims at the heart of the response to anti-social behaviour, and give professionals the flexibility they need to deal with any given situation. This is stated in the Home Office guidance on this area of work.

#### **Making a difference to the most vulnerable:**

As above, and Home Office guidance recognises that such ASB "is targeted against the most vulnerable in our society and even what is perceived as 'low level' anti-social behaviour, when targeted and persistent, can have a devastating effects on a victims life

#### **Making a difference to families:**

As above.

## Section 3 - Statutory Officer Clearance

Name: Jessie Man	<input checked="" type="checkbox"/>	on behalf of the Chief Financial Officer
Date: 12 October 2015		
Name: Paresh Mehta	<input checked="" type="checkbox"/>	on behalf of the Monitoring Officer
Date: 12 October 2015		

**Ward Councillors notified:**

No – Borough Wide

**EqIA carried out:**

YES

**EqIA cleared by:**

Hanif Islam

**Section 4 - Contact Details and Background Papers**

**Contact:** Richard Le-Brun, Environmental Services Manager  
(Public Protection), 020 8424 6267  
[Richard.lebrun@harrow.gov.uk](mailto:Richard.lebrun@harrow.gov.uk)

**Background Papers:** See Enclosures

**Call-In Waived by the  
Chairman of Overview  
and Scrutiny  
Committee**

**NOT APPLICABLE**

*[Call-in applies]*