

CONSULTATION TO REVIEW THE CURRENT CRIMINAL LEGISLATION FRAMEWORK TO TACKLE ANTI-SOCIAL BEHAVIOUR (INCLUDING ON-STREET DRINKING)	7 August 2018
TO: ENVIRONMENTAL SERVICES COMMITTEE	
FOR INFORMATION	

Linkage to Council Strategy (2015-19)	
Strategic Theme	Resilient, Healthy and Engaged Communities
Outcome	Council will work to develop and promote stable and cohesive communities across the Borough
Lead Officer	Head of Health & Built Environment
Cost: (If applicable)	none

Purpose of the Report

The purpose of this report is to update Council on the consultation to review the current criminal legislation framework to tackle anti-social behaviour (including on-street drinking) and inform members that a response was submitted on behalf of Council.

Relevant Background Information

Within the (draft) Programme for Government there is a commitment to review Northern Ireland's legislative framework for helping to tackle anti-social behaviour. As a result, there has been ongoing examination of the developments in anti-social behaviour legislation and powers within other jurisdictions, to determine whether replicating such powers in a Northern Ireland context would be appropriate.

The consultation seeks the views from a range of stakeholders, including the police, Policing and Community Safety Partnerships, the Probation Board, the Department for Communities, the Public Prosecution Service, all District Councils, Northern Ireland Housing Executive, Housing Associations, the business community, organisations within the voluntary and community sector, and members of the public.

Consideration of any new or revised powers will be in the context of seeking to address anti-social behaviour and its effects, based on what is effective, proportionate and appropriate.

Key Issues/Points

The consultation period was only open for 8 weeks with the closing date Tuesday 12 June 2018.

Council's Health and Built Environment Service prepared a joint response, attached (Appendix 1).

There is a range of options to deal with anti-social behaviour; however, there has been a decline in the use of certain legal remedies, such as Anti-social Behaviour Orders (ASBO's), in comparison to when they were first introduced, with a growing emphasis on early intervention and diversion.

While this focus on early intervention and diversion is a welcome one, it is also important to ensure that the legislative remedies remain appropriate. Commentary coming from stakeholders indicates that there are limited instant solutions when all other current advice, guidance and diversion strategies have been exhausted.

Given the pattern that certain anti-social behaviours are more prevalent in different areas or at different times of the year, the Department is keen to examine the flexibility that can be built in to tackling such behaviour, with appropriate powers being available to address local problems. In this regard the appropriateness of introducing powers such as are available to authorities outside of Northern Ireland is a further consideration.

Implications for Council: e.g. Financial, HR, Assets, Equality, Good Relations,
Link to Corporate Plan & Rural Proofing

The proposals within the consultation document will undoubtedly give Councils and partner agencies stronger powers to deal with certain anti-social behaviour. Within the response it is asked what additional resources will be provided to council in order to effectively utilise these new powers available to council, in line with managing public expectation.

Recommendation

It is recommended that Council note the consultation response to review the current criminal legislation framework to tackle anti-social behaviour (including on-street drinking).

Attached documents and/or links to other relevant information

Consultation to review the current criminal legislation framework to tackle anti-social behaviour (including on-street drinking)

<https://www.justice-ni.gov.uk/consultations/review-anti-social-behaviour-legislation-northern-ireland>

Appendix 1 Causeway Coast and Glens Borough Council response to consultation

Response to Consultation to review the current criminal legislation framework to tackle anti-social behaviour (including on-street drinking)

To: DOJSMsupportingSafer.Communities@justice-ni.x.gsi.gov.uk

Q1 What are your views on the current legislative framework to help tackle anti-social behaviour?

As stated within the consultation document the term 'anti-social behaviour' is used to describe a broad range of inconsiderate and nuisance behaviours covering many types of activities which impact on the quality of life of individuals, families and local communities. However this type of behaviour can often fall outside the scope of criminal law. On the basis that this consultation has been issued Council would suggest is a recognition of this vacuum, whereby the current legislative provisions are either not adequate and /or not utilised.

Existing ASB forums within councils include other statutory agencies, however there is often a missed opportunity to involve other partner organisations, particularly those in the health or social services sectors. There is an ad-hoc approach and perhaps lack of information available to councils on external support services that may be available. Council would expect to see an enhanced ASB type forum reflective of any legislative changes, including a wider partnership for Housing Associations and to reflect the 'Support Hub' Model which is operating in some Council areas.

The legislative list within section four of the consultation document is not exhaustive - there are other provisions enforced by Councils which assist in dealing with ASB. For example the Clean Neighbourhoods and Environment Act (NI) 2011 - provisions utilised include enforcement against graffiti, abandoned vehicles, alley gating, littering, noise; The Noise Act 1996 as amended; The Local Government (Miscellaneous Provisions) Order (NI) 1985.

Council feels that the current legislative framework is lacking in terms of its ability to tackle lower level ASB and with the legislative focus on the consumption of alcohol needs updated to tackle issues where persons have consumed other drugs resulting in their behaviour to contribute towards ASB.

There is a weakness in the existing Council byelaws, as an Officer cannot seize alcohol from those persons over 18 years of age. An amendment should be considered in any future legislative provisions.

Closing Order provisions under the Local Government (Miscellaneous Provisions) Order (NI) 1985 - is restricted to hot food type outlets with certain exclusions. It's enforcement is considered in onerous and restrictive.

Q2 What are your views on the Part 5 of the Criminal Justice (NI) Order 2008, sections 68 to 72 and whether they ought to be commenced in Northern Ireland?

Council's understanding is that any future role would be to designate these public areas through a public consultation process. Experience of previous consultation exercises are these can be over-burdensome, time consuming and that any subsequent order can become quickly outdated i.e. where there are new housing developments or road ways.

Clarification is sought of the evidential test expected to be met by Councils in order to satisfy the requirements within section 70 i.e. to designate by order any public place Council must be satisfied of nuisance or annoyance to members of the public or a section of the public; or disorder.

Council would seek assurances that this process will be as streamlined as possible, for example the provisions would permit blanket coverage of the district similar to Dog Control Orders.

Council would advise that the practical enforcement of any new provisions would fall best to PSNI and therefore agree with the proposed section 68 and the ability to issue fixed penalty notices as outlined in section 69.

It is noted that the Secretary of State shall by regulations prescribed the procedure to be followed in connection with the making of the Orders; Council would ask to be consulted in the drafting of any regulations.

Q3. What are your views on Criminal Behaviour Orders?

Q4. What would your views be if Criminal Behaviours Orders were introduced in Northern Ireland?

Council would support the proposals to introduce the CBO's to tackle those most serious and persistent offenders' where their behaviour has brought them before a criminal court and upon conviction the prosecution would apply to the court for a CBO.

It is noted this power to grant a CBO would lie with the individual court. Education of the Magistrate through the Judicial Studies Board to increase awareness of the new provisions and to ensure consistency of the process across the courts, would be a significant factor to the success of CBO's.

It is very much welcomed that the CBOs can include prohibitions or requirements (attend an anger management course or engage with their mental health professional/rehabilitation) or both and unlike ASBO's is seen as a proactive positive approach which should assist in getting to the heart of the issue.

Should a CBOs be breached, Council would ask what are the intended sanctions to be imposed are. Noted is the proposal around making public a list of the orders and reporting of same. Council would suggest that specific guidance should be made available for NI particularly to take cognisance of the sensitive requirements which could be included within a CBO and potential unwanted attention through social media, with a potentially detrimental impact on an individual under the CBO.

Comprehensive guidance is required on the process of application for the CBO, similar to that produced in the past by DOJ for ASBO's. (The Red Folder).

In terms of dealing with youths there should be interventions prior to applications for a CBO to the court. As stated in answer to question one, there needs to be a greater engagement with partner support organisations, as there is a reluctance to criminalise the youth, that only the persistent offenders to be brought before the court.

Q5. What are your views on Public Space Protection Orders?
Q6. What would be your views if Public Space Protection Orders were introduced in Northern Ireland?

It is noted that the proposal being that Councils issue the Public Space Protection Orders (PSPO), where the provision is wider than the dealing with alcohol i.e. nuisance busking, gathering of youths. It is our understanding that a PSPO is issued after consultation with Police and other partners.

There is a clear evidence gathering requirement on Council, who's Officers would be reliant on other agencies to provide same on order to meet the evidential test. Therefore council would ask in the drafting of any legislation that there is a widening of these powers to other statutory agencies, thus giving the required flexibility to permit a different applicant other than council, i.e. NIHE (including Housing Associations) and PSNI to also issue PSPOs. This would take cognisance of the differing powers of Councils in NI to those Councils in the rest of the UK.

Again there should be statutory guidance, similar to that in England, produced for those enforcing these provisions to ensure consistence, transparency and proportionality of approach. PSPO's can last for up to three years, therefore any guidance should clarify the requirement to review or amend any PSPO in the intervening period.

Q7. What are your views on Closure Powers?
Q8. What would your views be if Closure Powers were introduced in Northern Ireland?

Existing Closing Order provisions available to Council under the Local Government (Miscellaneous Provisions) (NI) Order 1985 are restricted to premises where meals or refreshments are provided, especially hot food outlets or similar. Utilisation of these powers requires a complainant and what is considered onerous evidence gathering. Officers consider the restrictions that can be put on the operator are limited in their application and ultimately this is a slow process.

The proposed powers within the consultation document appear to be much wider reaching and are said to be ‘a fast and flexible power’. It is noted that the initial Closure Notice is almost immediate, lasts for 48 hours, which cannot be appealed. In most circumstances compliance with such a notice would be sufficient to alleviate the ongoing disturbance being caused to ‘neighbours’. On that strength Council would welcome these powers being made available for use in NI.

Clarity is required on the ranges of intended uses for such **Closure Notices**, the evidential test to be met and enforcement powers, together with guidance on practical enforcement with examples of good practice case studies.

With regard to a **Closure Order** again clarity is required on the range of intended uses, the evidential test to be met and enforcement powers, together with guidance on practical enforcement with examples of good practice case studies.

Clarity and guidance is required on the agreed powers and lines of responsibility which would be available to Police and/or Council Officers respectively, as is the approach under the 2014 Act referenced within the consultation document. As the use of these Notices/Orders would appear to fall into both existing enforcement disciplines of Council and PSNI, for example, a notice relating to noise from a party house where drugs are also present.

Again to reflect the NI situation consideration is required to allow the same level of powers to NIHE and Housing Associations in order to effectively manage their own housing portfolios as social housing providers.

Council would ask what additional resources will be provided to council in order to effectively utilise these new powers available to council, in line with managing public expectation.

Q9. What are your views on the noise nuisance powers that are currently available in Scotland under the Civic Government (Scotland) Act 1982?

Q10. What would be your views be should these powers under the Civic Government (Scotland) Act 1982 be introduced in Northern Ireland?

The existing Noise Act 1996, as amended, restricts council’s powers in terms of entry and is premises specific. Outside of this Councils currently bound by nuisance provisions and processes.

Therefore it is welcomed that these powers similar to those in Scotland would also be available to the PSNI. However an update would be required in terms of the penalty or other sanctions available; and other types of offences including those which would occur in public places i.e. busking, including where there is no amplification device being used, but this still causes annoyance, for example a public speaker/preacher.

Clarity and guidance would be required on the evidential test for giving ‘another person reasonable cause for annoyance and fails to desist on being asked to do so’.