

Officer Delegation Scheme – Proposed Changes

Appendix 1

No.1

Section and Reference	Existing Text	Proposed amendment including revised text if appropriate
<p>Officer Delegation Scheme</p> <p>Head of Environment, Housing and Leisure.</p> <p>Anti-Social Behaviour, Crime and Policing Act 2014</p>	<p>EHL 99 Anti-Social Behaviour, Crime and Policing Act 2014</p> <p>e) To issue a Fixed Penalty Notice under section 52 for failure to comply with the Anti-Social Behaviour, Crime and Policing Act 2014 with fines up to £100.</p>	<p>e) To issue Fixed Penalty Notices <u>s</u> under sections <u>s</u> 52 and 68 for failure to comply with the Anti-Social Behaviour, Crime and Policing Act 2014 with fines up to £100. <u>a Community Protection Notice or Public Spaces Protection Order.</u></p> <p><u>h) To discharge all other functions under the Act except for those not capable of delegation.</u></p>
	<p>Reason for Proposed Change</p> <p>Insofar as e) is concerned, there is currently reference to Fixed Penalty Notices that can be issued for non-compliance with a Community Protection Notice (section 52) but there is no reference to Fixed Penalty Notices that can be issued for non-compliance with a Public Spaces protection Order (section 68). This omission is rectified by the inclusion of section 68 in the proposed amendment.</p> <p>The current wording in e) makes reference to “fines up to £100”. This wording is incorrect in that any payment made under a Fixed Penalty Notice is not a “fine”, (which is an amount that only a Court can impose), but is rather a “penalty amount”. Given that the 2014 Act specifies that any penalty amount required to be paid by Fixed Penalty Notices issued under both section 52 or 68 must not be more than £100, the wording in e) as well as being incorrect also seems unnecessary for the purposes of the delegation scheme.</p> <p>A new sub-paragraph h) is being suggested so that should the 2014 Act be amended and as a consequence new functions and responsibilities introduced, the Head of Environment, Housing</p>	

and Leisure will have the ability to discharge the functions and responsibilities without being required to take a report to Cabinet seeking specific delegated authority before exercising that function.

Implications of proposed change:

- **Finance and other resource implications:**

The proposed change will enable a new category of Fixed Penalty Notice to be issued which means that additional receipts may be forthcoming.

- **Legal implications:**

The functions relating to the Anti-Social Behaviour, Crime and Policing Act 2014 are Cabinet functions. The legislation is of particular significance to Local Authorities because it enables those Authorities to tackle anti-social behaviour by the use of Community Protection Notices (CPN) which will require those responsible for anti-social behaviour in the Borough served with a CPN to comply with the requirements of the Notice. Failure to do so is an offence for which they may be prosecuted or as an alternative, issued with a Fixed Penalty Notice. The legislation also enables the Authority to take remedial action to prevent anti-social behaviour such as carrying out work or seizing items that are used in the commission of an offence.

The 2014 Act also enables the Authority to make Public Spaces Protection Orders that prohibits specified things being done in the area(s) covered by the Order. This could be consumption of alcohol, dogs defecating, dogs being off a lead, skateboarding etc. etc. if there are reasonable grounds to believe that such activities are persistent, unreasonable and the restrictions imposed by the Order are justified. It is an offence to fail to comply with a requirement specified in the Order for which a person can be prosecuted. A person can be served with a Fixed Penalty Notice as an alternative to prosecution for failing to comply with the requirements of the Order.

It is the powers given to the Authority in relation to CPN's and Public Space Protection Orders and the ability for authorised officers to issue Fixed Penalty Notices that the proposed changes to the ODS relate to.

- **Consultation/Engagement undertaken (internal and external):** Colin MacDonald, Senior Manager, Technical and Regulatory Services; Vicki Dixon, Senior Manager Investment and Commercial Finance; Anne Foreman, Senior Policy, Intelligence and Research Officer

- **Human Rights implications:**

Article 8 of the ECHR provides that an individual is entitled to a right to a family and private life. Anti-Social behaviour can

have a negative impact on that right. The Anti-Social Behaviour, Policing and Crime Act enables the Authority to legally tackle ant-social behaviour when it is proportionate to do so for the benefit of the community.

- **Equalities and Diversity implications:**

There are no specific equalities and diversity implications in relation to these proposed changes to the ODS. The use of the powers given to the Authority under the legislation will be discharged in a way that will have regard to the public sector equality duty.

- **Risk Management implications:**

There are no risk management implications directly arising from this proposed change. Risks associated with delivery of the Authority's functions under the 2014 Act are monitored via the Technical Services Partnership risk arrangements included within the strategic partnership governance framework.

- **Crime and Disorder implications:**

There are several offences created by the 2014 Act which the Authority has the power to prosecute under. As an alternative, the Authority can issued Fixed Penalty Notices as described above.

- **Environment and Sustainability implications:**

The use of CPN's and Public Spaces protection Orders help to protect the environment by preventing anti-social behaviour. Such behaviour can have implications for environment.

Proposed by: John Barton

Service Area: Law and Governance

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Head of Service sign-off:

(please insert a cross in the box)

X

Section and Reference	Existing Text	Proposed amendment including revised text if appropriate
<p>Officer Delegation Scheme Para EHL200 j)</p> <p>(exceptions to planning applications being determined by officers)</p>	<p>j) Applications for other developments (including householder developments, as defined for the purposes of the government PS2 statistical return) where a Councillor has, within the statutory publicity period or prior to the determination of the application, requested in writing that the application be determined by Planning Committee and has also given substantial reasons why that application should be determined by Planning Committee and not under the Officer Delegation Scheme.</p>	<p>j) Applications for other developments (including householder developments, as defined for the purposes of the government PS2 statistical return) where a Councillor has, within the statutory publicity period or prior to the determination of the application, requested in writing that the application be determined by Planning Committee and has also given substantial reasons why that application <u>as to why the application is so significant or contentious that it</u> should be determined by Planning Committee and not under the Officer Delegation Scheme <u>and that request has been accepted by the Chair and/or Deputy Chair of the Planning Committee.</u></p>
	<p>Reason for proposed change: The inclusion of the text in bold:</p> <p>a) more accurately reflects actual practice whereby requests from members are presented to the Chair and/or Deputy Chair for determination;</p> <p>b) provides the Chair and Deputy Chair with a more objective test on which to consider requests;</p> <p>c) provides consistency with the committee’s speaking rights scheme whereby requests to speak will normally only be permitted if they relate to significant or contentious applications.</p>	
<p>Implications of proposed change:</p>		

- **Finance and other resource implications:**

It is not envisaged that the proposed amendment would alter the number of applications being referred to the Committee and so the financial implications would be neutral.

- **Legal implications:**

The Council has power to determine applications for planning permission under the Town and Country Planning Act 1990. The Council's constitution seeks to ensure that the Council's decision making is transparent, efficient and accountable to local people.

- **Consultation/Engagement undertaken (internal and external):**

The Chair and Deputy Chair of the Planning Committee and Senior Planning officers have been consulted.

- **Human Rights implications:**

Article 6 of the European Convention on Human Rights provides a right to a fair trial, including the right to a public hearing before an independent and impartial tribunal within reasonable time.

- **Equalities and Diversity implications:**

There are no direct equalities or diversity issues to arise from this proposed amendment.

- **Risk Management implications:**

A risk assessment of the proposed amendment has not been undertaken.

- **Crime and Disorder implications:**

There are no direct crime and disorder implications arising from this proposed amendment.

- **Environment and Sustainability implications:**

There are no direct environmental or sustainability implications arising from this proposed amendment.

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Head of Service sign-off:
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