

Is the final decision on the recommendations in this report to be made at this meeting?

**Yes**

## Public Spaces Protection Order

<b>Final Decision-Maker</b>	Communities, Housing and Environment Committee
<b>Lead Director or Head of Service</b>	John Littlemore, Head of Housing and Community Services
<b>Lead Officer and Report Author</b>	Sarah Robson, Housing and Community Manager
<b>Classification</b>	Non-exempt
<b>Wards affected</b>	High Street, South, Fant, Bridge, North, Tovil

### This report makes the following recommendations to the final decision-maker:

It is recommended that the Committee agrees:

1. In principle to proceed with public consultation on the implementation of a Public Space Protection Order (PSPO). See Appendix 1 for proposed PSPO location map and boundaries, which incorporates the town centre (High Street ward), Whatman Park (Bridge) and Riverside (Fant, South and Tovil) areas.
2. That the Borough Council commences an 8 week public consultation from 30 November 2015.
3. That the Head of Housing and Community Services be authorised to amend the details of the proposals for consultation including the definition of the area and activities to be covered in line with the principles outlined in this report, subject to consultation with the Chairman and Vice Chairman of the Communities, Housing and Environment Committee

### This report relates to the following corporate priorities:

- **Keeping Maidstone Borough an attractive place for all:** The introduction of a Public Space Protection Order will create safer communities and deter and reduce crime and anti-social behaviour. Perpetrators of ASB will be dealt with effectively and the victims of ASB are supported. This will support the achievement of lower levels of ASB and crime and in turn contribute to a safer town centre.
- **Securing a successful economy for Maidstone:** the order would support the Purple Flag initiative and the ongoing policy to support and enhance the town centre through regeneration, investment and management.

### Timetable

<i>Meeting</i>	<i>Date</i>
Corporate Leadership Team	15 September 2015
Communities, Housing and Environment Committee	17 November 2015

# Public Spaces Protection Order

## 1. PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1 The purpose of the Report is to enable Maidstone Borough Council to consult on the introduction of a Public Space Protection Order to give the Council greater powers in relation to dealing with anti-social behaviour in public spaces within its town centre.
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## 2. INTRODUCTION AND BACKGROUND

- 2.1 In the last three years, our preventative approach to ASB has led to a reduction in the number of incidents of ASB across the Maidstone borough recorded by Police of 25% over the three year period. However, Maidstone still has the 5th highest number of reported incidents in the County (after Thanet, Canterbury, Swale and Dover). Analysis of ASB including environmental nuisances across Maidstone, highlights that the High Street ward continues to experience the highest volumes, with Fant and Bridge wards seeing a significant increase.
- 2.2 As a Council, we are determined to reduce this figure further, and use the new tools and powers within the Anti-Social Behaviour, Crime and Policing Act 2014 to develop our joint work where appropriate.
- 2.3 The Council continues to receive repeated complaints from residents, visitors and local businesses about unreasonable anti-social behaviour including street drinking, increased littering from legal highs (e.g. empty laughing gas canisters) and verbal intimidation from the street population, including beggars and rough sleepers over the last year. Complaints showed that the anti-social behaviour was having a detrimental effect on the quality of life of those living in or using certain areas, reducing their ability to feel safe in, use or enjoy public spaces.
- 2.4 One of the key powers of interest to the Council, partners and the community is the Public Spaces Protection Order (PSPO). PSPO's are designed deal with a particular nuisance or problem in an area by placing conditions on the use of the area and providing sanctions for those that do not comply..
- 2.5 On 20 October 2014, the Government implemented most of the Anti-Social Behaviour Crime and Policing Act 2014 ("the Act). The purpose of the Act is to give local authorities and Others more effective powers to tackle anti-social behaviour (ASB), providing better protection for victims and communities.
- 2.6 Amongst these new tools and powers are Public Spaces Protection Orders (PSPO's), which are designed to control use of public spaces. It is for each individual Council to determine what behaviour(s) they want to make the subject of a Public Space Protection Order.
- 2.7 Public Space Protection Orders provide Councils with a flexible power to implement local restrictions to address a range of anti-social behaviour issues in

public places in order to prevent future problems. An Order should help to significantly reduce incidents of relevant asb in the area over the long-term and improve the quality of life for residents, visitors to the town and local businesses.

2.8 Local authorities can make an order as long as two conditions are met:

**First condition:**

- Activities carried out in a public space within the local authority's area have had a detrimental effect on the quality of life of those in the locality, or;
- It is likely that activities will be carried out in a public place within the area that will have such an effect.

**Second condition:**

The effect or likely effect of the activities:

- Is, or is likely to be, of a persistent or continuing nature
- Is, or is likely to be, such as to make activities unreasonable and
- Justifies the restrictions imposed by the notice.

2.9 Local authorities, when considering implementing a Public Space Protection Order, must have particular regard to the rights of freedom of expression and the freedom of assembly before making an order.

2.10 In terms of any consultation, local authorities must consult with the Chief Officer of Police, the Police and Crime Commissioner, whichever community representatives the local authority deems appropriate and, as far as is reasonably practicable, with the owner or occupier of the land in question.

2.11 The local authority must also notify the County Council and any Parish Council (where appropriate) before making any Order.

2.12 The Order must identify and publicise (e.g. on social media and through the provision of public signage in the designated areas) the public space as a 'restricted area' and must prohibit specified activities being carried out in the restricted area (prohibitions), or require specified things to be done by persons carrying out specific activities in that area (requirements), or both.

2.13 Any prohibition or requirement must be reasonable in order to prevent the detrimental effect from occurring or reoccurring, or must reduce the detrimental effect or reduce the risk of its occurrence, reoccurrence or continuance.

2.14 A prohibition or requirement may be framed so that it applies to all persons, persons in specified categories, or to all persons except those in specified categories. It can be applicable at all times, or only at specified times, or at all times except those specified. Also, so as to apply in all circumstances, or only in specified circumstances, or in all circumstances except those specified. Public Space Protection Orders can be made for a maximum of three years. The legislation provides that they can be extended at the end of the period, (if the authority is satisfied on reasonable grounds that it is necessary for various

reasons), but only for a further period of up to three years. However, orders can be extended more than once. Local authorities can increase or reduce the restricted area of an existing order, amend or remove a prohibition or requirement, or add a new prohibition or requirement. They can also discharge an order but further consultation must take place for varying or discharging orders.

- 2.15 The orders can be enforced by Police Officers, and Council Officers and in relation to Fixed Penalty Notices or requirements not to consume alcohol authorised PCSOs
- 2.16 Before making the order the local authority must notify potentially affected people of the proposed order, inform those persons of how they can see a copy of the proposed order, notify them of how long they have to make representation, and consider any representations made.
- 2.17 Any interested person can challenge the validity of a Public Space Protection Orders in the High Court but the challenge must be made within six weeks of the making of the Order. An 'interested person' means an individual who lives in the restricted area or who regularly works in or visits that area.
- 2.18 It is proposed that the Council considers consulting upon a Public Space Protection Order to cover prohibiting the following activities, which will support the current efforts to improve town centre public spaces where behaviours have a detrimental effect on the quality of life of those in the locality.
- 2.19 There are currently 4 key issues identified by the Council's Strategic Assessment, alongside Kent Police and other partners for the use of a PSPO to be investigated. These are begging, new emerging drugs, sleeping in a public space and drinking in a public space.

### **Begging - Why is this a priority?**

- 2.20 Begging in Maidstone town centre is a persistent and continuing issue and in recent years there has been a marked increase in the severity and volume of this problem. 10 persistent beggars who deploy aggressive begging techniques have been identified in the town centre area by partners (including the Council, Kent Police and Town Centre Management). There is a real concern begging is contributing to anti-social behaviour and is detrimental to quality of life of those in the locality. If this trend continues to grow, begging will become unmanageable and damage the reputation of the town centre, including loss of trade and attractiveness to new businesses considering locating to Maidstone. It is therefore unreasonable to allow this persistent issue to grow and justifies action.
- 2.21 The Killing with Kindness campaign was launched to enable people to combat begging in Maidstone town centre by donating directly to charities supporting the street homeless and not on the street. Its success led to the Maidstone Assertive Outreach project, led by Maidstone Borough Council alongside Kent Police, local businesses and voluntary and community organisations, such as Maidstone Day Care Centre, Porchlight and CRI to support people out of

homelessness and into support. However, we have identified a number of individuals that have been offered, but declined assistance for alternatives to begging, instead choosing to continue with begging. In addition, there are a growing number of people begging who are not homeless and persuade people into giving them money which is then spent on misusing drugs and alcohol. Anti-social behaviour from beggars is a drain on Police resources, who are increasingly being asked to attend calls relating to street begging and anti-social behaviour. Both have the potential to harm the town centre economically and socially. Therefore, alongside any prohibitions in the proposed new Order, the Maidstone Assertive Outreach project would continue to support these individuals both in a compassionate manner and through the established charities that have the skills in place to support them.

#### 2.22 Begging – Proposed prohibited activities:

- a) All persons are prohibited from approaching another person either in person or verbally in order to beg from the other person;
- b) All persons are prohibited from sitting or loitering in the public space for an unreasonable time, where behaviour is clearly inappropriate, excessive, or harmful to the public in degree or kind and; lacking justification in fact or circumstance; or with any receptacle used to contain monies for the purpose of begging. This includes the use of signage, children or animals to solicit monies from the other person.

*These prohibitions do not apply to any authorised collections or activity made on behalf of a registered charity.*

#### **New Emerging Drugs (Legal Highs and Nitrous Oxide – Laughing Gas) - Why is this a priority?**

2.23 This is a growing area of concern. Whilst a Public Space Protection Order cannot apply to businesses in the area trading in such substances, it is possible to prevent behaviour caused as a result of use of these substances in public areas. Evidence has shown through Maidstone's Street Population work, that at least 75% (approximately 80 individuals) who were engaged with since January 2014, have taken legal highs on a regular basis, culminating in reports of increased ASB in areas such as Wheeler Street (including the cemetery), Union Street, Mill Street and Archishop's Palace, due to their close vicinity to 'head shops'. Kent Police deployed additional staffing resources to the area, establishing the link between the purchase of legal highs at the head shop and the increase in complaints of ASB in the area. The council's street cleaning team has also seen a rise in finds of used laughing gas canisters in the town centre. At a recent event, in excess of 300 empty laughing gas canisters and legal high packages were found, which the Police directly attributed to increased reports of ASB in the specific locations. No standard drug paraphernalia, such as used needles were found.

2.24 The location maps provided in the Appendices shows an overlap of ASB and criminal activities (robbery, theft, sexual assault) in areas where street begging, rough sleeping and use of legal highs and alcohol have been identified. Local

drug support agency, CRI, have commented that using legal highs at the same time as alcohol can often contribute to increasingly aggressive behaviours which may add to the levels of violence. These behaviours have a detrimental effect on the Maidstone town centre economy and quality of life. The council and police first started receiving complaints from residents about legal highs in the summer of 2014. Following discussion amongst police and council officers regarding the substantial rise in both complaints to the police and council, and the noticeable degradation of the environment in affected areas, the local police requested that the council investigated the implementation of a PSPO to tackle the issue. Ward councillors had also highlighted the rising problem of legal highs in the town centre and surrounding areas.

#### 2.25 New Emerging Drugs (Legal Highs) – Proposed prohibited activities:

- a) All persons are prohibited from ingesting, inhaling, injecting or smoking any substance which has the capacity to stimulate or depress the nervous system. This includes prohibiting the sharing or passing of legal highs.

This prohibition does not apply where:

- i) The substance is used for a valid and demonstrable medicinal purpose;
- ii) The substance is given to an animal as a medicinal remedy;
- iii) The substance is a cigarette (tobacco) or vapouriser; or
- iv) The substance is a food product regulated by food, health and safety legislation.

Any person who breaches this prohibition shall surrender the substance or substances in his or her possession to an authorised person who has been trained in tackling ASB and substance identification. Through this order we seek to reduce the number of criminal incidents involving legal highs dealt with by the police, decrease the number of complaints regarding legal high usage from residents and ensure a cleaner, safer environment around our night time economies.

#### **Sleeping in a public space – Why is this a priority?**

2.26 In Maidstone town centre, rough sleepers have been found living in primitive shelters, including tents, or derelict buildings unfit for habitation, often without any sanitation. As well as creating considerable risks for the inhabitants, such habitations can create community safety and health and hygiene problems for people living in the surrounding area. Some hotspots are conspicuous and attract a lot of local attention, but others provide shelter for Maidstone's 'hidden homeless' who survive without basic amenities in dangerous surroundings.

2.27 The Maidstone Assertive Street Outreach project established in early 2014, participates in constructive and planned interventions where partner organisations provide skilled outreach staff alongside enforcement teams to offer advice and practical assistance in areas such as health, finding accommodation and work and being supported to return home. Over the past year, the project team has engaged with more than 100 individuals. Not every person engaged with is street homeless and may be sofa surfing or housed, but with a chaotic lifestyle or complex mental health issues. However, the

Maidstone Assertive Street Outreach ensures that every person understands the options available to them (including opportunities to address the accommodation, health and employment-related issues that have led to them living in destitution) and to provide support to enforcement colleagues and those responsible for matters relating to health and safety to carry out their responsibilities. As a result of this work increased needle exchanges have been installed in local pharmacies and parks; a local TB outbreak amongst the street population was dealt with quickly and effectively with health colleagues and some of our most entrenched street population have now entered into housing with floating support.

2.28 This identified cohort of Maidstone's street population plays a part in detrimentally affecting the quality of life for those who live, work in or visit the town centre. The Maidstone Community Safety Unit has witnessed increased reports of significant ASB and nuisance in the town centre, including defecation in public spaces, drunk and disorderly behaviour and used drug paraphernalia discarded in parks and children's play areas, alongside damage and vandalism to business premises caused by the identified street population. This group has been identified and continues to be engaged with through the street outreach team, but with no success in reducing ASB to date and it will be this group that are likely to be affected by the terms of the PSPO. Continued intervention and recovery support would be offered through the partners.

2.29 Sleeping in a public space – Proposed prohibited activities:

Rough sleeping (see i-iv below) in the town centre and surrounding areas has led to increased Police reports of fires, criminal damage and a proliferation of abandoned drugs paraphernalia, which has a detrimental effect on the quality of life for those who live, work or visit the area.

All persons are prohibited from sleeping in any public space which is or includes:

- i) Open to the air;
- ii) Within a vehicle;
- iii) Within a car park;
- iv) A non fixed structure, including tents

*Without the prior permission of the owner or occupier of the land.*

*Other than a place designated for the purpose of sleeping including designated camp sites.*

It should be made clear that this proposed restriction, would only apply to those individuals who were rough sleeping and who already had accommodation or has refused the support to which they are entitled.

At all times, the Council must ensure that the enforcement of the PSPO complies with its duties under the Equality Act 2010 and ensure it does not breach of the council's code of conduct – including disproportionate interference with a number of fundamental rights protected by the Human Rights Act. As is

standard practice, any enforcement of the PSPO must have regard for safeguarding concerns for identified vulnerable adults and children.

### **Drinking in a public space - Why is this a priority?**

- 2.30 Alcohol drives much crime. There are well-documented links between excessive alcohol consumption and crime or ASB. The consumption of super strength alcohol is often linked to ASB, particularly anti-social drinking in public places.
- 2.31 Anti-social behaviour covers a variety of unacceptable activities that affect community life and can impact upon families, individuals and entire communities. Terms such as nuisance, disorder, and harassment are also used to describe this behaviour. Due to the easy accessibility of super strength alcohol, it is often consumed by young people, which causes a significant concern in relation to underage drinking. Other community problems, from vandalism, graffiti, litter and noise can all be exacerbated by excessive alcohol consumption.
- 2.32 In Maidstone nearly 800 crimes were recorded as directly alcohol related in 2012/13, out of a total of 8,457 victim based crimes (9.5%). However, recorded figures are not available at ward level. For alcohol related conditions, Maidstone is ranked 10th out of the 12 Kent districts for hospital admissions due to alcohol in the county, and has the 9th worst rate of alcohol related deaths. High Street is one of the highest ranking wards for persistent alcohol related ASB and hospital admissions. An existing Alcohol Control Zone is in place within the proposed PSPO area based on the continued, detrimental effect alcohol and related ASB has on the quality of life during both the day and evening. In line with the new Anti-Social Behaviour Crime and Policing Act 2014, the proposed PSPO location will replace the existing Alcohol Control Zone, but increase the coverage area to include Whatman Park and Len Valley Nature Reserve.

### **2.33 Drinking in a public space – Proposed prohibited activities:**

All persons are prohibited from drinking alcohol within a public place, where their behaviour as a result of consuming alcohol, affects the quality of life to those who live, work or visit in the area. This provision does not apply to alcohol being consumed within premises licensed under the Licensing Act 2003 or s115E of the Highways Act 1980.

Where an authorised person reasonably believes that a person:

- a) Is or has been consuming alcohol in breach of this Order; or
- b) Intends to consume alcohol in circumstances which would be a breach of this Order

The authorised person can require the person:

- i) Not to consume alcohol or anything which the authorised person reasonably believes is alcohol in breach of this Order;
- ii) To surrender anything in the person's possession which is, or which the authorised person reasonably believes to be, alcohol or a container for alcohol.



2.34 An authorised person who imposes a requirement under 2.33 (i) and (ii) above must tell the person that failing without reasonable excuse to comply with the requirement is an offence. A requirement imposed by an authorised person is not valid if the authorised person:

- a) Is asked by the person to show evidence of his or her authorisation, and
- b) Fails to do so.

2.35 An authorised person may dispose of anything surrendered under 2.33 (i) and (ii) in whatever way he or she thinks appropriate.

2.36 A person who fails without reasonable excuse to comply with a requirement imposed on him or her under 2.33 (i) or (ii) commits an offence and is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

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### **3. AVAILABLE OPTIONS**

3.1 Do nothing (not recommended). This is not a recommended option as local authorities should demonstrate good practice and consider all available powers, including its discretionary responsibility to respond the Anti-Social Behaviour, Crime & Policing Act 2014.

3.2 Support the proposal to use consult on a PSPO, with the aim of addressing the detrimental effects on the quality of life of those in the locality resulting from street begging, taking legal highs, sleeping in public spaces, drinking alcohol in public spaces and sleeping in public spaces, which have been identified as persistent issues resulting in the decline of quality of life for those living, working or visiting the town centre. For these reasons set out under point 2., it is recommended that the council consults on the introduction of a PSPO in Maidstone town centre with respect to the behaviours set out in this report.

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### **4. PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS**

4.1 Move forward with the consultation, then review responses received and consider whether or not to proceed with the proposed PSPO, with any such amendments as are required,

4.2 Maidstone Borough Council and Kent Police first started seeing an increase in complaints from residents, business and visitors about legal highs, particularly laughing gas users, street drinking, street begging and rough sleepers in the summer of 2013. Following discussion amongst police and council officers regarding the substantial rise in complaints to the police and council, and the noticeable degradation of the environment in affected areas, the local police requested that the council investigate the implementation of a PSPO to tackle the issues. High Street ward councillors had also highlighted the rising problems in the town centre and surrounding areas, such as Whatman Park and the riverside reaching towards Fant and Tovil.

- 4.3 Therefore, officers consider that consultation relating to street begging, street drinking, the taking of new emerging drugs (legal highs and nitrous oxide) and sleeping in a public space should be carried out within the identified town centre areas (refer to appendices) in which these activities occur or where it is likely that these activities will be carried out and this is having or it is likely to have a detrimental effect on the quality of life of those in the locality.
- 4.4 At this stage, we are only seeking endorsement to undertake a consultation exercise on the Council's proposal for a PSPO in order to gather evidence to support any future decision.

## 5. CONSULTATION RESULTS AND PREVIOUS COMMITTEE FEEDBACK

- 5.1 It is proposed that public consultation exercise will take place with the chief Officer of Police, the Police Crime Commissioner, community representatives including Council Members, relevant partners, landowners, residents, businesses and community groups for a period of 8 weeks from 30 November 2015. The specific consultation questions are detailed in Appendix III and will be made available online ([www.maidstone.gov.uk](http://www.maidstone.gov.uk)), in hardcopy at The Maidstone Gateway and publicised in the local press.

## 6. NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION

- 6.1 Following the consultation period, the responses received will be presented to the Communities, Housing and Environment Committee to decide whether to proceed with a PSPO and in what form at their January 2016 meeting. There is a statutory right of appeal to the High Court within 6 weeks if a PSPO is considered to be unreasonable. If agreed, suitable signage will need to be erected prior to implementation of a PSPO. A PSPO can be made for a maximum of three years. Following the initial period, the PSPO must be reviewed to ensure that it is still necessary.

## 7. CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off
<b>Impact on Corporate Priorities</b>	<b>Keeping Maidstone Borough an attractive place for all:</b> Public Space Protection Orders provide Councils with a flexible power to implement local restrictions to address the effect on quality of life caused by a range of anti-social behaviour issues in public places in order to prevent future problems and ensure safe and attractive environment.	Head of Housing and Community Services
<b>Risk Management</b>	The management of Public Space Protection Orders will be subject to the	Head of Housing and

	current performance management arrangements within the service, with performance benchmarking as part of the process.	Community Services
<b>Financial</b>	<p>It is anticipated that implementation will be resourced from within existing budgets. There may also be additional legal costs and costs associated with the introduction of the individual PSPOs. These will be looked at on a case by case basis as they occur. The payment of fixed penalty notices within the new regime will generate a small income for the council. This will be pooled with the existing FPN income from other enforcement activities and used to fund awareness campaigns and legal action as appropriate in the delivery of a cleaner, safer Maidstone.</p> <p>Initial costs of consultation of this type would be in the region of £500. Additionally, there is a cost of signage and promotion which could reach £5,000 and require on-going maintenance budgets if the order is approved. These costs will need to be met from within the Housing and Community Services existing budget.</p>	Head of Finance & Resources
<b>Staffing</b>	Authorised officers will need to have completed appropriate training in order to be able to issue fixed penalties and deal with prosecutions.	Head of HR Shared Service
<b>Legal</b>	<p>Legal implications for the process of consulting upon and implementing a PSPO are covered in the body of the report.</p> <p>Should an Order be implemented MKLS will need to be instructed to act in respect of any unpaid FPN and/or prosecution matters arising and resourced according to the volume of matters likely to arise.</p>	Head of Legal Partnership
<b>Equality Impact Needs Assessment</b>	<p>Incidents of ASB will continue to be dealt with in line with the emerging strategy and in line with our equalities framework. These legislative changes are designed to have a significant community impact in preventing and limiting anti-social behaviour.</p> <p>EQIA to support this report.</p>	Policy & Information Manager
<b>Environmental/Sustainable Development</b>	None.	Head of Housing and Community

		Services
<b>Community Safety</b>	The introduction of Public Space Protection Orders will contribute to making Maidstone town centre a safer place by promoting the message and enforcement of appropriate standard of conduct and behaviour.	Head of Housing and Community Services
<b>Human Rights Act</b>	<p>The council must ensure that all statutory conditions are satisfied before a PSPO can be adopted and ensure it complies with its duties under the Equality Act 2010.</p> <p>The council must consider if the proposed PSPO will breach of the council's code of conduct – including disproportionate interference with a number of fundamental rights protected by the Human Rights Act.</p> <p>The council must ensure it balanced the problems of anti-social behaviour in its town centre with the rights of individuals</p>	Head of Housing and Community Services
<b>Procurement</b>	Appropriate procurement methods will used to procure consultation, publicity and signage.	Head of Finance & resources
<b>Asset Management</b>	None.	Head of Housing and Community Services

## 8. REPORT APPENDICES

The following documents are to be published with this report and form part of the report:

- Appendix I: Location map of proposed PSPO area
- Appendix II: Crime heat map area of PSPO area
- Appendix III: Street Population locations
- Appendix IV: Draft consultation timetable
- Appendix V: Draft questionnaire
- Appendix VI: EQIA

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## 9. BACKGROUND PAPERS

- Home Office website Guidance  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/352562/ASB\\_Guidance\\_v8\\_July2014\\_final\\_2\\_.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/352562/ASB_Guidance_v8_July2014_final_2_.pdf)
- Anti-social Behaviour Crime and Policing Act 2014  
<http://www.legislation.gov.uk/ukpga/2014/12/contents>