



Anti-social Behaviour, Crime and Policing Act 2014.

Introduction

Anti-social behaviour (ASB) is a broad term used to describe the day-to-day incidents of crime, nuisance and disorder that makes many people's lives a misery – from litter and vandalism, to public drunkenness or aggressive dogs, to noisy or abusive neighbours. Such a wide range of behaviours means that responsibility for dealing with anti-social behaviour is shared between a number of agencies, particularly the police, councils and social landlords.

The Government make it clear that their reforms are designed to put victims at the heart of the response to ASB and give professionals the flexibility they need to deal with any given situation.

This piece of legislation consists of 14 parts, 186 sections and 11 schedules. It includes changes which will have an impact on the police, local authorities and housing providers in a number of ways.

In guidance issued by the Home Office (October 2013), it is made clear that the new powers are designed to be flexible, allowing professionals to adapt them to protect victims in a wide range of situations. There is also an expectation of increased partnership working, sharing of information and using early and informal interventions.

The main powers

The legislation sees 15 existing ASB powers condensed into six new powers with the addition of two new ones. There are also a number of major amendments to other pieces of legislation. The eight new powers are:

- Injunctions to prevent nuisance;
- Criminal Behaviour Orders;
- Dispersal Powers;
- Community Protection Notices;
- Public Spaces Protection Orders;
- Closure Notices;
- Community Remedies; and
- Review of response to complaints, commonly referred to as 'Community Trigger'.

Injunctions to prevent nuisance (Sections 1 – 21)

The purpose of this power is to stop or prevent individuals engaging in ASB quickly, nipping problems in the bud before they escalate. The Injunction to Prevent Nuisance and Annoyance (IPNA) is a civil power which can be applied for to deal with anti-social individuals. IPNAs can offer fast and effective protection for victims and communities.

Although the IPNA is a civil power, it is still a formal sanction and many professionals will want to consider informal approaches before resorting to court action, especially in the case of under-18s. However where informal approaches have not worked or professionals decide that a formal response is needed more quickly they should be free to do so. Of course being action in the civil courts it is 'on the balance of probabilities' that the respondent has engaged or is threatening to engage in conduct capable of causing nuisance or annoyance to any person and the court considers it is just and convenient to grant the injunction to stop the ASB.

The injunctions are issued by the County Court for over-18s and the Youth Court for under-18s. Breach of the injunction is not a criminal offence but breach must be proved to the criminal standard that is beyond reasonable doubt. Over-18s, it would be civil contempt of court with unlimited fine or up to two years in prison. Under-18s, it would be a supervision order or as a very last resort, a detention order of up to three months for 14 to 17 year olds. An injunction may be applied for by:

- a local authority;
- a housing provider;
- the chief officer of police for the police area;
- the Chief Constable of the British Transport Police;
- Transport for London;
- the Environmental Agency;
- the Natural Resources Body for Wales; and
- NHS Protect and NHS Protect (Wales).

Criminal Behaviour Orders (Sections 22 – 33)

These Orders are issued by a criminal court against a person who has been convicted of an offence and are to be used to tackle the most persistently anti-social individuals who are also engaged in criminal activity. An application for an Order will be made in most cases by the Crown Prosecution Service either at its own initiative or following a request from the police or a council.

A Criminal Behaviour Order can be made if the court is satisfied beyond reasonable doubt that the offender has engaged in behaviour that has caused or is likely to cause harassment, alarm or distress to any person and that the court considers that making such an Order will help prevent to offender from engaging in such behaviour. The ASB does not need to be part of the criminal offence.

An Order will include prohibitions to stop the ASB but it can also include positive requirements to get the offender to address the underlying causes of their behaviour.

Breach of an Order is a criminal offence and must be proved to a criminal standard of proof that is beyond reasonable doubt. The punishments for breach for over-18s on summary conviction is up to six months imprisonment or a fine or both; and for over-18s on conviction on indictment, is up to five years imprisonment or a fine or both. For under-18s the sentencing powers in the youth court apply.

Dispersal Powers (Sections 34 – 42)

The dispersal power is a flexible power the police can use in a range of situations to disperse anti-social individuals and provide immediate short-term respite to a local community. The power is preventative as it allows an officer to deal instantly with someone's behaviour and nip a problem in the bud before it escalates. The power requires a person committing or likely to commit ASB, crime or disorder to leave an area for up to 48 hours. The dispersal power can be used by police officers in uniform and PCSOs if they have been designated by the chief constable. An Inspector (or above) must record the authorisation in writing, specifying the grounds on which it is given and sign the authorisation. The authorising officer should also ensure that the wider impacts on, for example, community relations, are considered on a case by case basis.

The power must specify the area to which it relates and can determine the time and route to leave by. Police officers can confiscate any item that could be used to commit ASB, crime or disorder. A direction can be given to anyone who appears to be over the age of 10. A person who is under 16 years old and given a direction can be taken home or to a place of safety.

The breach of the dispersal power is a criminal offence, with a fine up to £2,500 and / or up to three months in prison. Failure to hand over items carries a fine of up to £500.

Community Protection Notices (Sections 43 – 58)

The Community Protection Notice (CPN) is intended to deal with particular, ongoing problems or nuisances which negatively affect the community's quality of life by targeting those responsible. It is intended to stop a person, business or organisation committing ASB which spoils the community's quality of life. A CPN can be issued by council officers, police officers, police community support officers and social landlords (if designated by the Council).

To serve a CPN the bodies above need to be satisfied that the behaviour is:

- having a detrimental effect on the quality of life of those in the locality;
- be of a persistent or continuing nature; and
- be unreasonable.

Before a CPN can be served a written warning must be issued, informing the perpetrator of the problem behaviour, requesting them to stop, and the consequences of continuing. The CPN can then be issued if the behaviour does not stop, the CPN must include a requirement to stop things, do things or take reasonable steps to avoid further ASB. A council can also carry out works in default on behalf of a perpetrator.

The breach of a CPN is a criminal offence; however a Fixed Penalty Notice (FPN) can be issued of up to £100 if appropriate. A fine of up to £2,500 or £20,000 for businesses can be imposed by the courts. The terms of a CPN can be appealed against by the perpetrator within 21 days of issue; in addition the cost of works carried out in default by a council can be challenged by the perpetrator if they think they are disproportionate.

The CPN can be used to deal with a wide range of behaviours, for instance noise nuisance.

Preliminary guidance issued by the Home Office states that issuing a CPN does not discharge the council from its duty to issue an Abatement Notice where the behaviour constitutes a statutory nuisance for the purposes of Part 3 of the Environmental Protection Act 1990, which given all the surrounding circumstances is judged to be 'prejudicial to health or a nuisance'. In addition the guidance recommends partnership working on problems such as persistent litter problems and noise. In addition where problems may amount to a statutory nuisance it will be advisable to seek the expert view of council environmental health officers before issuing a CPN.

Public Spaces Protection Orders (Sections 59 – 75)

Public Spaces Protection Orders (PSPOs) are intended to deal with a particular nuisance or problem in a particular area that is detrimental to the local community's quality of life, by imposing conditions on the use of that area which apply to everyone. They are designed to ensure the law-abiding majority can enjoy public spaces, safe from ASB.

Councils issue PSPOs after consultation with the police, Police and Crime Commissioner and other relevant bodies.

A PSPO can be made by the Council if they are satisfied on reasonable grounds that the activities carried out, or are likely to be carried out, in a public space:

- have had, or are likely to have, a detrimental effect on the quality of life of those in the locality;
- is, or is likely to be, persistent or continuing in nature;
- is, or is likely to be, unreasonable; and
- justifies the restrictions imposed.

The restrictions specified in a PSPO can be set by the council, these can be blanket restrictions or requirements or can be targeted against certain behaviours by certain groups at certain times. They can restrict access to public rights of way where that route is being used to commit ASB. PSPOs can be enforced by a police officer, PCSOs and council officers.

PSPOs have a maximum duration of three years but they can last for shorter periods of time where appropriate. Short-term PSPOs could be used where it is not certain that restrictions will have the desired effect, for instance, when closing a public right of way, councils may wish to make an initial PSPO for 12 months and then review the decision at that point. At any point before expiry, the council can extend a PSPO by up to three years if they consider that it is necessary to prevent the original behaviour from occurring or recurring.

The breach of a PSPO is a criminal offence; however enforcement officers can issue a FPN of up to £100 if appropriate, but can be fined up to £1,000 on prosecution.

More than one restriction can be added to the same PSPO, meaning that a single PSPO can deal with a range of behaviours than the orders it replaces. Where a designated public place order, gating order or dog control order is currently in force, this will continue to be valid for a period of three years following commencement. At this point it will be treated as a PSPO. However councils need not wait for this to happen and could decide to review the need for their current orders ahead of that transition to simplify the enforcement landscape.

Closure Notices (Sections 76 – 93)

The closure power is a fast, flexible power that can be used to protect victims and communities by quickly closing premises that are causing nuisance or disorder. The power comes in two stages: the closure notice and the closure order which are intrinsically linked. The closure notice can be used by the council or the police out of court. This short-term closure notice can then be extended upon application for a closure order to the magistrates' court. The court will make the final decision as to whether to grant the order.

A closure notice can be issued for 24 hours if the council or police officer (of at least the rank of Inspector) is satisfied on reasonable grounds:

- That the use of particular premises has resulted, or (if the notice is not issued) is likely to result, in nuisance to members of the public; or
- That there has been, or (if the notice is not issued) is likely soon to be, disorder near those premises associated with the use of those premises, and that the notice is necessary to prevent the nuisance or disorder from continuing, recurring or occurring.

The closure notice can be issued in the first instance for 48 hours or extended from 24 hours up to a maximum of 48 hours by the Council's Chief Executive Officer (head of paid service) or designate thereof, or by a police superintendent. The closure notice can close a premises for up to 48 hours out of court, but cannot stop the owner or those who live there accessing the premises.

A closure notice must:

- identify the premises;
- explain the effect of the notice;
- state that failure to comply with the notice is an offence;
- state that an application will be made for a closure order;
- specify when and where the application will be heard;
- explain the effect of the closure order; and
- give information about the names of, and means of contacting, persons and organisations in the area that provide advice about housing and legal matters.

A closure order can subsequently be issued if the court is satisfied:

- that a person has engaged, or (if the order is not made) is likely to engage, in disorderly, offensive or criminal behaviour on the premises; or
- that the use of the premises has resulted, or (if the order was not made) is likely to result in serious nuisance to members of the public; or
- that there has been, or (or if the order was not made) is likely to be, disorder near to those premises associated with the use of those premises, and that the order is necessary to prevent the behaviour, nuisance from continuing, recurring or occurring.,

An application must be made to the magistrates' court for a closure order at the same time as the closure notice is issued. The police or council should communicate to the court if they consider that the notice is only required for 48 hours or less. Where this is not the case the courts are required to hear the application within 48 hours of the service of the closure notice (excludes Christmas Day). A court can also order that a closure notice continue in force for a period of not more than 14 days in circumstances where the hearing is adjourned. A hearing can be adjourned for no more than 14 days to enable the occupier or anyone with an interest in the property to show why a closure order should not be made.

Breach of a notice is a criminal offence with up to three months in prison. Breach of an order carries a sentence of up to six months in prison and for both an unlimited fine for residential and non-residential premises.

Community Remedies (Sections 101 – 103)

The 'Community Remedy' gives the victims a say in the out-of-court punishment of offenders for low-level crime and ASB.

The Act places a duty on the Police and Crime Commissioner (PCC) to consult with members of the public and community representations on what punitive, restorative or rehabilitative actions they would consider appropriate to be in the 'Community Remedy Document'.

A 'Community Remedy Document' includes a list of actions any of which might, in the opinion of the PCC, be appropriate in a particular case to be carried out by a person who has engaged in ASB or has committed an offence and is to be dealt with for that behaviour or offence without court proceedings. In preparing the document the PCC must have regard to the need to promote public confidence in the out-of-court disposal process.

The community remedy can be used by: a police officer; an investigating officer (which can include PCSOs for certain offences, if designated the power by their Chief Constable); and a person authorised by a relevant prosecutor for conditional cautions or youth conditional cautions.

When dealing with ASB or low level offences through a community resolution the police officer may use the 'Community Remedy Document' as a means to engage the victim in having a say in the punishment of the offender.

To use the community remedy the officer must have evidence that the person has engaged in ASB or committed an offence; the person must admit to the behaviour or offence; and the officer must think that the evidence is enough for court proceedings including an injunction to prevent nuisance and annoyance, or impose a caution, but considers that a community resolution would be more appropriate.

Review of response to complaints, commonly referred to as 'Community Trigger' (Sections 104 – 105)

The 'Community Trigger' gives the victims the ability to demand action, starting with a review of their case, where the locally defined threshold is met. It brings agencies, termed relevant bodies, together to take a joined up problem-solving approach to find a solution. The relevant bodies include the district council, the police, the clinical commissioning group and registered providers of social housing who are co-opted onto this group.

The threshold for the 'Trigger' is to be defined by the local agencies and include no more than three complaints in the previous six-month period and can also take account of the persistence of the ASB, the harm or potential harm caused by the ASB and the adequacy of response to the ASB.

When a request to use the Community Trigger is received agencies must decide whether the threshold has been met and communicate this to the victim. If the threshold is met, a case

review will be undertaken by the partner agencies. Agencies will share information related to the case, review what action has previously been taken and decide whether additional actions are possible. The local community trigger procedure should clearly state the timescales in which the review will be undertaken.

The review encourages a problem-solving approach aimed at dealing with some of the most persistent, complex cases of anti-social behaviour. The victim of ASB is informed of the outcome of the review. Where further actions are necessary an action plan will be discussed with the victim, including timescales.

Certain people can use the Community Trigger including a victim of ASB or another person acting on behalf of the victim such as a carer or family member, MP or councillor. The victim could be an individual, a business or a community group.

The responsible bodies must publish the community trigger procedure, including the point of contact for making an application to use the community trigger. Agencies can decide an appropriate method and format for publishing this depending on the needs of the community. Agencies must publish a 'point of contact' for victims (or anyone acting on their behalf) who have decided to use the Community Trigger. This may include a phone number, email address, postal address and a form which can be completed on-line.

The relevant bodies must work together to devise and agree the procedure for the Community Trigger. The procedure must include provision for a person to request a review of the way an application for a Community Trigger was dealt with and also the way the trigger review was carried out.

Amendments to existing legislation

Absolute Ground for possession: secure tenancies (Sections 94 to 100)

Amendments are made to several Housing Acts and for a variety of reasons. The main amendment is the new absolute ground for possession which is to speed up the possession process in cases where ASB or criminality has been already proven by another court. Its purpose is to expedite the eviction of landlord's most anti-social tenants to bring fast relief to victims. Social landlords (local authorities and housing associations) and private rented sector landlords can use the powers.

The test is that a tenant, a member of the tenant's household or a person visiting the property has met one of the following conditions:

- convicted for a serious offence;
- found by a court to have breached an injunction to prevent nuisance and annoyance;
- convicted for breaching a criminal behaviour order;
- convicted of breaching a noise abatement notice; or
- the tenant's property has been closed for more than 48 hours under a closure order for ASB.

Provided the correct procedure has been followed and the relevant tests have been met the court must grant a possession order.

Keeping dogs under proper control (Section 106 to 107)

Amendments are made to existing legislation to tighten up the law on dangerous dogs.

Firearms (Section 108 to 112)

Amendments are made to existing laws about the possession and use of firearms.

Protection from sexual harm (Sections 113 to 119)

Amendments are made to existing laws about various sexual offences and a new power requiring hotels to supply information about their guests to the police, where there is a suspicion that child sexual exploitation may be taking place.

Forced marriages (Sections 120 to 122)

Amendments are made to existing laws about forced marriage.

Policing (Sections 123 to 146)

These sections of the Act relate to policing, including the College of Policing, the Police Remuneration Board, the Independent Police Complaints Commission, appointment of chief officers of police and amendments to existing legislation about the taking of personal samples and DNA profiles and the retention of them.

Miscellaneous (Sections 147 to 154)

Various topics are covered; of particular interest will be amendments to the Environmental Protection Act 1990 which gives the Secretary of State powers to make regulations under which the keeper of a vehicle may be required to pay a FPN to a litter authority, where there is reason to believe that a littering offence in England has been committed in respect of the vehicle. A littering offence is committed in respect of a vehicle if an offence occurs as a result of litter being thrown, dropped or otherwise deposited from the vehicle (whether or not by the vehicle's keeper).

Extradition (Sections 155 to 174)

New powers and amendments are made to existing legislation about extradition.

Criminal justice and court fees (Sections 175 to 180)

New powers and amendments are made to existing legislation about criminal justice and court fees.

N.B.

The Anti-social Behaviour, Crime and Policing Act 2014 (Commencement Order No 1) Order 2014 brings into force the parts of the Act relating to passport and border control and a requirement for the PCC relating to the commissioning of services for the support of victims from 14th March 2014

The Anti-social Behaviour, Crime and Policing Act 2014 (Commencement Order No 2, Transitional and Transitory Provisions) Order 2014 made on 8th April 2014 brings into effect from October 2014, the discretionary grounds for possession, Community Remedies and the 'Community Trigger'.

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Note: with acknowledgement to Jeremy Leach, Wealden District Council