

Anti-social Behaviour, Crime and Policing Bill

Delegated Powers – Supplementary Memorandum by the Home Office

The Government has tabled amendments to the Anti-social Behaviour, Crime and Policing Bill for Lords Report stage. These include a number of new delegated powers. This supplementary memorandum explains why the powers have been taken and the reason for the procedure selected.

Amendment to clause 18: Power to make rules of court

Power conferred on: Civil Procedure Rules Committee (under section 2 of the Civil Procedure Act 1997) and the Lord Chief Justice (under sections 144 and 145 of the Magistrates' Courts Act 1980)

Power exercisable by: Rules of court made by Statutory Instrument

Parliamentary procedure: Negative resolution

2. Clause 18 already provides for rules of court to be made in respect of certain matters in relation to the injunction to prevent nuisance and annoyance (IPNA) under clause 1. Such injunctions are ordinarily to be made in the county court (or High Court) when the proposed respondent is aged 18 or over and in the youth court when the proposed respondent is aged under 18.

3. The Law Society has argued that the Bill should be amended to deal with the situation where there are linked applications for IPNAs involving respondents whose ages fall each side of 18 years. One of the improvements to the existing ASBO regime we have made in the Bill is to provide for applications for IPNAs against under 18s to be heard in the youth court. However, one consequence of this is that linked applications involving both adult and minor respondents cannot be heard in the same court. To address this, the amendment to clause 18 provide for rules of court to be made to enable a youth court to give permission for an application for an injunction against an adult, which is linked to an application in respect of a person under 18, to be heard in the youth court if that court considers that it would be in the interests of justice for the two applications to be heard together. It is appropriate that these procedural matters are dealt with in rules of court, the procedure for which is well established.

New clause after clauses 18, 30, 38, 52, 66 and 83 *Guidance:* Power to issue guidance in respect of anti-social behaviour powers

Power conferred on: Secretary of State

Power exercisable by: Statutory guidance

Parliamentary procedure: None

4. The Home Office has already published draft guidance for front line professionals on the exercise of the new anti-social behaviour powers in Parts 1 to 4 of the Bill¹. During Lords Committee stage, Ministers undertook to consider whether provision for such guidance should be included on the face of the Bill. The Government sees the merit in giving statutory underpinning to such guidance and, accordingly, these new clauses confer a power on the Secretary of State to issue guidance to the police, local authorities and others in relation to the exercise by them of their functions under each of Parts 1 to 4 of the Bill. Amongst other things such guidance would:

- Outline the factors to be considered before applying for an injunction under Part 1 or a criminal behaviour order under Part 2. The guidance will also provide further detail on the suitability of the prohibitions and requirements to be applied for, the process for review, the publicising of an injunction or order and how to respond to a breach.
- Outline the factors to be considered before authorising or issuing the use of the dispersal power in Part 3. It will also provide guidance on the information to be provided to a person who has been given a dispersal notice and also provide guidance on which records to keep and for how long.
- Outline the factors to be considered before issuing a Community Protection Notice (CPN) under Chapter 1 of Part 4. Such guidance will be relevant to constables, local authorities and any person designated under clause 50(1)(c) of the Bill. The guidance will also provide further detail on the suitability of the requirements to be imposed by a CPN and the process for enforcement.
- Outline the factors to be considered before making a public spaces protection order (PSPO) under Chapter 2 of Part 4. The guidance will also outline good practice with regards to the consultation requirements in the Bill, provide further detail on the suitability of the prohibitions and requirements to be contained in a PSPO and the process for review and enforcement. Clause 59 of the Bill allows a person authorised by the local authority to give a direction to a person to stop consuming alcohol or to hand over alcohol if they are drinking or in possession of the alcohol in breach of the terms of a PSPO. Clause 64 allows a person so authorised by the local authority to issue a fixed penalty notice to a person in breach of a PSPO. It is envisaged that the guidance will also be applicable to such authorised persons.
- Outline the factors to be considered before issuing a closure notice under Part 3 of Part 4. The guidance will also provide further detail on the matters to be considered when determining (or inviting the court to determine) the extent of the prohibition on access to the premises subject to a closure notice or closure order, the process for review and how to respond to a breach.

5. In the same way as the guidance provided for in clause 93(4)(b), any guidance issued under Parts 1 to 4 of the Bill will not be subject to any parliamentary procedure on the grounds that it will be worked up in consultation with practitioners, it will not conflict with the statutory provisions as set out in those Parts, and the police, local authorities and others are not required to follow the guidance.

¹ <https://www.gov.uk/government/publications/anti-social-behaviour-crime-and-policing-bill-anti-social-behaviour>

New clause after clause 66 *Bodies other than local authorities with statutory functions in relation to land*: Power to designate a person or body to make public spaces protection orders

Power conferred on: Secretary of State

Power exercisable by: Order made by statutory instrument

Parliamentary procedure: Negative resolution

6. The purpose of the power in new clause *Bodies other than local authorities with statutory functions in relation to land* is to enable the Secretary of State to designate a person or body (other than a local authority) with the power to make public spaces protection orders (PSPOs). Such a person can only be a person who has the power to make byelaws. The extent of the power to make a PSPO is limited to the same extent as the person or body's byelaw-making power.

7. This power is necessary in order to allow certain persons or bodies access to the ability to make a PSPO. The PSPO has the particular advantage over byelaws in that they can be made more quickly in response to a particular problem. The particular body that the Secretary of State has in mind to designate is the City of London Corporation.

8. The negative resolution procedure is considered to provide an appropriate level of Parliamentary scrutiny for the exercise of this power. This is because the designation under the clause does not substantively widen the power of person or body designated, because they will only be able to make a PSPO to the same extent as their current byelaw-making ability. However, it is necessary for Parliament to be able to scrutinise who this power is given to, especially because the penalties for breach may be slightly greater than those fixed by byelaws and because of the importance of the person or body being willing and able to comply with the procedural requirements set out in the Bill (in particular, the consultation requirements). The negative procedure also applies to the related power in section 58(3) of the Clean Neighbourhoods and Environment Act 2005. The Control of Dogs (Designation of the Common Council of the City of London as a Secondary Authority) Order 2012 (SI 2012/1223), which is made under that section, designates the Common Council of the City of London as a secondary authority for the purposes of Chapter 1 of Part 6 of the Clean Neighbourhoods and Environment Act 2005 in respect of the specified areas listed in the order. Under section 55(1) of the 2005 Act a secondary authority may make a dog control order providing for offences relating to dogs in respect of any area for which it is designated a secondary authority. Paragraph 42 of Schedule 10 to the Bill repeals the provisions in respect of dog control orders in the 2005 Act.

**Home office
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