EXPLANATORY MEMORANDUM TO

THE ANTI-SOCIAL BEHAVIOUR (AUTHORISED PERSONS) ORDER 2015

2015 No. [XXXX]

1. This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The purpose of this Order is to enable local authorities to give housing providers the power to issue community protection notices (CPN) and fixed penalty notices under the Anti-social Behaviour, Crime and Policing Act 2014 ("the Act").

3. Matters of special interest to the Joint Committee on Statutory Instruments *or* the Select Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 Section 53(1) of the Act provides that a CPN or fixed penalty notice may be issued by a constable, a relevant local authority or a person designated by the relevant local authority. Section 53(4) provides that only a person specified in an order made by the Secretary of State may be designated by the relevant local authority in this way.

4.2 Under section 43 of the Act, CPNs can be issued to individuals over the age of 16, or to a business or organisation, if an authorised person is satisfied on reasonable grounds that the following two conditions are met:

- the conduct of the individual or body is having a detrimental effect, of a persistent or continuing nature, on the quality of life of those in the locality, and
- the conduct is unreasonable.

4.3 Failure to comply with a CPN, without reasonable excuse, is a criminal offence subject to a fixed penalty notice (which attracts a penalty of no more than £100) or prosecution. A person found guilty on summary conviction may receive a fine of up to level 4 or up to £20,000 if a business or organisation.

4.4 Under section 52 of the Act an authorised person may issue a fixed penalty notice to anyone they believe has committed an offence of failing to comply with a CPN. If the person given the notice pays a fixed penalty within 14 days then they may not be convicted of the offence.

4.5 Under section 20(1) of the Act 'housing provider' is defined as a housing trust, a housing action trust, a non-profit private provider of social housing, a landlord under a secure tenancy, or, in relation to Wales, a Welsh body registered as a social landlord. This is the term that is used for the purposes of designating such persons under section 53(1)(c) of the Act.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

6.1 The Minister for Crime Prevention has made the following statement regarding Human Rights:

In my view the provisions of the Anti-social Behaviour (Authorised Persons) Order 2015 are compatible with the Convention rights.

7. Policy background

- What is being done and why

7.1 The overall policy aims of the anti-social behaviour provisions within the Anti-social Behaviour, Crime and Policing Act 2014 are to:

- Reform the powers available to deal with anti-social behaviour, streamlining the formal powers available to frontline professionals down to a faster, more effective, six. These measures will reduce bureaucracy and allow frontline professionals to respond to the needs of victims quickly.
- Introduce the community trigger which gives victims and communities the right to require agencies to deal with persistent anti-social behaviour that has previously been ignored. This will ensure that victims of persistent anti-social behaviour have a say in the way their complaints are dealt with.
- Introduce the community remedy which requires Police and Crime Commissioners to consult victims and the public on the menu of sanctions available for those committing low-level crime and anti-social behaviour. Police officers are required to work from the resulting menu thereby empowering the public to hold the police to account.
- Bring faster relief to victims and witnesses by removing the court's discretion to consider whether it would be reasonable to grant possession of a dwelling house where serious housing related anti-social behaviour or criminality has already been proven, and enabling possession to be sought by landlords where tenants have committed certain offences beyond the locality of the property in exceptional cases.

7.2 Part 4, Chapter 1, of the Act introduces the CPN which provides local councils, police, police community support officers (if designated by their chief constable) or a person designated by the relevant local authority, with a flexible power intended to deal with ongoing problems or nuisances which negatively affect the community's quality of life by targeting those responsible. The Act sets out when a CPN can be issued, by whom, what information it must contain, and what happens if it is breached.

7.3 It was made clear in the 'Anti-social Behaviour, Crime and Policing Act 2014: Reform of anti-social behaviour powers'[1] that there is a formal role for housing providers in using the CPN alongside local authorities, police officers and police community support officers, as they manage over four million dwellings in England and Wales and deal with hundreds of thousands of complaints of anti-social behaviour every year.

- Consolidation

7.4 There is no requirement for consolidation because these regulations are not amending another statutory instrument.

8. Consultation outcome

8.1 No formal consultation took place in respect of this instrument. However, in February 2011 the Government published a consultation document, 'More effective responses to anti-social behaviour'[2], outlining the reform of anti-social behaviour powers which set out the intention that housing providers could issue a CPN. In addition, the Home Office hosted workshops with frontline professionals, including housing providers, to discuss these proposals. In May 2012, the Government published a White Paper, 'Putting Victims First: More effective responses to anti-social behaviour'[3], which set out the Government's final proposals for reform and clearly set out that the power to issue a CPN should be available to the police (and PCSOs), local authorities and housing providers as designated by the relevant local authority.

9. Guidance

9.1 On 21 July 2014, the Home Office published statutory guidance for frontline professionals on the new anti-social behaviour powers and how they could be used, including the CPN[4]. The guidance was first published in draft in October 2013 and was updated to reflect amendments made to the Anti-social Behaviour, Crime and Policing

---

1 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/352562/ASB_Guidance_v8_July2014_final__2_.pdf

2 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/118297/asb-consultation-document.pdf

3 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/228863/8367.pdf

4 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/352562/ASB_Guidance_v8_July2014_final__2_.pdf

Act 2014 in Parliament and feedback received from agencies such as the police, local councils, housing providers and other government departments.

10. Impact

10.1 The impact on business, charities and voluntary bodies is minimal. However, a CPN can be issued against any individual or business or organisation.

10.2 The impact on the public sector is that councils can authorise housing providers to issue a CPN or a fixed penalty notice if they wish.

10.3 An Impact Assessment has not been prepared for this instrument. However, an Impact Assessment for the Anti-social Behaviour, Crime and Policing Bill was published on 9 May 2013[5]. Two further Impact Assessments covering the specific powers and measures introduced under the new legislation were published, including one which covers the CPN. [6]

10.4 Paragraph 38 of the Impact Assessment covering the CPN states that 'the CPN would be available for social landlords to use if they wanted to and were designated the power by the local authority. So, there would only be a change from the 'do nothing' option if landlords chose to opt in. While there would be an ongoing requirement to train new staff in the CPN, this would form part of the package of training currently undertaken outlining the tools and powers available to social landlords. As landlords would have to choose to opt in, it is reasonable to expect that they would only do this in situations where the benefits of doing so were likely to outweigh any costs incurred in the process. Therefore, we would assume a zero net effect for private registered providers of social housing'.

10.5 Paragraph 54 (ii) of the Impact Assessment sets out how the introduction of the CPN will provide additional benefits for private registered providers of social housing and the police as 'having one, simpler power would be easier for these organisations to use, than the range of existing powers. Specifically, giving the police and landlords the ability to deal with noise through these notices would be beneficial as 42.1% of English and 60% of Welsh local authority areas don't have an out of hours noise service whereas a third of the reports of anti-social behaviour made to social landlords were about noise. So, under the notice, the police and landlords would be able to deal better with persistent and complex cases, allowing them to use their staff time more effectively'.

11. Regulating small business

11.1 The legislation does not apply to small business.

---

[5] http://www.parliament.uk/documents/impact-assessments/IA13-17.pdf

[6] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/197808/Environmental_Powers_and_Trigger.pdf

12. Monitoring & review

12.1 The success criteria for this instrument will be that local authorities authorise housing providers to issue CPNs and fixed penalty notices and, as a result, can respond proportionately and preventatively to behaviour that is affecting a community's quality of life.

12.2 It is expected that this instrument will be reviewed as part of our post-legislative scrutiny three to five years after Royal Assent of the Act. This will include the impact of the proposals to better understand any associated costs and benefits.

13. Contact

Breesha Lowe at the Home Office Tel: 020 7035 8471 or email: breesha.lowe3@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.