



Home Office

# Draft Anti-Social Behaviour Bill

December 2012



# **Draft Anti-Social Behaviour Bill**

Presented to Parliament  
by the Secretary of State for the Home Department  
by Command of Her Majesty

December 2012

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# Anti-social Behaviour Bill

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## PART 1

### INJUNCTIONS TO PREVENT NUISANCE AND ANNOYANCE

#### *Injunctions to prevent nuisance and annoyance*

#### **1 Power to grant injunctions**

- (1) A court may grant an injunction under this section against a person aged 10 or over (“the respondent”) if two conditions are met.
- (2) The first condition is that the court is satisfied, on the balance of probabilities, that the respondent has engaged or threatens to engage in conduct capable of causing nuisance or annoyance to any person (“anti-social behaviour”).
- (3) The second condition is that the court considers it just and convenient to grant the injunction for the purpose of preventing the respondent from engaging in anti-social behaviour.
- (4) An injunction under this section may for the purpose of preventing the respondent from engaging in anti-social behaviour –
  - (a) prohibit the respondent from doing anything described in the injunction;
  - (b) require the respondent to do anything described in the injunction.
- (5) Prohibitions and requirements in an injunction under this section must, so far as practicable, be such as to avoid –
  - (a) any conflict with the respondent’s religious beliefs;
  - (b) any interference with the times, if any, at which the respondent normally works or attends school or any other educational establishment;
  - (c) any conflict with the requirements of any other court order or injunction to which the respondent may be subject.
- (6) An injunction under this section must –
  - (a) specify the period for which it has effect, or
  - (b) state that it has effect until further order.
- (7) An injunction under this section may specify periods for which particular prohibitions or requirements have effect.
- (8) Jurisdiction under this Part is exercisable by –
  - (a) a youth court, in the case of a respondent aged under 18;
  - (b) the High Court or the county court, in any other case.

*Contents of injunctions***2 Requirements included in injunctions**

- (1) An injunction under section 1 that includes a requirement must specify the person who is to be responsible for supervising compliance with the requirement.  
The person may be an individual or an organisation.
- (2) Before including a requirement, the court must receive evidence about its suitability and enforceability from—
  - (a) the individual to be specified under subsection (1), if an individual is to be specified;
  - (b) an individual representing the organisation to be specified under subsection (1), if an organisation is to be specified.
- (3) Before including two or more requirements, the court must consider their compatibility with each other.
- (4) It is the duty of a person specified under subsection (1)—
  - (a) to make any necessary arrangements in connection with the requirements for which the person has responsibility (the “relevant requirements”);
  - (b) to promote the respondent’s compliance with the relevant requirements;
  - (c) if the person considers that the respondent—
    - (i) has complied with all the relevant requirements, or
    - (ii) has failed to comply with a relevant requirement,to inform the person who applied for the injunction and the appropriate chief officer of police.
- (5) In subsection (4)(c) “the appropriate chief officer of police” means—
  - (a) the chief officer of police for the police area in which it appears to the person specified under subsection (1) that the respondent lives, or
  - (b) if it appears to that person that the respondent lives in more than one police area, whichever of the relevant chief officers of police that person thinks it most appropriate to inform.
- (6) A respondent subject to a requirement included in an injunction under section 1 must—
  - (a) keep in touch with the person specified under subsection (1) in relation to that requirement, in accordance with any instructions given by that person from time to time;
  - (b) notify the person of any change of address.These obligations have effect as requirements of the injunction.

**3 Power of arrest**

- (1) A court granting an injunction under section 1 may attach a power of arrest to a prohibition or requirement of the injunction if the court thinks that—
  - (a) the anti-social behaviour in which the respondent has engaged or threatens to engage consists of or includes the use or threatened use of violence against other persons, or
  - (b) there is a significant risk of harm to other persons from the respondent.

“Requirement” here does not include one that has the effect of requiring the respondent to participate in particular activities.

- (2) If the court attaches a power of arrest, the injunction may specify a period for which the power is to have effect which is shorter than that of the prohibition or requirement to which it relates.

#### *Applications for injunctions*

### **4 Applications for injunctions**

- (1) An injunction under section 1 may be granted only on the application of—
  - (a) a local authority,
  - (b) a housing provider,
  - (c) the chief officer of police for a police area,
  - (d) the chief constable of the British Transport Police Force,
  - (e) Transport for London,
  - (f) the Environment Agency, or
  - (g) the Special Health Authority known as the NHS Business Services Authority (or Awdurdod Gwasanaethau Busnes y GIG).
- (2) A housing provider may make an application only if the application concerns anti-social behaviour that directly or indirectly relates to or affects its housing management functions.
- (3) For the purposes of subsection (2) the housing management functions of a housing provider include—
  - (a) functions conferred by or under an enactment;
  - (b) the powers and duties of the housing provider as the holder of an estate or interest in housing accommodation.
- (4) The Secretary of State may by order—
  - (a) amend this section;
  - (b) amend section 19 in relation to expressions used in this section.

### **5 Applications without notice**

- (1) An application for an injunction under section 1 may be made without notice being given to the respondent.
- (2) If an application is made without notice the court must either—
  - (a) adjourn the proceedings and grant an interim injunction (see section 6),  
or
  - (b) adjourn the proceedings without granting an interim injunction, or
  - (c) dismiss the application.

#### *Interim injunctions*

### **6 Interim injunctions**

- (1) This section applies where the court adjourns the hearing of an application (whether made with notice or without) for an injunction under section 1.

- (2) The court may grant an injunction under that section lasting until the final hearing of the application or until further order (an “interim injunction”) if the court thinks it just to do so.
- (3) An interim injunction made at a hearing of which the respondent was not given notice may not have the effect of requiring the respondent to participate in particular activities.
- (4) Subject to that, the court has the same powers (including powers under section 3) whether or not the injunction is an interim injunction.

#### *Variation and discharge*

### **7 Variation or discharge of injunctions**

- (1) The court may vary or discharge an injunction under section 1 on the application of –
  - (a) the person who applied for the injunction, or
  - (b) the respondent.
- (2) The power to vary an injunction includes power –
  - (a) to include an additional prohibition or requirement in the injunction, or to extend the period for which a prohibition or requirement has effect;
  - (b) to attach a power of arrest, or to extend the period for which a power of arrest has effect.
- (3) If an application under this section is dismissed, the party by which the dismissed application was made may make no further application under this section without –
  - (a) the consent of the court, or
  - (b) the agreement of the other party.
- (4) Section 2 applies to additional requirements included under subsection (2)(a) above as it applies to requirements included in a new injunction.

#### *Breach of injunctions*

### **8 Arrest without warrant**

- (1) Where a power of arrest is attached to a provision of an injunction under section 1, a constable may arrest the respondent without warrant if he or she has reasonable cause to suspect that the respondent is in breach of the provision.
- (2) A constable who arrests a person under subsection (1) must inform the person who applied for the injunction.
- (3) A person arrested under subsection (1) must, within the period of 24 hours beginning with the time of the arrest, be brought before –
  - (a) a judge of the county court, if the injunction was granted by the county court;
  - (b) a justice of the peace, if the injunction was granted by a youth court.
- (4) In calculating when the period of 24 hours ends, Christmas Day, Good Friday and any Sunday are to be disregarded.

- (5) The judge before whom a person is brought under subsection (3)(a) may remand the person if the matter is not disposed of straight away.
- (6) The justice of the peace before whom a person is brought under subsection (3)(b) must remand the person to appear before –
  - (a) the youth court that granted the injunction, if the person is aged under 18;
  - (b) the county court, if the person is aged 18 or over.

## **9 Issue of arrest warrant**

- (1) If the person who applied for an injunction under section 1 thinks that the respondent is in breach of any of its provisions, the person may apply for the issue of a warrant for the respondent's arrest.
- (2) The application must be made to –
  - (a) a judge of the county court, if the injunction was granted by the county court;
  - (b) a justice of the peace, if the injunction was granted by a youth court.
- (3) A judge or justice may issue a warrant under this section only if the judge or justice has reasonable grounds for believing that the respondent is in breach of a provision of the injunction.
- (4) A warrant issued by a judge of the county court must require the respondent to be brought before that court.
- (5) A warrant issued by a justice of the peace must require the respondent to be brought before –
  - (a) the youth court that granted the injunction, if the person is aged under 18;
  - (b) the county court, if the person is aged 18 or over.
- (6) A constable who arrests a person under a warrant issued under this section must inform the person who applied for the injunction.
- (7) If the respondent is brought before a court by virtue of a warrant under this section but the matter is not disposed of straight away, the court may remand the respondent.

## **10 Remands**

Schedule 1 (remands under sections 8 and 9) has effect.

## **11 Powers in respect of under-18s**

Schedule 2 (breach of injunctions: powers of court in respect of under-18s) has effect.

*Powers of court on application by provider of residential accommodation*

## **12 Power to exclude person from home in cases of violence or risk of harm**

- (1) An injunction under section 1 may have the effect of excluding the respondent from the place where he or she normally lives only if –

- (a) that place is owned or managed by a local authority or a housing provider,
  - (b) the injunction is granted on the application of the local authority or housing provider, and
  - (c) the court thinks that –
    - (i) the anti-social behaviour in which the respondent has engaged or threatens to engage consists of or includes the use or threatened use of violence against other persons, or
    - (ii) there is a significant risk of harm to other persons from the respondent.
- (2) For the purposes of this section a local authority or housing provider owns a place if –
- (a) the authority or provider is a person (other than a mortgagee not in possession) entitled to dispose of the fee simple of the place, whether in possession or in reversion, or
  - (b) the authority or provider is a person who holds or is entitled to the rents and profits of the place under a lease that (when granted) was for a term of not less than 3 years.

### 13 Tenancy injunctions: exclusion and power of arrest

- (1) In this section “tenancy injunction” means an injunction granted –
- (a) on the application of a local authority or a housing provider,
  - (b) against a person who has a tenancy agreement with the applicant,
  - (c) in respect of a breach or anticipated breach of the agreement on the ground that the tenant –
    - (i) is engaging or threatening to engage in anti-social behaviour, or
    - (ii) is allowing, inciting or encouraging any other person to engage or threaten to engage in anti-social behaviour.
- “Tenancy agreement” here includes any agreement for the occupation of residential accommodation.
- (2) Subsections (3) and (4) apply where the High Court or the county court grants a tenancy injunction and is satisfied that –
- (a) the behaviour referred to in subsection (1)(c) consists of or includes the use or threatened use of violence (or would do so if engaged in), or
  - (b) there is a significant risk of harm to any person.
- (3) The court may include in the tenancy injunction a provision prohibiting the person against whom it is granted from entering or being in –
- (a) any premises specified in the injunction (including the premises where the person normally lives);
  - (b) any area specified in the injunction.
- (4) The court may attach a power of arrest to any provision of the tenancy injunction.
- (5) The following provisions of this Part apply to a tenancy injunction as they apply to an injunction under section 1 –
- (a) section 1(6);
  - (b) sections 3(2) and 8 (if a power of arrest is attached);
  - (c) sections 5 to 7;

- (d) section 9;
- (e) section 10 and Schedule 1;
- (f) section 11 and Schedule 2;
- (g) section 18(1).

*Supplemental*

**14 Requirements to consult etc**

- (1) A person applying for an injunction under section 1 must before doing so –
  - (a) consult the local youth offending team about the application, if the respondent will be aged under 18 when the application is made;
  - (b) inform any other body or individual the applicant thinks appropriate of the application.

This subsection does not apply to a without-notice application.

- (2) Where the court adjourns a without-notice application, before the date of the first on-notice hearing the applicant must –
  - (a) consult the local youth offending team about the application, if the respondent will be aged under 18 on that date;
  - (b) inform any other body or individual the applicant thinks appropriate of the application.
- (3) A person applying for variation or discharge of an injunction under section 1 granted on that person’s application must before doing so –
  - (a) consult the local youth offending team about the application for variation or discharge, if the respondent will be aged under 18 when that application is made;
  - (b) inform any other body or individual the applicant thinks appropriate of that application.

- (4) In this section –
  - “local youth offending team” means –
    - (a) the youth offending team in whose area it appears to the applicant that the respondent lives, or
    - (b) if it appears to the applicant that the respondent lives in more than one such area, whichever one or more of the relevant youth offending teams the applicant thinks it appropriate to consult;
  - “on-notice hearing” means a hearing of which notice has been given to the applicant and the respondent in accordance with rules of court;
  - “without-notice application” means an application made without notice under section 5.

**15 Appeals against decisions of youth courts**

- (1) An appeal lies to the Crown Court against a decision of a youth court made under this Part.
- (2) On an appeal under this section the Crown Court may make –
  - (a) whatever orders are necessary to give effect to its determination of the appeal;
  - (b) whatever incidental or consequential orders appear to it to be just.



- (3) An order of the Crown Court made on an appeal under this section (other than one directing that an application be re-heard by the youth court) is to be treated for the purposes of section 7 as an order of the youth court.

## 16 Special measures for witnesses

- (1) Chapter 1 of Part 2 of the Youth Justice and Criminal Evidence Act 1999 (special measures directions in the case of vulnerable and intimidated witnesses) applies to proceedings under this Part as it applies to criminal proceedings, but with—
- (a) the omission of the provisions of that Act mentioned in subsection (2) (which make provision appropriate only in the context of criminal proceedings), and
  - (b) any other necessary modifications.
- (2) The provisions are—
- (a) section 17(4) to (7);
  - (b) section 21(4C)(e);
  - (c) section 22A;
  - (d) section 27(10);
  - (e) section 32.
- (3) Rules of court made under or for the purposes of Chapter 1 of Part 2 of that Act apply to proceedings under this Part—
- (a) to the extent provided by rules of court, and
  - (b) subject to any modifications provided by rules of court.
- (4) Section 47 of that Act (restrictions on reporting special measures directions etc) applies with any necessary modifications—
- (a) to a direction under section 19 of that Act as applied by this section;
  - (b) to a direction discharging or varying such a direction.
- Sections 49 and 51 of that Act (offences) apply accordingly.

## 17 Children and young persons: disapplication of reporting restrictions

Section 49 of the Children and Young Persons Act 1933 (restrictions on reports of proceedings in which children and young persons are concerned) does not apply to proceedings under this Part.

## 18 Rules of court

- (1) Rules of court may provide that an appeal from a decision of the High Court, the county court or a youth court—
- (a) to dismiss an application for an injunction under section 1 made without notice being given to the respondent, or
  - (b) to refuse to grant an interim injunction when adjourning proceedings following such an application,
- may be made without notice being given to the respondent.
- (2) In relation to a respondent attaining the age of 18 after proceedings under this Part have begun, rules of court may—
- (a) provide for the transfer of the proceedings from the youth court to the High Court or the county court;

- (b) prescribe circumstances in which the proceedings may or must remain in the youth court.

## 19 Interpretation etc

- (1) In this Part—

“anti-social behaviour” has the meaning given by section 1(2);

“court” is to be read in accordance with section 1(8);

“harm” includes serious ill-treatment or abuse, whether physical or not;

“housing accommodation” includes—

- (a) flats, lodging-houses and hostels;
- (b) any yard, garden, outhouses and appurtenances belonging to the accommodation or usually enjoyed with it;
- (c) any common areas used in connection with the accommodation;

“housing provider” means—

- (a) a housing trust, within the meaning given by section 2 of the Housing Associations Act 1985, that is a charity;
- (b) a housing action trust established under section 62 of the Housing Act 1988;
- (c) in relation to England, a non-profit registered provider of social housing;
- (d) in relation to Wales, a Welsh body registered as a social landlord under section 3 of the Housing Act 1996;
- (e) any body (other than a local authority or a body within paragraphs (a) to (d)) that is a landlord under a secure tenancy within the meaning given by section 79 of the Housing Act 1985;

“local authority” means—

- (a) in relation to England, a district council, a county council, a London borough council, the Common Council of the City of London or the Council of the Isles of Scilly;
- (b) in relation to Wales, a county council or a county borough council;

“respondent” has the meaning given by section 1(1).

- (2) A person’s age is treated for the purposes of this Part as being that which it appears to the court to be after considering any available evidence.

## 20 Saving and transitional provision

- (1) In this section “existing order” means any of the following injunctions and orders—

- (a) an anti-social behaviour injunction under section 153A of the Housing Act 1996;
- (b) an injunction under section 153B of that Act (injunction against unlawful use of premises);
- (c) an injunction in which anything is included by virtue of section 153D(3) or (4) of that Act (power to include provision banning person from premises or area, or to include power of arrest, in injunction against breach of tenancy agreement);
- (d) an order under section 1 or 1B of the Crime and Disorder Act 1998 (anti-social behaviour orders etc);

- (e) an individual support order under section 1AA of that Act made in connection with an order under section 1 or 1B of that Act;
  - (f) an intervention order under section 1G of that Act;
  - (g) a drinking banning order under section 3 or 4 of the Violent Crime Reduction Act 2006.
- (2) The repeal or amendment by this Act of provisions about any of the existing orders specified in subsection (1)(a) to (d), (f) and (g) does not apply in relation to—
- (a) an application made before the commencement day for an existing order;
  - (b) an existing order (whether made before or after that day) applied for before that day;
  - (c) anything done in connection with such an application or order.
- (3) The repeal or amendment by this Act of provisions about an order specified in subsection (1)(e) does not apply in relation to—
- (a) an individual support order made before the commencement day;
  - (b) anything done in connection with such an order.
- (4) As from the commencement day there may be no variation of an existing order that extends the period of the order or of any of its provisions.
- (5) At the end of the period of 5 years beginning with the commencement day—
- (a) in relation to any of the existing orders specified in subsection (1)(a), (b) and (d) to (g) that is still in force, this Part has effect, with any necessary modifications (and with any modifications specified in an order under section 97(4)), as if the provisions of the order were provisions of an injunction under section 1;
  - (b) the provisions of this Part set out in section 13(5) apply to any injunction specified in subsection (1)(c) that is still in force as they apply to an injunction under section 1;
  - (c) subsections (2) to (4) cease to have effect.
- (6) In deciding whether to grant an injunction under section 1 a court may take account of conduct occurring up to 6 months before the commencement day.
- (7) In this section “commencement day” means the day on which this Part comes into force.

## PART 2

### CRIMINAL BEHAVIOUR ORDERS

#### *Criminal behaviour orders*

## 21 Power to make orders

- (1) This section applies where a person (“the offender”) is convicted of an offence.
- (2) The court may make a criminal behaviour order against the offender if two conditions are met.

- (3) The first condition is that the court is satisfied that the offender has engaged in behaviour that caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household as the offender.
- (4) The second condition is that the court considers that making the order will help in preventing the offender from engaging in such behaviour.
- (5) A criminal behaviour order is an order which, for the purpose of preventing the offender from engaging in such behaviour –
  - (a) prohibits the offender from doing anything described in the order;
  - (b) requires the offender to do anything described in the order.
- (6) The court may make a criminal behaviour order against the offender only if it is made in addition to –
  - (a) a sentence imposed in respect of the offence, or
  - (b) an order discharging the offender conditionally.
- (7) The court may make a criminal behaviour order against the offender only on the application of the prosecution.
- (8) The prosecution must find out the views of the local youth offending team before applying for a criminal behaviour order to be made if the offender will be under the age of 18 when the application is made.
- (9) Prohibitions and requirements in a criminal behaviour order must, so far as practicable, be such as to avoid –
  - (a) any conflict with the offender’s religious beliefs;
  - (b) any interference with the times, if any, at which the offender normally works or attends school or any other educational establishment;
  - (c) any conflict with the requirements of any other court order or injunction to which the offender may be subject.
- (10) In this section “local youth offending team” means –
  - (a) the youth offending team in whose area it appears to the prosecution that the offender lives, or
  - (b) if it appears to the prosecution that the offender lives in more than one such area, whichever one or more of the relevant youth offending teams the prosecution thinks appropriate.

## **22 Proceedings on an application for an order**

- (1) For the purpose of deciding whether to make a criminal behaviour order the court may consider evidence led by the prosecution and evidence led by the offender.
- (2) It does not matter whether the evidence would have been admissible in the proceedings in which the offender was convicted.
- (3) The court may adjourn any proceedings on an application for a criminal behaviour order even after sentencing the offender.
- (4) If the offender does not appear for any adjourned proceedings the court may –
  - (a) further adjourn the proceedings,
  - (b) issue a warrant for the offender’s arrest, or
  - (c) hear the proceedings in the offender’s absence.

- (5) The court may not act under paragraph (b) of subsection (4) unless it is satisfied that the offender has had adequate notice of the time and place of the adjourned proceedings.
- (6) The court may not act under paragraph (c) of subsection (4) unless it is satisfied that the offender –
  - (a) has had adequate notice of the time and place of the adjourned proceedings, and
  - (b) has been informed that if the offender does not appear for those proceedings the court may hear the proceedings in his or her absence.
- (7) Subsection (8) applies in relation to proceedings in which a criminal behaviour order is made against an offender who is under the age of 18.
- (8) In so far as the proceedings relate to the making of the order –
  - (a) section 49 of the Children and Young Persons Act 1933 (restrictions on reports of proceedings in which children and young persons are concerned) does not apply in respect of the offender;
  - (b) section 39 of that Act (power to prohibit publication of certain matters) does so apply.

### 23 Requirements included in orders

- (1) A criminal behaviour order that includes a requirement must specify the person who is to be responsible for supervising compliance with the requirement.  
The person may be an individual or an organisation.
- (2) Before including a requirement, the court must receive evidence about its suitability and enforceability from –
  - (a) the individual to be specified under subsection (1), if an individual is to be specified;
  - (b) an individual representing the organisation to be specified under subsection (1), if an organisation is to be specified.
- (3) Before including two or more requirements, the court must consider their compatibility with each other.
- (4) It is the duty of a person specified under subsection (1) –
  - (a) to make any necessary arrangements in connection with the requirements for which the person has responsibility (the “relevant requirements”);
  - (b) to promote the offender’s compliance with the relevant requirements;
  - (c) if the person considers that the offender –
    - (i) has complied with all the relevant requirements, or
    - (ii) has failed to comply with a relevant requirement,
 to inform the prosecution and the appropriate chief officer of police.
- (5) In subsection (4)(c) “the appropriate chief officer of police” means –
  - (a) the chief officer of police for the police area in which it appears to the person specified under subsection (1) that the offender lives, or
  - (b) if it appears to that person that the offender lives in more than one police area, whichever of the relevant chief officers of police that person thinks it most appropriate to inform.

- (6) An offender subject to a requirement in a criminal behaviour order must—
- (a) keep in touch with the person specified under subsection (1) in relation to that requirement, in accordance with any instructions given by that person from time to time;
  - (b) notify the person of any change of address.
- These obligations have effect as requirements of the order.

## 24 Duration of order etc

- (1) A criminal behaviour order takes effect on the day it is made, subject to subsection (2).
- (2) If on the day a criminal behaviour order (“the new order”) is made the offender is subject to another criminal behaviour order (“the previous order”), the new order may be made so as to take effect on the day on which the previous order ceases to have effect.
- (3) A criminal behaviour order must specify the period (“the order period”) for which it has effect.
- (4) In the case of a criminal behaviour order made before the offender has reached the age of 18, the order period must be a fixed period of—
  - (a) not less than 1 year, and
  - (b) not more than 3 years.
- (5) In the case of a criminal behaviour order made after the offender has reached the age of 18, the order period must be—
  - (a) a fixed period of not less than 2 years, or
  - (b) an indefinite period (so that the order has effect until further order).
- (6) A criminal behaviour order may specify periods for which particular prohibitions or requirements have effect.

## 25 Approved courses

- (1) A criminal behaviour order made after the offender has reached the age of 16 may include provision for—
  - (a) the order, or
  - (b) a prohibition or requirement included in it,to cease to have effect before it would otherwise do if the offender satisfactorily completes an approved course specified in the order.
- (2) Provision under subsection (1) must fix the time at which the order, prohibition or requirement will cease to have effect if the offender satisfactorily completes the specified approved course as whichever is the later of—
  - (a) the time when the offender does satisfactorily complete that course, and
  - (b) a time specified in the order in accordance with subsection (3).
- (3) The time specified for the purposes of subsection (2)(b) must be—
  - (a) a time after the expiry of at least half the period for which the order, prohibition or requirement would otherwise have effect, or
  - (b) in a case where that period is an indefinite period, whatever time the court thinks appropriate.

- (4) Provision under subsection (1) may be included in a criminal behaviour order only if –
  - (a) the court is satisfied that a place on the specified approved course will be available for the offender, and
  - (b) the offender has agreed to the inclusion of the provision in question in the order.
- (5) Before making provision under subsection (1), the court must inform the offender in ordinary language about –
  - (a) the effect of including the provision in the order,
  - (b) what, in general terms, attendance on the course will involve if the offender undertakes it,
  - (c) any fees the offender will be required to pay for attending the course, and
  - (d) when the offender will have to pay those fees.
- (6) Where a court makes a criminal behaviour order after the offender has reached the age of 16 and the order does not include provision under subsection (1), the court must give its reasons for not including such provision in open court.
- (7) Schedule 3 (which makes provision about the approval of courses and certificates of completion of approved courses) has effect.

#### *Interim orders*

### **26 Interim orders**

- (1) This section applies where a court adjourns the hearing of an application for a criminal behaviour order.
- (2) The court may make a criminal behaviour order that lasts until the final hearing of the application or until further order (“an interim order”) if the court thinks it just to do so.
- (3) Section 21(6) to (8), section 24(3) to (5) and section 25 do not apply in relation to the making of an interim order.
- (4) Subject to that, the court has the same powers whether or not the criminal behaviour order is an interim order.

#### *Variation and discharge*

### **27 Variation or discharge of orders**

- (1) A criminal behaviour order may be varied or discharged by the court which made it on the application of –
  - (a) the offender, or
  - (b) the prosecution.
- (2) If an application by the offender under this section is dismissed, the offender may make no further application under this section without –
  - (a) the consent of the court which made the order, or
  - (b) the agreement of the prosecution.

- (3) If an application by the prosecution under this section is dismissed, the prosecution may make no further application under this section without –
  - (a) the consent of the court which made the order, or
  - (b) the agreement of the offender.
- (4) The power to vary an order includes power to include an additional prohibition or requirement in the order or to extend the period for which a prohibition or requirement has effect.
- (5) Section 23 applies to additional requirements included under subsection (4) as it applies to requirements included in a new order.
- (6) In the case of a criminal behaviour order made by a magistrates' court, the references in this section to the court which made the order include a reference to any magistrates' court acting in the same local justice area as that court.

*Breach of orders*

**28 Breach of order**

- (1) A person who without reasonable excuse –
  - (a) does anything he or she is prohibited from doing by a criminal behaviour order, or
  - (b) fails to do anything he or she is required to do by a criminal behaviour order,commits an offence.
- (2) A person guilty of an offence under this section is liable –
  - (a) on summary conviction, to imprisonment for a period not exceeding 6 months or to a fine not exceeding the statutory maximum, or to both;
  - (b) on conviction on indictment, to imprisonment for a period not exceeding 5 years or to a fine, or to both.
- (3) If a person is convicted of an offence under this section, it is not open to the court by or before which the person is convicted to make an order under subsection (1)(b) of section 12 of the Powers of Criminal Courts (Sentencing) Act 2000 (conditional discharge).
- (4) In proceedings for an offence under this section, a copy of the original criminal behaviour order, certified by the proper officer of the court which made it, is admissible as evidence of its having been made and of its contents to the same extent that oral evidence of those things is admissible in those proceedings.
- (5) In relation to any proceedings for an offence under this section that are brought against a person under the age of 18 –
  - (a) section 49 of the Children and Young Persons Act 1933 (restrictions on reports of proceedings in which children and young persons are concerned) does not apply in respect of the person;
  - (b) section 45 of the Youth Justice and Criminal Evidence Act 1999 (power to restrict reporting of criminal proceedings involving persons under 18) does so apply.
- (6) If, in relation to any proceedings mentioned in subsection (5), the court does exercise its power to give a direction under section 45 of the Youth Justice and Criminal Evidence Act 1999, it must give its reasons for doing so.



*Supplemental***29 Special measures for witnesses**

- (1) Chapter 1 of Part 2 of the Youth Justice and Criminal Evidence Act 1999 (special measures directions in the case of vulnerable and intimidated witnesses) applies to criminal behaviour order proceedings as it applies to criminal proceedings, but with—
  - (a) the omission of the provisions of that Act mentioned in subsection (2) (which make provision appropriate only in the context of criminal proceedings), and
  - (b) any other necessary modifications.
- (2) The provisions are—
  - (a) section 17(4) to (7);
  - (b) section 21(4C)(e);
  - (c) section 22A;
  - (d) section 27(10);
  - (e) section 32.
- (3) Rules of court made under or for the purposes of Chapter 1 of Part 2 of that Act apply to criminal behaviour order proceedings—
  - (a) to the extent provided by rules of court, and
  - (b) subject to any modifications provided by rules of court.
- (4) Section 47 of that Act (restrictions on reporting special measures directions etc) applies with any necessary modifications—
  - (a) to a direction under section 19 of that Act as applied by this section;
  - (b) to a direction discharging or varying such a direction.Sections 49 and 51 of that Act (offences) apply accordingly.
- (5) In this section “criminal behaviour order proceedings” means proceedings in a magistrates’ court or the Crown Court so far as relating to the issue whether to make a criminal behaviour order.

**30 Saving and transitional provision**

- (1) The repeal or amendment by this Act of provisions about any of the orders specified in subsection (2) does not—
  - (a) prevent an order specified in that subsection from being made in connection with criminal proceedings begun before the commencement day;
  - (b) apply in relation to an order specified in that subsection which is made in connection with criminal proceedings begun before that day;
  - (c) apply in relation to anything done in connection with such an order.
- (2) The orders are—
  - (a) an order under section 1C of the Crime and Disorder Act 1998 (orders on conviction in criminal proceedings);
  - (b) an individual support order under section 1AA of that Act made in connection with an order under section 1C of that Act;
  - (c) a drinking banning order under section 6 of the Violent Crime Reduction Act 2006 (orders on conviction in criminal proceedings).

- (3) As from the commencement day there may be no variation of an order specified in subsection (2) that extends the period of the order or of any provision of the order.
- (4) At the end of the period of 5 years beginning with the commencement day –
  - (a) this Part has effect in relation to any order specified in subsection (2) that is still in force as if the provisions of the order were provisions of a criminal behaviour order;
  - (b) subsections (1) to (3) cease to have effect.

This Part, as it applies by virtue of paragraph (a), has effect with any necessary modifications (and with any modifications specified in an order under section 97(4)).
- (5) In deciding whether to make a criminal behaviour order a court may take account of conduct occurring up to 1 year before the commencement day.
- (6) In this section “commencement day” means the day on which this Part comes into force.

### PART 3

#### DISPERSAL POWERS

#### **31 Directions excluding a person from an area**

- (1) A constable in uniform may, if two conditions are met, direct a person who is in a public place –
  - (a) to leave the locality of that place (“the locality”), and
  - (b) not to return to the locality for the period specified in the direction (“the exclusion period”).
- (2) The first condition is that the constable has reasonable grounds to suspect that the presence or behaviour of the person in the locality has contributed or is likely to contribute to –
  - (a) members of the public in the locality being harassed, alarmed or distressed, or
  - (b) the occurrence in the locality of crime or disorder.
- (3) The second condition is that the constable considers that giving a direction to the person under this section is necessary for the purpose of removing or reducing the likelihood of the events mentioned in subsection (2)(a) or (b).
- (4) The exclusion period may not exceed 48 hours.
- (5) A direction under this section –
  - (a) must be given in writing, unless that is not reasonably practicable;
  - (b) must specify the locality to which it relates;
  - (c) may impose requirements as to the time by which the person must leave the locality and the manner in which the person must do so (including the route).
- (6) The constable must (unless it is not reasonably practicable) tell the person to whom the direction is given that failing without reasonable excuse to comply with the direction is an offence.

- (7) If the constable reasonably believes that the person to whom the direction is given is under the age of 16, the constable may remove the person to a place where the person lives or a place of safety.
- (8) Any constable may withdraw or vary a direction under this section; but a variation must not extend the duration of a direction beyond 48 hours from when it was first given.
- (9) Notice of a withdrawal or variation of a direction –
  - (a) must be given to the person to whom the direction was given, unless that is not reasonably practicable, and
  - (b) if given, must be given in writing unless that is not reasonably practicable.
- (10) In this section “public place” means a place to which at the material time the public or a section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission.
- (11) In this Part “exclusion period” has the meaning given by subsection (1)(b).

### **32 Restrictions**

- (1) A constable may not give a direction under section 31 to a person who appears to the constable to be under the age of 10.
- (2) A constable may not give a direction under section 31 that prevents the person to whom it is given having access to a place where the person lives.
- (3) A constable may not give a direction under section 31 that prevents the person to whom it is given attending at a place which the person is –
  - (a) required to attend for the purposes of the person’s employment, or a contract of services to which the person is a party,
  - (b) required to attend by an obligation imposed by or under an enactment or by the order of a court or tribunal, or
  - (c) expected to attend for the purposes of education or training or for the purposes of receiving medical treatment,at a time when the person is required or expected (as the case may be) to attend there.
- (4) A constable may not give a direction to a person under section 31 if the person is one of a group of persons who are engaged in conduct that is lawful under section 220 of the Trade Union and Labour Relations (Consolidation) Act 1992 (peaceful picketing).

### **33 Surrender of property**

- (1) A constable who gives a person a direction under section 31 may also direct the person to surrender to the constable any item in the person’s possession or control that the constable reasonably believes has been used or is likely to be used in behaviour that harasses, alarms or distresses members of the public.
- (2) A direction under this section must be given in writing, unless that is not reasonably practicable.
- (3) A constable who gives a person a direction under this section must (unless it is not reasonably practicable) –

- (a) tell the person that failing without reasonable excuse to comply with the direction is an offence, and
  - (b) give the person information in writing about when and how the person may recover the surrendered item.
- (4) The surrendered item must not be returned to the person before the end of the exclusion period.
- (5) If after the end of that period the person asks for the item to be returned, it must be returned (unless there is power to retain it under another enactment).
- (6) But if it appears to a constable that the person is under the age of 16 and is not accompanied by a parent or other responsible adult, the item may be retained until the person is so accompanied.
- (7) If the person has not asked for the return of the item before the end of the period of 28 days beginning with the day on which the direction was given, the item may be destroyed or otherwise disposed of.

#### **34 Record-keeping**

- (1) A constable who gives a direction under section 31 must make a record of –
- (a) the individual to whom the direction is given,
  - (b) the time at which the direction is given, and
  - (c) the terms of the direction (including in particular the locality to which it relates and the exclusion period).
- (2) A constable who withdraws or varies a direction under section 31 must make a record of –
- (a) the time at which the direction is withdrawn or varied,
  - (b) whether notice of the withdrawal or variation is given to the person to whom the direction was given and if it is, at what time, and
  - (c) if the direction is varied, the terms of the variation.
- (3) A constable who gives a direction under section 33 must make a record of –
- (a) the individual to whom the direction is given,
  - (b) the time at which the direction is given, and
  - (c) the item to which the direction relates.

#### **35 Offences**

- (1) A person given a direction under section 31 who fails without reasonable excuse to comply with it commits an offence.
- (2) A person guilty of an offence under subsection (1) is liable on summary conviction –
- (a) to imprisonment for a period not exceeding 3 months, or
  - (b) to a fine not exceeding level 4 on the standard scale,
- or to both.
- (3) A person given a direction under section 33 who fails without reasonable excuse to comply with it commits an offence.
- (4) A person guilty of an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

**36 Powers of community support officers**

- (1) Schedule 4 to the Police Reform Act 2002 (powers of community support officers) is amended as follows.
- (2) In paragraph 2(6), for paragraph (aa) there is substituted –
  - “(aa) an offence under section 35 of the Anti-social Behaviour Act 2013;”
- (3) For paragraph 4A of Schedule 4 there is substituted –
  - “4A Where a designation applies this paragraph to a person, that person has within the relevant police area the powers conferred on a constable by section 31 of the Anti-social Behaviour Act 2013.
  - 4AB (1) Where a designation applies this paragraph to a person, that person has within the relevant police area the powers conferred on a constable by section 33 of the Anti-Social Behaviour Act 2013.
  - (2) A designation may not apply this paragraph to a person unless a designation also applies paragraph 4A to that person.”

**37 Saving and transitional provision**

- (1) The repeal by this Act of Part 4 of the Anti-social Behaviour Act 2003, and the repeal or amendment by this Act of provisions related to that Part, do not apply in relation to –
  - (a) an authorisation given under section 30(2) of that Act before the commencement day, or
  - (b) anything done in connection with such an authorisation.
- (2) The repeal by this Act of section 27 of the Violent Crime Reduction Act 2006, and the repeal or amendment by this Act of provisions related to that section, do not apply in relation to –
  - (a) a direction given under that section before the commencement day, or
  - (b) anything done in connection with such a direction.
- (3) In this section “commencement day” means the day on which this Part comes into force.

**PART 4**

## COMMUNITY PROTECTION

**CHAPTER 1**

## COMMUNITY PROTECTION NOTICES

*Community protection notices***38 Power to issue notices**

- (1) An authorised person may issue a community protection notice to an individual aged 16 or over, or a body, if satisfied on reasonable grounds that –

- (a) 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
  - (b) the conduct is unreasonable.
- (2) In subsection (1) “authorised person” means a person on whom section 48 (or an enactment amended by that section) confers power to issue community protection notices.
- (3) A community protection notice is a notice that imposes any of the following requirements on the individual or body issued with it –
  - (a) a requirement to stop doing specified things;
  - (b) a requirement to do specified things;
  - (c) a requirement to take reasonable steps to achieve specified results.
- (4) The only requirements that may be imposed are ones that are reasonable to impose in order –
  - (a) to prevent the detrimental effect referred to in subsection (1) from continuing or recurring, or
  - (b) to reduce that detrimental effect or to reduce the risk of its continuance or recurrence.
- (5) A community protection notice may not be issued in respect of a matter that constitutes a statutory nuisance for the purposes of Part 3 of the Environmental Protection Act 1990 (see section 79 of that Act).
- (6) A person (A) may issue a community protection notice to an individual or body (B) only if –
  - (a) B has been given a written warning that the notice will be issued unless B’s conduct ceases to have the detrimental effect referred to in subsection (1), and
  - (b) A is satisfied that, despite B having had enough time to deal with the matter, B’s conduct is still having that effect.
- (7) A person issuing a community protection notice must before doing so inform any body or individual the person thinks appropriate.
- (8) A community protection notice must –
  - (a) identify the conduct referred to in subsection (1);
  - (b) explain the effect of sections 41 to 46.
- (9) A community protection notice may specify periods within which, or times by which, requirements within subsection (3)(b) or (c) are to be complied with.

### **39 Occupiers of premises etc**

- (1) Conduct on, or affecting, premises (other than premises within subsection (2)) that a particular person –
  - (a) owns,
  - (b) leases,
  - (c) occupies,
  - (d) controls,
  - (e) operates, or
  - (f) maintains,is treated for the purposes of section 38 as conduct of that person.

- (2) Conduct on, or affecting, premises occupied for the purposes of a government department is treated for the purposes of section 38 as conduct of the Minister in charge of that department.
- (3) This section does not treat an individual's conduct as that of another person if that person cannot reasonably be expected to control or affect it.

#### **40 Occupier or owner unascertainable**

- (1) This section applies where –
  - (a) an authorised person has power to issue a community protection notice,
  - (b) the detrimental effect referred to in section 38(1) arises from the condition of premises or the use to which premises have been put, and
  - (c) the authorised person has made reasonable enquiries to find out the name or proper address of the occupier of the premises (or, if the premises are unoccupied, the owner) but without success.
- (2) The responsible person may –
  - (a) post the community protection notice on the premises;
  - (b) enter the premises, or other premises, to the extent reasonably necessary for that purpose.
- (3) The community protection notice is treated as having been issued to the occupier of the premises (or, if the premises are unoccupied, the owner) at the time the notice is posted.
- (4) In this section “authorised person” has the same meaning as in section 38(1).

#### **41 Appeals against notices**

- (1) A person issued with a community protection notice may appeal to a magistrates' court against the notice on any of the following grounds.
  - 1. That the conduct specified in the community protection notice –
    - (a) did not take place,
    - (b) has not had a detrimental effect on the quality of life of those in the locality,
    - (c) has not been of a persistent or continuing nature,
    - (d) is not unreasonable, or
    - (e) is conduct that the person cannot reasonably be expected to control or affect.
  - 2. That the matter in respect of which the notice was issued constitutes a statutory nuisance for the purposes of Part 3 of the Environmental Protection Act 1990 (see section 79 of that Act).
  - 3. That any of the requirements in the notice, or any of the periods within which or times by which they are to be complied with, are unreasonable.

4. That there is a material defect or error in, or in connection with, the notice.
  5. That the notice was issued to the wrong person.
- (2) An appeal must be made within the period of 21 days beginning with the day on which the person is issued with the notice.
  - (3) A notice against which an appeal is made is of no effect until the appeal is finally determined or withdrawn.
  - (4) A magistrates' court hearing an appeal against a community protection notice must –
    - (a) quash the notice,
    - (b) modify the notice (for example by extending a period specified in it), or
    - (c) dismiss the appeal.

*Failure to comply with notice*

**42 Remedial action by local authority**

- (1) This section applies where a person issued with a community protection notice (“the defaulter”) fails to comply with a requirement of the notice.
- (2) If the relevant local authority issues the defaulter with a notice –
  - (a) specifying work it intends to have carried out in order to ensure that the failure is remedied,
  - (b) specifying the estimated cost of the work, and
  - (c) inviting the defaulter to consent to the work being carried out,the authority may have the work carried out if the necessary consent is given.
- (3) In subsection (2) “the necessary consent” means the consent of –
  - (a) the defaulter, and
  - (b) the owner of the premises on which the work is to be carried out (if that is not the defaulter).Paragraph (b) does not apply where the relevant authority has made reasonable efforts to contact the owner of the premises but without success.
- (4) A person authorised by a local authority to carry out work under subsection (2) may enter any premises to the extent reasonably necessary for that purpose.
- (5) If work is carried out under subsection (2) and the relevant local authority issues a notice to the defaulter –
  - (a) giving details of the work that was carried out, and
  - (b) specifying an amount that is no more than the cost to the authority of having the work carried out,the defaulter is liable to the authority for that amount (subject to the outcome of any appeal under subsection (6)).
- (6) A person issued with a notice under subsection (5) may appeal to a magistrates' court, within the period of 21 days beginning with the day on which the notice was issued, on the ground that the amount specified under subsection (5)(b) is excessive.



- (7) A magistrates' court hearing an appeal under subsection (6) must –
  - (a) confirm the amount, or
  - (b) substitute a lower amount.
- (8) In this section “the relevant local authority” means –
  - (a) the local authority that issued the community protection notice;
  - (b) if the community protection notice was not issued by a local authority, the local authority (or, as the case may be, one of the local authorities) that could have issued it.

#### **43 Offence of failing to comply with notice**

- (1) A person issued with a community protection notice who fails to comply with it commits an offence.
- (2) A person guilty of an offence under this section is liable on summary conviction –
  - (a) to a fine not exceeding level 4 on the standard scale, in the case of an individual;
  - (b) to a fine not exceeding £20,000, in the case of a body.
- (3) A person does not commit an offence under this section if the conduct specified in the community protection notice –
  - (a) did not take place,
  - (b) has not had a detrimental effect on the quality of life of those in the locality,
  - (c) has not been of a persistent or continuing nature,
  - (d) is not unreasonable, or
  - (e) is conduct that the person could not reasonably be expected to control or affect.
- (4) A person also does not commit an offence under this section if –
  - (a) the matter in respect of which the notice was issued constitutes a statutory nuisance for the purposes of Part 3 of the Environmental Protection Act 1990 (see section 79 of that Act),
  - (b) the alleged offence consists in a failure to comply with a requirement that was unreasonable, or in a failure to comply within a period or by a time that was unreasonable, or
  - (c) the notice was issued to the wrong person.
- (5) A person also does not commit an offence under this section if –
  - (a) the person took all reasonable steps to comply with the notice, or
  - (b) there is some other reasonable excuse for the failure to comply with it.
- (6) Subsections (3) to (5) apply only in relation to matters on which the defendant puts the prosecution to proof.

#### **44 Remedial orders**

- (1) A court before which a person is convicted of an offence under section 43 in respect of a community protection notice may make whatever order the court thinks appropriate for ensuring that what the notice requires to be done is done.

- (2) An order under this section may in particular require the defendant –
  - (a) to carry out specified work, or
  - (b) to allow specified work to be carried out by or on behalf of a specified local authority.
- (3) To be specified under subsection (2)(b) a local authority must be –
  - (a) the local authority that issued the community protection notice;
  - (b) if the community protection notice was not issued by a local authority, the local authority (or, as the case may be, one of the local authorities) that could have issued it.
- (4) A requirement imposed under subsection (2)(b) does not authorise the person carrying out the work to enter the defendant’s home without the defendant’s consent.

But this does not prevent a defendant who fails to give that consent from being in breach of the court’s order.
- (5) In subsection (4) “the defendant’s home” means the house, flat, vehicle or other accommodation where the defendant –
  - (a) usually lives, or
  - (b) is living at the time when the work is or would be carried out.
- (6) If work is carried out under subsection (2)(b) and the local authority specified under that subsection issues a notice to the defaulter –
  - (a) giving details of the work that was carried out, and
  - (b) specifying an amount that is no more than the cost to the authority of having the work carried out,the defaulter is liable to the authority for that amount (subject to the outcome of any appeal under subsection (7)).
- (7) A person issued with a notice under subsection (6) may appeal to a magistrates’ court, within the period of 21 days beginning with the day on which the notice was issued, on the ground that the amount specified under subsection (6)(b) is excessive.
- (8) A magistrates’ court hearing an appeal under subsection (7) must –
  - (a) confirm the amount, or
  - (b) substitute a lower amount.

#### **45 Forfeiture of item used in commission of offence**

- (1) A court before which a person is convicted of an offence under section 43 may order the forfeiture of any item that was used in the commission of the offence.
- (2) An order under this section may require a person in possession of the item to hand it over to a constable as soon as reasonably practicable.
- (3) An order under this section may require the item –
  - (a) to be destroyed, or
  - (b) to be disposed of in whatever way the order specifies.
- (4) Where an item ordered to be forfeited under this section is kept by or handed over to a constable, the police force of which the constable is a member must ensure that arrangements are made for its destruction or disposal, either –
  - (a) in accordance with the order, or

- (b) if no arrangements are specified in the order, in whatever way seems appropriate to the police force.

#### **46 Seizure of item used in commission of offence**

- (1) If a justice of the peace is satisfied on information on oath that there are reasonable grounds for suspecting –
  - (a) that an offence under section 43 has been committed, and
  - (b) that there is an item used in the commission of the offence on premises specified in the information,the justice may issue a warrant authorising any constable to enter the premises within 14 days from the date of issue of the warrant to seize the item.
- (2) A constable may use reasonable force, if necessary, in executing a warrant under this section.
- (3) A constable who has seized an item under a warrant under this section –
  - (a) may retain the item until any relevant criminal proceedings have been finally determined, if such proceedings are started before the end of the period of 28 days following the day on which the item was seized;
  - (b) otherwise, must before the end of that period return the item to the person from whom it was seized.
- (4) In subsection (3) “relevant criminal proceedings” means proceedings for an offence under section 43 in the commission of which the item is alleged to have been used.

#### **47 Fixed penalty notices**

- (1) An authorised person may issue a fixed penalty notice to anyone who that person has reason to believe has committed an offence under section 43.
- (2) In subsection (1) “authorised person” means a person on whom section 48 (or an enactment amended by that section) confers power to issue fixed penalty notices under this section.
- (3) A fixed penalty notice is a notice offering the person to whom it is issued the opportunity of discharging any liability to conviction for the offence by payment of a fixed penalty to a local authority specified in the notice.
- (4) The local authority specified under subsection (3) must be –
  - (a) the local authority that issued the community protection notice to which the fixed penalty notice relates;
  - (b) if the community protection notice was not issued by a local authority, the local authority (or, as the case may be, one of the local authorities) that could have issued it.
- (5) Where a person is issued with a notice under this section in respect of an offence –
  - (a) no proceedings may be taken for the offence before the end of the period of 14 days following the date of the notice;
  - (b) the person may not be convicted of the offence if the person pays the fixed penalty before the end of that period.
- (6) A fixed penalty notice must –

- (a) give reasonably detailed particulars of the circumstances alleged to constitute the offence;
  - (b) state the period during which (because of subsection (5)(a)) proceedings will not be taken for the offence;
  - (c) specify the amount of the fixed penalty;
  - (d) state the name and address of the person to whom the fixed penalty may be paid;
  - (e) specify permissible methods of payment.
- (7) An amount specified under subsection (6)(c) must not be more than £100.
- (8) A fixed penalty notice may specify two amounts under subsection (6)(c) and specify that, if the lower of those amounts is paid within a specified period (of less than 14 days), that is the amount of the fixed penalty.
- (9) Whatever other method may be specified under subsection (6)(e), payment of a fixed penalty may be made by pre-paying and posting to the person whose name is stated under subsection (6)(d), at the stated address, a letter containing the amount of the penalty (in cash or otherwise).
- (10) Where a letter is sent as mentioned in subsection (9), payment is regarded as having been made at the time at which that letter would be delivered in the ordinary course of post.
- (11) In any proceedings, a certificate that –
- (a) purports to be signed by or on behalf of the chief finance officer of the local authority concerned, and
  - (b) states that payment of a fixed penalty was, or was not, received by the dated specified in the certificate,
- is evidence of the facts stated.
- (12) In this section “chief finance officer”, in relation to a local authority, means the person with responsibility for the authority’s financial affairs.

*Who may issue notices*

**48 Authorised persons**

- (1) A community protection notice or a fixed penalty notice may be issued by –
- (a) a constable;
  - (b) the relevant local authority (see subsections (2) and (3));
  - (c) a person designated by the relevant local authority for the purposes of this section.
- (2) For a community protection notice, “the relevant local authority” means the local authority (or, as the case may be, any of the local authorities) within whose area the conduct specified in the notice has, according to the notice, been taking place.
- (3) For a fixed penalty notice, “the relevant local authority” means the local authority (or, as the case may be, any of the local authorities) within whose area the offence in question is alleged to have taken place.
- (4) Only a person of a description specified in an order made by the Secretary of State for the purposes of subsection (1)(c) may be designated under that subsection.

- (5) In Part 1 of Schedule 4 to the Police Reform Act 2002 (powers exercisable by community support officers), after paragraph 1ZA there is inserted –

*“Power to issue community protection notices*

1ZB A person shall have the power of a constable to issue a community protection notice under section 38 of the Anti-social Behaviour Act 2013 if –

- (a) a designation applies this paragraph to that person, and
- (b) the conduct specified in the notice has (according to the notice) been taking place within the relevant police area.”

- (6) In paragraph 1 of that Schedule (power of community support officers to issue fixed penalty notices), after paragraph (ab) of sub-paragraph (2) there is inserted –

“(ac) the power of a constable to issue a fixed penalty notice under section 47 of the Anti-social Behaviour Act 2013 (fixed penalty notice in respect of failure to comply with community protection notice);”.

### *Supplemental*

#### **49 Exemption from liability**

- (1) A local authority exercising or purporting to exercise a power under section 42(2) is not liable to an occupier or owner of land for damages or otherwise (whether at common law or otherwise) arising out of anything done or omitted to be done in the exercise or purported exercise of that power.
- (2) A person carrying out work under section 42(2), or a person by or on whose behalf work is carried out under section 44(2)(b), is not liable to an occupier or owner of land for damages or otherwise (whether at common law or otherwise) arising out of anything done or omitted to be done in carrying out that work.
- (3) Subsections (1) and (2) do not apply –
  - (a) to an act or omission shown to have been in bad faith, or
  - (b) to liability arising out of a failure to exercise due care and attention.
- (4) Subsections (1) and (2) do not apply so as to prevent an award of damages made in respect of an act or omission on the ground that the act or omission was unlawful by virtue of section 6(1) of the Human Rights Act 1998.
- (5) This section does not affect any other exemption from liability (whether at common law or otherwise).

#### **50 Issuing of notices**

- (1) A notice under this Chapter may be issued to a person by –
  - (a) handing it to the person,
  - (b) leaving it at the person’s proper address, or
  - (c) sending it by post to the person at that address.
- (2) A notice under this Chapter to a body corporate may be issued to the secretary or clerk of that body.

- (3) A notice under this Chapter to a partnership may be issued to a partner or a person who has the control or management of the partnership business.
- (4) For the purposes of this section and of section 7 of the Interpretation Act 1978 (service of documents by post) in its application to this section, the proper address of a person is the person's last known address, except that—
  - (a) in the case of a body corporate or its secretary or clerk, it is the address of the body's registered or principal office;
  - (b) in the case of a partnership or person having the control or the management of the partnership business, it is the principal office of the partnership.
- (5) For the purposes of subsection (4) the principal office of a company registered outside the United Kingdom, or of a partnership carrying on business outside the United Kingdom, is its principal office within the United Kingdom.
- (6) If a person has specified an address in the United Kingdom, other than the person's proper address within the meaning of subsection (4), as the one at which the person or someone on the person's behalf will accept notices of the same description as a notice under this Chapter, that address is also treated for the purposes of this section and section 7 of the Interpretation Act 1978 as the person's proper address.

## 51 Interpretation of Chapter 1

In this Chapter –

“conduct” includes a failure to act;

“local authority” means –

- (a) in relation to England, a district council, a county council for an area for which there is no district council, a London borough council, the Common Council of the City of London or the Council of the Isles of Scilly;
- (b) in relation to Wales, a county council or a county borough council;

“owner”, in relation to premises, means –

- (a) a person (other than a mortgagee not in possession) entitled to dispose of the fee simple of the premises, whether in possession or in reversion;
- (b) a person who holds or is entitled to the rents and profits of the premises under a lease that (when granted) was for a term of not less than 3 years;

“premises” includes any land.

## 52 Saving and transitional provision

- (1) The repeal or amendment by this Act of provisions about any of the notices specified in subsection (2) does not apply in relation to –
  - (a) a notice specified in that subsection served before the commencement day;
  - (b) anything done in connection with such a notice.
- (2) The notices are –
  - (a) a litter abatement notice under section 92 of the Environmental Protection Act 1990;

- (b) a litter clearing notice under section 92A of that Act;
  - (c) a street litter control notice under section 93 of that Act;
  - (d) a defacement removal notice under section 48 of the Anti-social Behaviour Act 2003.
- (3) A community protection notice that contains no requirement that could not have been contained in one of the notices specified in subsection (2) may be issued in respect of conduct before the commencement day.
- (4) Subsection (3) applies only during the period of 3 months beginning with the commencement day.
- (5) In this section “commencement day” means the day on which this Chapter comes into force.

## CHAPTER 2

### PUBLIC SPACES PROTECTION ORDERS

#### *Public spaces protection orders*

#### **53 Power to make orders**

- (1) A local authority may make a public spaces protection order if satisfied on reasonable grounds that two conditions are met.
- (2) The first condition is that –
- (a) activities carried on in a public place within the authority’s area have had a detrimental effect on the quality of life of those in the locality, or
  - (b) it is likely that activities will be carried on in a public place within that area and that they will have such an effect.
- (3) The second condition is that the effect, or likely effect, of the activities –
- (a) is, or is likely to be, of a persistent or continuing nature,
  - (b) is, or is likely to be, such as to make the activities unreasonable, and
  - (c) justifies the restrictions imposed by the notice.
- (4) A public spaces protection order is an order that identifies the public place referred to in subsection (2) (“the restricted area”) and –
- (a) prohibits specified things being done in the restricted area,
  - (b) requires specified things to be done by persons carrying on specified activities in that area, or
  - (c) does both of those things.
- (5) The only prohibitions or requirements that may be imposed are ones that are reasonable to impose in order –
- (a) to prevent the detrimental effect referred to in subsection (2) from continuing, occurring or recurring, or
  - (b) to reduce that detrimental effect or to reduce the risk of its continuance, occurrence or recurrence.
- (6) A prohibition or requirement may be framed –
- (a) so as to apply to all persons, or only to persons in specified categories, or to all persons except those in specified categories;

- (b) so as to apply at all times, or only at specified times, or at all times except those specified;
  - (c) so as to apply in all circumstances, or only in specified circumstances, or in all circumstances except those specified.
- (7) A local authority making a public spaces protection order must before doing so consult –
- (a) the chief officer of police, and the local policing body, for the police area that includes the restricted area;
  - (b) whatever community representatives the local authority thinks it appropriate to consult.
- (8) A public spaces protection order must –
- (a) identify the activities referred to in subsection (2);
  - (b) explain the effect of section 57 (where it applies) and section 61;
  - (c) specify the period for which the order has effect.
- (9) A public spaces protection order must be published in accordance with regulations made by the Secretary of State.

#### **54 Duration of orders**

- (1) A public spaces protection order may not have effect for a period of more than 3 years, unless extended under this section.
- (2) Before the time when a public spaces protection order is due to expire, the local authority that made the order may extend the period for which it has effect if satisfied on reasonable grounds that doing so is necessary to prevent –
- (a) occurrence or recurrence after that time of the activities identified in the order, or
  - (b) an increase in the frequency or seriousness of those activities after that time.
- (3) An extension under this section –
- (a) may not be for a period of more than 3 years;
  - (b) must be published in accordance with regulations made by the Secretary of State.
- (4) A public spaces protection order may be extended under this section more than once.
- (5) A local authority extending the period for which a public spaces protection order has effect must before doing so consult –
- (a) the chief officer of police, and the local policing body, for the police area that includes the restricted area;
  - (b) whatever community representatives the local authority thinks it appropriate to consult.

#### **55 Variation and discharge of orders**

- (1) Where a public spaces protection order is in force, the local authority that made the order may vary it –
- (a) by increasing or reducing the restricted area;
  - (b) by altering or removing a prohibition or requirement included in the order, or adding a new one.



- (2) A local authority may make a variation under subsection (1)(a) that results in the order applying to an area to which it did not previously apply only if the conditions in section 53(2) and (3) are met as regards activities in that area.
- (3) A local authority may make a variation under subsection (1)(b) that makes a prohibition or requirement more extensive, or adds a new one, only if the prohibitions and requirements imposed by the order as varied are ones that section 53(5) allows to be imposed.
- (4) A public spaces protection order may be discharged by the local authority that made it.
- (5) A local authority varying or discharging a public spaces protection order must before doing so consult –
  - (a) the chief officer of police, and the local policing body, for the police area that includes the restricted area;
  - (b) whatever community representatives the local authority thinks it appropriate to consult.
- (6) In relation to a variation that would increase the restricted area, the restricted area for the purposes of subsection (5) is the increased area.
- (7) Where an order is varied, the order as varied must be published in accordance with regulations made by the Secretary of State.
- (8) Where an order is discharged, a notice identifying the order and stating the date when it ceases to have effect must be published in accordance with regulations made by the Secretary of State.

*Prohibition on consuming alcohol*

**56 Premises etc to which alcohol prohibition does not apply**

- (1) A prohibition in a public spaces protection order on consuming alcohol does not apply to –
  - (a) premises (other than council-operated licensed premises) authorised by a premises licence to be used for the supply of alcohol;
  - (b) premises authorised by a club premises certificate to be used by the club for the supply of alcohol;
  - (c) a place within the curtilage of premises within paragraph (a) or (b);
  - (d) premises which by virtue of Part 5 of the Licensing Act 2003 may at the relevant time be used for the supply of alcohol or which, by virtue of that Part, could have been so used within the 30 minutes before that time;
  - (e) a place where facilities or activities relating to the sale or consumption of alcohol are at the relevant time permitted by virtue of a permission granted under section 115E of the Highways Act 1980 (highway-related uses).
- (2) A prohibition in a public spaces protection order on consuming alcohol does not apply to council-operated licensed premises –
  - (a) when the premises are being used for the supply of alcohol, or
  - (b) within 30 minutes after the end of a period during which the premises have been used for the supply of alcohol.
- (3) In this section –

“club premises certificate” has the meaning given by section 60 of the Licensing Act 2003;

“premises licence” has the meaning given by section 11 of that Act;

“supply of alcohol” has the meaning given by section 14 of that Act.

- (4) For the purposes of this section, premises are “council-operated licensed premises” if they are authorised by a premises licence to be used for the supply of alcohol and –
- (a) the licence is held by a local authority in whose area the premises (or part of the premises) are situated, or
  - (b) the licence is held by another person but the premises are occupied by a local authority or are managed by or on behalf of a local authority.

## **57 Consumption of alcohol in breach of prohibition in order**

- (1) This section applies where a constable or an authorised person reasonably believes that a person (P) –
- (a) is or has been consuming alcohol in breach of a prohibition in a public spaces protection order, or
  - (b) intends to consume alcohol in circumstances in which doing so would be a breach of such a prohibition.

In this section “authorised person” means a person authorised for the purposes of this section by the local authority that made the public spaces protection order (or authorised by virtue of section 63(1)).

- (2) The constable or authorised person may require P –
- (a) not to consume, in breach of the order, alcohol or anything which the constable or authorised person reasonably believes to be alcohol;
  - (b) to surrender anything in P’s possession which is, or which the constable or authorised person reasonably believes to be, alcohol or a container for alcohol.
- (3) A constable or an authorised person who imposes a requirement under subsection (2) must tell P that failing without reasonable excuse to comply with the requirement is an offence.
- (4) A requirement imposed by an authorised person under subsection (2) is not valid if the person –
- (a) is asked by P to show evidence of his or her authorisation, and
  - (b) fails to do so.
- (5) A constable or an authorised person may dispose of anything surrendered under subsection (2)(b) in whatever way he or she thinks appropriate.
- (6) A person who fails without reasonable excuse to comply with a requirement imposed on him or her under subsection (2) commits an offence and is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

### *Restrictions on public rights of way*

## **58 Orders restricting public right of way over highway**

- (1) A local authority may not make a public spaces protection order that restricts the public right of way over a highway without considering –

- (a) the likely effect of making the order on the occupiers of premises adjoining or adjacent to the highway;
  - (b) the likely effect of making the order on other persons in the locality;
  - (c) in a case where the highway constitutes a through route, the availability of a reasonably convenient alternative route.
- (2) Before making such an order a local authority must—
- (a) notify potentially affected persons of the proposed order,
  - (b) inform those persons how they can see a copy of the proposed order,
  - (c) notify those persons of the period within which they may make representations about the proposed order, and
  - (d) consider any representations made.

In this subsection “potentially affected persons” means occupiers of premises adjacent to or adjoining the highway, and any other persons in the locality who are likely to be affected by the proposed order.

- (3) A public spaces protection order may not restrict the public right of way over a highway for the occupiers of premises adjoining or adjacent to the highway.
- (4) A public spaces protection order may not restrict the public right of way over a highway that is the only or principal means of access to a dwelling.
- (5) In relation to a highway that is the only or principal means of access to premises used for business or recreational purposes, a public spaces protection order may not restrict the public right of way over the highway during periods when the premises are normally used for those purposes.
- (6) A public spaces protection order that restricts the public right of way over a highway may authorise the installation, operation and maintenance of a barrier or barriers for enforcing the restriction.
- (7) A local authority may install, operate and maintain barriers authorised under subsection (6).
- (8) A highway over which the public right of way is restricted by a public spaces protection order does not cease to be regarded as a highway by reason of the restriction (or by reason of any barrier authorised under subsection (6)).
- (9) In this section—
  - “dwelling” means a building or part of a building occupied, or intended to be occupied, as a separate dwelling;
  - “highway” has the meaning given by section 328 of the Highways Act 1980.

## **59 Categories of highway over which public right of way may not be restricted**

- (1) A public spaces protection order may not restrict the public right of way over a highway that is—
  - (a) a special road;
  - (b) a trunk road;
  - (c) a classified or principal road;
  - (d) a strategic road;
  - (e) a highway in England of a description prescribed by regulations made by the Secretary of State;

- (f) a highway in Wales of a description prescribed by regulations made by the Welsh Ministers.
- (2) In this section –
  - “classified road”, “special road” and “trunk road” have the meaning given by section 329(1) of the Highways Act 1980;
  - “highway” has the meaning given by section 328 of that Act;
  - “principal road” has the meaning given by section 12 of that Act (and see section 13 of that Act);
  - “strategic road” has the meaning given by section 60(4) of the Traffic Management Act 2004.

### *Validity of orders*

## **60 Challenging the validity of orders**

- (1) An interested person may apply to the High Court to question the validity of a public spaces protection order.  
“Interested person” means an individual who lives in the restricted area or who regularly works in or visits that area.
- (2) The grounds on which an application under this section may be made are –
  - (a) that the local authority did not have power to make the order, or to include particular prohibitions or requirements imposed by the order;
  - (b) that a requirement under this Chapter was not complied with in relation to the order.
- (3) An application under this section must be made within the period of 6 weeks beginning with the date on which the order is made.
- (4) On an application under this section the High Court may by order suspend the operation of the public spaces protection order, or any of its prohibitions or requirements, until the final determination of the proceedings.
- (5) If on an application under this section the High Court is satisfied that –
  - (a) the local authority did not have power to make the order, or to include particular prohibitions or requirements imposed by the order, or
  - (b) the interests of the applicant have been substantially prejudiced by a failure to comply with a requirement under this Chapter,the Court may quash the order or any of its prohibitions or requirements.
- (6) A public spaces protection order, or any of its prohibitions or requirements, may be suspended under subsection (4) or quashed under subsection (5) –
  - (a) generally, or
  - (b) so far as necessary for the protection of the interests of the applicant.
- (7) The validity of a public spaces protection order may not be challenged in any legal proceedings, either before or after it is made, except under this section or section 61(3).

*Failure to comply with orders*

**61 Offence of failing to comply with order**

- (1) It is an offence for a person without reasonable excuse—
  - (a) to do anything that the person is prohibited from doing by a public spaces protection order, or
  - (b) to fail to comply with a requirement to which the person is subject under a public spaces protection order.
- (2) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (3) A person does not commit an offence under this section by failing to comply with a prohibition or requirement that the local authority did not have power to include in the public spaces protection order.

**62 Fixed penalty notices**

- (1) A constable or an authorised person may issue a fixed penalty notice to anyone he or she has reason to believe has committed an offence under section 57 or 61 in relation to a public spaces protection order.
- (2) A fixed penalty notice is a notice offering the person to whom it is issued the opportunity of discharging any liability to conviction for the offence by payment of a fixed penalty to a local authority specified in the notice.
- (3) The local authority specified under subsection (2) must be the one that made the public spaces protection order.
- (4) Where a person is issued with a notice under this section in respect of an offence—
  - (a) no proceedings may be taken for the offence before the end of the period of 14 days following the date of the notice;
  - (b) the person may not be convicted of the offence if the person pays the fixed penalty before the end of that period.
- (5) A fixed penalty notice must—
  - (a) give reasonably detailed particulars of the circumstances alleged to constitute the offence;
  - (b) state the period during which (because of subsection (4)(a)) proceedings will not be taken for the offence;
  - (c) specify the amount of the fixed penalty;
  - (d) state the name and address of the person to whom the fixed penalty may be paid;
  - (e) specify permissible methods of payment.
- (6) An amount specified under subsection (5)(c) must not be more than £100.
- (7) A fixed penalty notice may specify two amounts under subsection (5)(c) and specify that, if the lower of those amounts is paid within a specified period (of less than 14 days), that is the amount of the fixed penalty.
- (8) Whatever other method may be specified under subsection (5)(e), payment of a fixed penalty may be made by pre-paying and posting to the person whose

- name is stated under subsection (5)(d), at the stated address, a letter containing the amount of the penalty (in cash or otherwise).
- (9) Where a letter is sent as mentioned in subsection (8), payment is regarded as having been made at the time at which that letter would be delivered in the ordinary course of post.
- (10) In any proceedings, a certificate that—
- (a) purports to be signed by or on behalf of the chief finance officer of the local authority concerned, and
  - (b) states that payment of a fixed penalty was, or was not, received by the date specified in the certificate,
- is evidence of the facts stated.
- (11) In this section—
- “authorised person” means a person authorised for the purposes of this section by the local authority that made the order (or authorised by virtue of section 63(2));
  - “chief finance officer”, in relation to a local authority, means the person with responsibility for the authority’s financial affairs.

### *Supplemental*

## **63 Powers of community support officers**

- (1) In Part 1 of Schedule 4 to the Police Reform Act 2002 (powers exercisable by community support officers), after paragraph 5 there is inserted—
- “Alcohol consumption in restricted areas*
- 5ZA Where a designation applies this paragraph to any person, that person shall, within the relevant police area, have the powers of a constable under section 57 of the Anti-social Behaviour Act 2013 (consumption of alcohol in breach of prohibition in public spaces protection order)—
- (a) to impose a requirement under subsection (1) of that section; and
  - (b) to dispose under subsection (5) of that section of anything surrendered to the person;
- and that section shall have effect in relation to the exercise of those powers by that person as if the references to a constable were references to that person.”
- (2) In paragraph 1 of that Schedule (power of community support officers to issue fixed penalty notices), after paragraph (e) of sub-paragraph (2) there is inserted—
- (f) the power of a constable to issue a fixed penalty notice under section 62 of the Anti-social Behaviour Act 2013 (fixed penalty notice in respect of failure to comply with public spaces protection order).”

## 64 Byelaws

- (1) A byelaw that prohibits, by the creation of an offence, an activity regulated by a public spaces protection order is of no effect in relation to the restricted area during the currency of the order.
- (2) In subsection (1) “regulated” means –
  - (a) prohibited by virtue of section 53(4)(a), or
  - (b) subjected to requirements by virtue of section 53(4)(b), whether or not for all persons and at all times.

## 65 Interpretation of Chapter 2

- (1) In this Chapter –
  - “alcohol” has the meaning given by section 191 of the Licensing Act 2003;
  - “community representative”, in relation to a public spaces protection order that a local authority proposes to make or has made, means any individual or body appearing to the authority to represent the views of people who live in, work in or visit the restricted area;
  - “local authority” means –
    - (a) in relation to England, a district council, a county council for an area for which there is no district council, a London borough council, the Common Council of the City of London or the Council of the Isles of Scilly;
    - (b) in relation to Wales, a county council or a county borough council;
  - “public place” –
    - (a) means any place to which the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission, but
    - (b) does not include land to which subsection (2) applies;
  - “restricted area” has the meaning given by section 53(4).
- (2) This section applies to land –
  - (a) for the regulation of which a private Act confers power on a person other than a local authority, and
  - (b) in respect of which that person has given a notice in writing under this subsection to the local authority or local authorities in whose area the land is situated.

## CHAPTER 3

### CLOSURE OF PREMISES ASSOCIATED WITH NUISANCE OR DISORDER ETC

#### *Closure notices*

## 66 Power to issue closure notices

- (1) A police officer of at least the rank of inspector, or the local authority, may issue a closure notice if satisfied on reasonable grounds –
  - (a) that the use of particular premises has resulted, or (if the notice is not issued) is likely soon to result, in nuisance to members of the public, or

- (b) 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.
- (2) A closure notice is a notice prohibiting access to the premises for a period specified in the notice.  
For the maximum period, see section 67.
- (3) A closure notice may prohibit access –
  - (a) by all persons except those specified, or by all persons except those of a specified description;
  - (b) at all times, or at all times except those specified;
  - (c) in all circumstances, or in all circumstances except those specified.
- (4) A closure notice may not prohibit access by –
  - (a) people who habitually live on the premises, or
  - (b) the owner of the premises,and accordingly they must be specified under subsection (3)(a).
- (5) A closure notice must –
  - (a) identify the premises;
  - (b) explain the effect of the notice;
  - (c) state that failure to comply with the notice is an offence;
  - (d) state that an application will be made under section 70 for a closure order;
  - (e) specify when and where the application will be heard;
  - (f) explain the effect of a closure order;
  - (g) give information about the names of, and means of contacting, persons and organisations in the area that provide advice about housing and legal matters.
- (6) A closure notice may be issued only if reasonable efforts have been made to inform –
  - (a) people who live on the premises (whether habitually or not), and
  - (b) any person who has control of or responsibility for the premises or who has an interest in them,that the notice is going to be issued.
- (7) Before issuing a closure notice the police officer or local authority must ensure that any body or individual the officer or authority thinks appropriate has been consulted.
- (8) The Secretary of State may by regulations specify premises or descriptions of premises in relation to which a closure notice may not be issued.

## **67 Duration of closure notices**

- (1) The maximum period that may be specified in a closure notice is 24 hours unless subsection (2) applies.
- (2) The maximum period is 48 hours –
  - (a) if, in the case of a notice issued by a police officer, the officer is of at least the rank of superintendent, or



- (b) if, in the case of a notice issued by a local authority, the notice is signed by the chief executive officer of the authority or a person designated by him or her for the purposes of this subsection.
- (3) The period specified in a closure notice to which subsection (2) does not apply may be extended by up to 24 hours –
  - (a) if, in the case of a notice issued by a police officer, an extension notice is issued by an officer of at least the rank of superintendent, or
  - (b) if, in the case of a notice issued by a local authority, the authority issues an extension notice signed by the chief executive officer of the authority or a person designated by the chief executive officer for the purposes of this subsection.
- (4) An extension notice is a notice which –
  - (a) identifies the closure notice to which it relates, and
  - (b) specifies the period of the extension.
- (5) In this section “chief executive officer”, in relation to a local authority, means the head of the paid service of the authority designated under section 4 of the Local Government and Housing Act 1989.

## **68 Cancellation or variation of closure notices**

- (1) This section applies where a closure notice is in force and the relevant officer or authority is no longer satisfied as mentioned in section 66(1), either –
  - (a) as regards the premises as a whole, or
  - (b) as regards a particular part of the premises.
- (2) In a case within subsection (1)(a) the relevant officer or authority must issue a cancellation notice.  
 A cancellation notice is a notice cancelling the closure notice.
- (3) In a case within subsection (1)(b) the relevant officer or authority must issue a variation notice.  
 A variation notice is a notice varying the closure notice so that it does not apply to the part of the premises referred to in subsection (1)(b).
- (4) A cancellation notice or a variation notice that relates to a closure notice which was –
  - (a) issued by a local authority, and
  - (b) signed as mentioned in section 67(2)(b),
 must be signed by the person who signed the closure notice (or, if that person is not available, by another person who could have signed as mentioned in section 67(2)(b)).
- (5) A cancellation notice or a variation notice that relates to a closure notice which was –
  - (a) issued by a local authority, and
  - (b) extended under section 67(3)(b),
 must be signed by the person who signed the extension notice (or, if that person is not available, by another person who could have signed the extension notice).
- (6) In this section “the relevant officer or authority” means –

- (a) in the case of a closure notice issued by a police officer and not extended under section 67(3)(a), that officer (or, if that officer is not available, another officer of the same or higher rank);
- (b) in the case of a closure notice issued by a police officer and extended under section 67(3)(a), the officer who issued the extension notice (or, if that officer is not available, another officer of the same or higher rank);
- (c) in the case of a closure notice issued by a local authority, that authority.

## 69 Service of notices

- (1) A closure notice, an extension notice, a cancellation notice or a variation notice must be served by –
  - (a) a constable, in the case of a notice issued by a police officer;
  - (b) an employee of the authority that issued the notice, in the case of a notice issued by a local authority.
- (2) The constable or local authority employee must if possible –
  - (a) fix a copy of the notice to at least one prominent place on the premises,
  - (b) fix a copy of the notice to each normal means of access to the premises,
  - (c) fix a copy of the notice to any outbuildings that appear to the constable or employee to be used with or as part of the premises,
  - (d) give a copy of the notice to at least one person who appears to the constable or employee to have control of or responsibility for the premises, and
  - (e) give a copy of the notice to the people who live on the premises and to any person who does not live there but was informed (under section 66(6)) that the notice was going to be issued.
- (3) If the constable or local authority employee reasonably believes, at the time of serving the notice, that there are persons occupying another part of the building or other structure in which the premises are situated whose access to that part will be impeded if a closure order is made under section 70, the constable or employee must also if possible serve the notice on those persons.
- (4) The constable or local authority employee may enter any premises, using reasonable force if necessary, for the purposes of complying with subsection (2)(a).

### *Closure orders*

## 70 Power of court to make closure orders

- (1) Whenever a closure notice is issued an application must be made to a magistrates' court for a closure order (unless the notice has been cancelled under section 68).
- (2) An application for a closure order must be made –
  - (a) by a constable, if the closure notice was issued by a police officer;
  - (b) by the authority that issued the closure notice, if the notice was issued by a local authority.
- (3) The application must be heard by the magistrates' court not later than 48 hours after service of the closure notice.

- (4) The court may make a closure order if it is satisfied –
- (a) 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
  - (b) that the use of the premises has resulted, or (if the order is not made) is likely to result, in serious nuisance to members of the public, or
  - (c) that there has been, or (if the order is not made) is likely to be, disorder near those premises associated with the use of those premises,
- and that the order is necessary to prevent the behaviour, nuisance or disorder from continuing, recurring or occurring.
- (5) A closure order is an order prohibiting access to the premises for a period specified in the order.  
 The period may not exceed 3 months.
- (6) A closure order may prohibit access –
- (a) by all persons, or by all persons except those specified, or by all persons except those of a specified description;
  - (b) at all times, or at all times except those specified;
  - (c) in all circumstances, or in all circumstances except those specified.
- (7) A closure order –
- (a) may be made in respect of the whole or any part of the premises;
  - (b) may include provision about access to a part of the building or structure of which the premises form part.
- (8) The court must notify the relevant licensing authority if it makes a closure order in relation to premises in respect of which a premises licence is in force.

## **71 Temporary orders**

- (1) This section applies where an application has been made to a magistrates' court under section 70 for a closure order.
- (2) If the court does not make a closure order it may nevertheless order that the closure notice continues in force for a specified further period of not more than 48 hours, if satisfied –
- (a) that the use of particular premises has resulted, or (if the notice is not continued) is likely soon to result, in nuisance to members of the public, or
  - (b) that there has been, or (if the notice is not continued) is likely soon to be, disorder near those premises associated with the use of those premises,
- and that the continuation of the notice is necessary to prevent the nuisance or disorder from continuing, recurring or occurring.
- (3) The court may adjourn the hearing of the application for a period of not more than 14 days to enable –
- (a) the occupier of the premises,
  - (b) the person with control of or responsibility for the premises, or
  - (c) any other person with an interest in the premises,
- to show why a closure order should not be made.

- (4) If the court adjourns the hearing under subsection (3) it may order that the closure notice continues in force until the end of the period of the adjournment.

## **72 Extension of closure orders**

- (1) At any time before the expiry of a closure order, an application may be made to a justice of the peace, by complaint, for an extension (or further extension) of the period for which the order is in force.
- (2) Those entitled to make an application under this section are –
  - (a) where the closure order was made on the application of a constable, a police officer of at least the rank of inspector;
  - (b) where the closure order was made on the application of a local authority, that authority.
- (3) A police officer or local authority may make an application under this section only if satisfied on reasonable grounds that it is necessary for the period of the order to be extended to prevent the occurrence, recurrence or continuance of –
  - (a) disorderly, offensive or criminal behaviour on the premises,
  - (b) serious nuisance to members of the public resulting from the use of the premises, or
  - (c) disorder near the premises associated with the use of the premises,and also satisfied that the appropriate consultee has been consulted about the intention to make the application.
- (4) In subsection (3) “the appropriate consultee” means –
  - (a) the local authority, in the case of an application by a police officer;
  - (b) the chief officer of police for the area in which the premises are situated, in the case of an application by a local authority.
- (5) Where an application is made under this section, the justice of the peace may issue a summons directed to –
  - (a) any person on whom the closure notice was served under section 69, or
  - (b) any other person who appears to the justice to have an interest in the premises but on whom the closure notice was not served,requiring the person to appear before the magistrates’ court to respond to the application.
- (6) If a summons is issued under subsection (5), a notice stating the date, time and place of the hearing of the application must be served on the persons to whom the summons is directed.
- (7) If the magistrates’ court is satisfied as mentioned in subsection (3)(a), (b) or (c), it may make an order extending (or further extending) the period of the closure order by a period not exceeding 3 months.
- (8) The period of a closure order may not be extended so that the order lasts for more than 6 months.

## **73 Discharge of closure orders**

- (1) At any time before the expiry of a closure order, an application may be made to a justice of the peace, by complaint, for the order to be discharged.
- (2) Those entitled to make an application under this section are –

- (a) a constable, where the closure order was made on the application of a constable;
  - (b) the authority that applied for the closure order, where the order was made on the application of a local authority;
  - (c) a person on whom the closure notice was served under section 69;
  - (d) anyone else who has an interest in the premises but on whom the closure notice was not served.
- (3) Where a person other than a constable makes an application under this section for the discharge of an order that was made on the application of a constable, the justice may issue a summons directed to a constable considered appropriate by the justice requiring him or her to appear before the magistrates' court to respond to the application.
- (4) If a summons is issued under subsection (3), a notice stating the date, time and place of the hearing of the application must be served on—
- (a) the constable to whom the summons is directed;
  - (b) the persons mentioned in subsection (2)(c) and (d) (other than the complainant).
- (5) Where—
- (a) the order in question was made on the application of a local authority, and
  - (b) a person other than that authority makes an application under this section for the discharge of the order,
- the justice may issue a summons directed to that authority requiring it to appear before the magistrates' court to respond to the application.
- (6) If a summons is issued under subsection (5), a notice stating the date, time and place of the hearing of the application must be served on—
- (a) the authority mentioned in that subsection;
  - (b) the persons mentioned in subsection (2)(c) and (d) (other than the complainant).
- (7) The magistrates' court may not make an order discharging the closure order unless satisfied that the closure order is no longer necessary to prevent the occurrence, recurrence or continuance of—
- (a) disorderly, offensive or criminal behaviour on the premises,
  - (b) serious nuisance to members of the public resulting from the use of the premises, or
  - (c) disorder near the premises associated with the use of the premises.

### *Appeals*

#### **74 Appeals**

- (1) An appeal against a decision to make or extend a closure order may be made by—
- (a) a person on whom the closure notice was served under section 69;
  - (b) anyone else who has an interest in the premises but on whom the closure notice was not served.
- (2) A constable may appeal against—
- (a) a decision not to make a closure order applied for by a constable;

- (b) a decision not to extend a closure order made on the application of a constable;
  - (c) a decision (under section 71) not to order the continuation in force of a closure notice issued by a constable.
- (3) A local authority may appeal against –
- (a) a decision not to make a closure order applied for by that authority;
  - (b) a decision not to extend a closure order made on the application of that authority;
  - (c) a decision (under section 71) not to order the continuation in force of a closure notice issued by that authority.
- (4) An appeal under this section is to the Crown Court.
- (5) An appeal under this section must be made within the period of 21 days beginning with the date of the decision to which it relates.
- (6) On an appeal under this section the Crown Court may make whatever order it thinks appropriate.
- (7) The Crown Court must notify the relevant licensing authority if it makes a closure order in relation to premises in respect of which a premises licence is in force.

### *Enforcement*

#### **75 Enforcement of closure orders**

- (1) An authorised person may –
- (a) enter premises in respect of which a closure order is in force;
  - (b) do anything necessary to secure the premises against entry.
- (2) In this section “authorised person” –
- (a) in relation to a closure order made on the application of a constable, means a constable or a person authorised by the chief officer of police for the area in which the premises are situated;
  - (b) in relation to a closure order made on the application of a local authority, means a person authorised by that authority.
- (3) A person acting under subsection (1) may use reasonable force.
- (4) A person seeking to enter premises under subsection (1) must, if required to do so by or on behalf of the owner, occupier or other person in charge of the premises, produce evidence of his or her identity and authority before entering the premises.
- (5) An authorised person may also enter premises in respect of which a closure order is in force to carry out essential maintenance or repairs to the premises.

#### **76 Offences**

- (1) A person who without reasonable excuse remains on or enters premises in contravention of a closure notice (including a notice continued in force under section 71) commits an offence.

- (2) A person who without reasonable excuse remains on or enters premises in contravention of a closure order commits an offence.
- (3) A person who without reasonable excuse obstructs a person acting under section 69 or 75(1) commits an offence.
- (4) A person guilty of an offence under subsection (1) is liable on summary conviction—
  - (a) to imprisonment for a period not exceeding 3 months, or
  - (b) to a fine not exceeding the relevant amount,
 or to both.
- (5) A person guilty of an offence under subsection (2) is liable on summary conviction—
  - (a) to imprisonment for a period not exceeding 51 weeks, or
  - (b) to a fine not exceeding the relevant amount,
 or to both.
- (6) A person guilty of an offence under subsection (3) is liable on summary conviction—
  - (a) to imprisonment for a period not exceeding 3 months, or
  - (b) to a fine not exceeding level 5 on the standard scale,
 or to both.
- (7) In subsections (4)(b) and (5)(b) “the relevant amount” is—
  - (a) level 5 on the standard scale, where the premises to which the closure notice or closure order relates, or any part of them, are premises where a person habitually lives;
  - (b) £20,000 in any other case.
- (8) In relation to an offence committed before the commencement of section 281(5) of the Criminal Justice Act 2003, the reference in subsection (5)(a) to 51 weeks is to be read as a reference to 6 months.

*Supplemental*

**77 Access to other premises**

- (1) Where—
  - (a) access to premises is prohibited or restricted by, or as a result of, an order under section 70, 71, 72 or 74,
  - (b) those premises are part of a building or structure, and
  - (c) there is another part of that building or structure that is not subject to the prohibition or restriction,
 an occupier or owner of that other part may apply to the appropriate court for an order under this section.
- (2) The appropriate court is—
  - (a) the magistrates’ court, in the case of an order under section 70, 71 or 72;
  - (b) the Crown Court, in the case of an order under section 74.
- (3) Notice of an application under this section must be given to—
  - (a) whatever constable the court thinks appropriate;
  - (b) the local authority;

- (c) a person on whom the closure notice was served under section 69;
  - (d) anyone else who has an interest in the premises but on whom the closure notice was not served.
- (4) On an application under this section the court may make whatever order it thinks appropriate in relation to access to any part of the building or structure mentioned in subsection (1).  
It does not matter whether provision has been made under section 70(7)(b).

## **78 Reimbursement of costs**

- (1) A local policing body or a local authority that incurs expenditure for the purpose of clearing, securing or maintaining premises in respect of which a closure order is in force may apply to the court that made the order for an order under this section.
- (2) On an application under this section the court may make whatever order it thinks appropriate for the reimbursement (in full or in part) by the owner of the premises of the expenditure mentioned in subsection (1).
- (3) An application for an order under this section may not be heard unless it is made before the end of the period of 3 months starting with the day on which the closure order ceases to have effect.
- (4) An application under this section must be served on –
- (a) the local policing body for the area in which the premises are situated, if the application is made by a local authority;
  - (b) the local authority, if the application is made by a local policing body;
  - (c) the owner of the premises.

## **79 Exemption from liability**

- (1) A police officer, or the chief officer of police under whose direction or control he or she acts, is not liable for damages in proceedings for –
- (a) judicial review, or
  - (b) the tort of negligence or misfeasance in public office,
- arising out of anything done or omitted to be done by the police officer in the exercise or purported exercise of a power under this Chapter.
- (2) A local authority is not liable for damages in proceedings for –
- (a) judicial review, or
  - (b) the tort of negligence or misfeasance in public office,
- arising out of anything done or omitted to be done by the authority in the exercise or purported exercise of a power under this Chapter.
- (3) Subsections (1) and (2) do not apply to an act or omission shown to have been in bad faith.
- (4) Subsections (1) and (2) do not apply so as to prevent an award of damages made in respect of an act or omission on the ground that the act or omission was unlawful by virtue of section 6(1) of the Human Rights Act 1998.
- (5) This section does not affect any other exemption from liability (whether at common law or otherwise).



## 80 Compensation

- (1) A person who claims to have incurred financial loss in consequence of a closure notice or a closure order may apply to the appropriate court for compensation.
- (2) The appropriate court is –
  - (a) the magistrates' court that considered the application for a closure order (except where paragraph (b) applies);
  - (b) the Crown Court, in the case of a closure order that was made or extended by an order of that Court on an appeal under section 74.
- (3) An application under this section may not be heard unless it is made before the end of the period of 3 months starting with whichever of the following is applicable –
  - (a) the day on which the closure notice was cancelled under section 68;
  - (b) the day on which a closure order was refused;
  - (c) the day on which the closure order ceased to have effect.
- (4) For the purposes of subsection (3)(b) the day on which a closure order was refused is –
  - (a) the day on which the magistrates' court decided not to make a closure order (except where paragraph (b) applies);
  - (b) the day on which the Crown Court dismissed an appeal against a decision not to make a closure order.
- (5) On an application under this section the court may order the payment of compensation out of central funds if it is satisfied –
  - (a) that the applicant is not associated with the use of the premises, or the behaviour on the premises, on the basis of which the closure notice was issued or the closure order made,
  - (b) if the applicant is the owner or occupier of the premises, that the applicant took reasonable steps to prevent that use or behaviour,
  - (c) that the applicant has incurred financial loss in consequence of the notice or order, and
  - (d) that having regard to all the circumstances it is appropriate to order payment of compensation in respect of that loss.
- (6) In this section “central funds” has the same meaning as in enactments providing for the payment of costs.

## 81 Interpretation of Chapter 3

- (1) In this Chapter –
  - “cancellation notice” has the meaning given by section 68(2);
  - “criminal behaviour” means behaviour that constitutes a criminal offence;
  - “extension notice” has the meaning given by section 67(4);
  - “local authority” means –
    - (a) in relation to England, a district council, a county council for an area for which there is no district council, a London borough council, the Common Council of the City of London or the Council of the Isles of Scilly;
    - (b) in relation to Wales, a county council or a county borough council;

“offensive behaviour” means behaviour by a person that causes or is likely to cause harassment, alarm or distress to one or more other persons not of the same household as that person;

“owner”, in relation to premises, means –

- (a) a person (other than a mortgagee not in possession) entitled to dispose of the fee simple of the premises, whether in possession or in reversion;
- (b) a person who holds or is entitled to the rents and profits of the premises under a lease that (when granted) was for a term of not less than 3 years;

“premises” includes –

- (a) any land or other place (whether enclosed or not);
- (b) any outbuildings that are, or are used as, part of premises;

“premises licence” has the meaning given by section 11 of the Licensing Act 2003;

“relevant licensing authority” has the meaning given by section 12 of that Act;

“variation notice” has the meaning given by section 68(3).

- (2) A reference in this Chapter to “the local authority”, in relation to any premises or a notice or order relating to any premises, is a reference to the local authority (or, as the case may be, any of the local authorities) within whose area the premises are situated.
- (3) A reference in this Chapter to “the premises”, in relation to a closure notice or a closure order, is a reference to the premises to which the notice or order relates.

## 82 Saving and transitional provision

- (1) The repeal or amendment by this Act of provisions about any of the notices specified in subsection (2) or orders specified in subsection (3) does not apply in relation to –
  - (a) any such notice issued or order made before the commencement day;
  - (b) anything done in connection with any such notice or order.
- (2) The notices are –
  - (a) a notice issued under section 1 of the Anti-social Behaviour Act 2003;
  - (b) a notice issued under section 11A of that Act.
- (3) The orders are –
  - (a) an order made under section 2 of the Anti-social Behaviour Act 2003;
  - (b) an order made under section 11B of that Act;
  - (c) an order made under section 40 of that Act;
  - (d) an order made under section 161 of the Licensing Act 2003;
  - (e) an order made under section 165(2)(b), (c) or (d) of that Act.
- (4) A person deciding whether to issue a closure notice may take into account things that –
  - (a) happened before the commencement day, and
  - (b) would have given rise to the power to issue one of the notices specified in subsection (2) or to make an order specified in subsection (3)(c) or (d).

- (5) A court deciding whether to make a closure order may take into account things that –
  - (a) happened before the commencement day, and
  - (b) would have given rise to the power to make an order specified in subsection (3)(a), (b) or (e).
- (6) Subsections (4) and (5) apply only during the period of 3 months beginning with the commencement day.
- (7) In this section “commencement day” means the day on which this Chapter comes into force.

## PART 5

### RECOVERY OF POSSESSION OF DWELLING-HOUSES: ANTI-SOCIAL BEHAVIOUR GROUNDS

#### *Absolute ground for possession: secure tenancies*

### 83 New ground for serious offences or breach of requirements etc

- (1) After section 84 of the Housing Act 1985 (secure tenancies: grounds and orders for possession) there is inserted –

#### **“84A Absolute ground for possession for anti-social behaviour**

- (1) If the court is satisfied that any of the following conditions is met, it must make an order for the possession of a dwelling-house let under a secure tenancy, unless subsection (2) applies.
- (2) This subsection applies where the court thinks that the landlord has not complied with its obligations under section 85ZA (review of decision to seek possession).
- (3) Condition 1 is that –
  - (a) the tenant, or a person residing in or visiting the dwelling-house, has been convicted of a serious offence, and
  - (b) the serious offence –
    - (i) was committed (wholly or partly) in, or in the locality of, the dwelling-house,
    - (ii) was committed elsewhere against a person with a right (of whatever description) to reside in or occupy housing accommodation in the locality of the dwelling-house, or
    - (iii) was committed elsewhere against the landlord of the dwelling-house, or a person employed (whether or not by the landlord) in connection with the exercise of the landlord’s housing management functions, and directly or indirectly related to or affected those functions.
- (4) Condition 2 is that a court has found in relevant proceedings that the tenant, or a person residing in or visiting the dwelling-house, has breached a provision of an injunction under section 1 of the Anti-social Behaviour Act 2013, other than a provision requiring a person to participate in a particular activity, and –
  - (a) the breach occurred in, or in the locality of, the dwelling-house,
 or

- (b) the breach occurred elsewhere and the provision breached was a provision intended to prevent –
  - (i) conduct that is capable of causing nuisance or annoyance to a person with a right (of whatever description) to reside in or occupy housing accommodation in the locality of the dwelling-house, or
  - (ii) conduct that is capable of causing nuisance or annoyance to the landlord of the dwelling-house or a person employed (whether or not by the landlord) in connection with the exercise of the landlord’s housing management functions, and that is directly or indirectly related to or affects those functions.

In this condition, the reference to an injunction under section 1 of the Anti-social Behaviour Act 2013 does not include an injunction granted following an application made without notice under section 5 of that Act.

- (5) Condition 3 is that the tenant, or a person residing in or visiting the dwelling-house, has been convicted of an offence under section 28 of the Anti-Social Behaviour Act 2013 consisting of a breach of a provision of a criminal behaviour order prohibiting a person from doing anything described in the order, and the offence involved –
  - (a) a breach that occurred in, or in the locality of, the dwelling-house, or
  - (b) a breach that occurred elsewhere of a provision intended to prevent –
    - (i) behaviour that causes or is likely to cause harassment, alarm or distress to a person with a right (of whatever description) to reside in or occupy housing accommodation in the locality of the dwelling-house, or
    - (ii) behaviour that causes or is likely to cause harassment, alarm or distress to the landlord of the dwelling-house, or a person employed (whether or not by the landlord) in connection with the exercise of the landlord’s housing management functions, and that is directly or indirectly related to or affects those functions.
- (6) Condition 4 is that –
  - (a) the dwelling-house is or has been subject to a closure order under section 70 of the Anti-social Behaviour Act 2013, and
  - (b) access to the dwelling-house has been prohibited (under the closure order or under a closure notice made under section 66 of that Act) for a continuous period of more than 48 hours.
- (7) Condition 5 is that –
  - (a) the tenant, or a person residing in or visiting the dwelling-house, has been convicted of an offence under –
    - (i) section 80(4) of the Environmental Protection Act 1990 (breach of abatement notice in relation to statutory nuisance), or
    - (ii) section 82(8) of that Act (breach of court order to abate statutory nuisance etc.), and
  - (b) the nuisance concerned was noise emitted from the dwelling-house which was a statutory nuisance for the purposes of Part 3

of that Act by virtue of section 79(1)(g) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance).

- (8) Condition 1, 2, 3, 4 or 5 is not met if –
- (a) there is an appeal against the conviction, finding or order concerned which has not been finally determined, abandoned or withdrawn, or
  - (b) the final determination of the appeal results in the conviction, finding or order being overturned.
- (9) In this section –
- “relevant proceedings” means proceedings for contempt of court or proceedings under Schedule 2 to the Anti-social Behaviour Act 2013;
- “serious offence” means an offence which –
- (a) was committed on or after the day on which subsection (3) comes into force,
  - (b) is specified, or falls within a description specified, in Schedule 2A at the time the offence was committed and at the time the court is considering the matter, and
  - (c) is not an offence that is triable only summarily by virtue of section 22 of the Magistrates’ Courts Act 1980 (either way offences where value involved is small).
- (10) The Secretary of State may by order amend Schedule 2A as it applies in relation to dwelling-houses in England by –
- (a) adding an indictable offence;
  - (b) removing an offence.
- (11) The Welsh Ministers may by order amend Schedule 2A as it applies in relation to dwelling-houses in Wales by –
- (a) adding an indictable offence;
  - (b) removing an offence.
- (12) An order under subsection (10) or (11) –
- (a) is to be made by statutory instrument which –
    - (i) in the case of an order made by the Secretary of State is subject to annulment in pursuance of a resolution of either House of Parliament;
    - (ii) in the case of an order made by the Welsh Ministers is subject to annulment in pursuance of a resolution of the National Assembly for Wales;
  - (b) may make different provision for different purposes;
  - (c) may include incidental, supplementary, consequential, transitional or saving provision.”
- (2) After Schedule 2 to that Act there is inserted the Schedule set out in Schedule 4 to this Act.

#### 84 Notice requirements for new ground

After section 83A of the Housing Act 1985 (additional requirements in relation

to certain proceedings for possession) there is inserted –

**“83B Notice requirements in relation to proceedings for possession on absolute ground for anti-social behaviour**

- (1) The court must not entertain proceedings for an order under section 84A unless the landlord has served on the tenant a notice under this section.
- (2) The notice must –
  - (a) state that the court will be asked to make an order under section 84A for the possession of the dwelling-house,
  - (b) set out the reasons for the landlord’s decision to apply for the order (including the condition or conditions in section 84A on which the landlord proposes to rely), and
  - (c) inform the tenant of any right that the tenant may have under section 85ZA to request a review of the landlord’s decision and of the time within which the request must be made.
- (3) A notice which states that the landlord proposes to rely upon condition 1, 3 or 5 in section 84A –
  - (a) must also state the conviction on which the landlord proposes to rely, and
  - (b) must be served on the tenant within –
    - (i) the period of 12 months beginning with the day of the conviction, or
    - (ii) if there is an appeal against the conviction, the period of 12 months beginning with the day on which the appeal is finally determined or abandoned.
- (4) A notice which states that the landlord proposes to rely upon condition 2 in section 84A –
  - (a) must also state the finding on which the landlord proposes to rely, and
  - (b) must be served on the tenant within –
    - (i) the period of 12 months beginning with the day on which the court has made the finding, or
    - (ii) if there is an appeal against the finding, the period of 12 months beginning with the day on which the appeal is finally determined, abandoned or withdrawn.
- (5) A notice which states that the landlord proposes to rely upon condition 4 in section 84A –
  - (a) must also state the closure order concerned, and
  - (b) must be served on the tenant within –
    - (i) the period of 3 months beginning with the day on which the closure order was made, or
    - (ii) if there is an appeal against the making of the order, the period of 3 months beginning with the day on which the appeal is finally determined, abandoned or withdrawn.
- (6) A notice under this section must also inform the tenant that, if the tenant needs help or advice about the notice and what to do about it, the tenant should take it immediately to a Citizens’ Advice Bureau, a housing aid centre, a law centre or a solicitor.

- (7) Where the tenancy is a periodic tenancy, the notice –
  - (a) must also specify the date after which proceedings for an order under section 84A may be begun, and
  - (b) ceases to be in force 12 months after the date so specified.
- (8) The date specified in accordance with subsection (7)(a) must not be earlier than the date on which the tenancy could, apart from this Part, be brought to an end by notice to quit given by the landlord on the same day as the notice under this section.
- (9) Where a notice under this section is served with respect to a secure tenancy for a term certain, it has effect also with respect to any periodic tenancy arising on the termination of that tenancy by virtue of section 86; and subsections (7) and (8) do not apply to the notice.”

## 85 Review requirements for new ground

After section 85 of the Housing Act 1985 (extended discretion of court in certain proceedings for possession) there is inserted –

### “85ZA Review of decision to seek possession on absolute ground for anti-social behaviour

- (1) A tenant may request a review of a landlord’s decision to seek an order for possession of a dwelling-house under section 84A if the interest of the landlord belongs to –
  - (a) a local housing authority, or
  - (b) a housing action trust.
- (2) Such a request must be made in writing before the end of the period of 7 days beginning with the day on which the notice under section 83B is served.
- (3) On a request being duly made to it, the landlord must review its decision.
- (4) The landlord must notify the tenant in writing of the decision on the review.
- (5) If the decision is to confirm the original decision, the landlord must also notify the tenant of the reasons for the decision.
- (6) The review must be carried out, and the tenant notified –
  - (a) in the case of a periodic tenancy, before the day specified in the notice under section 83B as the day after which proceedings for the possession of the dwelling-house may be begun;
  - (b) in the case of a fixed term tenancy, before the end of the period of one month beginning with the day on which the notice under section 83B is served.
- (7) The Secretary of State may by regulations make provision about the procedure to be followed in connection with a review under this section that relates to an order for possession of a dwelling-house in England.
- (8) The Welsh Ministers may by regulations make provision about the procedure to be followed in connection with a review under this section that relates to an order for possession of a dwelling-house in Wales.

- (9) Regulations under subsections (7) and (8) may, in particular, make provision –
- (a) requiring the decision on review to be made by a person of appropriate seniority who was not involved in the original decision, and
  - (b) as to the circumstances in which the person concerned is entitled to an oral hearing, and whether and by whom the person may be represented at such a hearing.
- (10) Regulations under this section –
- (a) may contain transitional or saving provision;
  - (b) are to be made by statutory instrument which –
    - (i) in the case of regulations made by the Secretary of State is subject to annulment in pursuance of a resolution of either House of Parliament;
    - (ii) in the case of regulations made by the Welsh Ministers, is subject to annulment in pursuance of a resolution of the National Assembly for Wales.”

*Absolute ground for possession: assured tenancies*

**86 Corresponding new ground and notice requirements for assured tenancies**

- (1) In Part 1 of Schedule 2 to the Housing Act 1988 (assured tenancies: grounds on which court must order possession), after ground 7 there is inserted –

*“Ground 7A*

Any of the following conditions is met.

Condition 1 is that –

- (a) the tenant, or a person residing in or visiting the dwelling-house, has been convicted of a serious offence, and
- (b) the serious offence –
  - (i) was committed (wholly or partly) in, or in the locality of, the dwelling-house,
  - (ii) was committed elsewhere against a person with a right (of whatever description) to reside in or occupy housing accommodation in the locality of the dwelling-house, or
  - (iii) was committed elsewhere against the landlord of the dwelling-house, or a person employed (whether or not by the landlord) in connection with the exercise of the landlord’s housing management functions, and directly or indirectly related to or affected those functions.

Condition 2 is that a court has found in relevant proceedings that the tenant, or a person residing in or visiting the dwelling-house, has breached a provision of an injunction under section 1 of the Anti-social Behaviour Act 2013, other than a provision requiring a person to participate in a particular activity, and –

- (a) the breach occurred in, or in the locality of, the dwelling-house, or



- (b) the breach occurred elsewhere and the provision breached was a provision intended to prevent –
  - (i) conduct that is capable of causing nuisance or annoyance to a person with a right (of whatever description) to reside in or occupy housing accommodation in the locality of the dwelling-house, or
  - (ii) conduct that is capable of causing nuisance or annoyance to the landlord of the dwelling-house or a person employed (whether or not by the landlord) in connection with the exercise of the landlord’s housing management functions, and that is directly or indirectly related to or affects those functions.

In this condition, the reference to an injunction under section 1 of the Anti-social Behaviour Act 2013 does not include an injunction granted following an application made without notice under section 5 of that Act.

Condition 3 is that the tenant, or a person residing in or visiting the dwelling-house, has been convicted of an offence under section 28 of the Anti-Social Behaviour Act 2013 consisting of a breach of a provision of a criminal behaviour order prohibiting a person from doing anything described in the order, and the offence involved –

- (a) a breach that occurred in, or in the locality of, the dwelling-house, or
- (b) a breach that occurred elsewhere of a provision intended to prevent –
  - (i) behaviour that causes or is likely to cause harassment, alarm or distress to a person with a right (of whatever description) to reside in or occupy housing accommodation in the locality of the dwelling-house, or
  - (ii) behaviour that causes or is likely to cause harassment, alarm or distress to the landlord of the dwelling-house, or a person employed (whether or not by the landlord) in connection with the exercise of the landlord’s housing management functions, and that is directly or indirectly related to or affects those functions.

Condition 4 is that –

- (a) the dwelling-house is or has been subject to a closure order under section 70 of the Anti-social Behaviour Act 2013, and
- (b) access to the dwelling-house has been prohibited (under the closure order or under a closure notice made under section 66 of that Act) for a continuous period of more than 48 hours.

Condition 5 is that –

- (a) the tenant, or a person residing in or visiting the dwelling-house, has been convicted of an offence under –
  - (i) section 80(4) of the Environmental Protection Act 1990 (breach of abatement notice in relation to statutory nuisance), or

- (ii) section 82(8) of that Act (breach of court order to abate statutory nuisance etc.), and
- (b) the nuisance concerned was noise emitted from the dwelling-house which was a statutory nuisance for the purposes of Part 3 of that Act by virtue of section 79(1)(g) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance).

Condition 1, 2, 3, 4 or 5 is not met if –

- (a) there is an appeal against the conviction, finding or order concerned which has not been finally determined, abandoned or withdrawn, or
- (b) the final determination of the appeal results in the conviction, finding or order being overturned.

In this ground –

“relevant proceedings” means proceedings for contempt of court or proceedings under Schedule 2 to the Anti-social Behaviour Act 2013;

“serious offence” means an offence which –

- (a) was committed on or after the day on which this ground comes into force,
- (b) is specified, or falls within a description specified, in Schedule 2A to the Housing Act 1985 at the time the offence was committed and at the time the court is considering the matter, and
- (c) is not an offence that is triable only summarily by virtue of section 22 of the Magistrates’ Courts Act 1980 (either way offences where value involved is small).

(2) In section 8 of that Act (notice of proceedings for possession) –

- (a) in subsection (3)(b), for “subsections (4)” there is substituted “subsections (3A)”;
- (b) after subsection (3) there is inserted –

“(3A) If a notice under this section specifies in accordance with subsection (3)(a) Ground 7A in Schedule 2 to this Act (whether with or without other grounds), the date specified in the notice as mentioned in subsection (3)(b) is not to be earlier than –

- (a) in the case of a periodic tenancy, the earliest date on which, apart from section 5(1), the tenancy could be brought to an end by a notice to quit given by the landlord on the same date as the date of service of the notice under this section;
- (b) in the case of a fixed term tenancy, one month after the date on which the notice was served.”;
- (c) in subsection (4), for “(whether with or without other grounds)” there is substituted “(whether without other grounds or with any ground other than Ground 7A)”;
- (d) in subsection (4A), after “other than Ground” there is inserted “7A or”;

- (e) after subsection (4B) there is inserted –
- “(4C) A notice under this section that specifies in accordance with subsection (3)(a) Ground 7A in Schedule 2 to this Act (whether with or without other grounds) must be served on the tenant within the time period specified in subsection (4D), (4E) or (4F).
- (4D) Where the landlord proposes to rely on condition 1, 3 or 5 in Ground 7A, the notice must be served on the tenant within –
- (a) the period of 12 months beginning with the day of the conviction, or
  - (b) if there is an appeal against the conviction, the period of 12 months beginning with the day on which the appeal is finally determined or abandoned.
- (4E) Where the landlord proposes to rely on condition 2 in Ground 7A, the notice must be served on the tenant within –
- (a) the period of 12 months beginning with the day on which the court has made the finding, or
  - (b) if there is an appeal against the finding, the period of 12 months beginning with the day on which the appeal is finally determined, abandoned or withdrawn.
- (4F) Where the landlord proposes to rely on condition 4 in Ground 7A, the notice must be served on the tenant within –
- (a) the period of 3 months beginning with the day on which the closure order was made, or
  - (b) if there is an appeal against the making of the order, the period of 3 months beginning with the day on which the appeal is finally determined, abandoned or withdrawn.”;

(f) in subsection (5), after “Ground” there is inserted “7A or”.

*Discretionary grounds: secure and assured tenancies*

**87 Addition of offences connected with riot to existing possession grounds**

- (1) In Part 1 of Schedule 2 to the Housing Act 1985 (grounds on which court may order possession in relation to secure tenancies if it considers it reasonable), after Ground 2 there is inserted –

*“Ground 2ZA*

The tenant or a person residing in the dwelling-house has been convicted of an offence which took place during, and at the scene of, a riot in the United Kingdom.

In this Ground, “riot” is to be construed in accordance with section 1 of the Public Order Act 1986.

This Ground applies only in relation to dwelling-houses in England.”

- (2) In Part 2 of Schedule 2 to the Housing Act 1988 (grounds on which court may order possession in relation to assured tenancies if it considers it reasonable),

after Ground 14 there is inserted –

*“Ground 14ZA*

The tenant or a person residing in the dwelling-house has been convicted of an offence which took place during, and at the scene of, a riot in the United Kingdom.

In this Ground, “riot” is to be construed in accordance with section 1 of the Public Order Act 1986.

This Ground applies only in relation to dwelling-houses in England.”

*Supplemental*

**88 Restrictions where new possession proceedings in progress etc**

- (1) In section 138 of the Housing Act 1985 (right to buy: suspension of duty of landlord to convey freehold or grant lease) –
  - (a) in subsection (2A)(a), for “or Ground 2 possession order” there is substituted “, Ground 2 or 2ZA possession order or section 84A possession order”;
  - (b) in subsection (2B)(a), for “or an operative Ground 2 possession order” there is substituted “, an operative Ground 2 or 2ZA possession order or an operative section 84A possession order”;
  - (c) in subsection (2C), for the definition of “Ground 2 possession order” there is substituted –

““Ground 2 or 2ZA possession order” means an order for possession under Ground 2 or Ground 2ZA in Schedule 2;”;
  - (d) for the definition of “operative Ground 2 possession order” there is substituted –

““operative Ground 2 or 2ZA possession order” means an order made under Ground 2 or Ground 2ZA in Schedule 2 which requires possession of the dwelling-house to be given up on a date specified in the order;”;
  - (e) after that definition there is inserted –

““operative section 84A possession order” means an order under section 84A which requires possession of the dwelling-house to be given up on a date specified in the order;

“section 84A possession order” means an order for possession made under section 84A;”.
- (2) In Schedule 3 to that Act (grounds for withholding consent to assignment of secure tenancy by way of exchange), after ground 2 there is inserted –

*“Ground 2ZA*

Proceedings have been begun for possession of the dwelling-house, of which the tenant or the proposed assignee is the secure tenant, under section 84A (absolute ground for possession for anti-social behaviour), or there has been served on the tenant or the proposed assignee a notice under section 83B (notice requirements in relation

to proceedings for possession on absolute ground for anti-social behaviour) which is still in force.”

- (3) In Schedule 14 to the Localism Act 2011 (grounds on which landlord may refuse to surrender and grant tenancies in pursuance of a request under section 158 of that Act) –

- (a) after Ground 4 there is inserted –

*“Ground 4A*

4A (1) This ground is that either of the following conditions is met.

(2) The first condition is that –

- (a) proceedings have begun for possession of a dwelling-house let on an existing tenancy which is a secure tenancy, and  
(b) possession is sought under section 84A of the Housing Act 1985 (absolute ground for possession for anti-social behaviour).

(3) The second condition is that –

- (a) a notice has been served on a relevant tenant under section 83B of that Act (notice requirements in relation to proceedings for possession on absolute ground for anti-social behaviour), and  
(b) the notice is still in force.”;

- (b) after Ground 5 there is inserted –

*“Ground 5A*

5A (1) This ground is that either of the following conditions is met.

(2) The first condition is that –

- (a) proceedings have begun for possession of a dwelling-house let on an existing tenancy which is an assured tenancy, and  
(b) possession is sought on ground 7A in Part 1 of Schedule 2 to the Housing Act 1988 (absolute ground for possession for anti-social behaviour).

(3) The second condition is that –

- (a) a notice has been served on a relevant tenant under section 8 of that Act (notice of proceedings for possession), and  
(b) the notice specifies ground 7A and is still in force.”

## PART 6

### LOCAL INVOLVEMENT AND ACCOUNTABILITY

#### *Community remedies*

#### **89 The community remedy document**

- (1) Each local policing body must prepare a community remedy document for its area, and may revise it at any time.
- (2) A community remedy document is a list of actions any of which might, in the opinion of the local policing body, be appropriate in a particular case to be carried out by a person who –
  - (a) has engaged in anti-social behaviour or has committed an offence, and
  - (b) is to be dealt with for that behaviour or offence without court proceedings.
- (3) In preparing or revising the community remedy document for its area a local policing body must –
  - (a) consult the chief officer of police for the area,
  - (b) consult whatever community representatives the local policing body thinks it appropriate to consult, and
  - (c) undertake whatever other public consultation the local policing body thinks appropriate,and must take account of all views expressed by those consulted.
- (4) A local policing body must agree the community remedy document for its area, and any revised document, with the chief officer of police for the area.
- (5) Once the community remedy document, or a revised document, has been agreed with the chief officer of police, the local policing body must publish it in whatever way it thinks appropriate.
- (6) In this section –
  - “anti-social behaviour” means behaviour capable of causing nuisance or annoyance to any person;
  - “community representative”, in relation to a police area, means any individual or body appearing to the local policing body to represent the views of people who live in, work in or visit the area.

#### **90 Anti-social behaviour etc: out-of-court disposals**

- (1) This section applies where –
  - (a) a person (P) within subsection (2) has evidence that an individual (A) has engaged in anti-social behaviour or committed an offence,
  - (b) A admits to P that he or she has done so,
  - (c) P thinks that the evidence is enough for taking proceedings against A for an injunction under section 1, or taking other court proceedings, but decides that it would be more appropriate for A to carry out action of some sort instead, and
  - (d) where the evidence is that A has committed an offence, P thinks that the matter is not so serious that a conditional caution is appropriate.

- (2) The persons within this subsection are –
  - (a) a constable;
  - (b) an investigating officer;
  - (c) a person authorised by a relevant prosecutor for the purposes of section 22 of the Criminal Justice Act 2003 (conditional cautions) or section 66A of the Crime and Disorder Act 1998 (youth conditional cautions).
- (3) Before deciding what action to invite A to carry out, P must make reasonable efforts to obtain the views of the victim (if any) of the anti-social behaviour, and in particular the victim’s views as to whether A should carry out any of the actions listed in the community remedy document.
- (4) If the victim expresses the view that A should carry out a particular action listed in the community remedy document, P must invite A to carry out that action unless it seems to P that it would be inappropriate to do so.
- (5) Where –
  - (a) there is more than one victim and they express different views, or
  - (b) for any other reason subsection (4) does not apply,
 P must nevertheless take account of any views expressed by the victim (or victims) in deciding what action to invite A to carry out.
- (6) In this section –
  - “anti-social behaviour” means behaviour capable of causing nuisance or annoyance to any person;
  - “community remedy document” means the community remedy document (as revised from time to time) published under section 89 for the police area in which A’s anti-social behaviour took place;
  - “conditional caution” means –
    - (a) in the case of a person aged 18 or over, a conditional caution within the meaning of Part 3 of the Criminal Justice Act 2003;
    - (b) in the case of a person under that age, a youth conditional caution within the meaning of Chapter 1 of Part 4 of the Crime and Disorder Act 1998;
  - “investigating officer” and “relevant prosecutor” have the same meaning as in Part 3 of the Criminal Justice Act 2003 (see section 27 of that Act);
  - “victim”, in relation to an offence, means the particular person who seems to P to have been affected, or principally affected, by A’s anti-social behaviour.

## 91 Criminal behaviour: conditional cautions

- (1) In Part 3 of the Criminal Justice Act 2003 (conditional cautions), after section 23 there is inserted –
  - “23ZA Duty to consult victims**
  - (1) Before deciding what conditions to attach to a conditional caution, a relevant prosecutor or the authorised person must make reasonable efforts to obtain the views of the victim (if any) of the offence, and in particular the victim’s views as to whether the offender should carry out any of the actions listed in the community remedy document.
  - (2) If the victim expresses the view that the offender should carry out a particular action listed in the community remedy document, the

prosecutor or authorised person must attach that as a condition unless it seems to the prosecutor or authorised person that it would be inappropriate to do so.

- (3) Where—
  - (a) there is more than one victim and they express different views, or
  - (b) for any other reason subsection (2) does not apply,the prosecutor or authorised person must nevertheless take account of any views expressed by the victim (or victims) in deciding what conditions to attach to the conditional caution.
- (4) In this section—

“community remedy document” means the community remedy document (as revised from time to time) published under section 89 of the Anti-social Behaviour Act 2013 for the police area in which the offence was committed;

“victim” means the particular person who seems to the relevant prosecutor or authorised person to have been affected, or principally affected, by the offence.”

- (2) After section 66B of the Crime and Disorder Act 1998 (requirements for youth conditional cautions) there is inserted—

**“66BA Duty to consult victims**

- (1) Before deciding what conditions to attach to a youth conditional caution, a relevant prosecutor or the authorised person must make reasonable efforts to obtain the views of the victim (if any) of the offence, and in particular the victim’s views as to whether the offender should carry out any of the actions listed in the community remedy document.
- (2) If the victim expresses the view that the offender should carry out a particular action listed in the community remedy document, the prosecutor or authorised person must attach that as a condition unless it seems to the prosecutor or authorised person that it would be inappropriate to do so.
- (3) Where—
  - (a) there is more than one victim and they express different views, or
  - (b) for any other reason subsection (2) does not apply,the prosecutor or authorised person must nevertheless take account of any views expressed by the victim (or victims) in deciding what conditions to attach to the conditional caution.
- (4) In this section—

“community remedy document” means the community remedy document (as revised from time to time) published under section 89 of the Anti-social Behaviour Act 2013 for the police area in which the offence was committed;

“victim” means the particular person who seems to the relevant prosecutor or authorised person to have been affected, or principally affected, by the offence.”



*Response to complaints about anti-social behaviour***92 Review of response to complaints**

- (1) In a case where a person has made a complaint about anti-social behaviour in a particular local government area, the relevant bodies in that area must carry out a review of the response to that behaviour (an “ASB case review”) if—
  - (a) that person, or any other person, makes an application for such a review, and
  - (b) the relevant bodies decide that the threshold for a review is met.
- (2) The relevant bodies in each local government area must—
  - (a) make arrangements about the carrying out of ASB case reviews by those bodies (“review procedures”); and
  - (b) ensure that the current review procedures are published.
- (3) The review procedures must include provision about the making of applications for ASB case reviews; and, in particular, must—
  - (a) specify the point of contact for making applications, and
  - (b) ensure that applications made to that point of contact are passed on to all the relevant bodies in the local government area.
- (4) If a person makes an application for an ASB case review, the question whether the threshold for a review is met must be decided in accordance with the review procedures; and the procedures may, in particular, include provision for this purpose which is framed by reference to either of these matters—
  - (a) the persistence of the anti-social behaviour about which the original complaint was made;
  - (b) the adequacy of the response to that behaviour.
- (5) After the relevant bodies have decided whether or not the threshold for a review is met, they must inform the applicant of their decision.
- (6) The relevant bodies who carry out an ASB case review may make recommendations to a person who exercises public functions (including recommendations to a relevant body) in respect of any matters arising from the review; and the person must have regard to the recommendations in exercising public functions.
- (7) The relevant bodies who carry out an ASB case review must inform the applicant of—
  - (a) the outcome of the review, and
  - (b) any recommendations made in accordance with subsection (6).
- (8) As soon as practicable after the end of a reporting period, the relevant bodies in a local government area must publish information about the following matters which relates to that period—
  - (a) the number of applications for ASB case reviews made to those bodies;
  - (b) the number of times those bodies decided that the threshold for a review was not met;
  - (c) the number of ASB case reviews those bodies have carried out;
  - (d) the number of ASB case reviews carried out by those bodies that have resulted in recommendations being made.
- (9) Schedule 5 (ASB case reviews: supplementary provision) has effect.

### 93 ASB case reviews: interpretation

(1) This section applies for the purposes of section 92, this section and Schedule 5.

(2) In relation to England—

“local government area” means an area for which there is—

- (a) a relevant district council, or
- (b) a unitary authority;

“relevant district council” means the council of a district so far as it is not a unitary authority;

“unitary authority” means—

- (a) the council of a county so far as it is the council for an area for which there are no district councils,
- (b) the council of any district comprised in an area for which there is no county council,
- (c) a London borough council,
- (d) the Common Council of the City of London in its capacity as a local authority, or
- (e) the Council of the Isles of Scilly;

and, in relation to a local government area in England—

“local provider of social housing” means a private registered provider of social housing that—

- (a) grants tenancies of dwelling-houses in that area, or
- (b) manages any house or other property in that area;

“relevant bodies” means—

- (a) the relevant district council or the unitary authority,
- (b) the chief officer of police for the police area which that local government area is within,
- (c) each clinical commissioning group established under section 14V of the National Health Service Act 2006 whose area is wholly or partly within that local government area, and
- (d) any local providers of social housing who are among the relevant bodies by virtue of the co-option arrangements made in relation to that local government area.

(3) In relation to Wales—

“local government area” means—

- (a) a county, or
- (b) a county borough;

and, in relation to a local government area in Wales—

“local provider of social housing” means a body registered as a social landlord under section 3 of the Housing Act 1996 which—

- (a) grants tenancies of dwelling-houses in that area, or
- (b) manages any house or other property in that area;

“relevant bodies” means—

- (a) the council for the area,
- (b) the chief officer of police for the police area which that local government area is within,
- (c) each Local Health Board whose area is wholly or partly within that local government area, and

- (d) any local providers of social housing who are among the relevant bodies by virtue of the co-option arrangements made in relation to that local government area.
- (4) These expressions have the meanings given –
- “anti-social behaviour” means behaviour causing harassment, alarm or distress to members or any member of the public;
  - “applicant” means a person who makes an application for an ASB case review;
  - “ASB case review” has the meaning given in section 92(1);
  - “dwelling-house” has the same meaning as in the Housing Act 1985;
  - “co-option arrangements” has the meaning given in paragraph 5 of Schedule 5;
  - “reporting period”, in relation to the publication of information by the relevant bodies in a local government area, means a period, not exceeding 12 months, determined by those bodies.

## PART 7

### GENERAL

#### 94 Amendments

- (1) Schedule 6 (minor and consequential amendments) has effect.
- (2) The Secretary of State may by order make consequential amendments to provisions contained in or made under any Act.  
“Consequential amendments” here means amendments that are consequential on any provision of this Act, other than the provisions listed in subsection (3) as they apply in Wales.
- (3) The Welsh Ministers may by order make consequential amendments to provisions contained in or made under any Act or any Measure or Act of the National Assembly for Wales.  
“Consequential amendments” here means amendments that are consequential on any of the following provisions as they apply in Wales –
- (a) sections 83 to 86;
  - (b) section 88;
  - (c) paragraphs 5 to 9, 34 and 35 of Schedule 6.

#### 95 Orders and regulations

- (1) A power under this Act to make an order or regulations is exercisable by statutory instrument.
- (2) A statutory instrument containing an order under section 94(2) that amends an Act may not be made unless a draft of the instrument has been laid before both Houses of Parliament and approved by a resolution of each House.
- (3) A statutory instrument containing an order under section 94(3) that amends an Act or a Measure or Act of the National Assembly for Wales may not be made unless a draft of the instrument has been laid before and approved by a resolution of the National Assembly for Wales.
- (4) A statutory instrument containing –

- (a) an order under this Act made by the Secretary of State, other than an order within subsection (2) or an order under section 97, or
  - (b) regulations under this Act made by the Secretary of State,
- is subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) A statutory instrument containing –
    - (a) an order under this Act made by the Welsh Ministers, other than an order within subsection (3) or an order under section 97, or
    - (b) regulations under this Act made by the Welsh Ministers,is subject to annulment in pursuance of a resolution of the National Assembly for Wales.
  - (6) An order or regulations under this Act (other than an order under section 97) may make transitional, transitory, supplementary or consequential provision.

## **96 Extent**

This Act extends only to England and Wales.

## **97 Commencement**

- (1) This Act comes into force on whatever day or days the Secretary of State appoints by order.  
Different days may be appointed for different purposes or different areas.
- (2) Subsection (1) does not apply to –
  - (a) sections 95 to 98 (which accordingly come into force on the day on which this Act is passed);
  - (b) the provisions listed in subsection (3) as they apply in Wales.
- (3) The following provisions, as they apply in Wales, come into force on whatever day or days the Welsh Ministers appoint by order –
  - (a) sections 83 to 86;
  - (b) section 88;
  - (c) paragraphs 5 to 9, 34 and 35 of Schedule 6 (and section 94 so far as it relates to those paragraphs).
- (4) The Secretary of State may by order make whatever saving, transitional or transitory provision (in addition to the provision in sections 20, 30, 37, 52 and 82) the Secretary of State thinks appropriate in connection with the coming into force of any provision of this Act, other than the provisions listed in subsection (3) as they apply in Wales.
- (5) The Welsh Ministers may by order make whatever saving, transitional or transitory provision they think appropriate in connection with the coming into force in Wales of the provisions listed in subsection (3) as they apply in Wales.

## **98 Short title**

This Act may be cited as the Anti-social Behaviour Act 2013.

## SCHEDULES

## SCHEDULE 1

Section 10

## REMANDS UNDER SECTIONS 8 AND 9

*Introductory*

- 1 (1) This Schedule applies where—
  - (a) a judge has power to remand a person under section 8(5),
  - (b) a justice of the peace is required to remand a person under section 8(6), or
  - (c) a court has power to remand a person under section 9(7).
- (2) A reference in the following paragraphs of this Schedule to a judge is to be read as including a justice of the peace.

*Remand in custody or on bail*

- 2 (1) The judge or the court may remand the person—
    - (a) in custody, or
    - (b) on bail.

But a person aged under 18 may not be remanded in custody unless paragraph 6 applies.
  - (2) A reference in this Schedule to remanding a person in custody is a reference to committing the person to custody to be brought before the court at the end of the period of remand or at whatever earlier time the court may require.
  - (3) The judge or the court may remand the person on bail—
    - (a) by taking from the person a recognizance, with or without sureties, conditioned as provided in paragraph 3, or
    - (b) by fixing the amount of the recognizances with a view to their being taken subsequently and, in the meantime, committing the person to custody as mentioned in sub-paragraph (2).
  - (4) Where a person is brought before the court after remand, the court may further remand the person.
- 3 (1) Where a person is remanded on bail, the judge or the court may direct that the person's recognizance be conditioned for his or her appearance—
    - (a) before the court at the end of the period of remand, or
    - (b) at every time and place to which during the course of the proceedings the hearing may from time to time be adjourned.
  - (2) Where a recognizance is conditioned for a person's appearance as mentioned in sub-paragraph (1)(b), the fixing of a time for the person next to appear is to be treated as a remand.

- (3) Nothing in this paragraph affects the power of the court at any subsequent hearing to remand the person afresh.
- 4 (1) The judge or the court may not remand a person for a period exceeding 8 clear days unless –
- (a) paragraph 5 or 6 applies, or
  - (b) the person is remanded on bail and both that person and the person who applied for the injunction consent to a longer period.
- (2) Where the judge or the court has power to remand a person in custody, the person may be committed to the custody of a constable if the remand is for a period not exceeding 3 clear days.

*Remand for medical examination and report*

- 5 (1) This paragraph applies where –
- (a) the judge or the court has reason to think that a medical report will be needed, and
  - (b) the judge or the court remands the person in order to enable a medical examination to take place and a report to be made.
- (2) If (in the case of a person aged 18 or over) the person is remanded in custody, the adjournment may not be for more than 3 weeks at a time.
- (3) If the person is remanded on bail, the adjournment may not be for more than 4 weeks at a time.
- 6 (1) If the judge or the court –
- (a) is satisfied, on the written or oral evidence of a registered medical practitioner, that there is reason to suspect that the person is suffering from mental disorder, and
  - (b) is of the opinion that it would be impracticable for a report on the person’s mental condition to be made if he or she were remanded on bail,
- the judge or the court may remand the person to a hospital or registered establishment specified by the judge or the court for such a report to be made.
- (2) In sub-paragraph (1) –
- “hospital” has the meaning given by section 145(1) of the Mental Health Act 1983;
  - “mental disorder” has the meaning given by section 1 of that Act (reading subsection (2B) of that section as if it included a reference to sub-paragraph (1) above);
  - “registered establishment” has the meaning given by 34(1) of that Act.
- (3) Subsections (4) to (10) of section 35 of the Mental Health Act 1983 apply for the purposes of sub-paragraph (1) with any necessary modifications (in particular, with references to the accused person being read as references to the person mentioned in that sub-paragraph, and references to the court being read as references to the judge or the court).

*Further remand*

- 7 (1) If the court is satisfied that a person who has been remanded is unable by reason of illness or accident to appear or be brought before the court at the

end of the period of remand, the court may further remand the person in his or her absence.

- (2) The power in sub-paragraph (1) may, in the case of a person who was remanded on bail, be exercised by enlarging the person's recognizance and those of any sureties for the person to a later time.
- (3) Where a person remanded on bail is bound to appear before the court at any time and the court has no power to remand the person under sub-paragraph (1), the court may (in the person's absence) enlarge the person's recognizance and those of any sureties for the person to a later time.
- (4) The enlargement of the person's recognizance is to be treated as a further remand.
- (5) Paragraph 4(1) (limit of remand) does not apply to the exercise of the powers conferred by this paragraph.

*Postponement of taking recognizance*

- 8 Where under paragraph 2(3)(b) the court fixes the amount in which the principal and the sureties, if any, are to be bound, the recognizance may afterwards be taken by a person prescribed by rules of court, with the same consequences as if it had been entered into before the court.

*Requirements imposed on remand on bail*

- 9 The court may when remanding a person on bail under this Schedule require the person to comply, before release on bail or later, with any requirements that appear to the court to be necessary to secure that the person does not interfere with witnesses or otherwise obstruct the course of justice.

SCHEDULE 2

Section 11

BREACH OF INJUNCTIONS: POWERS OF COURT IN RESPECT OF UNDER-18S

PART 1

INTRODUCTORY

*Power to make supervision order or detention order*

- 1 (1) A youth court, if satisfied beyond reasonable doubt that a person aged under 18 is in breach of a provision of an injunction under section 1 to which he or she is subject, may make in respect of the person –
  - (a) a supervision order (see Part 2 of this Schedule), or
  - (b) a detention order (see Part 3 of this Schedule).
- (2) An order under sub-paragraph (1) may be made only on the application of the person who applied for the injunction.  
That person is referred to in this Schedule as “the original applicant”.
- (3) A person making an application for an order under sub-paragraph (1) must before doing so –

- (a) consult any youth offending team specified under section 2(1) or, if a youth offending team is not specified under that subsection, the local youth offending team within the meaning of section 14;
  - (b) inform any other body or individual the applicant thinks appropriate.
- (4) In considering whether and how to exercise its powers under this paragraph, the court must consider any representations made by the youth offending team referred to in sub-paragraph (3)(a).
- (5) A detention order may not be made under sub-paragraph (1) in respect of a person aged under 14.
- (6) The court may not make a detention order under sub-paragraph (1) unless it is satisfied that, in view of the severity or extent of the breach, no other power available to the court is appropriate.  
If the court makes a detention order it must state in open court why it is satisfied that that is the case.

## PART 2

### SUPERVISION ORDERS

#### *Supervision orders*

- 2 (1) A supervision order is an order imposing on the person in respect of whom it is made (“the defaulter”) one or more of the following requirements –
- (a) a supervision requirement (see paragraph 3);
  - (b) an activity requirement (see paragraph 4);
  - (c) a curfew requirement (see paragraph 5).
- (2) Before making a supervision order the court must obtain and consider information about the defaulter’s family circumstances and the likely effect of a supervision order on those circumstances.
- (3) Before making a supervision order imposing two or more requirements, the court must consider their compatibility with each other.
- (4) The court must ensure, as far as practicable, that requirements imposed by a supervision order are such as to avoid –
- (a) any conflict with the defaulter’s religious beliefs;
  - (b) any interference with the times, if any, at which the defaulter normally works or attends school or any other educational establishment;
  - (c) any conflict with the requirements of any other court order or injunction to which the defaulter may be subject.
- (5) A supervision order must for the purposes of this Schedule specify a maximum period for the operation of any requirement contained in the order.
- (6) The period specified under sub-paragraph (5) may not exceed 6 months (not counting the day on which the order is made).
- (7) A supervision order must for the purposes of this Schedule specify –



- (a) the youth offending team in whose area it appears to the court that the respondent will live during the period specified under sub-paragraph (5), or
- (b) if it appears to the court that the defaulter will live in more than one such area, whichever of the relevant youth offending teams the court decides.

#### *Supervision requirements*

- 3 (1) In this Schedule “supervision requirement”, in relation to a supervision order, means a requirement that the defaulter attend appointments with—
- (a) the responsible officer (see paragraph 7), or
  - (b) another person decided by the responsible officer,
- at whatever times and places the responsible officer instructs.
- (2) The appointments must be within the period for the time being specified in the order under paragraph 2(5).

#### *Activity requirements*

- 4 (1) In this Schedule “activity requirement”, in relation to a supervision order, means a requirement that the defaulter do any or all of the following within the period for the time being specified in the order under paragraph 2(5)—
- (a) participate, on however many days are specified in the order, in activities at a place or places specified in it;
  - (b) participate in an activity or activities specified in the order on however many days are specified in it;
  - (c) participate in one or more residential exercises for a continuous period or periods comprising however many days are specified in the order;
  - (d) in accordance with sub-paragraphs (8) to (10), engage in activities in accordance with instructions of the responsible officer on however many days are specified in the order.
- (2) The aggregate number of days specified in a supervision order in relation to an activity requirement must not be less than 12 or more than 24.
- (3) A requirement referred to in sub-paragraph (1)(a) operates to require the defaulter, in accordance with instructions given by the responsible officer, on the number of days specified in the order in relation to the requirement—
- (a) to present himself or herself at a place specified in the order to a person of a description specified in it;
  - (b) on each day, to comply with instructions given by, or under the authority of, the person in charge of the place.
- (4) A requirement referred to in sub-paragraph (1)(b) operates to require the defaulter, in accordance with instructions given by the responsible officer, on the number of days specified in the order in relation to the requirement—
- (a) to participate in an activity specified in the order;
  - (b) on each day, to comply with instructions given by, or under the authority of, the person in charge of the activity.
- (5) Where the order includes a requirement referred to in sub-paragraph (1)(c) to participate in a residential exercise, it must specify either—
- (a) a place, or

- (b) an activity,  
in relation to the exercise.
- (6) A requirement under sub-paragraph (1)(c) to participate in a residential exercise in relation to which a place is specified under sub-paragraph (5) operates to require the defaulter, in accordance with instructions given by the responsible officer –
  - (a) to present himself or herself at the beginning of the period specified in the order in relation to the exercise, at the place specified in it, to a person of a description specified in the instructions;
  - (b) to live there for that period;
  - (c) during that period to comply with instructions given by, or under the authority of, the person in charge of the place.
- (7) A requirement under sub-paragraph (1)(c) to participate in a residential exercise in relation to which an activity is specified under sub-paragraph (5) operates to require the defaulter, in accordance with instructions given by the responsible officer –
  - (a) to participate, for the period specified in the order in relation to the exercise, in the activity specified in it;
  - (b) during that period to comply with instructions given by, or under the authority of, the person in charge of the activity.
- (8) Subject to sub-paragraph (9), instructions under sub-paragraph (1)(d) relating to any particular day must require the defaulter to do either of the following –
  - (a) to present himself or herself to a person of a description specified in the instructions at a place specified in them;
  - (b) to participate in an activity specified in the instructions.

The instructions operate to require the defaulter, on that day or while participating in that activity, to comply with instructions given by, or under the authority of, the person in charge of the place or activity.
- (9) If the supervision order so provides, instructions under sub-paragraph (1)(d) may require the defaulter to participate in a residential exercise for a period comprising not more than seven days, and for that purpose –
  - (a) to present himself or herself at the beginning of that period to a person of a description specified in the instructions at a place specified in them, and to live there for that period, or
  - (b) to participate for that period in an activity specified in the instructions.
- (10) Instructions of the kind mentioned in sub-paragraph (9) –
  - (a) may not be given except with the consent of a parent or guardian of the defaulter;
  - (b) operate to require the defaulter, during the period specified under that sub-paragraph, to comply with instructions given by, or under the authority of, the person in charge of the place or activity specified under paragraph (a) or (b) of that sub-paragraph.
- (11) Instructions given by, or under the authority of, a person in charge of a place under sub-paragraph (3)(b), (6)(c), (8) or (10)(b) may require the defaulter to engage in activities otherwise than at that place.

- (12) Where a supervision order contains an activity requirement, the court may, on the application of the original applicant or the defaulter, amend the order by substituting for a number of days, place, activity, period or description of persons specified in the order a new number of days, place, activity, period or description (subject, in the case of a number of days, to sub-paragraph (2)).
- (13) A court may include an activity requirement in a supervision order or vary an activity requirement under sub-paragraph (12) only if –
- (a) it has consulted the youth offending team that is to be, or is, specified in the order,
  - (b) it is satisfied that it is feasible to secure compliance with the requirement, or the requirement as varied,
  - (c) it is satisfied that provision for the defaulter to participate in the activities proposed can be made under the arrangements for persons to participate in those activities which exist in the area of the youth offending team that is to be, or is, specified in the order, and
  - (d) in a case where the requirement, or the requirement as varied, would involve the co-operation of a person other than the defaulter and the responsible officer, that person consents to its inclusion or variation.
- (14) In sub-paragraph (10) “guardian” has the same meaning as in the Children and Young Persons Act 1933.  
 But where a local authority has parental responsibility (within the meaning given by section 3 of the Children Act 1989) for a defaulter who –
- (a) is in the authority’s care, or
  - (b) is provided with accommodation by the authority in the exercise of social services functions (within the meaning given by section 1A of the Local Authority Social Services Act 1970),
- the reference to “guardian” in sub-paragraph (10) is to be read as a reference to that authority.

#### *Curfew requirements*

- 5 (1) In this Schedule “curfew requirement”, in relation to a supervision order, means a requirement that the defaulter remain at a place specified in the order for the periods specified in it.
- (2) A supervision order imposing a curfew requirement may specify different places or different periods for different days.
- (3) The periods specified under sub-paragraph (1) –
- (a) must be within the period for the time being specified in the order under paragraph 2(5);
  - (b) may not amount to less than 2 or more than 8 hours in any day.
- (4) Before specifying a place under sub-paragraph (1), the court making the order must obtain and consider information about the place proposed to be specified (including information as to the attitude of persons likely to be affected by the enforced presence there of the defaulter).
- (5) Where a supervision order contains a curfew requirement, the court may, on the application of the original applicant or the defaulter, amend the order by –

- (a) substituting new periods for the periods specified in the order under this paragraph (subject to sub-paragraph (3));
- (b) substituting a new place for the place specified in the order under this paragraph (subject to sub-paragraph (4)).

*Electronic monitoring requirements*

- 6 (1) A supervision order containing a curfew requirement may also contain a requirement (an “electronic monitoring requirement”) for securing the electronic monitoring of compliance with the curfew requirement during a period –
- (a) specified in the order, or
  - (b) determined by the responsible officer in accordance with the order.
- (2) In the case referred to in sub-paragraph (1)(b), the responsible officer must, before the beginning of the period when the electronic monitoring requirement is to take effect, notify –
- (a) the defaulter,
  - (b) the person responsible for the monitoring, and
  - (c) any person within sub-paragraph (3)(b),
- of the time when that period is to begin.
- (3) Where –
- (a) it is proposed to include an electronic monitoring requirement in a supervision order, but
  - (b) there is a person (other than the defaulter) without whose co-operation it will not be practicable to secure that the monitoring takes place,
- the requirement may not be included in the order without that person’s consent.
- (4) A supervision order imposing an electronic monitoring requirement must include provision for making a person responsible for the monitoring. The person must be of a description specified in an order under paragraph 26(5) of Schedule 1 to the Criminal Justice and Immigration Act 2008.
- (5) An electronic monitoring requirement may not be included in a supervision order unless the court making the order –
- (a) has been notified by the youth offending team for the time being specified in the order that arrangements for electronic monitoring are available in the area that includes the place the court proposes to specify in the order for the purposes of the curfew requirement, and
  - (b) is satisfied that the necessary provision can be made under the arrangements currently available.
- (6) Where a supervision order contains an electronic monitoring requirement, the court may, on the application of the original applicant or the defaulter, amend the order by substituting a new period for the period specified in the order under this paragraph.
- (7) Sub-paragraph (3) applies in relation to the variation of an electronic monitoring requirement under sub-paragraph (6) as it applies in relation to the inclusion of a requirement.

*“Responsible officer”*

- 7 (1) For the purposes of this Part of this Schedule, the “responsible officer”, in relation to a supervision order, means –
- (a) in a case where the order imposes a curfew requirement and an electronic monitoring requirement, but does not impose an activity or supervision requirement, the person who under paragraph 6(4) is responsible for the electronic monitoring;
  - (b) in any other case, the member of the youth offending team for the time being specified in the order who is for the time being responsible for discharging the functions conferred by this Schedule on the responsible officer.
- (2) Where a supervision order has been made, it is the duty of the responsible officer –
- (a) to make any arrangements that are necessary in connection with the requirements contained in the order;
  - (b) to promote the defaulter’s compliance with those requirements.
- (3) The responsible officer must ensure, so far as practicable, that any instructions given by the officer under a supervision order are such as to avoid the things referred to in paragraph 2(4).
- (4) A defaulter in respect of whom a supervision order is made must –
- (a) keep in touch with the responsible officer, in accordance with any instructions given by the responsible officer from time to time;
  - (b) notify the responsible officer of any change of address.
- These obligations have effect as requirements of the order.

*Amendment of operative period*

- 8 (1) The court may, on the application of the original applicant, amend a supervision order by substituting a new period for the one specified in the order for the time being under paragraph 2(5) (subject to paragraph 2(6)).
- (2) A court amending a supervision order under sub-paragraph (1) may make whatever other amendments to the order the court considers appropriate in relation to a requirement imposed by the order.

*Amendment on change of area of residence*

- 9 (1) This paragraph applies where, on an application made in relation to a supervision order by the original applicant or the defaulter, the court is satisfied that the defaulter proposes to live, or is living, in the area of a youth offending team other than the team for the time being specified in the order.
- (2) If the application is made by the defaulter, the court may amend the order by substituting for the youth offending team specified in the order the youth offending team for the area referred to in sub-paragraph (1) (or, if there is more than one youth offending team for that area, whichever of them the court decides).
- (3) If the application is made by the original applicant, the court must amend the order in the way mentioned in sub-paragraph (2) (subject to sub-paragraph (5)).

- (4) Where a court amends the supervision order under sub-paragraph (2) or (3) but the order contains a requirement that, in the opinion of the court, cannot reasonably be complied with if the defaulter lives in the area referred to in sub-paragraph (1), the court must also amend the order by –
  - (a) removing that requirement, or
  - (b) substituting for that requirement a new requirement that can reasonably be complied with if the defaulter lives in that area.
- (5) Sub-paragraph (3) does not require a court to amend the supervision order if in its opinion sub-paragraph (4) would produce an inappropriate result.
- (6) The original applicant must consult the youth offending team for the time being specified in the order before making an application under sub-paragraph (1).

*Revocation of supervision order*

- 10 (1) The original applicant or the defaulter may apply to a youth court –
  - (a) to revoke a supervision order;
  - (b) to amend a supervision order by removing a requirement from it.
- (2) If it appears to the court to be in the interests of justice to do so, having regard to circumstances that have arisen since the supervision order was made, the court may grant an application under sub-paragraph (1) and revoke or amend the order accordingly.
- (3) The circumstances referred to in sub-paragraph (2) include the conduct of the defaulter.
- (4) If an application under this paragraph is dismissed, the party by which the dismissed application was made may make no further application under this paragraph without –
  - (a) the consent of the court, or
  - (b) the agreement of the other party.
- (5) The original applicant must consult the youth offending team for the time being specified in the supervision order before making an application under sub-paragraph (1).

*Compliance with supervision order*

- 11 If the responsible officer considers that the defaulter has complied with all the requirements of the supervision order, the officer must inform the original applicant.

*Non-compliance with supervision order*

- 12 (1) If the responsible officer considers that the defaulter has failed to comply with a requirement of the supervision order, the officer must inform the original applicant.
- (2) On being informed under sub-paragraph (1) the original applicant may apply to a youth court.
- (3) Before making an application under sub-paragraph (2) the original applicant must –

- (a) consult the youth offending team for the time being specified in the order;
  - (b) inform any other body or individual the original applicant thinks appropriate.
- (4) If on an application under sub-paragraph (2) the court is satisfied beyond reasonable doubt that the defaulter has without reasonable excuse failed to comply with a requirement of the supervision order, the court may –
- (a) revoke the supervision order and make a new one;
  - (b) revoke the order and make a detention order (see Part 3 of this Schedule).
- (5) The powers in sub-paragraph (4) –
- (a) may not be exercised after the defaulter reaches the age of 18;
  - (b) are in addition to any other power of the court in relation to the breach of the supervision order.
- (6) The court must consider any representations made by the youth offending team for the time being specified in the order before exercising its powers under this paragraph.

*Copies of supervision order etc*

- 13 (1) A court that makes a supervision order must straight away provide a copy of the order to –
- (a) the defaulter;
  - (b) the youth offending team for the time being specified in the order.
- (2) Where a supervision order is made, the original applicant must straight away provide a copy of so much of the order as is relevant –
- (a) in a case where the order includes an activity requirement specifying a place under paragraph 4(1)(a), to the person in charge of that place;
  - (b) in a case where the order includes an activity requirement specifying an activity under paragraph 4(1)(b), to the person in charge of that activity;
  - (c) in a case where the order includes an activity requirement specifying a residential exercise under paragraph 4(1)(c), to the person in charge of the place or activity specified under paragraph 4(5) in relation to that residential exercise;
  - (d) in a case where the order contains an electronic monitoring requirement, to –
    - (i) any person who by virtue of paragraph 6(4) will be responsible for the electronic monitoring, and
    - (ii) any person without whose consent that requirement could not have been included in the order.
- (3) A court that revokes or amends a supervision order must straight away provide a copy of the revoking order, or of the order as amended, to –
- (a) the defaulter;
  - (b) the youth offending team for the time being specified in the order.
- (4) Where –

- (a) a copy of a supervision order (or part of a supervision order) has been given to a person under sub-paragraph (2) by virtue of a requirement contained in the order, and
- (b) the order is revoked, or amended in respect of that requirement, the original applicant must straight away give a copy of the revoking order, or of so much of the order as amended as is relevant, to that person.

### PART 3

#### DETENTION ORDERS

##### *Detention orders*

- 14 (1) A detention order is an order that the person in respect of whom it is made (“the defaulter”) be detained for a period specified in the order in whatever youth detention accommodation the Secretary of State decides.
- (2) The period specified under sub-paragraph (1) may not exceed the period of 3 months (not counting the day on which the order is made).
- (3) In sub-paragraph (1) “youth detention accommodation” means –
- (a) a secure training centre;
  - (b) a young offender institution;
  - (c) secure accommodation, as defined by section 23(12) of the Children and Young Persons Act 1969.
- (4) The function of the Secretary of State under sub-paragraph (1) is exercisable concurrently with the Youth Justice Board.
- (5) A person detained under a detention order is in legal custody.

##### *Revocation of detention order*

- 15 (1) Where a detention order is made, the original applicant or the defaulter may apply to a youth court to revoke it.
- (2) If it appears to the court to be in the interests of justice to do so, having regard to circumstances that have arisen since the detention order was made, the court may grant an application under sub-paragraph (1) and revoke the order accordingly.
- (3) The circumstances referred to in sub-paragraph (2) include the conduct of the defaulter.
- (4) If an application under this paragraph is dismissed, the party by which the dismissed application was made may make no further application under this paragraph without –
- (a) the consent of the court, or
  - (b) the agreement of the other party.
- (5) A person making an application under this paragraph in relation to a detention order made under paragraph 1 must before doing so consult any youth offending team specified in the injunction under section 2(1) or, if none is specified, the local youth offending team within the meaning of section 14.



- (6) A person making an application under this paragraph in relation to a detention order made under paragraph 12(4)(b) must before doing so consult the youth offending team for the time being specified in the relevant supervision order.

### SCHEDULE 3

Section 25(7)

#### APPROVAL OF COURSES AND CERTIFICATES OF COMPLETION

##### *Approval of courses*

- 1 (1) An application for the approval of a course for the purposes of section 25 may be made to the local authority in whose area the course is to be provided or primarily provided.
- (2) An application to a local authority under this paragraph must be made in whatever form the authority may determine.
- (3) A local authority that receives an application under this paragraph must decide whether to approve the course.
- (4) In reaching a decision as to whether to approve a course for the purposes of section 25 a local authority must have regard to—
  - (a) the aims of the course and its likely effectiveness in preventing persons engaging in behaviour of the sort mentioned in section 21(3),
  - (b) whether the person providing the course is an appropriate person both to provide it and efficiently and effectively to administer its provision,
  - (c) the likelihood that places will be available on the course for persons who are the subject of criminal behaviour orders, and
  - (d) whether the course is good value for money.
- (5) If a local authority decides to approve a course for the purposes of section 25—
  - (a) the approval must be for a period specified by the authority (which must not exceed 7 years),
  - (b) the approval may be withdrawn by the authority at any time, and
  - (c) the approval may be subject to conditions specified by the authority (including conditions for enabling the authority to monitor the course and the person providing it).
- (6) A local authority may charge fees in respect of applications for the approval of a course and the giving of approvals.
- (7) A local authority must comply with any general directions given by the Secretary of State as to—
  - (a) the exercise of its functions under this paragraph;
  - (b) the publication of information about courses approved by it.
- (8) In this paragraph “local authority” means—
  - (a) in relation to England, a county council, a district council for an area for which there is no county council, a London borough council, the Common Council of the City of London or the Council of the Isles of Scilly;

- (b) in relation to Wales, a county council or a county borough council.

*Certificates of completion of approved courses*

- 2 (1) This paragraph applies where a criminal behaviour order includes provision under subsection (1) of section 25.
- (2) For the purposes of that section –
- (a) the offender is to be regarded as having satisfactorily completed the approved course specified in the order if, and only if, the person providing the course has given a certificate (a “certificate of completion”) that the offender has done so;
  - (b) the time at which the offender is to be regarded as having satisfactorily completed the course is the time when the certificate of completion is received by the proper officer of the court that made the order.
- (3) The person providing the approved course specified in the order must give the offender a certificate of completion unless the offender –
- (a) has failed to make due payment of fees for the course,
  - (b) has failed to attend the course in accordance with the reasonable instructions of the person providing it, or
  - (c) has failed to comply with any other reasonable requirement of that person.
- (4) If the person providing the approved course specified in the order decides not to give the offender a certificate of completion, the person must give the offender notice of the decision setting out the grounds of the decision.
- (5) The obligation of the person providing the approved course specified in the order to give either –
- (a) a certificate of completion, or
  - (b) a notice under sub-paragraph (4),
- must be discharged before the end of the period of 14 days beginning with the day on which any request to do so is made by the offender.
- (6) If the offender is given a notice under sub-paragraph (4) or claims that a request for the purposes of sub-paragraph (5) has not been complied with the offender may, within whatever period may be prescribed by rules of court, apply –
- (a) to the court which made the order, or
  - (b) if that court is not the Crown Court or a relevant local court, to either the court which made the order or a relevant local court,
- for a declaration that there has been a contravention of sub-paragraph (3).
- (7) If the court grants the application, the offender is to be treated for the purposes of section 25 as having satisfactorily completed the course at the time of the making of the declaration.
- (8) In this paragraph “relevant local court”, in relation to an offender, means a magistrates’ court acting for the local justice area in which the offender normally lives.

SCHEDULE 4

Section 83(2)

SCHEDULE TO BE INSERTED AS SCHEDULE 2A TO THE HOUSING ACT 1985

“SCHEDULE 2A

ABSOLUTE GROUNDS FOR POSSESSION FOR ANTI-SOCIAL BEHAVIOUR: SERIOUS OFFENCES

*Violent offences*

- 1 Murder.
- 2 Manslaughter.
- 3 Kidnapping.
- 4 False imprisonment.
- 5 An offence under any of the following sections of the Offences against the Person Act 1861 –
  - (a) section 4 (soliciting murder),
  - (b) section 16 (threats to kill),
  - (c) section 18 (wounding with intent to cause grievous bodily harm),
  - (d) section 20 (malicious wounding),
  - (e) section 21 (attempting to choke, suffocate or strangle in order to commit or assist in committing an indictable offence),
  - (f) section 22 (using chloroform etc. to commit or assist in the committing of any indictable offence),
  - (g) section 23 (maliciously administering poison etc. so as to endanger life or inflict grievous bodily harm),
  - (h) section 24 (maliciously administering poison etc. with intent to injure, aggrieve or annoy any other person),
  - (i) section 27 (abandoning or exposing children whereby life is endangered or health permanently injured),
  - (j) section 28 (causing bodily injury by explosives),
  - (k) section 29 (using explosives etc. with intent to do grievous bodily harm),
  - (l) section 30 (placing explosives with intent to do bodily injury),
  - (m) section 31 (setting spring guns etc. with intent to do grievous bodily harm),
  - (n) section 38 (assault with intent to resist arrest),
  - (o) section 47 (assault occasioning actual bodily harm).
- 6 An offence under any of the following sections of the Explosive Substances Act 1883 –
  - (a) section 2 (causing explosion likely to endanger life or property),
  - (b) section 3 (attempt to cause explosion, or making or keeping explosive with intent to endanger life or property),
  - (c) section 4 (making or possession of explosive under suspicious circumstances).
- 7 An offence under section 1 of the Infant Life (Preservation) Act 1929 (child destruction).

- 8 An offence under section 1 of the Children and Young Persons Act 1933 (cruelty to children).
- 9 An offence under section 1 of the Infanticide Act 1938 (infanticide).
- 10 An offence under any of the following sections of the Public Order Act 1986—
- (a) section 1 (riot),
  - (b) section 2 (violent disorder),
  - (c) section 3 (affray).
- 11 An offence under either of the following sections of the Protection from Harassment Act 1997—
- (a) section 4 (putting people in fear of violence),
  - (b) section 4A (stalking involving fear of violence or serious alarm or distress).
- 12 An offence under any of the following provisions of the Crime and Disorder Act 1998—
- (a) section 29 (racially or religiously aggravated assaults),
  - (b) section 31(1)(a) or (b) (racially or religiously aggravated offences under section 4 or 4A of the Public Order Act 1986),
  - (c) section 32 (racially or religiously aggravated harassment etc.).
- 13 An offence under either of the following sections of the Female Genital Mutilation Act 2003—
- (a) section 1 (female genital mutilation),
  - (b) section 2 (assisting a girl to mutilate her own genitalia).
- 14 An offence under section 5 of the Domestic Violence, Crime and Victims Act 2004 (causing or allowing the death of a child or vulnerable adult).

*Sexual offences*

- 15 An offence under section 33A of the Sexual Offences Act 1956 (keeping a brothel used for prostitution).
- 16 An offence under section 1 of the Protection of Children Act 1978 (indecent photographs of children).
- 17 An offence under section 160 of the Criminal Justice Act 1988 (possession of indecent photograph of a child).
- 18 An indictable offence under Part 1 of the Sexual Offences Act 2003 (sexual offences).

*Offensive weapons*

- 19 An offence under either of the following sections of the Prevention of Crime Act 1953—
- (a) section 1 (prohibition of the carrying of offensive weapons without lawful authority or reasonable excuse),
  - (b) section 1A (threatening with offensive weapon in public).
- 20 An offence under any of the following provisions of the Firearms Act 1968—
- (a) section 16 (possession of firearm with intent to endanger life),

- (b) section 16A (possession of firearm with intent to cause fear of violence),
  - (c) section 17(1) (use of firearm to resist arrest),
  - (d) section 17(2) (possession of firearm at time of committing or being arrested for offence specified in Schedule 1 to the Act of 1968),
  - (e) section 18 (carrying a firearm with criminal intent),
  - (f) section 19 (carrying a firearm in a public place),
  - (g) section 20 (trespassing with firearm),
  - (h) section 21 (possession of firearms by persons previously convicted of crime).
- 21 An offence under either of the following sections of the Criminal Justice Act 1988 –
- (a) section 139 (having article with blade or point in public place),
  - (b) section 139AA (threatening with article with blade or point or offensive weapon).

*Offences against property*

- 22 An offence under any of the following sections of the Theft Act 1968 –
- (a) section 8 (robbery or assault with intent to rob),
  - (b) section 9 (burglary),
  - (c) section 10 (aggravated burglary).
- 23 An offence under section 1 of the Criminal Damage Act 1971 (destroying or damaging property).
- 24 An offence under section 30 of the Crime and Disorder Act 1998 (racially or religiously aggravated criminal damage).

*Road traffic offences*

- 25 Section 35 of the Offences against the Person Act 1861 (injuring persons by furious driving).
- 26 Section 12A of the Theft Act 1968 (aggravated vehicle-taking involving an accident which caused the death of any person).
- 27 An offence under any of the following sections of the Road Traffic Act 1988 –
- (a) section 1 (causing death by dangerous driving),
  - (b) section 1A (causing serious injury by dangerous driving),
  - (c) section 3A (causing death by careless driving when under influence of drink or drugs).

*Drug-related offences*

- 28 An offence under any of the following provisions of the Misuse of Drugs Act 1971 –
- (a) section 4 (restriction of production and supply of controlled drugs),
  - (b) section 5(3) (possession of controlled drugs with intent to supply),
  - (c) section 8(a) or (b) (occupiers etc. of premises to be punishable for permitting unlawful production or supply etc. of controlled drugs there).

- 29 An offence under section 6 of that Act (restrictions of cultivation of cannabis plant) where the cultivation is for profit and the whole or a substantial part of the dwelling-house concerned is used for the cultivation.

*Inchoate offences*

- 30 (1) An offence of attempting or conspiring the commission of an offence specified or described in this Schedule.
- (2) An offence under Part 2 of the Serious Crime Act 2007 (encouraging or assisting) where the offence (or one of the offences) which the person in question intends or believes would be committed is an offence specified or described in this Schedule.
- (3) An offence of aiding, abetting, counselling or procuring the commission of an offence specified or described in this Schedule.

*Scope of offences*

- 31 Where this Schedule refers to offences which are offences under the law of England and Wales and another country or territory, the reference is to be read as limited to the offences so far as they are offences under the law of England and Wales.”

## SCHEDULE 5

Section 92

## ASB CASE REVIEWS: SUPPLEMENTARY PROVISION

## PART 1

## MAKING AND REVISING REVIEW PROCEDURES ETC

*Consultation: local policing bodies*

- 1 (1) In making and revising the review procedures, the relevant bodies in a local government area must consult the local policing body for the relevant police area.
- (2) The “relevant police area” is the police area which consists of, or includes, the local government area.

*Consultation: local providers of social housing*

- 2 In making and revising the review procedures, the relevant bodies in a local government area must consult such local providers of social housing as they consider appropriate.

*Dissatisfaction with ASB case reviews*

- 3 The review procedures must include provision about what is to happen where an applicant is dissatisfied with the way in which the relevant bodies have—
- (a) dealt with an application for an ASB case review, or
- (b) carried out an ASB case review.

*Assessment and revision of review procedures*

- 4 The review procedures must include provision about—
- (a) the assessment of the effectiveness of those procedures, and
  - (b) the revision of those procedures.

PART 2

INCLUSION OF LOCAL PROVIDERS OF SOCIAL HOUSING AMONG RELEVANT BODIES

*Co-option arrangements*

- 5 (1) The responsible authorities in a local government area must make arrangements (“co-option arrangements”) for the inclusion of local providers of social housing among the relevant bodies in that area.
- (2) In this paragraph “responsible authorities” means—
- (a) in relation to a local government area in England—
    - (i) the relevant district council or the unitary authority,
    - (ii) the chief officer of police for the police area which that local government area is within, and
    - (iii) each clinical commissioning group established under section 14V of the National Health Service Act 2006 whose area is wholly or partly within that local government area;
  - (b) in relation to a local government area in Wales—
    - (i) the council for the area,
    - (ii) the chief officer of police for the police area which that local government area is within, and
    - (iii) each Local Health Board whose area is wholly or partly within that local government area.

PART 3

ASB CASE REVIEWS

*Consultation and co-operation: local providers of social housing*

- 6 (1) The relevant bodies in a local government area must consult such local providers of social housing as they consider appropriate in carrying out ASB case reviews.
- (2) The local providers of social housing must co-operate with the relevant bodies in the local government area in such matters specified by the relevant bodies which concern ASB case reviews.

*Information*

- 7 (1) The relevant bodies in a local government area may request any person to disclose information for a purpose connected with the carrying out of an ASB case review.
- (2) If such a request is made to a person that exercises public functions, and that person possesses the requested information in connection with the exercise

of such functions, the person must (subject to sub-paragraph (4)) comply with the request.

- (3) If such a request is made to a person who is not required by sub-paragraph (2) to disclose the requested information, the person may (subject to sub-paragraph (4)) comply with the request.
- (4) This paragraph does not require or authorise –
  - (a) a disclosure, in contravention of any provisions of the Data Protection Act 1998, of personal data which are not exempt from those provisions, or
  - (b) a disclosure which is prohibited by Part 1 of the Regulation of Investigatory Powers Act 2000.
- (5) Subject to that, a disclosure under this paragraph does not breach –
  - (a) any obligation of confidence owed by the person making the disclosure, or
  - (b) any other restriction on the disclosure of information (however imposed).

#### PART 4

#### GENERAL

##### *Joint review procedures or co-option arrangements*

- 8 (1) The relevant bodies in two or more local government areas –
  - (a) may jointly make review procedures applicable to those areas;
  - (b) must secure that such jointly-made review procedures are in place if co-option arrangements applicable to those areas have been jointly made under sub-paragraph (2).
- (2) The responsible authorities in two or more local government areas –
  - (a) may jointly make co-option arrangements applicable to those areas;
  - (b) must secure that such jointly-made co-option arrangements are in place if review procedures applicable to those areas have been jointly made under sub-paragraph (1).
- (3) In a case where review procedures or co-option arrangements are made jointly in accordance with this paragraph, a reference to any of the following in section 92, section 93 or this Schedule is to be read accordingly –
  - (a) the relevant bodies (in the case of review procedures) or the responsible authorities (in the case of co-option arrangements);
  - (b) the local government area or the relevant police area (in either case).

##### *Different review procedures or co-option arrangements for different parts of an area etc*

- 9 (1) Review procedures may make different provision in relation to different parts of a local government area.
- (2) Review procedures or co-option arrangements made jointly in accordance with paragraph 8 may make different provision in relation to –
  - (a) different local government areas to which the procedures or arrangements are applicable, or
  - (b) different parts of such areas.



SCHEDULE 6

Section 94

MINOR AND CONSEQUENTIAL AMENDMENTS

PART 1

AMENDMENTS

*Magistrates' Courts Act 1980 (c. 43)*

- 1 In section 143(2) of the Magistrates' Courts Act 1980 (provisions in which sums may be altered) paragraph (da) is repealed.

*Highways Act 1980 (c. 66)*

- 2 Sections 129A to 129G of the Highways Act 1980 (restriction of rights over highway) are repealed.

*Police and Criminal Evidence Act 1984 (c. 60)*

- 3 In section 64A of the Police and Criminal Evidence Act 1984 (photographing of suspects etc), for paragraph (ca) of subsection (1B) there is substituted –  
 “(ca) given a direction by a constable under section 31 of the Anti-social Behaviour Act 2013.”

*Prosecution of Offences Act 1985 (c. 23)*

- 4 (1) In section 3 of the Prosecution of Offences Act 1985 (functions of DPP), subsection (2) is amended as follows.
- (2) In paragraph (fa), for the words from “section 1C” to “proceedings)” there is substituted “section 21 of the Anti-social Behaviour Act 2013 (criminal behaviour orders made on conviction)”.
- (3) In paragraph (fb) –  
 (a) for “section 1CA(3) of the Crime and Disorder Act 1998” there is substituted “section 27 of the Anti-social Behaviour Act 2013”;  
 (b) for “section 1C” there is substituted “section 21”.
- (4) In paragraph (fc) –  
 (a) for “section 1CA” there is substituted “section 27”;  
 (b) for “section 1C” there is substituted “section 21”.
- (5) Paragraphs (fd) and (fe) are omitted.

*Housing Act 1985 (c. 68)*

- 5 In section 83 of the Housing Act 1985 (proceedings for possession or termination: notice requirements) –  
 (a) in the heading, after “termination:” there is inserted “general”;  
 (b) in subsection (1), after “proceedings under” there is inserted “section 84A (absolute ground for possession for anti-social behaviour) or”.
- 6 In section 84 of that Act (grounds and orders for possession), in subsection (1), after “in accordance with” there is inserted “section 84A (absolute ground for possession for anti-social behaviour) or”.

- 7 In the heading of section 85A of that Act (proceedings for possession: anti-social behaviour) after “possession” there is inserted “on non-absolute grounds”.
- 8 (1) In Schedule 3 to that Act (grounds for withholding consent to assignment by way of exchange), Ground 2A is amended as follows.
- (2) In paragraph (a), for “or suspended Ground 2 or 14 possession order” there is substituted “, a suspended anti-social behaviour possession order or a suspended riot-related possession order”.
- (3) In paragraph (b), for “or a Ground 2 or 14 possession order” there is substituted “, an anti-social behaviour possession order or a riot-related possession order”.
- (4) In the definition of “relevant order” –
- (a) the word “or” before the final entry is omitted;
- (b) in the final entry, after “section 91 of the Anti-social Behaviour Act 2003” there is inserted “or section 27 of the Police and Justice Act 2006”;
- (c) at the end there is inserted –
- “an injunction under section 1 of the Anti-social Behaviour Act 2013;  
an order under section 21 of that Act.”
- (5) After the definition of “relevant order” there is inserted –
- “An “anti-social behaviour possession order” means an order for possession under Ground 2 in Schedule 2 to this Act or Ground 14 in Schedule 2 to the Housing Act 1988.”
- (6) After the definition of “demotion order” there is inserted –
- “A “riot-related possession order” means an order for possession under Ground 2ZA in Schedule 2 to this Act or Ground 14ZA in Schedule 2 to the Housing Act 1988.”
- (7) The definition of a “Ground 2 or 14 possession order” is omitted.
- 9 After Ground 2A in that Schedule there is inserted –

*“Ground 2B*

The dwelling-house is subject to a closure notice or closure order under Chapter 3 of Part 4 of the Anti-social Behaviour Act 2013.”

*Environmental Protection Act 1990 (c. 43)*

- 10 In the Environmental Protection Act 1990, sections 92 to 94A (litter abatement notices, litter clearing notices and street litter control notices) are repealed.

*Housing Act 1996 (c. 52)*

- 11 In the Housing Act 1996, sections 153A to 158 and Schedule 15 (injunctions against housing-related anti-social behaviour) are repealed.

*Crime and Disorder Act 1998 (c. 37)*

- 12 The following provisions of the Crime and Disorder Act 1998 are repealed –
- (a) sections 1 to 1K (anti-social behaviour orders etc);
  - (b) section 4 (appeals against orders);
  - (c) section 8A (parenting orders on breach of anti-social behaviour order).
- 13 (1) Section 8 of that Act (parenting orders) is amended as follows.
- (2) In subsection (1)(b), for “an anti-social behaviour order or” there is substituted “an injunction is granted under section 1 of the Anti-social Behaviour Act 2013, an order is made under section 21 of that Act or a”.
  - (3) In subsection (1)(c) the words “, except in a case where section 8A below applies (parenting order on breach of anti-social behaviour order)” are omitted.
  - (4) In subsection (6)(a), for the words after “behaviour which led to” there is substituted “the order being made or the injunction granted”.
- 14 (1) Section 9 of that Act (parenting orders: supplemental) is amended as follows.
- (2) In subsection (1) the words “, other than an offence under section 1(10) above in respect of an anti-social behaviour order,” are omitted.
  - (3) In subsection (1B) –
    - (a) for “an anti-social behaviour order” there is substituted “an injunction under section 1 of the Anti-social Behaviour Act 2013 is granted or an order is made under section 21 of that Act”;
    - (b) after “which” there is inserted “grants the injunction or”.
  - (4) In subsection (2) –
    - (a) paragraph (d) and the word “or” before it are omitted;
    - (b) in the text after paragraph (d) the words “(including any report prepared under section 1(1C))” are omitted.
  - (5) Subsection (2AA) is repealed.
- 15 (1) Section 18 of that Act (interpretation etc) is amended as follows.
- (2) In subsection (1) –
    - (a) the definitions of “anti-social behaviour order” and “individual support order” are omitted;
    - (b) paragraph (za) of the definition of “responsible officer” is omitted.
  - (3) In subsection (4) –
    - (a) the words “an individual support order or” are omitted;
    - (b) for “the child, defendant or parent, as the case may be” there is substituted “the child or, as the case may be, the parent”.
- 16 In section 38 of that Act (local provision of youth justice services), in subsection (4)(f) the words “individual support orders,” are omitted.
- 17 In section 114 of that Act (orders and regulations), in subsection (2) “(1A), (1G)” is omitted.

*Criminal Justice and Police Act 2001 (c. 16)*

- 18 Sections 12 to 16 of the Criminal Justice and Police Act 2001 (alcohol consumption in designated public places) are repealed.

*Police Reform Act 2002 (c. 30)*

- 19 In section 50 of the Police Reform Act 2002 (power of constable to require person acting in an anti-social manner to give name and address), for the words in subsection (1) from “a person has been” to “he may require” there is substituted “engaging, or is engaging, in anti-social behaviour (within the meaning of Part 1 of the Anti-social Behaviour Act 2013 (injunctions to prevent nuisance and annoyance))”.
- 20 (1) Part 1 of Schedule 4 to that Act (powers exercisable by community support officers) is amended as follows.
- (2) Paragraph 1(2)(e) (powers to issue fixed penalty notices in respect of offences under dog control orders) and the word “and” before it are omitted.
- (3) Paragraph 5 (powers under section 12 of the Criminal Justice and Police Act 2001 in relation to alcohol consumption in designated public places) is repealed.
- 21 In Schedule 5 to that Act, in paragraph 1(2), paragraph (d) and the word “and” before it are omitted.

*Licensing Act 2003 (c. 17)*

- 22 Sections 161 to 166 of the Licensing Act 2003 (closure orders of identified premises) are repealed.
- 23 (1) Section 167 of that Act (review of premise licence following closure order) is amended as follows.
- (2) In subsection (1)(a), for “a closure order has come into force” there is substituted “a magistrates’ court has made a closure order under section 70 of the Anti-social Behaviour Act 2013, or the Crown Court has made a closure order on appeal under section 74 of that Act”.
- (3) In subsection (1)(b), for the words after “the relevant licensing authority has” there is substituted “accordingly received a notice under section 70(8) or 74(7) of that Act”.
- (4) In subsection (4)(a), for the words after “notice of” there is substituted “the review and of the order mentioned in subsection (1)(a)”.
- (5) In subsection (5)(a), for the words after “to consider” there is substituted “the order mentioned in subsection (1)(a) and any relevant representations”.
- 24 In section 168 of that Act (provisions about decisions under section 167), in subsections (3)(b) and (6)(b), for the words after “the premises to which the licence relates” there is substituted “are closed at the time of the decision by virtue of an closure order made under section 70 or 74 of the Anti-social Behaviour Act 2013”.
- 25 Section 169 (enforcement of closure order) is repealed.

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- 26 (1) Section 170 (exemption of police from liability for damages) of that Act is amended as follows.
- (2) In subsection (1) the words “of his functions in relation to a closure order or any extension of it or” are omitted.
- (3) Paragraph (b) of subsection (2) is omitted.
- 27 (1) Section 171 of that Act (interpretation of Part 8) is amended as follows.
- (2) In subsection (2), for “Relevant premises” there is substituted “Premises”.
- (3) In subsection (3) the word “relevant” is omitted.
- (4) In subsection (5) –
- (a) in the definition of “appropriate person” the word “relevant” is omitted;
- (b) the definitions of “closure order”, “extension”, “relevant magistrates’ court”, “relevant premises”, “responsible senior police officer” and “senior police officer” are omitted.
- 28 In Schedule 3 to that Act (matters to be entered in licensing register), for the words after “any notice given to it under” in paragraph (z) there is substituted “section 70(8) or 74(7) of the Anti-social Behaviour Act 2013 (notification by court of closure order)”.

*Anti-social Behaviour Act 2003 (c. 38)*

- 29 The following provisions of the Anti-social Behaviour Act 2003 are repealed –
- (a) Part 1 (closure of premises where drugs used unlawfully);
- (b) Part 1A (closure of premises associated with persistent disorder or nuisance);
- (c) Part 4 (dispersal of groups etc);
- (d) sections 40 and 41 (closure of noisy premises);
- (e) sections 48 to 52 (removal of graffiti and fly-posting) and the cross-heading before section 48.

*Clean Neighbourhoods and Environment Act 2005 (c. 16)*

- 30 Sections 55 to 64, 66 and 67 of the Clean Neighbourhoods and Environment Act 2005 are repealed.

*Violent Crime Reduction Act 2006 (c. 38)*

- 31 The following provisions of the Violent Crime Reduction Act 2006 (which relate to drinking banning orders) are repealed –
- (a) sections 1 to 7;
- (b) section 8(1) to (6);
- (c) sections 9 to 14.
- 32 Section 27 of that Act (directions to individuals who represent a risk of disorder) is repealed.

*Crime and Security Act 2010 (c. 17)*

- 33 Sections 40 and 41 of the Crime and Security Act 2010 (anti-social behaviour orders: report on family circumstances and parenting orders on breach) are repealed.

*Localism Act 2011 (c. 20)*

- 34 (1) In Schedule 14 to the Localism Act 2011 (grounds on which landlord may refuse to surrender and grant tenancies under section 158 of that Act), paragraph 6 (Ground 6) is amended as follows.
- (2) In sub-paragraph (2), for “or suspended Ground 2 or 14 possession order” there is substituted “, a suspended anti-social behaviour possession order or a suspended riot-related possession order”.
- (3) In sub-paragraph (3), for “or a Ground 2 or 14 possession order” there is substituted “, an anti-social behaviour possession order or a riot-related possession order”.
- (4) In sub-paragraph (4), in the definition of “relevant order” –
- (a) the word “or” before paragraph (e) is omitted;
  - (b) in paragraph (e), after “section 91 of the Anti-social Behaviour Act 2003” there is inserted “or section 27 of the Police and Justice Act 2006”;
  - (c) at the end there is inserted –
    - “(f) an injunction under section 1 of the Anti-social Behaviour Act 2013, or
    - (g) an order under section 21 of that Act;”.
- (5) After the definition of “relevant order” in that sub-paragraph there is inserted –
- “An “anti-social behaviour possession order” means an order for possession under Ground 2 in Schedule 2 to the Housing Act 1985 or Ground 14 in Schedule 2 to the Housing Act 1988.”
- (6) After the definition of “demotion order” in that sub-paragraph there is inserted –
- “A “riot-related possession order” means an order for possession under Ground 2ZA in Schedule 2 to the Housing Act 1985 or Ground 14ZA in Schedule 2 to the Housing Act 1988.”
- (7) The definition of “Ground 2 or 14 possession order” in that sub-paragraph is omitted.

- 35 After paragraph 6 of that Schedule there is inserted –

*“Ground 6A*

- 6A This ground is that a dwelling-house let on an existing tenancy is subject to a closure notice or closure order under Chapter 3 of Part 4 of the Anti-social Behaviour Act 2013.”

*Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10)*

- 36 (1) Schedule 1 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (legal aid for civil legal services) is amended as follows.
- (2) In paragraph 36 of Part 1 (anti-social behaviour), for the words after “in relation to” in sub-paragraph (1) there is substituted “an application for, or proceedings in respect of, an injunction against the individual under section 1 of the Anti-social Behaviour Act 2013.”
- (3) In paragraph 7 of Part 3 (certain advocacy services in a magistrates’ court excepted from the advocacy exclusion), for “and 15 to 18” there is substituted “, 15 to 18 and 36”.

PART 2

CONSEQUENTIAL REPEALS

- 37 The following provisions are repealed.

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Crime and Disorder Act 1998 (c. 37)	Section 40(2).
Powers of Criminal Courts (Sentencing) Act 2000 (c. 6)	In Schedule 9, paragraph 192.
Police Reform Act 2002 (c. 30)	Sections 61 to 66.
Licensing Act 2003 (c. 17)	Section 155(2). In Schedule 6, paragraphs 121 to 125.
Anti-social Behaviour Act 2003 (c. 38)	Section 13. Section 56(1). Section 85(2) to (7) and (9) to (11). Section 86(1) to (4).
Sexual Offences Act 2003 (c. 42)	In Schedule 6, paragraph 38(3).
Criminal Justice Act 2003 (c. 44)	Sections 322 and 323. In Schedule 26, paragraph 59.
Children Act 2004 (c. 31)	In Schedule 2, paragraph 8.
Serious Organised Crime and Police Act 2005 (c. 15)	Section 139(1) to (9). Section 140(1) to (4). Sections 141 to 143. In Schedule 7, paragraph 36. In Schedule 10, paragraph 3(3)(b).
Clean Neighbourhoods and Environment Act 2005 (c. 16)	Section 2. Section 20(2). Section 21. Section 22. Section 31. In Schedule 4, paragraphs 7, 13 and 16 to 19.
Drugs Act 2005 (c. 17)	Section 20. In Schedule 1, paragraph 7.
Violent Crime Reduction Act 2006 (c. 38)	Section 8(7).

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Violent Crime Reduction Act 2006 (c. 38) – <i>cont.</i>	Section 26. Section 59(1).
Police and Justice Act 2006 (c. 48)	Section 26. In Schedule 14, paragraph 32.
Mental Health Act 2007 (c. 12)	In Schedule 1, paragraph 21.
Criminal Justice and Immigration Act 2008 (c. 4)	Section 118. Section 123. Section 124. Schedule 20.
Transport for London Act 2008 (c. i)	Section 29(a).
Coroners and Justice Act 2009 (c. 25)	In Schedule 21, paragraph 72.
Policing and Crime Act 2009 (c. 26)	Section 31.
Police Reform and Social Responsibility Act 2011 (c. 13)	In Schedule 16, paragraphs 307 to 309.



# **DRAFT ANTI-SOCIAL BEHAVIOUR BILL**

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These Explanatory Notes relate to the draft Anti-Social Behaviour Bill as published on 13 December 2012 for pre-legislative scrutiny by the Home Affairs Select Committee. They have been prepared by the Home Office and the Department for Communities and Local Government in order to assist the reader of the draft Bill and to help inform debate on it. They do not form part of the draft Bill and have not been endorsed by Parliament.

2. The Notes need to be read in conjunction with the draft Bill. They are not, and are not meant to be, a comprehensive description of the draft Bill. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

3. A glossary of abbreviations and terms used in these Explanatory Notes is contained in Annex A to these Notes.

### **SUMMARY**

4. The Bill is in seven parts. Part 1 makes provision for a civil injunction to prevent nuisance and annoyance. Part 2 makes provision for an order on conviction to prevent behaviour which causes harassment, alarm or distress. Part 3 contains a power for the police to disperse people causing harassment, alarm or distress. Part 4 covers the new powers to deal with community protection and makes provision for a community protection notice, a public space protection order and provisions to close premises associated with nuisance and annoyance. Part 5 makes provision for the possession of houses on anti-social behaviour grounds. Part 6 contains provisions on establishing a community remedy document and dealing with responses to complaints of anti-social behaviour. Part 7 contains general provisions.

### **BACKGROUND**

#### **What is anti-social behaviour?**

5. The term ‘anti-social behaviour’ describes the everyday nuisance, disorder and crime that has a huge impact on victims’ quality of life. In the year ending June 2012, over 2.5 million incidents of anti-social behaviour were recorded by the police in England and Wales, equivalent to around 6,800 every day. However, many incidents are not reported at all, or are reported to other agencies such as local councils or social landlords.

6. Much of what is described as anti-social behaviour is criminal (e.g. vandalism, graffiti, street drug dealing and people being drunk or rowdy in public), but current legislation

also provides a range of civil powers, such as the anti-social behaviour order (ASBO) and the anti-social behaviour injunction (ASBI). These offer an alternative to criminal prosecution and give the police and other agencies the ability to deal with the cumulative impact of an individual's behaviour, rather than focus on a specific offence. Some powers, such as the ASBI, have a lower standard of proof (i.e. the civil 'balance of probabilities' rather than the criminal 'beyond reasonable doubt'). While the ASBO can be used by a number of agencies, the ASBI can currently only be used by social landlords.

7. In addition, informal interventions and out-of-court disposals are an important part of professionals' toolkit for dealing with anti-social behaviour, offering a proportionate response to first-time or low-level incidents and a chance to intervene early and prevent behaviour from escalating. For example, tools such as warning letters and acceptable behaviour agreements are often used to deal with low-level anti-social behaviour, with one intervention frequently enough to stop the behaviour.

### **Consultation**

8. *The Coalition: our programme for government* outlined the Government's commitment to reform the powers available to deal with anti-social behaviour. Specifically it said:

*"We will introduce effective measures to tackle anti-social behaviour and low-level crime."*

9. In response to this, a consultation document was published on 7 February 2011. It is available at [www.homeoffice.gov.uk/asb-consultation](http://www.homeoffice.gov.uk/asb-consultation). It outlined proposals to radically streamline the toolkit available to tackle anti-social behaviour. It presented a number of questions across five key policy proposals which were:

- a. The criminal behaviour order
- b. The crime prevention injunction
- c. The community protection order
- d. The directions power
- e. The community trigger.

10. The consultation took place over a fourteen week period. Responses to the consultation could be completed anonymously online, submitted via email or posted to the Home Office in written form.

11. To support the consultation process six days of regional events were held to canvass opinions from frontline professionals, including local authorities, police, social landlords, youth offending teams and representatives from the voluntary sector. A total of 547 responses to the consultation were received from frontline professionals (e.g. police, local authority, social landlords, judiciary, voluntary sector etc). A total of 425 responses were also received from members of the public. These views were considered alongside the views expressed in the workshops to develop the final proposals outlined in the White Paper.

## **Putting victims first: More effective responses to anti-social behaviour**

12. In May 2012, the Home Office published a White Paper, *Putting victims first: More effective responses to anti-social behaviour*. This set out how the Government would support local areas to:

- a. **Focus the response to anti-social behaviour on the needs of victims** - helping agencies to identify and support people at high risk of harm, giving frontline professionals more freedom to do what they know works, and improving our understanding of the experiences of victims;
- b. **Empower communities to get involved in tackling anti-social behaviour** – including by giving victims and communities the power to ensure action is taken to deal with persistent anti-social behaviour through a new community trigger, and making it easier for communities to demonstrate in court the harm they are suffering;
- c. **Ensure professionals are able to protect the public quickly** – giving them faster, more effective formal powers, and speeding up the eviction process for the most anti-social tenants, in response to recent consultations by the Home Office and Department for Communities and Local Government; and
- d. **Focus on long-term solutions** – by addressing the underlying issues that drive anti-social behaviour, such as binge drinking, drug use, mental health issues, troubled family backgrounds and irresponsible dog ownership.

13. The reforms proposed are designed to ensure that professionals have effective powers that are quick, practical and easy to use, provide better protection for victims and communities and act as real deterrents to perpetrators – replacing 19 of the complex existing powers with six simpler and more flexible new ones.

## **The Community Remedy**

14. On 9 October 2012, the Home Secretary announced her intention to legislate to introduce a community remedy. This would be a Police and Crime Commissioner (PCC) (or in London, the relevant policing body) sponsored menu of community sanctions for low level crime and anti-social behaviour. It would be used as part of informal and formal out of court disposals. The aim is to help PCCs make community justice more responsive and accountable to victims and the public, with proportionate but meaningful punishments.

15. Some police forces currently use a ‘community resolution’ to deal with low-level crime and anti-social behaviour – essentially a common sense approach where the offender agrees to make amends to the victim without the case going through the criminal justice system. According to data supplied by 22 police forces, at least 50,000 offences were dealt with this way in 2011/12.

16. Dealing with low-level crime and anti-social behaviour informally is aimed at ensuring that victims get justice straightaway, and offenders have to face immediate consequences for their actions, so that they are less likely to reoffend in the future. But victims and the public should agree that the punishments used are meaningful, rather than a ‘slap on the wrist’.

17. The community remedy is included for pre-legislative scrutiny but is also undergoing a simultaneous public consultation to seek views on some of the specific proposals. The consultation will run alongside the pre-legislative scrutiny. The consultation document can be found at <http://www.homeoffice.gov.uk/community-remedy>.

## **Parts 1 & 2: Reform of anti-social behaviour powers to deal with individuals**

### **Basic process for the injunction**

#### *Granting the injunction*

1. An injunction can be applied for by the groups listed in clause 4, *subsection (1)*. The court will grant the injunction if the conditions in clause 1, *subsections (2) and (3)* are met.

2. Where the person against whom the injunction is intended cannot be notified beforehand, the court can grant an application without notice (clause 5). The court can also grant an interim injunction where it feels that appropriate (clause 6). However, clause 14, *subsection (1)* outlines the people who should normally be consulted or informed before an application for an injunction is made.

#### *What is in the injunction?*

3. The injunction must specify the time periods set out in clause 1, *subsection (6)*. It can include prohibitions as well as positive requirements. Clause 2 outlines what is expected if requirements are included in the injunction. The power of arrest can also be added to the injunction if prohibitions or requirements are breached, subject to the conditions laid out in clause 3.

4. An individual can be excluded from the place where they normally reside if there is a risk of violence or harm (clause 12).

5. Clause 7 outlines how an injunction can be varied once granted. This includes, in *subsection (2)(b)*, the addition of a power of arrest. In the event a power of arrest is attached, an officer may arrest the person as outlined in clause 8. If a power of arrest is not attached, a warrant of arrest may be applied for in accordance with clause 9.

#### *Appeals*

6. Decisions made in the youth court can be appealed to the Crown Court in accordance with clause 15. Appeals from county court or High Court judges go to the Court of Appeal under existing appeal mechanisms.

## **Injunctions to prevent nuisance and annoyance**

18. The injunction to prevent nuisance and annoyance (presented as the crime prevention injunction in the White Paper) will be a purely civil injunction available in the county court for adults and the youth court for those under the age of 18. The injunction will replace a range of current tools including the anti-social behaviour order (ASBO) on application, the anti-social behaviour injunction (ASBI), the drinking banning order on application, intervention orders and individual support orders.

19. There will be a wider range of potential applicants for the new injunction than the current ASBI to bring it more in line with the breadth of the ASBO. This is intended to help to reduce the burden falling on any particular agency to make applications on behalf of others. The following agencies would be able to apply:

- a. a local authority;
- b. a housing provider;
- c. the police, including the British Transport Police;
- d. Transport for London;
- e. the Environment Agency; or
- f. the Special Health Authority known as the NHS Business Services Authority (or Awdurdod Gwasanaethau Busnes y GIG).

20. The only formal consultation requirement would be to consult with the youth offending team if the injunction is being applied for in respect of someone aged under 18, though the applicant would need to take into account the views of other agencies if raised.

21. Interim injunctions could be made without notice having been given to the respondent. There will be no requirement to consult before applying for a without notice injunction.

22. The test for an injunction to be granted is that the person has engaged in conduct which is capable of causing nuisance or annoyance to any person and that it is just and convenient to grant the injunction. This is in line with the current ASBI which is used effectively by many private registered providers of social housing and local authorities (in relation to their housing management functions) to stop anti-social behaviour quickly.

23. The injunction would be 'tenure neutral', so could be used to deal with any anti-social individual, regardless of where they lived. A power of arrest could also be attached to the injunction if the individual had used, or threatened violence, or if there is risk of significant harm to the victim.

24. The injunction could include prohibitions or requirements that assist in the prevention of future nuisance or annoyance. The requirements would be designed to deal with the causes of their behaviour, thus aiming to reduce breach rates in the long term. However, before making any requirement, the court must be sure that it is available and enforceable, that it does not duplicate or conflict with any other court orders (e.g. a community sentence) and that it does not conflict with the European Convention on Human Rights. There is no minimum or maximum term, in line with the majority of existing injunctions.

25. Breach by an adult will be contempt of court, punishable in the usual way by the county court with up to two years in prison or an unlimited fine. Breach by someone aged under 18 could result in a curfew, activity or supervision requirement, or as a last resort, (for example in a case of repeated breach causing serious harm) could result in detention for up to three months.

### **The criminal behaviour order**

26. The criminal behaviour order (CBO) will be an order on conviction, available following a conviction for any criminal offence and in any criminal court. This would replace the anti-social behaviour order (ASBO) on conviction and the drinking banning order on conviction. A court will be able to make a criminal behaviour order against an offender only if the prosecutor applies for the order.

27. The prosecutor must find out the views of the local youth offending team before applying for a CBO to be made in respect of an offender who is under the age of 18. The prosecutor should also be made aware of and take into account the views of other agencies if raised.

28. An interim order would be available on conviction if the court adjourned, for example, for sentencing. The court would have the power to proceed to make an order in the defendant's absence if the defendant had previously been warned by the court that this could occur.

**Basic process for the CBO**

*Making an order*

1. An order can be made by the court on application by the prosecution when someone is convicted of an offence as long as the two conditions in clause 21, *subsections (3) and (4)* are met.
2. Where the court is not able to take a decision on whether to make an order at the time, it can make an interim order as outlined in clause 26. How to vary the order is covered in clause 27.

*What is in the order?*

3. An order can include positive requirements as well as prohibitions. When including requirements in an order, clause 23 applies. The order can also include a provision for attendance on an approved course in accordance with clause 25. The court must decide on the duration of the order in line with clause 24.

*Breach of the order*

4. If someone breaches one of the provisions in the order without reasonable excuse, they commit an offence (clause 28, *subsection (1)*). That person is then liable to the penalties outlined in clause 28, *subsection (2)*.

29. The test for the order to be made will be that the offender has engaged in behaviour that caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household as the offender (which might have been proved during the course of the trial which led to the conviction) and that the order will help in preventing such behaviour. The order can include any prohibitions or requirements that assist in the prevention of such behaviour. The court may consider evidence led by the prosecution and the offender, including that which would have been inadmissible in the criminal proceedings in which the offender was convicted.

30. Before making any requirement, the court must receive evidence about its suitability and enforceability. The court must also be satisfied that the requirement does not conflict with any other court orders (e.g. a community sentence) or conflict with the European Convention on Human Rights.

31. The minimum duration for a CBO would be one year for offenders under 18 years of age and two years for adults, and the maximum duration would be three years for offenders under 18 years of age and indefinite for adults. On summary conviction the maximum penalty

is 6 months imprisonment or a fine of up to £5,000, or both. Where a person is convicted on indictment the maximum penalty is five years imprisonment or an unlimited fine, or both.

### **Part 3: Reform of police dispersal powers to deal with anti-social behaviour in public places**

#### **The new police dispersal power**

32. The police dispersal<sup>1</sup> power will enable officers to direct a person who has committed, or is likely to commit, anti-social behaviour to leave a specified area and not return for a specified period of up to 48 hours. No advance designation or consultation would be required. The test would be that the constable has reasonable grounds for suspecting that the person's presence or behaviour is contributing, or is likely to contribute to anti-social behaviour or crime or disorder in the area and that the direction is necessary. Police officers would have access to all elements of the power, and police community support officers (PCSOs) could have access to some, or all elements of the power at the discretion of the Chief Constable.

33. The ability to return children under the age of 16 home or to a place of safety is being retained.

34. The direction would in most instances be given in writing to ensure that those individuals being dispersed are clear where they are being dispersed from. Where this is not reasonably practicable, the direction could be given orally and the officer would keep a written record of the direction. Failure to comply with the direction would be a criminal offence and would carry a maximum penalty of a level four fine and/or three months imprisonment.

35. A police officer would also be able to require an individual to hand over items causing, or likely to cause anti-social behaviour (e.g. alcohol). Failure to comply with the requirement would also be a criminal offence and would have a penalty of a level two fine. These sanctions are in line with current equivalent powers, and are designed to ensure there is an appropriately serious consequence to failing to comply.

36. Any confiscated items would need to be held at the police station for 28 days to enable the individual to reclaim it. A constable may also refuse to return the item to an individual under 16 unless they are accompanied by a parent or other appropriate adult to enforce parental responsibility.

37. As a safeguard to ensure that the power is used proportionately, and to protect civil liberties, guidance will suggest that data on its use should be published locally. This would be via a website or other locally agreed media. PCCs (or in London, the relevant policing body) would have a key role in holding forces to account on this to ensure that officers are using the power proportionately. Publication of data locally would also help highlight any 'hot-spot' areas that may need a longer-term solution (e.g. diversionary activities for young people or introduction of CCTV cameras to help 'design out' crime and anti-social behaviour).

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<sup>1</sup> In these notes the word "dispersal" is used, but the power under Part 3 is available not just in relation to groups of people but also in the case of people causing trouble on their own.

### **Basic process for dispersals**

#### *Issuing a direction*

1. A constable or PCSO can issue a direction in accordance with clause 31, *subsection (1)*. The constable also needs to consider that giving the direction is necessary for the purpose of removing or reducing the behaviour (clause 31, *subsection (3)*) described in clause 31 *subsection (2)*.

#### *The direction*

2. The constable would explain that he or she is issuing the person with a direction to leave the area for a period (of up to 48 hours). The constable explains the area which the direction relates to, and if necessary the route the person should take to leave the area. The constable issues the person with this information in writing in accordance with clause 31, *subsection (5)*. The constable also explains that failure to comply with the direction is an offence (clause 31, *subsection (6)*).

#### *Refusal to comply*

3. If the person refuses to comply with the direction, they commit an offence. The penalty is set out in clause 35, *subsection (2)*. If the constable believes the person is under the age of 16, he can take them home or to a place of safety (clause 31, *subsection (7)*).

#### *Confiscation*

4. The constable may ask the person to hand over any item being used (or likely to be used) in the behaviour. It is an offence to not comply with the request (clause 35, *subsection (3)*), the penalty for not complying is set out in clause 35, *subsection (4)*. The person may not collect the item from the police station until after the exclusion period is over. If the person is under the age of 16, clause 33, *subsection (6)* applies. If the item is not collected after a period of 28 days clause 33, *subsection (7)* applies.

## **Part 4: Community Protection**

38. This part covers the new powers designed to deal with environmental anti-social behaviour that affects communities.

### **Chapter 1: The community protection notice**

39. The community protection notice is intended to deal with particular, ongoing problems or nuisances which negatively affect the community's quality of life by targeting the person responsible. The notice will direct the individual, business or organisation responsible to stop causing the problem and it could also require the person responsible to take reasonable steps to ensure that it does not occur again.

40. This notice is intended to replace current measures such as litter clearing notices, defacement removal notices and street litter control notices. It is not meant to replace the statutory nuisance regime – and where the behaviour is such as to amount to a statutory nuisance under section 79 of the Environmental Protection Act 1990 (EPA), it should be dealt with as such.



41. The power to issue a notice will be available to the police (and PCSOs if designated by the Chief Constable), authorised persons within the local authority and staff of registered providers of social housing (if designated by the relevant local authority).

42. The test will be that the authorised person reasonably believes that the behaviour is detrimental to the local community's quality of life and is unreasonable, and that the behaviour is having a persistent or continuing effect. An authorised person would be required, before issuing a notice, to inform whatever agencies or persons he or she considered appropriate (for example the landlord of the person in question, or the local authority), partly in order to avoid duplication.

43. The notice must clearly state: what the behaviour or action (or inaction) is that is having a detrimental effect on the quality of life of those in the local community or is otherwise detrimental to the amenity of the locality; what action is required; and the consequences of not complying. The requirement(s) set out in the notice could include: a requirement to desist from a specified action or behaviour; a requirement to make reasonable efforts to make good any outstanding issues within a specified period of time; a requirement to take reasonable steps to prevent future occurrence of the behaviour or problem.

44. Breach of any requirement in the notice, without reasonable excuse, would be a criminal offence, subject to a fixed penalty notice (FPN) or prosecution. On summary conviction an individual would be liable to a fine not exceeding level four on the standard scale. An organisation such as a company, statutory undertaker, Crown authority or education authority is liable to a fine not exceeding £20,000. On conviction, the magistrates' court would have the power to order forfeiture and destruction of any item used in the commission of the offence. An alternative to prosecution would be for the relevant agency to make good itself, and recover the costs of doing so from the person.

45. Specifically, community protection notices will be different from the powers they seek to replace in the following ways:

- a. They cover a wider range of behaviour (all behaviour that is detrimental to the local community's quality of life) rather than specifically stating the behaviour covered (e.g. litter or graffiti);
- b. Noise disturbance could be tackled, particularly if it is demonstrated to be occurring in conjunction with other anti-social behaviour;
- c. The notices can be issued by more people: police, local authorities and private registered providers of social housing (if approved by local authorities) meaning that the most appropriate agency can deal with the situation;
- d. The notices can apply to businesses and individuals (which is the same as for some of the notices it will replace but not all); and
- e. It would be a criminal offence if an individual did not comply, with a sanction of a fine (or fixed penalty notice) for non-compliance. This exists at the moment for litter-related notices but not defacement removal notices.

46. However, a number of **safeguards** have been built in, including:

- a. Any disturbance that meets the requirements of the statutory nuisance regime can only be dealt with using that process;

*These notes refer to the draft Anti-Social Behaviour Bill as published for pre-legislative scrutiny by the Home Affairs Select Committee on 13 December 2012*

- b. Guidance will make explicitly clear that CPNs could only be issued where there was no ‘reasonable excuse’ for the problem - and no offence is committed where ‘all reasonable steps’ have been taken to comply with the notice; and
- c. A CPN cannot be issued for a single incident – guidance will make it clear that informal measures should be used at first to try to deal with the problem.

#### **Basic process for a community protection notice**

##### *Applying for a community protection notice*

1. A notice can be issued if the conduct of a person meets the test in clause 38, *subsection (1)*. Only those persons listed in clause 48, *subsection (1)* are able to issue a notice.
2. Before issuing a notice, the person or body has to have been given a written warning in accordance with clause 38, *subsection (6)*. Before a notice is issued, the officer should inform anybody they think appropriate. (Clause 38, *subsection (7)*).
3. The notice can be issued to anyone covered by clause 39, *subsection (1)*. However, if the person covered in that part cannot be ascertained, clause 40 applies.

##### *What should the notice contain?*

4. The notice should include at least one of the requirements outlined in clause 38, *subsection (3)*. In addition, it should make clear the full consequences of not complying with the notice (clause 38, *subsection (8)*).
5. The notice can also include the remedial action that the authorised body plans to take if the conditions of the notice are not met. This would include the steps outlined in clause 42, *subsection (2)*. This can also be served later as a separate notice. Where access to a property is required, consent to enter that property has to be sought from the owner.

##### *Appealing the notice*

6. The person issued with a notice can appeal against this decision to a magistrates’ court in accordance with clause 41. The court can quash or vary the notice based on the evidence presented. It can also dismiss the appeal (clause 41, *subsection (4)*).

##### *Failing to comply with the notice*

7. A person who fails to comply with the notice, or refuses to allow an authorised person into their property to carry out works, commits an offence. This offence is punishable with the fine outlined in clause 43, *subsection (2)*. A fixed penalty notice can also be issued in accordance with clause 47.
8. The court can then make whatever order it thinks appropriate to ensure the work is done (clause 44, *subsection (1)*). This could include the forfeiture of items used in the commission of the offence (clause 45).

## **Chapter 2: Public spaces protection orders**

47. The public spaces protection order (referred to as the community protection order (public spaces) in the White Paper) is 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. The order could be used to deal with likely future problems.

48. Only a local authority could issue the order, and before doing so, they must consult with the chief officer of police, the PCC (or in London, the relevant policing body) and any representatives of the local community they consider appropriate. The test for issuing the order will be that the local authority reasonably believes that the behaviour is detrimental to the local community's quality of life, and that the impact merits restrictions being put in place in a particular area. The behaviour must also be ongoing or persistent (or there must be a reasonable belief that future behaviour will be ongoing or persistent).

#### **Basic process for public spaces protection order**

##### *Issuing an order*

1. A local authority can issue an order if it believes the two conditions laid out in clause 53, *subsections (2) and (3)* have been met. The order would create a "restricted area" where one or both of the restrictions laid out in clause 53, *subsection (4)* apply.
2. Before issuing an order, the local authority should consult the chief officer of police in that area and any other community representative they think appropriate (clause 53, *subsection (7)*).

##### *What should the order include?*

3. The order should include the restrictions that have been placed on the affected area, the duration of the order and a summary of the consequences of breaching the order (clause 53, *subsection (8)*). Clause 54, *subsection (1)* makes clear that an order cannot last more than 3 years without being renewed.
4. During the period when the order is in place, the local authority can vary it at any time, subject to the conditions laid out in clause 55. Where an order is intended to prohibit the drinking of alcohol, special consideration needs to be given to clauses 56 and 57.

##### *Restricting public rights of way*

5. Before seeking to restrict access to a public right of way, a local authority must first consider those covered by clause 58, *subsection (1)*. If they decide to proceed with the order, the local authority must, in addition, inform or notify those persons covered in clause 58, *subsection (2)*.
6. There are a number of public rights of way that cannot be restricted by this order. These are laid out in clause 59, *subsection (1)*.

##### *Challenging the order*

7. Any interested person can challenge the validity of the order on the grounds outlined in clause 60, *subsection (2)*. This challenge must be made within 6 weeks of the commencement of the order. The High Court would make the final decision as to the validity of the order.

##### *Failure to comply*

8. A person who, without reasonable excuse, fails to comply with the prohibitions or requirements of an order commits an offence (clause 61, *subsection (1)*). This offence can be dealt with either by a fine as laid out in clause 61, *subsection (2)* or a fixed penalty notice, issued in accordance with clause 62.

49. The order must clearly state: what behaviour the order is seeking to prevent; what the prohibitions or requirements are in the specified area (which the local authority reasonably believes will remedy the problem); the specified area itself; and the consequences of not complying. The order must be in writing and it must be published. Regulations will ensure that

reasonable signage is put up in the areas affected. The order could last for up to three years and could be renewed before the three year time period expired.

50. Breach of the order, without reasonable excuse, would be a criminal offence, subject to a FPN or prosecution. On summary conviction, an individual would be liable to a fine not exceeding level three on the standard scale. Any person who breached an order prohibiting the consumption of alcohol in a public place could be required to hand over, to any person who can issue a FPN, any containers or items they reasonably believe to contain alcohol. Failure to comply would be a criminal offence which on summary conviction means an individual is liable to a fine not exceeding level two on the standard scale. If alcohol is confiscated, it can also be disposed by the person who confiscates it.

51. Specifically, the public spaces protection order will be different from the powers it seeks to replace in the following ways:

- a. It can prohibit a wider range of behaviour, which makes the new proposal more like the ‘good rule and government byelaws’ under the Local Government Act 1972, but with a fixed penalty notice available on breach (although some current byelaws do allow for fixed penalty notices to be issued). This is following feedback in the consultation from local authorities that current byelaws are hard to enforce as the only option available to local agencies is to take an individual to court if they fail to comply, which can be costly and time-consuming;
- b. There would be less central government oversight than with byelaws, and no central government reporting requirements as with designated public place orders. This would reduce bureaucracy; and
- c. There will be lighter touch consultation requirements to save costs (e.g. paying to advertise in local newspapers). This is following feedback in the consultation from local authorities that the current processes for consultation outlined in secondary legislation are costly and time-consuming.

### **Chapter 3: Closure of premises associated with nuisance or disorder**

52. Closure of premises associated with nuisance or disorder (referred to as the community protection order (closure) in the White Paper) has two stages – the closure notice and the closure order. It would consolidate various existing closure powers related to licensed and all other premises which are causing anti-social behaviour. This power will be available to the police (officers of the rank of inspector and above) and the local authority.

53. Within 24 hours of the notice being issued, it must, in order to continue to be valid, be signed off, in the case of a police order, by an officer of at least superintendent rank and, in the case of a local authority order, by either the Chief Executive or a person designated by them. This is unless the original notice was issued by someone of superintendent rank, in which case no further sign off would be required. This would extend the notice to a maximum of 48 hours.

54. Before issuing the notice, the police or local authority must consult any person or agency they consider appropriate, as well as informing the owner, landlord, licensee and anyone who appears to be residing in the premise.

55. The test for issuing a notice will be that the police or local authority reasonably believes: that there is, or is likely soon to be, a public nuisance or there is, or is likely

imminently to be, disorder in the vicinity of, and related to the premises; and that the notice is necessary in the interest of preventing the occurrence or reoccurrence of such disorder or behaviour. The notice must: state that access to the premises by any person other than someone who habitually lives on the premises or the owner of the premises is prohibited; state that failure to comply is an offence; give details as to when and where the notice will be considered by the magistrates' court; and give information about persons and organisations in the area that provide advice about housing and legal matters.

#### **Basic process for closure notices and orders**

##### *Issuing a closure notice*

1. A closure notice for up to 24 hours can be issued by a police officer of at least the rank of inspector or the local authority, if they have reasonable grounds to believe that the test in clause 66, *subsection (1)* has been met.

2. A notice may prohibit those outlined in clause 66, *subsection (3)* from entering the premises, but not those outlined in clause 66, *subsection (4)*. The closure notice must include the information covered in clause 66, *subsection (5)* and must be served in accordance with the conditions laid out in clause 69.

##### *Extending, cancelling or varying the notice*

3. A closure notice can be extended under clause 67, *subsection (2)*. This extension has to be served again in accordance with the conditions laid out in clause 69. The notice can also be cancelled or varied at any time in accordance with the conditions laid out in clause 68. Any variation or cancellation notice must be served in accordance with clause 69.

##### *Applying for a closure order*

4. When a notice is issued, an application must be made to a magistrates' court for a closure order (clause 70, *subsection (1)*). This must be heard in accordance with clause 70. The order can seek to close the premises based on the test laid out in clause 70, *subsection (4)* for a period up to 3 months.

5. Where a court decision is not possible in time (because the case has been adjourned), clause 71 sets out how a temporary order can be applied for the intervening period – although *subsection (3)* makes clear this cannot last longer than 14 days.

##### *Extension of an order*

6. At any point before the expiry of a closure order, an application can be made to the court for an extension (clause 72, *subsection (3)*).

##### *Discharge of, or appeal against, a closure order*

7. At any point before the expiry of an order, those listed in clause 73, *subsection (2)* may apply for the order to be discharged after consideration of the points listed in clause 73, *subsection (7)*. Clause 74 outlines the appeals process against an order or subsequent extension. This appeal would be heard in the Crown Court.

##### *Offences*

8. A person who remains in a premises, or enters a premises in contravention of a closure notice or order commits an offence (clause 76, *subsections (1)* and *(2)*). It is also an offence to obstruct someone who is trying to post a notice or carry out essential maintenance. The penalties for these offences are laid out in clause 76, *subsections (4)* to *(8)*.

56. Guidance will make it clear that the police or local authority must take into account any special considerations arising from the presence, or likely presence of any children or vulnerable adults on the premises. Authorised persons will have a power of entry to the premises, using reasonable force if necessary, to serve the notice.

57. Unless the police or local authority cancels the notice within the 48 hour period, they must apply to the magistrates' court for a court order. The court can make a closure order for a maximum period of three months if it is satisfied that: a person has engaged in disorder, anti-social or criminal behaviour on the premises (or that such behaviour is likely if the order is not made); the use of the premises is associated with the occurrence of disorder or serious nuisance to members of the public (or that such disorder or serious nuisance is likely if the order is not made); and that the order is necessary to prevent the occurrence or reoccurrence of such disorder or behaviour.

58. Before the time specified in the order expires, the police or local authority could apply to the magistrates' court for a further extension of the order if this were deemed necessary. The maximum period an order could last overall would be six months. Breach of the order, without reasonable excuse, would be a criminal offence. On summary conviction, a person would be liable to a fine not exceeding level five on the standard scale and/or up to three months imprisonment if in breach of a notice and up to six months imprisonment if in breach of an order. Organisations and businesses would be subject to a higher maximum fine of £20,000.

## **Part 5: Recovery of possession of dwelling-houses**

### **Recovery of possession of dwelling-houses on anti-social behaviour grounds**

59. Under current housing legislation, landlords may apply to the county court to evict tenants who are behaving anti-socially using the relevant 'ground for possession'. These are ground 2 of Schedule 2 to the Housing Act 1985 for secure tenants (mostly tenants of local authorities) and ground 14 of Schedule 2 to the Housing Act 1988 for assured tenants (tenants of housing associations and landlords in the private rented sector) respectively<sup>2</sup>. These grounds are discretionary, that is the court must be satisfied that anti-social behaviour has occurred and that it would be reasonable to grant possession.

60. In practice eviction for anti-social behaviour is exceptional; social landlords in England own around four million homes but only evict about 2,000 tenants for anti-social behaviour each year. Available evidence suggests that early interventions by social landlords successfully resolve over 80% of complaints about anti-social behaviour. However, where social landlords resort to eviction where all other intervention measures have been tried and failed, that process can be protracted (on average around seven months from the date of application to the court for a possession order to an outcome).

61. In August 2011 the Department for Communities and Local Government (DCLG) consulted on proposals to expedite the possession process where serious housing related anti-

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<sup>2</sup> These relevant grounds on which a court may order repossession under these provisions are that: the tenant or a person residing in or visiting the dwelling-house: (a) has been guilty of conduct causing or likely to cause a nuisance or annoyance to a person residing, visiting or otherwise engaging in a lawful activity in the locality; or (b) has been convicted either of using the dwelling-house or allowing it to be used for immoral or illegal purposes, or of an indictable offence committed in, or in the locality of, the dwelling-house.

social behaviour or criminality had already been proven in another court. In these circumstances landlords could choose to use, instead of existing discretionary grounds for possession, a new mandatory ground. This would provide the landlord with an unqualified right of possession, subject only to the court's considering the proportionality of the decision to seek possession (where the landlord is a public authority) where this is required by the decision of the Supreme Court in *Manchester City Council v Pinnock* [2011] 2 AC 104.

62. The discretionary grounds for possession for anti-social behaviour (which also includes criminal behaviour) referred to above apply only where the behaviour has taken place in, or in the locality of the dwelling house.

63. Following the riots in August 2011, and concerns about 'riot tourism', DCLG broadened the consultation on the new mandatory power of possession to cover proposals to extend the scope of the discretionary ground so that landlords would have powers to seek to evict a tenant where they, or a member of their household are engaged in riot related offences anywhere in the UK.

64. Final proposals, in the light of consultation, were published alongside and as part of the May 2012 White Paper '*Putting victims first: more effective responses to anti-social behaviour*'.

## **Part 6: Local involvement and accountability**

### **Community remedies**

65. The community remedy will require the PCC (or in London, the relevant policing body) to consult the public on what sanctions should be used informally when dealing with anti-social behaviour or low level criminality, and use their PCC crime commissioning funding to make available sanctions that address particular local needs. Police officers in that force area would then work from an agreed list of sanctions.

66. Typically, the informal approach would be used for low-level criminal damage, low value theft, minor assaults (without injury) and anti-social behaviour. The police officer would invite the victim to choose an appropriate sanction from the community remedy list. He or she would then give the offender the choice to either accept that informal sanction, or face more formal action on the offence they had committed.

67. What is on the community remedy menu in a particular area will depend on the views of victims and public, but it could include, for example:

- a. The offender signing an acceptable behaviour contract – where they agree not to behave anti-socially in the future, or face more formal consequences;
- b. Participation in structured activities funded by the PCC (or in London, the relevant policing body) as part of his or her efforts to prevent crime;
- c. Mediation – for example, to resolve a neighbour dispute;
- d. Paying compensation to the victim (e.g. for any damage caused);
- e. Reparation to the victim (e.g. repairing damage or scrubbing graffiti off a wall);  
or
- f. Reparation to the community – for example, by doing local unpaid work for up to 10 hours.

## **Response to complaints about anti-social behaviour**

68. The community trigger is a new tool to support victims and communities to ensure that agencies respond effectively to their needs. It will give those affected by anti-social behaviour the right to ask agencies to undertake a case review in relation to persistent anti-social behaviour.

69. The legislation will place a high-level duty on local authorities, police and health to deal jointly with these cases. Private registered providers of social housing will also have a duty to co-operate with this group, as they play a key role in tackling anti-social behaviour in local areas. Relevant authorities will be required to decide and publish the thresholds, criteria, process and reporting mechanism they intend to use locally.

70. Agencies will be able to design the process to suit local circumstances and focus on local priorities. It is envisaged that existing processes and channels of communication will be used where possible to minimise additional bureaucracy and workload.

## **TERRITORIAL EXTENT AND APPLICATION**

71. The draft Bill extends to England and Wales. The provisions of the draft Bill relate to a mix of reserved and transferred matters.

## **COMMENTARY ON CLAUSES**

### **Part 1: Injunctions to prevent nuisance and annoyance**

#### **Clause 1: Power to grant injunctions**

72. *Subsections (1) to (3)* set out the test for granting an injunction. An injunction may be made against a person aged 10 or over if the court is satisfied, on the balance of probabilities that the person has engaged in, or is threatening to engage in, anti-social behaviour and that it is just and convenient to grant the injunction.

73. *Subsection (4)* sets out that, in order to prevent the respondent from engaging in anti-social behaviour, the court may prohibit the respondent from doing anything described in the injunction or may require the respondent to do anything described in the injunction. Such prohibitions may include, for example, not being in possession of a can of spray paint in a public place, not entering a particular area, or not being drunk in a public place. The requirements in an injunction may include, for example, attendance at a course to educate offenders on alcohol and its effects and to reduce re-offending. An injunction can either be for a fixed period or it can be indefinite. (*Subsection (6)*). An injunction may specify periods for which any prohibitions or requirements will have effect (*subsection (7)*), although such prohibitions or restrictions may be open ended in the case of an injunction of indefinite duration.

74. *Subsection (5)* sets out the safeguards to balance, as far as practicable, an individual's rights when prohibitions or requirements are included in the injunction.



75. *Subsection (8)* gives the county court (for adults) and the youth court (for individuals under 18) the jurisdiction to grant an injunction.

76. In this clause, “anti-social behaviour”, “court” and “respondent” should be interpreted as in clause 19.

## **Clause 2: Requirements included in injunctions**

77. *Subsections (1) to (3)* set out that an injunction must specify the person who is responsible for supervising compliance with any requirement on the respondent. The court must receive evidence on the suitability and enforceability of a requirement from the individual or organisation responsible for supervising compliance. Such individuals or organisations could include the local authority, youth offending teams, recognised providers of substance misuse recovery or dog training providers for irresponsible dog owners. Before including two or more requirements in the injunction, the court must consider their compatibility with each other.

78. *Subsection (4)* sets out the duty on the person under *subsection (1)* responsible for monitoring compliance with a requirement. The duty includes making any necessary arrangements, promoting the respondent’s compliance with the requirement and informing the person who applied for the injunction if the respondent has complied or failed to comply with the requirement.

79. *Subsection (6)* obliges the respondent, who is subject to a requirement in the injunction, to keep in touch with the person specified in *subsection (1)* in relation to that requirement and in accordance with any instructions given by that person from time to time and to the respondent. The respondent must notify the person specified under *subsection (1)* of any change of address. These obligations have the effect of a requirement of the injunction and accordingly a failure to comply with such an obligation would trigger the breach provisions in clauses 8 to 11.

80. In this clause, “court” and “respondent” should be interpreted as in clause 19.

## **Clause 3: Power of arrest**

81. This clause enables the court to attach a power of arrest to any prohibition or requirement contained in an injunction. Where such a provision is included in an injunction a police officer will be able to arrest the respondent if he or she breaches the terms of any prohibition or requirement to which a power of arrest is attached. Where no power of arrest is included in an injunction, the individual or organisation who applied for the injunction may apply to the court to issue a warrant of arrest of the respondent under clause 9 *subsection (1)*.

82. In this clause, “anti-social behaviour”, “court”, “harm” and “respondent” should be interpreted as in clause 19.

## **Clause 4: Application for injunctions**

83. *Subsection (1)* lists those persons specified who can apply for the injunction. These are:

- a. a local authority;
- b. a housing provider;
- c. the chief officer of police for a police area;
- d. the chief constable of the British Transport Police;
- e. Transport for London;
- f. the Environment Agency; or
- g. the Special Health Authority known as the NHS Business Services Authority (or Awdurdod Gwasanaethau Busnes y GIG).

84. The Secretary of State may by order, subject to the negative resolution procedure, add or remove other persons, or categories of person, to the list of bodies that may apply for an injunction.

85. In this clause, “anti-social behaviour”, “housing accommodation”, “housing provider” and “local authority” should be interpreted as in clause 19.

#### **Clause 5: Application without notice**

86. *Subsection (1)* allows an application for an injunction to be made without notice to the respondent. This would be for exceptional or urgent circumstances and the applicant would need to produce evidence to the court as to why a without notice hearing was necessary.

87. *Subsection (2)* provides that the court must either dismiss the application or adjourn the proceedings. If it adjourns the proceedings it may grant an interim injunction. Where the court adjourns an application for an injunction it may grant an injunction on an interim basis, if it thinks it just to do so, without having to consider the tests in clause 1 *subsections (2) and (3)*.

88. In this clause, “court” and “respondent” should be interpreted as in clause 19.

#### **Clause 6: Interim injunctions**

89. *Subsection (1)* allows the court to grant an interim injunction where the hearing of an application is adjourned and under *subsection (2)* the court may grant an interim injunction if it thinks that it is just to do so.

90. *Subsection (4)* gives the court the same powers as in Part 1 in respect of an interim injunction as it has in respect of a full injunction, except that the court does not have the power to impose particular activities under clause 2 where it grants an interim injunction without notice (*subsection (3)*).

91. In this clause, “court” and “respondent” should be interpreted as in clause 19.

#### **Clause 7: Variation or discharge of injunctions**

92. *Subsection (1)* enables a court to vary or discharge an injunction upon an application by the applicant or the respondent. *Subsection (2)* allows the court to vary the injunction by: including a new prohibition or requirement; extending the effect of an existing prohibition or requirement; attaching a power of arrest; or extending the period in which a power of arrest has

effect in addition to reducing the length of time for which a condition has effect, or removing or otherwise reducing a condition of the injunction.

93. *Subsection (3)* prevents a party from re-applying to vary or discharge an injunction, where such an application has previously been dismissed, without the consent of the court or agreement of the other party.

94. In this clause, “court” and “respondent” should be interpreted as in clause 19.

#### **Clause 8: Arrest without warrant**

95. *Subsection (1)* allows a constable to arrest a respondent without warrant if the constable has reasonable cause to suspect that the respondent has breached a provision in the injunction and the injunction has a power of arrest attached to that provision.

96. *Subsections (2) and (3)* provide that a constable who arrests the respondent must inform the person who applied for injunction and the respondent must be brought before the relevant court within 24 hours beginning with the time of time of the arrest. *Subsection (4)* makes further provision in respect of the calculation of the 24 hour time limit.

97. In this clause, “court” and “respondent” should be interpreted as in clause 19.

#### **Clause 9: Issue of arrest warrant**

98. *Subsection (1)* provides that the person who applied for an injunction may apply to a court for an arrest warrant if they think that the respondent has breached a provision of the injunction.

99. Under *subsection (3)* the judge may issue an arrest warrant only if he or she has reasonable grounds for believing that the respondent has breached a provision of the injunction.

100. *Subsection (7)* provides that the judge may remand a respondent (on bail if the respondent is aged under 18, or on bail or in custody where the respondent is aged 18 and over) where he or she is brought before the relevant court under *subsection (2)* and the matter is not disposed of straightaway.

101. In this clause, “court” and “respondent” should be interpreted as in clause 19.

#### **Clause 10 and Schedule 1: Remands**

102. Clause 10 gives effect to Schedule 1 which makes further provision for remands following arrest under clauses 8 and 9. Under *paragraph 2(1)* of Schedule 1, the respondent may be remanded on bail or in custody. But the ability to remand a respondent aged under 18 in custody is limited to where there is satisfactory evidence from a medical practitioner, or there is reason to suspect, that the individual is suffering from a mental disorder and it is impracticable to get a report on the individual’s mental condition if he or she were remanded on bail. In such circumstances, the court may remand the person aged under 18 to a hospital or registered establishment that will prepare the report as instructed by the judge or the court: *paragraph 6(1)(a) and (b)*.

103. The maximum period that a person may be remanded by the judge or a court is 8 clear days unless *paragraph 5* or *6* applies or the person is remanded on bail and both that person and the injunction applicant agree to the longer period: *paragraph 4(1)(a)* and *(b)*. Where the court has power to remand a person in custody, the person may be kept in police custody for no more than 3 clear days: *paragraph 4(2)*.

104. Under *paragraph 5* the judge or the court may remand a person for a medical examination to be carried out on that person and to obtain a medical report following the examination if the judge or the court thinks that this is required. The adjournment for the medical report may not be for more than 3 weeks if the person (aged 18 or over) is remanded in custody. The adjournment may not be for more than 4 weeks if the person is remanded on bail.

### **Clause 11 and Schedule 2: Powers in respect of under-18s**

105. Clause 11 introduces Schedule 2 which makes further provision in respect of the powers of a youth court in dealing with the breach of an injunction by a person under 18. In this clause and schedule, “anti-social behaviour” and “court” should be interpreted as in clause 19.

#### Power to make a supervision order or detention order

106. Under *paragraph 1(1)* of Schedule 2, a youth court may make a supervision order or a detention order against a respondent under 18 if it is satisfied beyond reasonable doubt that the respondent is in breach of an injunction. *Paragraph 1(2)* provides that only the original applicant for the injunction may apply for a supervision order or a detention order under *paragraph 1*.

107. *Paragraph 1(3)* requires that the person making the application for a supervision order or a detention order must consult any youth offending team specified under clause 2(1) or if not specified, any youth offending team within the meaning of clause 14 and inform any other body or individual the person thinks appropriate before making the application. *Paragraph 1(4)* provides that in considering whether and how to apply for a supervision order or detention order, the court must consider any representations made by the youth offending team.

108. *Paragraph 1(5)* prevents a detention order being made against a person aged under 14.

109. *Paragraph 1(6)* provides that a court may only make a detention order under *paragraph 1(1)* if it is satisfied that, in view of the severity or extent of the breach of the injunction, no other power available to the court is appropriate. Where a court makes a detention order it must state in open court why it is satisfied that this is the case. This is a safeguard to ensure that a decision to detain a person aged under 18 is only used as a last resort by the court.

#### Supervision orders

110. Under Part 2 of Schedule 2, a supervision order is described as an order which imposes on a defaulter one or more of the following requirements: a supervision requirement,

an activity requirement and/or a curfew requirement: *paragraph 2(1)*. Under *paragraph 2(5)* a supervision order must specify a maximum period that the supervision will operate but that period must not exceed 6 months: *paragraph 2(6)*. The supervision order must also specify the youth offending team where the defaulter lives or the relevant youth offending teams the court decides if the defaulter lives in more than one area: *paragraph 2(7)*.

111. *Paragraph 2(2)* requires the court to obtain and consider information about the defaulter's family circumstances and consider the effects of a supervision order on the family circumstances. The court must also consider the compatibility of two or more requirements before imposing them: *paragraph 2(3)*.

112. *Paragraph 2(4)* provides that the court must also have regard to the defaulter's rights before it imposes a supervision order.

### Supervision requirements

113. Under *paragraph 3(1)* a "supervision requirement" means that the defaulter must attend appointments with the responsible officer from the youth offending team or another designated officer at whatever times and places instructed by the responsible officer. The appointments must be within the specified period of the operation of the requirement as described in *paragraph 2(5)*.

### Activity requirements

114. *Paragraph 4(1)* sets out the activity requirements in a supervision order. The defaulter must do any or all of the activity requirements in the specified period of time under *paragraph 2(5)*. The activity requirement may specify the number of days, type of activity or activities, or participation in one or more residential exercises or engage in activities as instructed by the responsible officer.

115. *Paragraph 4(12)* provides that where a supervision order contains an activity requirement a court may amend the order by changing the number of days, place, activity, period or description on the application of the original applicant or the defaulter.

116. *Paragraph 4(13)* provides that a court may include an activity requirement in a supervision order or vary an activity requirement only if it has consulted the youth offending team; if it is satisfied that the respondent will comply with the requirement; if the necessary arrangements are in place in the area where the defaulter will participate in activities in the order; and where the requirement or the varied requirement would involve the cooperation of a person other than the defaulter or responsible officer, if that person's consent has been obtained for its inclusion or variation.

### Curfew requirements

117. *Paragraph 5(1)* provides that a curfew requirement in relation to a supervision order means a requirement that the defaulter remain at a specified place and for a specified period in the order. The period in *paragraph (5)(1)* must be within the specified period in the order under *paragraph 2(5)* but may not amount to less than two or more than eight hours in any given day. A curfew requirement may specify different places or different periods for different days: *paragraph 5(2)*.

118. *Paragraph 5(4)* provides that the court must obtain and consider information about the proposed place before specifying a place in a supervision order, including information about the attitude of people who may be affected by the enforced presence of the defaulter.

119. Under *paragraph 5(5)* the court may vary the curfew requirements on the application of the original applicant by substituting new periods or a new place in the curfew requirement.

#### Electronic monitoring requirement

120. *Paragraph 6(1)* provides that a supervision order containing a curfew requirement may also contain a requirement for securing the electronic monitoring with the curfew requirement during a period specified in the order or determined by the responsible officer. A supervision order imposing an electronic monitoring requirement must have a person responsible for monitoring the requirement: *paragraph 6 (4)*. Under *paragraph 6 (2)*, before commencing the electronic monitoring, the responsible officer must notify the defaulter, the person responsible for monitoring and any person whose cooperation is needed to ensure that the monitoring will take place. The requirement may not be included in the order without that person's consent: *paragraph 6(3)*.

121. Under *paragraph 6(5)* the court may not include an electronic monitoring requirement in a supervision order unless the court making the order has been notified by the youth offending team that arrangements for electronic monitoring are available in the area that includes the place to be specified in the order, and the court is satisfied that the necessary provision can be made under the arrangements currently available. Under *paragraph 6 (6)* where a supervision order contains an electronic monitoring requirement, the court may amend the order by substituting a new period in the order, but only on the application of the original applicant or defaulter.

#### Responsible officer

122. *Paragraph 7(1)* provides that the responsible officer is the person responsible for monitoring the electronic monitoring requirement under *paragraph 6 (4)* and, in any other case, the member of the youth offending team. *Paragraph 7 (2)* provides that the responsible officer in a supervision order must make any necessary arrangements for the electronic requirement in the order and must promote the defaulter's compliance with the requirement. Under *paragraph 7(3)* the responsible officer must, as far as practicable, ensure any instruction by the officer under the supervision order does not interfere with the defaulter's rights under *paragraph 2(4)*.

#### Revocation of a supervision order

123. Under *paragraph 10(1)* the original applicant or the defaulter may apply to a youth court to revoke or amend the supervision order. The court may grant the application if it considers it is in the interests of justice to do so (*paragraph 10(2)*). *Paragraph 10(4)* provides that if an application to revoke or amend a supervision order is dismissed, the party that made the application may not make a further application without the consent of the court or the agreement of the other party. The original applicant must consult the youth offending team in the supervision order before applying to revoke or amend the supervision order.

### Compliance with the order

124. *Paragraph 11* provides that the responsible officer must inform the original applicant if he or she considers that the defaulter has complied with all the requirements of the supervision order.

125. *Paragraph 12(1)* provides that if the responsible officer considers that the defaulter has not complied with a requirement, he or she must inform the original applicant. The original applicant may apply to a youth court after being informed of the non-compliance (*paragraph 12(2)*). But before making the application under *paragraph 12(2)* the original applicant must consult the youth offending team or any other body or individual the original applicant thinks appropriate (*paragraph 12(3)*).

126. Under *paragraph 12(4)* if the court is satisfied beyond reasonable doubt that the defaulter has failed to comply with the requirement without reasonable excuse, the court may revoke the supervision order and make a new one or revoke the order and make a detention order. These powers may not be exercised after a defaulter reaches the age of 18 and are in addition to any other power in relation to the breach of the supervision order. The court must consider any representations from the youth offending team before using these powers.

### Detention orders

127. A defaulter may be detained in a secure training centre, youth offender institution or secure accommodation under a detention order (*paragraph 14(1)*). The defaulter may be detained for a maximum period of three months (*paragraph 14(2)*) and is detained in legal custody (*paragraph 14(5)*).

### Revocation of detention order

128. Under *paragraph 15(1)* the original applicant or the defaulter may apply to the youth court to revoke a detention order. The court may grant the application if it considers it to be in the interests of justice to do so: *paragraph 15(2)*. If the application is dismissed, the original applicant or the defaulter may not make a further application without the consent of the court or the agreement of the other party: *paragraph 15(4)*.

129. Under *paragraph 15(5)* the person applying for a detention order must consult the youth offending team specified in the injunction or the local youth offending team before doing so. The person applying for a detention order must consult the youth offending team specified in the relevant supervision order before doing so: *paragraph 15(6)*.

### **Clause 12: Power to exclude person from home in cases of violence or risk of harm**

130. In granting an injunction to a local authority or housing provider, the court may attach a power to exclude a respondent from his or her home or an area specified in the injunction where the respondent has been violent or threatened violence to another person or if there is a risk of harm by that person to another person. This provision is similar to section 153C of the Housing Act 1996 which applies to the housing management function of social landlords.

131. In this clause, “anti-social behaviour”, “court”, “harm”, “housing provider”, “local authority” and “respondent” should be interpreted as in clause 19.

### **Clause 13: Tenancy injunctions: exclusion and power of arrest**

132. This clause deals with breaches or anticipated breaches of the tenancy agreement by the tenant. The breach of the tenancy agreement does not necessarily need to relate to a housing provider’s or local authority’s housing management function. A tenancy agreement could contain a prohibition against anti-social behaviour to the housing provider’s or local authority’s staff, even where the anti-social behaviour has nothing to do with the housing provider’s or local authority’s housing management functions. This clause reproduces the effect of section 153D of the Housing Act 1996.

133. In this clause, “anti-social behaviour”, “court”, “harm”, “housing provider” and “local authority” should be interpreted as in clause 19.

### **Clause 14: Requirements to consult etc**

134. *Subsections (1) to (3)* require the applicant to consult the local youth offending team about the application if the respondent is under 18 years and inform any other body or individual about the application that they think appropriate, where the applicant is applying for an injunction (other than a without notice application where the consultation may take place before the first full hearing) or applying to vary or discharge an injunction. The statutory requirement for consultation does not mean that the youth offending team must agree the application made, but rather that they are told of the intended application and given the opportunity to comment.

135. In this clause, “court” and “respondent” should be interpreted as in clause 19.

### **Clause 15: Appeals against decisions of youth courts**

136. *Subsection (1)* provides for appeals against a decision of the youth court to be made to the Crown Court. Appeals from the county court or High Court are to the Court of Appeal under existing legislation.

### **Clause 16: Special measures for witnesses**

137. Special measures directions will apply to vulnerable and intimidated witnesses in injunction proceedings. In this clause, “court” should be interpreted as in clause 19.

### **Clause 18: Rules of court**

138. This clause enables further procedural matters to be provided for in rules of court made by the Civil Procedure Rules Committee. Such rules might provide, for example, for how cases involving respondents aged under 18 are transferred to the county court when they turn 18.

139. In this clause, “anti-social behaviour” and “respondent” should be interpreted as in clause 19.



## **Clause 20: Saving and transitional provisions**

140. This clause makes certain saving and transitional provisions in respect of ASBOs on application, anti-social behaviour injunctions and drinking banning orders before the commencement of the provisions in the Bill, repealing the legislation providing for such orders. Five years after the commencement of Part 1 of the Bill any of these orders still in force will be automatically treated as an injunction under Part 1.

## **Part 2: Criminal Behaviour Orders**

### **Clause 21: Power to make orders**

141. *Subsections (1) and (2)* allow the court to make a criminal behaviour order against a person (“the offender”) who has been convicted of a criminal offence if two conditions are met. As an order will be made on conviction of an offender, the relevant court will be a youth court, magistrates’ court or the Crown Court as the case may be. An order will be an ancillary order to the sentence.

142. The first condition, in *subsection (3)*, is that the court is satisfied that the offender has engaged in behaviour that caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household as the offender. The second condition, in *subsection (4)*, is that the court considers that making the order will assist in preventing the offender from engaging in such behaviour.

143. *Subsection (5)* provides that a criminal behaviour order is an order which, for the purpose of preventing the offender from engaging in behaviour described in *subsection (3)*, prohibits the offender from doing anything in the order or requires the offender to do anything in the order. Such prohibitions will be a matter for the court, but might include, for example, not being in possession of a can of spray paint in a public place, not entering a particular area, or not being drunk in a public place. The requirements that may be included in an order may include, for example, attendance at a course to educate offenders on alcohol and its effects and to reduce re-offending.

144. *Subsection (6)* provides that a criminal behaviour order may only be made against an offender when he or she has been sentenced for the offence or given a conditional discharge. No order may be made where the offender has been given an absolute discharge or has been bound over to keep the peace.

145. *Subsection (7)* provides that a court may only make a criminal behaviour order against an offender if the prosecution applies for an order; it may not make an order on its own volition.

146. *Subsection (8)* requires that the prosecution must find out the views of the local youth offending team (as defined in *subsection (10)*) before applying for a criminal behaviour order against an offender who will be under the age of 18 when the application is made. The youth offending team may have already been consulted during the preparation of the case file by the police or local authority; if this is the case the prosecutor does not need to re-consult the youth offending team, just be aware of their views .

147. *Subsection (9)* sets out the safeguards to balance, as far as practicable, an individual's rights.

#### **Clause 22: Proceedings on an application for an order**

148. *Subsections (1) and (2)* allow the courts to consider evidence submitted by the prosecution and the offender in its decision to make a criminal behaviour order. Such evidence can include evidence which was inadmissible in the criminal proceedings, for example certain types of hearsay or bad character evidence.

149. *Subsection (3)* allows the court to adjourn a hearing for a criminal behaviour order and *subsection (4)* sets out the options available to the court where an offender fails to appear for an adjourned hearing.

150. But the court may only issue a warrant for the arrest of the offender if he or she has been given adequate notice of the adjourned hearing (*subsection (5)*) and may only hear the proceedings in the offender's absence if he or she has been given adequate notice of the adjourned hearing and has been warned that the court may hear the proceedings in his or her absence (*subsection (6)*).

151. *Subsections (7) and (8)* dis-apply the reporting restrictions and the bar on the publication of certain information (such as the name, address or school of a child or young person) that normally apply in respect of legal proceedings in respect of persons under 18.

#### **Clause 23: Requirements included in orders**

152. *Subsection (1)* stipulates that if an order includes a requirement it must specify the person responsible for supervising compliance with the requirement. Such individuals or organisations could be the local authority, recognised providers of substance misuse recovery or dog training providers for irresponsible dog owners. Before including the requirement the court must receive evidence on the enforceability and suitability of the requirement from the individual specified or, in the case of an organisation, an individual representing that organisation (*subsection (2)*).

153. *Subsection (3)* requires the court to consider the compatibility of two or more requirements with each other before including them in an order.

154. Under *subsection (4)* it is the duty of the person specified under *subsection (1)* to make the necessary arrangements for a requirement that they are responsible for, to promote its compliance by the offender and to inform the prosecution and the appropriate chief officer of police (as defined in *subsection (5)*) if the offender has complied with the requirement or has failed to comply with it.

155. *Subsection (6)* requires an offender subject to a requirement in a criminal behaviour order to keep in touch with his or her supervisor and notify that person of any change of address. Breach of these obligations is to be treated as a breach of the requirements of the order and therefore subject to the breach provisions in clause 28.

#### **Clause 24: Duration of order etc**

156. An order takes effect on the day it is made (*subsection (1)*) save when there is an existing order in force in which case the new order may take effect once the existing order ceases to have effect (*subsection (2)*).

157. *Subsections (3), (4) and (5)* provide for the duration of a criminal behaviour order. Where a criminal behaviour order is made against a person under 18 years of age the order must be for a fixed period of between one and three years. In the case of an adult, a criminal behaviour order may be for a fixed period of at least two years or for an indefinite period.

#### **Clause 25: Approved courses**

158. *Subsection (1)* provides that a criminal behaviour order made in respect of an offender aged 16 or over may include provision for the order, or any prohibition or requirement included in it, to cease to have effect earlier than it would otherwise do if the offender completes an approved course. An approved course can be used to address the offender's anti-social behaviour where alcohol or drugs misuse may be the cause of the anti-social behaviour. The reduction in the length of the order or the prohibition period or requirement period may be no more than half (*subsection (3)*). The offender must agree to attend an approved course (having had an explanation of what attendance on the course will involve and of fees that might be payable) and the court must be satisfied that a place on an approved course is available for the offender (*subsections (4) and (5)*). A court is required to give its reasons for not including provision in a criminal behaviour order for attendance at an approved course (*subsection (6)*).

#### **Schedule 3: Approval of courses and certificates of completion**

##### Approval of courses

159. Under *paragraph 1(1)* applications for the approval of a course for the purposes of clause 25 may be made to the local authority in whose area the course is to be provided or primarily provided. *Paragraph 1(4)* sets out matters which a local authority must have regard to when deciding whether to approve a course. The local authority will consider the aims of the course, its likely effectiveness in preventing anti-social behaviour, whether the course can be administered effectively and efficiently, the availability of places for persons subject to a criminal behaviour order and whether the course is good value for money. A local authority may charge fees for applications to approve courses and for giving approvals: *paragraph 1 (6)*.

##### Certificates of completion of approved courses

160. Under *paragraph 2(3)* the course provider must give the offender a certificate of completion unless the offender has: failed to pay fees that are due, has failed to attend the course as reasonably instructed by the course provider, or has failed to comply with a reasonable requirement from that person.

#### **Clause 26: Interim orders**

161. This clause makes provision for the making of interim criminal behaviour orders. Under *subsections (1) and (2)* where a court adjourns the hearing on an application for a

criminal behaviour order it may make an order that lasts until the final hearing of the application if the court thinks it is just to do so. In making an interim order the court does not have to satisfy the two conditions in *subsections (3) and (4)* of clause 21. *Subsection (3)* dis-applies other restrictions on the making and duration of a criminal behaviour order in the case of an interim order. So, for example, a court may make an interim order on its own volition for a fixed period of less than two years (in the case of an adult). The other powers of a court under this Part, for example, the power to vary or discharge an order, will apply to an interim order as they apply to any other kind of criminal behaviour order (*subsection (4)*).

#### **Clause 27: Variation or discharge of orders**

162. *Subsection (1)* allows a court to vary or discharge an order upon the application of the offender or the prosecution. *Subsections (2) and (3)* prevent a party from making a further application to vary or discharge an order without the consent of the court or agreement of the other party (the offender or prosecution) if the party has made a previous application that has been dismissed. *Subsection (4)* allows the court to include an additional prohibition or requirement or extend the duration of a prohibition or requirement when varying an order.

#### **Clause 28: Breach of order**

163. *Subsection (1)* makes it an offence for a person subject to a criminal behaviour order to breach a prohibition or fail to comply with a requirement in the order without reasonable excuse.

164. *Subsection (2)* provides for the penalties on conviction for such an offence. On summary conviction the maximum penalty is 6 months imprisonment or a fine of up to £5,000, or both. Where a person is convicted on indictment the maximum penalty is five years imprisonment or an unlimited fine, or both. *Subsections (5) and (6)* dis-apply the reporting restrictions that normally apply in respect of legal proceedings in respect of persons under 18, but the court's discretionary powers to restrict reporting continue to apply; however, where the court exercises such discretionary powers it must give its reasons for doing so.

#### **Clause 29: Special measures for witnesses**

165. Special measures directions can be used in relation to vulnerable and intimidated witnesses in criminal behaviour order proceedings.

#### **Clause 30: Saving and transitional provision**

166. This clause makes certain saving and transitional provisions in respect of ASBOs on conviction, individual support orders and drinking banning orders on conviction made before the commencement of the provisions in the Bill, repealing the legislation providing for such orders. Five years after the commencement of Part 2 of the Bill any orders still in force will be automatically treated as criminal behaviour orders.

### **Part 3: Dispersal powers**

#### **Clause 31: Directions excluding a person from an area**

167. *Subsections (1) to (4)* give a constable in uniform the power to direct a person who is in a public place to leave an area and not return for a period of up to 48 hours. The constable must have reasonable grounds to suspect that the behaviour of the person has contributed, or is likely to contribute, to members of the public being harassed, alarmed or distressed, or to the occurrence of crime or disorder. The constable must also consider that the direction is necessary for the purpose of removing or reducing the likelihood of harassment, alarm or distress, crime or disorder.

168. *Subsection (5)* states that the direction must be given in writing, unless this is not reasonably practicable in the circumstances, in which case it can be given orally. It will be strongly advised that officers should give the direction in writing as this safeguards against disproportionate use of the power and later challenge in court. The constable must specify the area from which the person is excluded, and may specify when and by which route they must leave the area, and the consequences if they fail to comply. If the person appears to be under the age of 16 the constable can take them home or to a place of safety (*subsection (7)*).

#### **Clause 32: Restrictions**

169. This sets out the restrictions to the power, including that the constable cannot prevent the person from having access to certain places such as where they live, are employed, or attend for medical treatment. A direction may not be given to anyone under the age of 10.

#### **Clause 33: Surrender of property**

170. The constable may require the person being given the direction to surrender any items being used in the anti-social behaviour. The constable does not have power under this provision to seize the item. The constable must give the person information in writing about how and when they can recover the item, which must not be returned before the exclusion period is over. If the person is under 16 the constable can require that person to be accompanied by an adult when collecting the item.

#### **Clause 35: Offences**

171. A person who fails to comply with a direction to leave commits an offence and is liable on summary conviction to imprisonment for up to three months, a fine not exceeding level four on the standard scale (£2,500), or both. The fine has been set at this level in order to be equivalent to the fine for drunk and disorderly behaviour. Failure to comply with a request to surrender items is a lesser offence and is subject to a level two fine (£500); this is the level of fine applicable to refusing to hand over alcohol in an alcohol controlled zone under a designated public protection order.

#### **Clause 36: Powers of community support officers**

172. This amends Schedule 4 to the Police Reform Act 2002 (powers of community support officers), to provide community support officers with the ability to use the dispersal power and the power to ask the person to surrender items if designated by the Chief Constable.

### **Clause 37: Saving and transitional provision**

173. This clause makes saving provisions for authorisations given under section 30(2) of the Anti-social Behaviour Act 2003, and directions given under section 27 of the Violent Crime Reduction Act 2006 before the commencement day of Part 4 of the Act.

### **Part 4, Chapter 1: Community protection notices**

#### **Clause 38: Power to issue notices**

174. *Subsection (1)* aims to make clear that a CPN should not be issued for a single instance of behaviour by stating that the behaviour must be persistent or continuing in nature.

175. *Subsections (3) and (4)* outline the kind of requirements, or conditions, which could be included in a CPN. For instance, a CPN could be issued against an individual who was persistently littering a communal area of a block of flats if this was causing nuisance or annoyance to fellow residents. The requirements could include not allowing litter to accumulate in communal areas as well as a positive requirement to clean up the mess already made. These would have to be linked into the original conduct – for instance, it would not be possible to include a positive requirement to help clean graffiti off a community centre on the opposite side of town if the CPN were issued in relation to a build up of household waste (washing machines, mattresses, etc.) in their front garden.

176. *Subsection (5)* refers to the statutory nuisance regime. Management of statutory nuisance is set out in Part III of the Environmental Protection Act 1990. The Act places a duty on a local authority to investigate complaints of statutory nuisance from people living within its area.

177. The following issues may constitute statutory nuisances:

- a. Noise
- b. Artificial light
- c. Odour
- d. Insects
- e. Smoke
- f. Dust
- g. Premises
- h. Fumes or gases
- i. Accumulation or deposit
- j. Animals kept in such a place or manner as to be prejudicial to health or a nuisance
- k. Any other matter declared by any enactment to be a statutory nuisance

178. Where a local authority establishes any one of these issues constitutes a nuisance (i.e. is unreasonably interfering with the use or enjoyment of someone's premises) or is prejudicial to health they must generally serve an abatement notice on the person responsible. Failure to comply with the notice could result in the person being prosecuted.

179. If environmental anti-social behaviour meets the threshold for statutory nuisance, it must be dealt with accordingly through that route. Where there is a likelihood that this could be

the case, the authorised person should contact the relevant local authority office to discuss the use of a CPN. Further guidance will be developed to ensure that this distinction is understood by all practitioners.

180. *Subsection (6)* relates to the interim stage required before issuing a notice – namely the issue of a written warning stating that unless the individual’s conduct stops, they will be issued with a CPN. This written warning could be issued in person, by email, or where appropriate, by text message. The period of time between a written warning and issue of a CPN would depend on circumstances – for instance, a number of days to allow time for graffiti to be cleared but a shorter period to deal with a barking dog.

181. As with some of the other new powers, *subsection (7)* makes clear that before issuing a CPN, the authorised person (police officer, local authority officer, etc.) must inform anyone they think appropriate. This is to ensure that the CPN is appropriate in the circumstances. For instance, to make sure that another authorised person has not already issued (or is considering issuing) a CPN and that there are no other restrictions that need to be considered. For instance, if the ongoing issue involved noise nuisance, an authorised person would be expected to consult with the local authority’s statutory nuisance team.

182. In this clause, “conduct” should be interpreted as in clause 51.

#### **Clause 39: Occupiers of premises etc**

183. A CPN is designed to be issued against an individual or organisation who can appropriately be held responsible for the environmental anti-social behaviour that is having a detrimental effect on the quality of life of others. This clause aims to identify who those individuals or organisations could be. For instance, if a small shop were allowing litter to be deposited outside the property and not dealing with the issue, a CPN could be issued and would probably be issued to the business owner, whereas if a large national supermarket were to cause a similar issue, the company itself would probably be issued with a CPN. Guidance will be issued to assist practitioners in this area.

184. *Subsection (3)* outlines one of the safeguards included in the CPN to ensure that its application and use is proportionate. This ensures that where the individual or organisation could not reasonably be expected to control the issue or affect it through any reasonable action, they should not be held accountable.

185. In this clause, “conduct” and “premises” should be interpreted as in clause 51.

#### **Clause 40: Occupier or owner unascertainable**

186. This allows for an authorised person (police officer, etc.) to issue a CPN where the owner of a property or piece of land where the nuisance or annoyance has taken place cannot be ascertained. It allows them to enter the property or land insofar as to post the notice only – not to undertake any work.

187. In this clause, “owner” and “premises” should be interpreted as in clause 51.

#### **Clause 41: Appeals against notices**

188. This clause gives a right of appeal under which a failure to satisfy any of the requirements for the issuing of the notice can be raised. In this clause, “conduct” should be interpreted as in clause 51.

#### **Clause 42: Remedial action by local authorities**

189. *Subsections (2) and (3)* refer to the steps that can be taken when the conditions outlined in a CPN are not met. For example, if this relates to the cleaning up of graffiti, the local authority could issue a second notice outlining the steps the local authority planned to take to clean the graffiti up and how much this would cost. If access were required to a property, the owner’s consent would also be required to facilitate the works. If this were not forthcoming, the relevant authority would not be able to undertake the works and would have to seek another route for resolution (see clause 43). This clause does not provide a power of entry.

190. *Subsection (1)* explains that only the local authority can issue a second notice when there has been a failure to comply with an original CPN. This emphasises the importance of a police officer or registered social landlord consulting properly when considering issuing a notice, as local authority capacity would have to be considered.

191. In this clause, “local authority”, “owner” and “premises” should be interpreted as in clause 51.

#### **Clause 43: Offence of failing to comply with notice**

192. The remedial action outlined in clause 42 does not change the fact that failure to comply with the conditions of a CPN is an offence. *Subsection (2)* outlines the potential fines available to a court, in this case a magistrates’ court, on failure to comply. Level four of the standard scale is currently £2,500.

193. *Subsection (5)(a)* provides the defence of taking all reasonable steps, a safeguard that has been built into the CPN. For instance, if a newsagent had been issued with a CPN for allowing customers to persistently drop litter outside his shop and had responded to this by putting up signage and placing a waste bin outside, it could be argued that he or she had taken reasonable steps to address the issue.

194. In this clause, “conduct” should be interpreted as in clause 51.

#### **Clause 44: Remedial orders**

195. *Subsections (1) and (2)* provide that once a CPN has not been complied with, the court can make whatever order it thinks appropriate to ensure the work is done. This can take the form of the initial conditions in the original CPN or can go further if the situation has deteriorated. Failure to undertake this work would then result in contempt of court, and could be dealt with through a fine or committal to custody under section 63(3) of the Magistrates’ Courts Act 1980. *Subsection (4)* provides that there remains no formal power of entry associated with the CPN.



196. In this clause, “local authority” should be interpreted as in clause 51.

**Clause 46: Seizure of item used in conjunction with an offence**

197. *Subsection (1)* enables a justice of the peace to issue a warrant allowing a constable to enter premises to seize any item that is considered to be causing the nuisance and annoyance. This could include a sound system, spray paints, etc.

198. In this clause, “premises” should be interpreted as in clause 51.

**Clause 47: Fixed penalty notices**

199. *Subsection (1)* explains that if someone fails to comply with a CPN, they can be issued with a fixed penalty notice in the first instance rather than resorting to court proceedings. In this clause, “conduct” should be interpreted as in clause 51.

**Clause 48: Authorised persons**

200. *Subsection (1)* sets out who can issue a CPN and enables the local authority to extend this power to other designated persons. At the moment, it is intended that this will only refer to registered providers of social housing, as defined in clause 19, *subsection (1)*.

201. *Subsections (5) and (6)* amend the Police Reform Act 2002 to enable community support officers to issue both CPNs and fixed penalty notices if designated by the Chief Constable.

202. In this clause, “conduct” and “local authority” should be interpreted as in clause 51.

**Clause 49: Exemption from liability**

203. *Subsections (1) and (2)* make clear that damages arising from an authorised person making good under a CPN (such as removing graffiti) are not the responsibility of the individual or local authority doing the work. The only exceptions to this are outlined in *subsection (3)*.

204. *Subsection (4)* makes reference to section 6(1) of the Human Rights Act 1998. This states that “*it is unlawful for a public authority to act in a way which is incompatible with a Convention right*”.

205. In this clause, “local authority” and “owner” should be interpreted as in clause 51.

**Clause 50: Issuing of notices**

206. *Subsection (4)* refers to section 7 of the Interpretation Act 1978 which states:

*“Where an Act authorises or requires any document to be served by post (whether the expression “serve” or the expression “give” or “send” or any other expression is used) then, unless the contrary intention appears, the service is deemed to be effected by properly addressing, pre-paying and posting a letter containing the document and,*

*These notes refer to the draft Anti-Social Behaviour Bill as published for pre-legislative scrutiny by the Home Affairs Select Committee on 13 December 2012*

*unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.”*

#### **Clause 52: Saving, transitional and transitory provision**

207. The notices being replaced are summarised in Annex B.

#### **Part 4, Chapter 2: Public space protection orders**

##### **Clause 53: Power to make orders**

208. The local authority may issue a public spaces protection order where activity in a public place has or is likely to have a detrimental effect on the quality of life of those in the area. The order will either prohibit specific activities, or require people carrying out an activity to do certain things, or it can specify both. Restrictions imposed by the order are justified if the effect of the activity is likely to be persistent and unreasonable. The order must identify the area to which it applies; this is called the “restricted area”. For instance, it could prohibit the drinking or carrying of alcohol in a certain park, restrict the use of a particular alleyway or control dogs in a specific area.

209. The order will specify:

- a. Who it applies to (to all people, those in specified categories, or all people except those in specified categories);
- b. When it applies (all the time, at specified times, or at all times except specific times);
- c. In which circumstances it applies (in all circumstances, in specified circumstances or in all circumstances except those specified).

210. It must identify the activities it restricts, where it applies, the period of time it applies to and the consequences of failing to adhere to the order. The order must be published in accordance with regulations made by the Secretary of State.

211. *Subsection (7)(b)* states that the local authority must consult any community representative the local authority considers appropriate; for instance if the local authority plans to close a park in a residential estate, it would be expected that they would inform the residents’ association responsible for that estate.

212. In this clause, “local authority”, “public place” and “restricted area” should be interpreted as in clause 65.

##### **Clause 54: Duration of orders**

213. The order may have effect for up to 3 years, and may be extended for a further 3 years. Before extending the order the local authority must consult the chief officer of police and the police and crime commissioner for the area, or, in London, the relevant policing body, and any community representative the local authority considers appropriate.

214. In this clause, “local authority” and “restricted area” should be interpreted as in clause 65.

**Clause 55: Variation and discharge of orders**

215. An order may be varied by the local authority that made it. This could include adding additional prohibitions (for instance, the drinking of alcohol had been banned and they want to add mini-motos), or reduce prohibitions (for instance, decrease the size of the area).

216. In this clause, “local authority” and “restricted area” should be interpreted as in clause 65.

**Clause 56: Premises etc to which alcohol prohibition does not apply**

217. In this clause, “alcohol” and “local authority” should be interpreted as in clause 65.

**Clause 57: Consumption of alcohol in breach of prohibition in order**

218. An authorised person who reasonably believes that a person is consuming, has been consuming, or intends to consume alcohol in breach of an order may require the person not to consume the alcohol in the restricted area and to surrender the alcohol to the authorised person. The authorised person must show evidence of their authorisation if they are asked to do so. The authorised person may dispose of any surrendered item. *Subsection (6)* states that a person who fails to comply without reasonable excuse may be subject to a level two fine on the standard scale – currently £500.

219. In this clause, “alcohol” and “local authority” should be interpreted as in clause 65.

**Clause 58: Orders restricting public right of way over highway**

220. *Subsection (2)* covers the safeguards in place before issuing an order restricting public rights of way over a highway. In this clause, “local authority” should be interpreted as in clause 65.

**Clause 60: Challenging the validity of orders**

221. In this clause, “local authority” and “restricted area” should be interpreted as in clause 65.

**Clause 61: Offence of failing to comply with order**

222. *Subsection (2)* states that a person who does anything prohibited by the order, or fails to comply with a requirement of the order commits an offence and is liable to a level three fine on the standard scale – currently £1,000. In this clause, “local authority” should be interpreted as in clause 65.

**Clause 62: Fixed penalty notices**

223. In this clause, “local authority” should be interpreted as in clause 65.

**Clause 63: Powers of community support officers**

224. This amends Part 1 of Schedule 4 to the Police Reform Act 2002 (powers exercisable by community support officers), to provide community support officers with the power to impose a requirement under clause 57 or to issue fixed penalty notices if designated by the Chief Constable.

225. In this clause, “alcohol” and “restricted area” should be interpreted as in clause 65.

**Clause 64: Byelaws**

226. This states that an order under this section takes precedence over a byelaw where the byelaw prohibits an activity in the restricted area. In this clause, “restricted area” should be interpreted as in clause 65.

**Part 4, Chapter 3: Closure of premises associated with nuisance or disorder etc**

**Clause 66: Power to issue closure notices**

227. *Subsection (4)(a)* ensures that those who habitually live on the premises are allowed entry to the premises during the period of closure. For instance, when a property is rented out, it allows both the owner and the resident to access the property.

228. The consultation mentioned in *subsection (7)* could include the police, local authority, social landlords, etc. Guidance will be issued alongside the legislation on enactment to provide further information to practitioners.

229. In this clause, “local authority”, “owner” and “premises” should be interpreted as in clause 81.

**Clause 67: Duration of premises closure notices**

230. This clause covers the short-term closure notice which can be extended to cover any period, not exceeding 48 hours. Both the initial notice and extension notice must be issued in writing to the relevant person - for instance the owner of the business.

231. In this clause, “extension notice” and “local authority” should be interpreted as in clause 81.

**Clause 68: Cancellation or variation of closure notices**

232. In this clause, “cancellation notice”, “extension notice”, “local authority”, “premises” and “variation notice” should be interpreted as in clause 81.

**Clause 69: Service of notices**

233. *Subsection (3)* states that if other people are affected by the closure notice, reasonable efforts should be made by the issuing person to serve them a copy of the notice. This could relate to an adjoining property if access is through the closed premises or premises of multiple-occupancy.

234. *Subsection (4)* only allows the power of entry for the purposes of fixing a copy of the notice in a prominent place in the property – as required by *subsection (2)(a)*. It does not provide power of entry for any other reason or purpose.

235. In this clause, “cancellation notice”, “extension notice”, “local authority”, “premises” and “variation notice” should be interpreted as in clause 81.

#### **Clause 70: Power of court to make closure orders**

236. In this clause, “criminal behaviour”, “local authority”, “premises”, “premises licence” and “relevant licensing authority” should be interpreted as in clause 81.

#### **Clause 71: Temporary orders**

237. This clause allows the court to decide to allow a short-term closure notice to continue during a period of adjournment (not more than 14 days), if necessary. This allows the person issued with the closure notice time to show that the order should not have been made, without increasing the risk of anti-social behaviour to those in the immediate vicinity of the premises. *Subsection (2)* states that even if an order is not made, the court may order that the closure notice remains in place unless it is cancelled.

238. In this clause, “premises” should be interpreted as in clause 81.

#### **Clause 72: Extension of closure orders**

239. In this clause, “cancellation notice”, “local authority” and “premises” should be interpreted as in clause 81.

#### **Clause 73: Discharge of closure orders**

240. In this clause, “cancellation notice”, “local authority” and “premises” should be interpreted as in clause 81.

#### **Clause 74: Appeals**

241. In this clause, “local authority”, “premises”, “premises licence” and “relevant licensing authority” should be interpreted as in clause 81.

#### **Clause 75: Enforcement of premises closure orders**

242. This clause provides for a power of entry to allow for a building to be closed securely or to carry out essential maintenance during the period of closure.

243. In this clause, “local authority”, “owner” and “premises” should be interpreted as in clause 81.

**Clause 76: Offences**

244. Level 5 on the standard scale is currently £5,000. In this clause, “premises” should be interpreted as in clause 81.

**Clause 77: Access to other premises**

245. *Subsection (4)* allows for the court to consider every case independently and design an arrangement over access that is appropriate.

246. In this clause, “local authority”, “owner” and “premises” should be interpreted as in clause 81.

**Clause 78: Reimbursement of costs**

247. In this clause, “local authority”, “owner” and “premises” should be interpreted as in clause 81.

**Clause 79: Exemption from liability**

248. *Subsections (1) and (2)* make clear that damages arising from an authorised person exercising or purporting to exercise a closure order are not the responsibility of the individual or local authority doing the work.

249. *Subsection (4)* makes reference to section 6(1) of the Human Rights Act 1998. This states that “*it is unlawful for a public authority to act in a way which is incompatible with a Convention right*”.

250. In this clause, “local authority” should be interpreted as in clause 81.

**Clause 80: Compensation**

251. In this clause, “owner” and “premises” should be interpreted as in clause 81.

**Part 5: Recovery of possession of dwelling-houses: anti-social behaviour grounds**

**Clause 83: New ground for serious offences or breach of requirements etc**

252. This clause introduces a new absolute ground for possession of a dwelling that is the subject of a secure tenancy (in general, most secure tenants are local authority tenants although other social landlords, such as private registered providers of social housing (“PRPs”) in England and registered social landlords (“RSLs”) in Wales may have secure tenants). Under the provisions of the Housing Act 1985 (“the 1985 Act”) the county court may only make an order for possession of a secure tenancy if it considers it reasonable to do so and/or suitable alternative accommodation is available and one of the grounds in Schedule 2 to the 1985 Act is met. Under ground 2 of Schedule 2 to that Act, the court may grant possession for anti-social behaviour if it considers it reasonable to do so.

253. *Subsection (1)* inserts a new section 84A into the 1985 Act which provides that the court will be required to grant possession if any one of the conditions in new section 84A is

met; the notice requirements have been met, and, where relevant, the review procedures have been followed. The conditions relate to anti-social behaviour by the tenant, a member of the tenant's household or a visitor to the property.

254. Condition 1, 2 or 3 will be met if the tenant, a member of the tenant's household or a person visiting the property has been:

- a. convicted for a serious offence (which is one of the offences set out in new Schedule 2A to the 1985 Act as inserted by Schedule 4 to the Bill);
- b. found by a court to have breached an injunction to prevent nuisance and annoyance obtained under clause 1 of the Bill; or
- c. convicted for breach of a criminal behaviour order obtained under clause 21 of the Bill.

255. The offence or anti-social conduct must have been committed in the dwelling-house or in the locality of the dwelling-house, affected a person with a right to live in the locality of the dwelling-house or affected the landlord or a person connected with the landlord's housing management functions.

256. Condition 4 will be met if the tenant's property has been closed under a closure order obtained under clause 70 of the Bill as a result of anti-social behaviour in or near the property and the total period of closure (under the order or under a preceding closure notice) was more than 48 hours.

257. Condition 5 will be met if the tenant, a member of the tenant's household or a person visiting the property has been convicted for breach of a notice or order to abate noise in relation to the tenant's property under the Environmental Protection Act 1990.

258. Tenants of public authorities may raise the issue of proportionality as a defence to the possession proceedings: see *Manchester City Council v Pinnock* [2011] 2 AC 104.

259. New section 84A(10) and (11) confers power on the Secretary of State in relation to England and the Welsh Ministers in relation to Wales to amend new Schedule 2A to the 1985 Act by order (subject to the negative resolution procedure) by adding an indictable offence or removing an offence.

#### **Clause 84: Notice requirements for new ground**

260. This clause sets out the notice requirements where a landlord of a secure tenant wishes to seek possession for anti-social behaviour on the absolute ground because they believe one or more of the conditions in new section 84A inserted by clause 83 have been met. The clause inserts new section 83B into the 1985 Act which prescribes the minimum notice that the landlord must give to a tenant with a periodic tenancy and the time limits in which possession proceedings must begin. In the notice, landlords must also give the reason for applying for possession and the condition, or conditions, on which they propose to rely and let the tenants know where and how they can seek advice. Landlords whose tenants have a statutory right to request a review of the decision must also inform their tenants about this right.

261. The clause also sets out the time limits within which a notice must be served following a conviction, finding of the court or closure of premises or the conclusion of any appeal process.

#### **Clause 85: Review requirements for new ground**

262. This clause, which inserts a new section 85ZA into the 1985 Act, provides secure tenants of local housing authorities and housing action trusts with a right to request a review of the landlord's decision to seek possession on the absolute ground. The landlord must review the decision, if the tenant requests it. New section 85ZA specifies how requests should be made, the time limits that apply to the review procedure and how the outcome of the review should be communicated to the tenant.

263. New sections 85ZA(7) and (8) confers a power on the Secretary of State in relation to England and the Welsh Ministers in relation to Wales to make regulations (subject to the negative resolution procedure) setting out the procedure for carrying out such reviews.

#### **Clause 86: Corresponding new ground and notice requirements for assured tenancies**

264. Tenants in the private sector and most tenants of PRPs and RSLs have assured tenancies. With assured tenancies, the court must grant the landlord possession if a ground in Part 1 of Schedule 2 to the Housing Act 1988 ("the 1988 Act") is met and may grant possession if one of the grounds in Part 2 of Schedule 2 to that Act is met and it is reasonable to grant possession. Under ground 14 of Schedule 2, the court may grant possession on the grounds of anti-social behaviour if it considers it reasonable to do so.

265. *Subsection (1)* amends Schedule 2 to the 1988 Act so as to introduce a new ground for possession (new ground 7A) so that the court will be required to grant possession if any of the conditions in ground 7A are met. These conditions are identical to those for secure tenants in new section 84A of the 1985 Act inserted by clause 83.

266. *Subsection (2)* amends section 8 of the 1988 Act to modify the notice requirements for possession to take account of the new ground 7A. As with clause 84, if the landlord is seeking possession of a periodic tenancy on the absolute ground, the minimum notice period is 4 weeks, or a tenancy period's notice if the tenancy period is longer than 4 weeks (for example, a calendar month if the tenancy is monthly). The minimum notice period for fixed term assured tenancies is one month. Notice must be served within a prescribed time limit of the date on which the condition for the absolute ground to apply is met. Section 8 of the 1988 Act requires possession proceedings to begin with 12 months of the notice being served.

#### **Clause 87: Addition of offences connected with riot to existing possession grounds**

267. This clause adds a new ground for possession into Schedule 2 to the 1985 Act (*subsection (1)*) and Part 2 of Schedule 2 to the 1988 Act (*subsection (2)*) so that a landlord can apply for possession of a secure or assured tenant's property where the tenant or a person living in the tenant's property has been convicted of an offence committed at the scene of a riot which took place anywhere in the UK. This will enable the court to grant possession even if the anti-social behaviour did not occur in the locality of the dwelling-house. Possession on this ground is subject to a test of reasonableness and applies only to dwelling houses in England.



## **Clause 88: Restrictions where new possession proceedings in progress etc**

268. Under Part V of the 1985 Act, secure tenants who meet the qualifying criteria have the right to buy their property. Clause 88 amends section 138 of the 1985 Act so that, as with the existing ground for possession for anti-social behaviour, if proceedings on the absolute or the new discretionary ground of possession for anti-social behaviour are pending before any court, the landlord has no duty to convey the freehold or grant a lease to a tenant who has applied to exercise the right to buy.

269. The amendments made by this clause will also mean that a landlord may also refuse to allow a tenant to take part in mutual exchange under the 1985 Act (which applies to secure tenants) (*subsection (2)*) or a transfer of tenancy under the Localism Act 2011 (which applies to certain secure and assured tenants) (*subsection (3)*). Landlords may already withhold consent where possession is being sought on the discretionary ground for anti-social behaviour.

## **Part 6: Local involvement and accountability**

### **Community remedies**

#### **Clause 89: The community remedy document**

270. The ‘area’ referred to in *subsection (1)* relates to police force areas (as defined in Schedule 1 to the Police Act 1996). The ‘local policing body’ relates to police and crime commissioners or their equivalent, for example the Mayor’s Office for Policing and Crime in London.

271. *Subsection (2)* defines a community remedy document as a list of actions that might be carried out by an offender or a perpetrator of anti-social behaviour as a sanction without going to court. The local policing body must ensure that the actions in the community remedy document are reasonable and proportionate. The community remedy document could include actions such as paying compensation to the victim, making good any damage caused or mediation to resolve a dispute.

272. *Subsection (3)* requires the local policing body to consult with the chief officer of police for the area, community representatives and the public when preparing the community remedy document. This might include consulting with local faith leaders or leaders of community groups, holding public meetings, or putting up notices in prominent places within the community.

273. *Subsection (5)* requires the local policing body to publish the community remedy document in whatever way is considered appropriate which might be, for example, on a website or a notice board.

#### **Clause 90: Anti-social behaviour: out of court disposals**

274. *Subsections (1)(c)* and *(d)* ensure that the community remedy can only be used where the constable (or other person listed under *subsection (2)*) thinks there is enough evidence to apply for an injunction to prevent nuisance and annoyance under clause 1 of the Bill or to take other court proceedings and when it is not considered that a conditional caution would be appropriate.

275. *Subsection (2)* defines the people who are able to make decisions on which out of court disposal is appropriate.

276. The effect of *subsection (4)* is that, once the views of the victim have been obtained, the constable (or other person) would have to be satisfied that any action chosen by the victim from the community remedy document is reasonable and proportionate to the behaviour or offence committed. For instance, it would be unreasonable to ask an offender to carry out an action that was incompatible with their disability.

### **Clause 91: Criminal behaviour: conditional cautions**

277. *Subsections (1) and (2)* insert sections after section 23 of the Criminal Justice Act 2003 and section 66B of the Crime and Disorder Act 1998 which relate to requirements for adult conditional cautions and youth conditional cautions. Before including any conditions, the views of the victim must be sought as to what action they would like the perpetrator to undertake.

278. The prosecutor or authorised person (such as a constable) would have to be satisfied that any action chosen by the victim from the community remedy document is reasonable and proportionate to the offence committed.

### **Response to complaints about anti-social behaviour**

#### **Clause 92: Complaints about anti-social behaviour: review of response**

279. The community trigger is a mechanism for victims of persistent anti-social behaviour to request that relevant bodies undertake a case review. Relevant bodies are set out in clause 93 and include the local authority, police, health providers and providers of social housing. Any individual, community or business can make an application for a case review, and the relevant bodies must carry out a case review if the threshold is met. The threshold will be set by the relevant bodies and could, for example, be three reports of separate incidents of anti-social behaviour in a six month period, where there has not been an adequate response to that behaviour.

280. The relevant bodies in each local government area must make and publish arrangements for review procedures. *Paragraph 8* of Schedule 5 allows for joint arrangements to be made for a larger area such as the police force area. The procedures must include the point of contact for making applications and ensure that applications are passed to all the relevant bodies in the area. The bodies carrying out the review must inform the applicant of their decision on whether or not the threshold for review is met, the outcome of the review and any recommendations made as a result of the review. The bodies carrying out the review may make recommendations to a person who carries out public functions, including any of the bodies that have taken part in the community trigger review, and the person must have regard to the recommendations.

281. Relevant bodies must publish information about the number of applications and the number of case reviews carried out.

## **Schedule 5: ASB Case reviews: supplementary provisions**

282. Schedule 5 makes additional provisions for the community trigger. The review procedures must include:

- a. what happens when the applicant is dissatisfied with the way their application was dealt with or the review carried out;
- b. an assessment of the effectiveness of the procedures and revising them.

283. In making and revising the procedures, the relevant bodies must consult the PCC (or Mayor's Office for Policing and Crime or Common Council of the City of London), and the appropriate local providers of social housing.

284. The Schedule sets out the information sharing requirements. The relevant bodies may request any person to disclose information in order to carry out the case review. If the information relates to a public function, agencies must comply with the request for information unless it contravenes the Data Protection Act 1998 or part 1 of the Regulation of Investigatory Powers Act 2000.

285. The Schedule sets out arrangements for co-opting local providers of social housing to be included among the relevant bodies.

## **Part 7: General**

286. Clauses 94 to 98 and Schedule 6 makes minor and consequential amendments and includes general provisions, including in respect of the making of orders and regulations and commencement.

## **COMMENCEMENT**

287. Clauses 95 to 98 of the Bill come into force on Royal Assent. All other provisions of the Bill will be brought into force by means of commencement orders made by the Secretary of State or, in the case of certain provisions in Part 5 as they apply in Wales, the Welsh Ministers.

## **FINANCIAL EFFECTS OF THE BILL**

### **Parts 1 to 4: Reform of anti-social behaviour powers**

288. Reforming the powers available to frontline professionals in dealing with anti-social behaviour will require some additional training. However, the new powers are designed, in many cases, to be quicker, and more effective to use for the police, local authorities and other relevant bodies. As such, it is believed that there will be savings to practitioners once initial transition costs are removed. Work will continue with frontline professionals and other government departments throughout the process of pre-legislative scrutiny to assess the full financial effects of this Bill.

### **Part 5: Absolute ground for possession**

289. Part 5 of the Bill introduces a new absolute ground for possession which will provide that the court must grant possession, on application from a landlord, where serious housing

related anti-social behaviour or criminality had already been proven in another court. Where landlords choose to seek possession on this absolute ground the possession process should be expedited, saving costs both for the court and the landlord. Based on an estimated 250 evictions annually for anti-social behaviour using the new absolute ground rather than discretionary grounds, Part 5 of the Bill is expected provisionally to result in estimated annual savings for Her Majesty's Courts and Tribunals Service of about £800,000 and for local authorities (who own approximately 45% of the social housing stock) of about £450,000.

### **Part 6: Local involvement and accountability**

290. In response to the consultation, the community trigger has been designed to minimise the financial effects on frontline professionals. However, there will be some additional costs arising from placing a duty on community safety partnerships and social landlords to assess interventions once a community trigger is activated. The final evaluation report into the results of the four pilot trigger areas will be used alongside pre-legislative scrutiny to assess the financial impacts of the new duty.

### **EFFECTS OF THE BILL ON PUBLIC SECTOR MANPOWER**

291. The provisions in the Bill are not expected to have an impact on public sector manpower.

### **SUMMARY OF IMPACT ASSESSMENTS**

292. The draft Bill is accompanied by four overarching impact assessments which have been published alongside this draft Bill. The first deals with Part 1 (the injunction to prevent nuisance and annoyance), 2 (the criminal behaviour order) and 3 (the police dispersals power); the second deals with Part 4 (community protection) and elements of Part 6 (the community trigger); the third deals with the reforms outlined in Part 5 (absolute grounds for possession); and the fourth covers elements of Part 6 (the community remedy).

293. The provisions in the draft Bill impact mainly on public sector bodies including the police, local authorities, youth offending teams, Her Majesty's Courts and Tribunal Service, the National Offender Management Service, the Legal Services Commission, the Crown Prosecution Service and the prison service. The provisions also impact on registered providers of social housing in both the public and private sector. Parts 4 and 6 also impact on businesses adversely affected by anti-social behaviour.

### **EUROPEAN CONVENTION ON HUMAN RIGHTS**

294. A separate ECHR memorandum with its assessment of the compatibility of the Bill's provisions with the Convention rights is included at Annex C.

*These notes refer to the draft Anti-Social Behaviour Bill as published for pre-legislative scrutiny by the Home Affairs Select Committee on 13 December 2012*

## **ANNEX A**

### **GLOSSARY**

1985 Act	Housing Act 1985
1988 Act	Housing Act 1988
ASBI	Anti-Social Behaviour Injunction
ASBO	Anti-Social Behaviour Order
CBO	Criminal Behaviour Order
CPI	Crime Prevention Injunction
CPN	Community Protection Notice
CPO (C)	Community Protection Order (Closure)
CPO (PS)	Community Protection Order (Public Space)
FPN	Fixed Penalty Notice
PCC	Police and Crime Commissioner
PRPs	Private registered providers of social housing
RSLs	Registered social landlords

## **ANNEX B**

### **SUMMARY OF POWERS TO BE REPLACED**

#### **The anti-social behaviour order**

Established by section 1 of the Crime and Disorder Act 1998 (updated by the Police Reform Act 2002).

#### **The drinking banning order**

Established by the Violent Crime Reduction Act 2006.

#### **The anti-social behaviour injunction**

Established by section 153A to 157 of the Housing Act 1996 (as amended by Part 2 of the Anti-Social Behaviour Act 2003 and section 26 of the Police and Justice Act 2006).

#### **The litter clearing notice**

Established by the Clean Neighbourhoods and Environment Act 2005 through amendments to the Environmental Protection Act 1990.

#### **The street litter clearing notice**

Established by sections 93 and 94 of the Environmental Protection Act 1990 (as amended by section 20 of the Clean Neighbourhoods and Environment Act 2005).

#### **The defacement removal notice**

Established by sections 48 to 52 of the Anti-Social Behaviour Act 2003.

#### **The designated public place order**

Established by section 13 of the Criminal Justice and Police Act 2001.

#### **The gating order**

Established by section 2 of the Clean Neighbourhoods and Environment Act 2005.

#### **The dog control order**

Established by sections 55 to 67 of the Clean Neighbourhoods and Environment Act 2005.

#### **The anti-social behaviour premises closure order**

Established by Part IA of the Anti-social Behaviour Act 2003 (as amended by the Criminal Justice and Immigration Act 2008).

*These notes refer to the draft Anti-Social Behaviour Bill as published for pre-legislative scrutiny by the Home Affairs Select Committee on 13 December 2012*

**The crack house closure order**

Established by Part I of the Anti-social Behaviour Act 2003.

**The noisy premises closure order**

Established by sections 40 to 41 of the Anti-Social Behaviour Act 2003.

**The section 161 closure order**

Established by sections 161 to 170 of the Licensing Act 2003.

**The section 30 dispersal order**

Established by sections 30-36 of the Anti-Social Behaviour Act 2003.

**The section 27 direction to leave**

Established by section 27 of the Violent Crime Reduction Act 2006.

## **ANNEX C**

### **EUROPEAN CONVENTION ON HUMAN RIGHTS**

#### **MEMORANDUM BY THE HOME OFFICE/DEPARTMENT FOR COMMUNITIES AND LOCAL GOVERNMENT**

##### **Introduction**

1. This memorandum addresses issues arising under the European Convention on Human Rights (“ECHR”) in relation to the draft Anti-social Behaviour Bill. The Government is satisfied that, in the event that the Bill is introduced into Parliament, the responsible Minister could make a statement under section 19(1)(a) of the Human Rights Act 1998 that, in his or her view, the provisions of the Bill are compatible with the Convention rights.

##### **Summary**

2. The Bill is in seven parts. Part 1 makes provision for a civil injunction to prevent nuisance and annoyance. Part 2 makes provision for an order on conviction to prevent behaviour which causes harassment, alarm or distress. Part 3 contains a power for the police to disperse people causing harassment, alarm or distress. Part 4 makes provision for a community protection notice and a public space protection order, both of which have the aim of preventing behaviour which is detrimental to the local community. It also makes provision for premises closure notices and orders to be issued and made in respect of premises which cause nuisance to the public. Part 5 makes provision for the possession of houses on anti-social behaviour grounds. Part 6 contains provisions on establishing a community remedy document and dealing with responses to complaints of anti-social behaviour.
3. The Government considers that the clauses of this Bill which are not mentioned in this memorandum do not engage rights protected under the ECHR.

##### **Part 1: Injunctions to prevent nuisance and annoyance**

4. Part 1 makes provision for a civil injunction to prevent anti-social behaviour (defined as causing nuisance or annoyance). These provisions may engage Articles 5, 6, 8, 9, 10 and 11.

###### *Article 5*

5. The power of arrest may be attached to any prohibition or requirement in an injunction. Any detention pursuant to the power of arrest will require the respondent to be brought before the court within 24 hours (excluding Sundays and certain bank holidays), which satisfies Article 5(3). The provisions will expressly provide for the power of arrest and



detention and the resulting detention would be as a result of non-compliance with a lawful order of the court in accordance with Article 5(1)(b). Similarly, any sentence of imprisonment or detention imposed as a result of a contempt of court will fall within Article 5(1)(a). The respondent will still be able to appeal against the finding that he or she is in contempt and the resulting sentence in the usual way.

6. The Government is therefore satisfied that the provisions fully respect Article 5.
7. There is express provision in relation to those aged between 14 and 17 who breach their injunction in which situation a short (three month) detention order is available only as a measure of last resort in compliance with the UN Convention on the Rights of the Child (“UNCRC”). The provisions make it clear that a youth detention order can only be imposed when the court takes the view that due to the severity or extent of the breach, no other option is appropriate and if the court does come to that view, it must give reasons in open court for that view.

#### *Article 6*

8. An injunction is issued by the county court in the case of those respondents aged 18 and over and by the youth court in the case of those respondents aged under 18. Appeals against decisions of a district judge in the county court will lie to a circuit judge and appeals from the decision of a circuit judge in the county court will lie to the Court of Appeal. Appeals against decisions from the youth court will lie to the Crown Court. Legal representation and interpreters may be obtained at all stages of proceedings, and legal aid is available.
9. An application for an injunction may be made without notice being given to the respondent. There is provision for an interim injunction to be made if the court adjourns the proceedings for whatever reason but only if the court considers it just to do so. There is provision for the respondent to apply to the court to have the injunction varied or discharged. No positive requirement may be included in the injunction unless the court has heard evidence as to its suitability and enforceability. No injunction may be applied for in relation to a person under 18 years without consulting the local youth offending team.
10. Breach of the injunction does not amount to a criminal offence; therefore breach will be dealt with as a contempt of court. For those aged 18 and over, this means that a senior court (of which the county court is one) may impose an unlimited fine and/or imprisonment (detention in the case of those aged 18 to 20) of up to 2 years.
11. Committal proceedings for contempt of court (which would be commenced by the original injunction applicant when there was evidence of breach of the injunction, or by the court dealing with a respondent who has been arrested for an alleged breach of the injunction and produced before the court) have been held to be criminal proceedings for the purposes of Article 6 irrespective of whether the contempt itself was civil or criminal, including the right to be legally represented at such proceedings.
12. The Government is therefore satisfied that the provisions fully respect Article 6.

*Article 8*

13. Injunctions may contain any prohibition or requirement that the court considers appropriate in order to prevent the person from engaging in anti-social behaviour. Articles 8 may be engaged by these prohibitions. Article 8 is a qualified right meaning that a restriction can be justified in accordance with Article 8(2).
14. Any interference with those rights by prohibitions or requirements will be justified under Article 8(2). Any prohibition or requirement imposed will be in accordance with the law as set out in the draft Bill and therefore will be clearly laid down in primary legislation. The prohibition or requirement will be imposed for the purpose of the prevention of disorder (likely to be caused by the anti-social behaviour) and/or to protect the rights of others to go about their lawful business without being subjected to anti-social behaviour, and will only be imposed if the court considers it just and convenient to do so. Any interference would therefore be in accordance with national law which is sufficiently precise and accessible for an individual to foresee the consequence of their actions.
15. The test of proportionality is met since the court has a discretion whether to grant an injunction at all, as well as in relation to what requirements or prohibitions are imposed by any injunction. The court will consider each respondent separately in relation to their own individual circumstances before deciding whether any particular prohibition or restriction is appropriate in order to prevent anti-social behaviour in any particular case. There are no mandatory restrictions or prohibitions and positive requirements may only be imposed if the court has received evidence about their suitability and enforceability. The court cannot grant an injunction with mutually incompatible requirements. The procedural safeguards set out in relation to Article 6 are also relevant in the consideration that any restriction on Article 8 rights will be proportionate.
16. The court must also take into account any potential conflict with any school or educational establishment or place of work the person attends regularly (for example, there could be an exception to a “non-association” provision to allow contact in the work or college environment), and any other court order or other legal obligation to which the person is subject (for example, bail conditions or a community sentence).
17. There is a power for the court to include a provision excluding a person from their own home but this is only possible where the applicant for the injunction is the person’s landlord and the court is of the view that there has been violence or threatened violence against someone who lives in the premises or someone who lives in that premises is at significant risk of harm from the respondent. This is tightly drawn and proportionate to the harm or threat of harm posed by such a respondent to another person.
18. The Government is therefore satisfied that these provisions are compatible with Article 8.

*Article 9*

19. There is express provision to ensure that any requirements or prohibitions included in an injunction are compatible with Article 9. The court must try to avoid, as far as practicable, any potential conflict with the person’s religious beliefs (for example, excluding them from

the area including their regular place of worship – this could still be done but could include an exception for particular times on particular days).

20. The Government therefore is satisfied that these provisions are compatible with Article 9.

*Articles 10 and 11*

21. Restrictions or requirements imposed by an injunction may interfere with the respondent's rights in relation to freedom of assembly (especially if there is a non-association clause). To a lesser extent, depending on the particular terms of the injunction, there could be an interference with the respondent's right to freedom of expression (for example if the respondent was prohibited from going to a protest rally). Both of these rights are qualified rights and those rights may be limited in accordance with Articles 10(2) and 11(2).

22. The legitimate aim that is being pursued by these provisions is the prevention of disorder which could result should the person be allowed to continue to cause nuisance and annoyance to member of the public and the protection of the rights of others to go about their lawful business without being subject to such nuisance and annoyance.

23. An injunction would only include provisions which interfered with the respondent's Article 10 or 11 rights if the court considered that this was appropriate for the purpose of preventing the respondent from engaging in anti-social behaviour. The court will consider each respondent separately in relation to their own individual circumstances before deciding whether any particular prohibition or restriction is appropriate in order to prevent anti-social behaviour in any particular case. There are no mandatory restrictions or prohibitions and positive requirements may only be imposed if the court has received evidence about its suitability and enforceability. The court cannot grant an injunction with mutually incompatible requirements. The procedural safeguards set out in relation to Article 6 are also relevant in the consideration that any restriction on Article 10 and 11 rights will be proportionate.

24. The Government therefore is satisfied that these provisions are compatible with Articles 10 and 11.

25. The Government also notes that applicants for an injunction are public bodies and are therefore obliged to act compatibly with the ECHR, as are the courts who grant any injunction, in accordance with section 6 of the Human Rights Act 1998.

**Part 2 – Criminal behaviour order**

26. This order on conviction enables a court to make an order on conviction when the court considers that the defendant has engaged in behaviour which causes or is likely to cause harassment, alarm or distress and that making an order will assist in preventing the defendant from engaging in such behaviour.

27. These provisions may engage rights under Articles 5, 6, 8, 9, 10 and 11 of the ECHR.

*Article 5*

28. Breach of the criminal behaviour order is a criminal offence for which imprisonment is a sentence available resulting from the conviction, which is lawful under national law. In accordance with established case law including *Poole –v- United Kingdom*<sup>3</sup>, *Johnson –v- United Kingdom*<sup>4</sup> and *Denson –v- United Kingdom*<sup>5</sup>, this amounts to the lawful detention of a person after conviction by a competent court and therefore the Government is satisfied that this fulfils Article 5(1)(a) and complies with Article 5.

*Article 6*

29. The court may only make an order on the application of the prosecutor for the criminal proceedings and this order is only available on conviction. Before applying for this order against a person aged under 18, the prosecutor must consult with the local youth offending team.
30. The court will be able to grant an interim order if it considers it just do so. This might happen when sentencing for the criminal offence is adjourned. As this is an ancillary order to a criminal sentence the usual appeal routes apply, namely from the magistrates' or youth court to the Crown Court and from the Crown Court to the Court of Appeal.
31. The court may fix a shorter time period for an order if the person completes an approved course (which must be relevant to the particular issues in the case, for example alcohol or drug usage) in a specified time. An approved course would only be able to form part of the order with the individual's consent.
32. The Government is therefore satisfied that the process fully respects Article 6 rights.

*Article 8*

33. The order may contain requirements as well as well as prohibitions; any condition will need to meet the test of assisting in the prevention of harassment, alarm or distress. Before making an order which includes any positive requirements, the court must receive written or oral evidence from the person who would supervise and monitor the positive requirements. This will ensure that the requirements are available, appropriate and enforceable.
34. Any interference with those rights by prohibitions or requirements will be justified under Article 8(2). Any prohibition or requirement imposed will be in accordance with the law as set out in the draft Bill. The prohibition or requirement will be imposed for the purpose of the prevention of disorder (likely to be caused by harassment, alarm or distress the order seeks to prevent) and/or to protect the rights of others to go about their lawful business without being subjected to harassment, alarm or distress, and will only be imposed if the court considers it would help prevent such behaviour. Any interference would therefore be

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<sup>3</sup> (1998) App. No. 28190/95.

<sup>4</sup> (1998) App. No. 28455/95.

<sup>5</sup> (1998) App. No. 25286/94.

in accordance with national law which is sufficiently precise and accessible for an individual to foresee the consequence of their actions.

35. The test of proportionality is met since the court has a discretion whether to make an order and can only do so if the offender has previously engaged in behaviour which caused harassment, alarm or distress and the court considers that this order will help in preventing the reoccurrence of this behaviour. The court will consider the individual circumstances of the offender before deciding whether any particular prohibition or restriction is appropriate in order to prevent the behaviour any particular case. There are no mandatory restrictions or prohibitions and positive requirements may only be imposed if the court has received evidence about its suitability and enforceability. The court cannot grant an order with mutually incompatible requirements. The procedural safeguards set out in relation to Article 6 are also relevant in the consideration that any restriction on Article 8 rights will be proportionate.
36. The court must also take into account any potential conflict with any school or educational establishment or place of work the person attends regularly (for example, there could be an exception to a “non-association” provision to allow contact in the work or college environment), and any other court order or other legal obligation to which the person is subject (for example, bail conditions or a community sentence). The court must take all of these issues into account before granting an order which must be appropriate for the particular circumstances of the offender. These provisions will ensure that any order is proportionate.
37. The Government therefore is satisfied that these provisions are compatible with Article 8.

#### *Article 9*

38. There is express provision to ensure that any requirements or prohibitions included in an order are compatible with Article 9. The court must try to avoid, as far as practicable, any potential conflict with the person’s religious beliefs (for example, excluding them from the area including their regular place of worship – this could still be done but could include an exception for particular times on particular days).
39. The Government therefore is satisfied that these provisions are compatible with Article 9.

#### *Articles 10 and 11*

40. The restrictions or requirements imposed by an order may interfere with the respondent’s rights in relation to freedom of assembly (especially if there is a non-association clause). To a lesser extent, depending on the particular terms of the order, there could be an interference with the respondent’s right to freedom of expression (for example if the respondent was prohibited from going to certain events). Both of these rights are qualified rights and those rights may be limited in accordance with Articles 10(2) and 11(2).
41. The legitimate aim that is being pursued by these provisions is the prevention of disorder which could result should the person be allowed to continue to cause nuisance and

annoyance to member of the public and the protection of the rights of others to go about their lawful business without being subject to such nuisance and annoyance.

42. An order would only include provisions which interfered with the respondent's Article 10 or 11 rights if the court considered that this was appropriate for the purpose of preventing the offender from engaging behaviour which causes harassment, alarm or distress in relation to an offender who had previously engaged in such behaviour. The court will consider the individual circumstances of the offender before deciding whether any particular prohibition or restriction is appropriate in order to prevent the behaviour in any particular case. There are no mandatory restrictions or prohibitions and positive requirements may only be imposed if the court has received evidence about its suitability and enforceability. The court cannot grant an order with mutually incompatible requirements. The procedural safeguards set out in relation to Article 6 are also relevant in the consideration that any restriction on Article 10 and 11 rights will be proportionate.
43. The Government therefore is satisfied that these provisions are compatible with Articles 10 and 11.
44. The Government also notes that applicants for an order are public bodies and are therefore obliged to act compatibly with the ECHR, as are the courts who grant an order, in accordance with section 6 of the Human Rights Act 1998.

### **Part 3 – Dispersal powers**

45. These provisions establish a power to direct people away from an area where they are committing or likely to commit anti-social behaviour. This is a power for constables and Police Community Support Officers to issue a dispersal direction to any person aged 10 and over to leave a specific area and not return for up to 48 hours. Knowingly breaching the direction is a criminal offence. There is also a power to require property which has been used (or is likely to be used) in the anti-social behaviour to be surrendered.
46. The test that needs to be met in order for a constable to issue a dispersal direction is that the constable has reasonable grounds for suspecting that the person's behaviour in the area is contributing to anti-social behaviour (which is behaviour which causes harassment, alarm or distress) or crime or disorder in the area or is likely to contribute to anti-social behaviour or crime or disorder in the area; and that the direction is necessary for the purposes of reducing the likelihood of the occurrence of anti-social behaviour or crime or disorder in the area.
47. The provisions make it clear that the default position is that the direction must be issued in writing unless in all the circumstances it is not practicable to do so. The direction must clearly state the area from which the individual is being dispersed and make it clear what consequences can flow should the direction be breached. The exclusion period is for a maximum of 48 hours.
48. These provisions may engage Articles 8, 9, 10 and 11 and Article 1 of Protocol 1 ("A1P1").

*Article 8*

49. Any interference with those rights will be justified under Article 8(2). Any prohibition or requirement imposed will be in accordance with the law as set out in the draft Bill. The direction will be issued for the purpose of the prevention of disorder (likely to be caused by harassment, alarm or distress, the criminality or disorder the direction seeks to prevent) and/or to protect the rights of others to go about their lawful business without being subjected to harassment, alarm or distress, and will only be imposed if the court considers it just and convenient to do so. Any interference would therefore be in accordance with national law which is sufficiently precise and accessible for an individual to foresee the consequence of their actions.
50. These provisions are in pursuance of a legitimate aim, namely protecting the rights and freedoms of others to go about their lawful business without being harassed, alarmed or distressed and the prevention of disorder and/or criminality. The provisions are strictly limited in their application as far as the time period for which a direction can be given and the area in relation to which it can be given. There are express limitations which ensure that the person cannot be excluded from their home, their work or their education.
51. Insofar as a direction under these provisions may engage in Article 8, the limitations contained in the provisions mean that any interference will be proportionate.
52. The Government therefore is satisfied that these provisions are compatible with Article 8.

*Article 9*

53. A direction may have the effect of excluding a person from their regular place of worship for a maximum of 48 hours, but a direction could not exclude the person from all places of worship, just those in the locality. Any exclusion would be strictly limited in terms of time and geographical location.
54. The Government therefore is satisfied that these provisions are compatible with Article 9.

*Articles 10 and 11*

55. The provisions are also explicit to the effect that the direction must not be used in such a way as to prevent the person from having access to the place where he or she resides; any school or any educational establishment he or she attends regularly; any place of work he or she attends regularly; any hospital he or she is required to attend for the purpose of receiving medical treatment during the period of the direction; or any place he or she is obliged to attend by virtue of any enactment or order from any court of tribunal. The direction must not be issued to someone who is taking part in lawful picketing. In light of the legitimate aims pursued by the direction (prevention of crime and disorder and protection of the rights of others) and the limitations in terms of time, locality and effect

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which are set out in the provisions, any interference with Articles 10 and 11 would be proportionate to the legitimate aim pursued.

56. The Government is therefore satisfied that the provisions are compatible with Articles 10 and 11.

*Article 1 Protocol 1*

57. A1P1 may be engaged by the power for the police to require the surrender of items which the police reasonably believe have been used in the anti-social behaviour in relation to which the direction was issued. A1P1 allows the State to control property where this is in accordance with the general interest.
58. The power to require items and retain them is strictly time limited (unless the item is to be retained pending criminal proceedings) as the item(s) will be returned once the period of the direction is finished; therefore this is not a deprivation of property, rather it is a control of property. Items will only be requested if there is reason to believe they have been used in anti-social behaviour or are likely to be used in such behaviour and therefore this pursues the general interest of preventing such behaviour.
59. The Government therefore considers that these provisions, in conferring a time-limited power to take control of possessions in the general interest of preventing anti-social behaviour, are compatible with A1P1.

*UN Convention on the Rights of the Child*

60. In the law of England and Wales criminal responsibility arises from the age of 10 and therefore children aged 10 and over are able to understand when they are doing something wrong. Acting in a way which causes members of the public harassment, alarm or distress or engaging in criminality or disorder is behaviour which is wrong.
61. The UNCRC, in particular article 3 which requires the best interests of the child to be a primary consideration in all actions concerning children. To that end there is provision for the police to take home a child who is reasonably believed to be under the age of 16 or to take them to a place of safety. This is done in the child's best interests since there is no benefit for children to be in an environment where there is disorder, criminality or anti-social behaviour, irrespective of whether the child is participating in that behaviour.
62. The Government also notes the police who have the power to issue a direction are obliged to act compatibly with the ECHR, in accordance with section 6 of the Human Rights Act 1998.



#### **Part 4, Chapter 1 - Community Protection Notices**

63. The Community Protection Notice (“CPN”) may be issued by the police, local authority or person designated by the local authority in respect of a person whose persistent or continuing conduct or behaviour (or inaction) is unreasonable and is having a detrimental effect on the local community’s quality of life. The CPN must clearly state what is required in order to rectify the issue and might include an obligation to take reasonable steps to prevent the behaviour from re-occurring. Breach of the CPN without reasonable excuse is a criminal offence. The court on conviction, in addition to a fine, would be able to impose any reasonable requirement in order to rectify the issue and would also be able to order forfeiture and destruction of any item used in the commission of the offence.
64. In order to ensure this power is not used as a first resort, there will be an obligation to warn the person in writing that their behaviour is considered to be unreasonable and having a detrimental effect on the local community’s quality of life such that if they do not rectify their behaviour, they may be issued with a CPN.
65. A person issued with a CPN may appeal against the notice to the magistrates’ court. A person who fails to comply with a CPN may be issued with a remedial notice by the local authority in respect of work which the local authority proposes to carry out in order to rectify the problem (for example, cleaning graffiti from a wall). The remedial notice will specify the cost involved but the work will only be carried out with the consent of the defaulter and the property owner (where possible). An appeal against the cost lies to the magistrates’ court.
66. These provisions are likely to engage Articles 6, 8, 9 and 10 and Article 1 of Protocol 1 (“A1P1”).
67. In considering whether Article 11 might be engaged it was noted that the CPN would not itself prevent any assembly from taking place, rather it might limit what the effects of such an assembly could be (such as littering or excessive noise) in the public interest and that Article 11 does not protect an individual’s rights to make as much noise as he or she would like to make or to litter. Therefore the Government does not consider that this will interfere with rights protected by Article 11.

#### *Article 6*

68. It is possible that the issuing of a CPN may determine a person’s civil rights under Article 6. Although there is a large discretion as to whether to issue a CPN, which is relevant as to whether Article 6 is engaged,<sup>6</sup> Article 6 will generally be taken to apply to a dispute concerning action taken by an administrative authority which has a direct and appreciable effect on the enjoyment or exercise of property rights or interests, including the enjoyment of a person’s land.<sup>7</sup> That being the case, it is possible that Article 6 is engaged.
69. The Bill makes provision for a CPN to be appealed to a magistrates’ court on a wide range of issues and contains provision for the magistrates’ court to vary or quash the CPN. This

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<sup>6</sup> In accordance with *Jacobsson –v- Sweden* (1989) 12 E.H.R.R. 56.

<sup>7</sup> In accordance with *Zander –v- Sweden* (1993) 18 E.H.R.R. 175 at paragraph 27.

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fulfils the requirement in Article 6 for a person to be entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal.

70. The Government therefore considers that the provisions fully respect Article 6.

#### *Article 8*

71. These provisions may interfere with Article 8 rights but are in pursuance of the legitimate aim of public safety and/or protecting the rights of others which involve a balance of what should be allowed in a public space (or a private space which affects the public, for example, a large mound of rubbish in a front garden) with a person's right enjoy their private life.

72. In particular the failure by state authorities to take measures to protect individuals from environmental harm, including the right to respect for his or her home, may constitute a violation of Article 8.<sup>8</sup> Therefore there must be a balancing exercise between the needs of the community and the protection of the individual.<sup>9</sup> The small minority do not have a right to spoil community life for the majority and therefore the CPN is an appropriate way to address that balance.

73. The CPN can only be issued if the person is firstly made aware that their behaviour is detrimental to the local community and it cannot be issued in respect of very minor behaviour as there is a requirement that the problem be of a persistent or continuing nature. This ensures that the interference is in accordance with national law which is sufficiently precise and accessible for an individual to foresee the consequence of their actions. This is a proportionate way to tackle nuisance behaviour for the benefit of the local community.

74. The Government therefore considers that these provisions are compatible with Article 8.

#### *Article 9*

75. It is possible, although not very likely, that Article 9 might be engaged by these provisions insofar as it might require for example householders to paint over large signs and pictures connected with their religious beliefs which are considered to be detrimental to the local community's quality of life.

76. Insofar as this would engage Article 9 by limiting the ability of the person subject to the notice to manifest their beliefs, this would only be limited to the extent necessary to protection the rights and freedoms of others not to have their quality of life diminished by the actions of individuals.

77. The Government therefore is satisfied these provisions are compatible with Article 9.

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<sup>8</sup> In accordance with *Moreno Gomez –v- Spain* App. No. 4142/02.

<sup>9</sup> *Hatton –v- UK* (2003) 37 E.H.R.R. 28.

*Article 10*

78. It may be that a CPN affects a person's freedom of expression, in a similar manner perhaps to the example given in relation to Article 9 above. The rights guaranteed by Article 10 do involve a balancing exercise between those who wish to exercise their freedom of expression and those who wish to go about their lawful business.<sup>10</sup> Any limitations on a person's freedom of expression will only be imposed if that freedom has been exercised in such a way as to result in a detrimental effect on the local community.
79. In addition the conduct must be unreasonable, so anyone exercising their Article 10 rights would have a ground to say that their conduct is reasonable and a CPN should therefore not be issued, or if a CPN has been issued, it could form a ground of appeal.
80. The Government therefore is satisfied that these provisions are compatible with Article 10.

*Article 1 of Protocol 1*

81. An item used in the commission of the offence of breach of a CPN may be seized upon application to a court or as a result of a conviction for the offence, both of which falls under the public interest for which possessions may be seized under A1P1<sup>11</sup>. An independent and impartial tribunal determines whether a warrant for seizure should be issued, or a forfeiture order made upon conviction and therefore these procedural safeguards ensure that any deprivation of property would be subject to the conditions provided for by law.
82. The Government therefore is satisfied that these provisions are compatible with A1P1.
83. The Government also notes that persons who may issue a CPN are public bodies and are therefore obliged to act compatibly with the ECHR, in accordance with section 6 of the Human Rights Act 1998.

**Part 4, Chapter 2 – Public Space Protection Order**

84. The Public Space Protection Order ("PSPO") can be issued by the local authority if it is satisfied that activities carried on in a public place within the authority's area have had a detrimental effect on the quality of life of those in the local area, or that it is likely that activities will be carried on in a public place within that area and that they will have such an effect and that the effect of the activities is of a persistent or continuing nature and is such as to make the activities unreasonable, and that the restrictions in the notice are justified.
85. The PSPO can be made for a maximum of 3 years and must be published to ensure that everyone is aware of any restrictions imposed by the order (for example, to keep dogs on a

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<sup>10</sup> *City of London Corporation –v- Samede* and others [2012] EWHC 34 (QB).

<sup>11</sup> See *Vendittelli –v- Italy* (1994) 19 E.H.R.R. 464 at paragraph 38 and *X –v- Netherlands* App. No. 7721/76.

lead in particular parks). Breach of the PSPO without reasonable excuse is a criminal offence. An interested party can challenge the imposition of a PSPO in the High Court.

86. These provisions may engage Articles 8, 9, 10 and 11 and Article 1 of Protocol 1 (“A1P1”).

#### *Article 8*

87. The conditions imposed by a PSPO will affect what individuals can do in the particular area in relation to which the PSPO applies and that this is likely to engage Article 8.
88. The rationale for imposing a PSPO is clearly set out in the provisions and not only must the activities which have been carried on in the public space have had a detrimental effect on the quality of life of the local community but the activities also need to have been of a persistent or continuing nature and unreasonable. The provisions also expressly provide that the restrictions must be proportionate to the effect of the activities.
89. The legitimate aim which these provisions pursue is that of public safety and/ protecting the rights of others which involve a balance of what should be allowed in public with a person’s right enjoy their private life. The PSPO will impose conditions about the use of a public space for all persons who choose to use that public space but only if those conditions are justified to deal with the particular problem. A PSPO which restricts public rights of way over a highway is limited in relation to occupiers of premises adjoining the highway and access to dwellings.
90. The provisions include a mechanism to challenge the PSPO which is considered a proportionate way to tackle unreasonable nuisance behaviour for the benefit of the local community.
91. The Government therefore is satisfied that these provisions are compatible with Article 8.

#### *Article 9*

92. Although it is not likely that Article 9 will be engaged nevertheless a particular restriction in a PSPO may, for example, restrict the ability for members of a particular religious group to have faith meetings in public spaces which would engage Article 9.
93. As in relation to Article 8, that the rationale for imposing a PSPO is clearly set out in the provisions: not only must the activities which have been carried on in the public space have had a detrimental effect on the quality of life of the local community but the activities also need to have been of a persistent or continuing nature and unreasonable. The provisions also expressly provide that the restrictions must be proportionate to the effect of the activities.
94. Again the legitimate aim which these provisions pursue is that of public safety and protecting the rights of others which involve a balance of what should be allowed in public with a person’s right enjoy their private life. For those reasons any interference with Article 9 rights would be justified and proportionate.

95. The Government therefore is satisfied that these provisions are compatible with Article 9.

*Article 10 and 11*

96. Articles 10 and 11 could be engaged by the restrictions set out in a PSPO. The legitimate aim which these provisions pursue is that of public safety and protecting the rights of others which involve a balance of what should be allowed in public with a person's right to enjoy their private life.<sup>12</sup> The PSPO will impose conditions about the use of a public space for all persons who choose to use that public space but only if those conditions are justified to deal with the particular problem.

97. The PSPO is limited in terms of its geographical area as the provisions ensure that a PSPO can only be issued in respect of an area where there has either been a problem with unreasonable activities or where it is likely that there will be a problem with unreasonable activities.

98. The Government therefore is satisfied that these provisions are compatible with Articles 10 and 11.

*Article 1 Protocol 1*

99. There is provision which enables an authorised person to require any person consuming alcohol in a particular place where a PSPO has been issued prohibiting the consumption of alcohol in that place to surrender the alcohol. Failure to do so is a criminal offence.

100. Since this requirement would only exist when an offence was being committed (since breach of the PSPO which prohibits the consumption of alcohol is a criminal offence) this is a situation in which possessions may be seized in the public interest of preventing criminal behaviour in conditions provided for by law.<sup>13</sup>

101. Therefore the Government is satisfied that these provisions are compatible with A1P1.

102. The Government also notes that local authorities, who can make a PSPO, and local authorities and police, who may enforce the PSPO, are public bodies and are therefore obliged to act compatibly with the ECHR, in accordance with section 6 of the Human Rights Act 1998.

**Part 4, Chapter 3 – Closure of premises associated with nuisance or disorder etc**

103. These provisions have the effect of streamlining existing powers (under Parts 1 and 1A and sections 40 and 41 of the Anti-Social Behaviour Act 2003 and sections 161 to 169 of the Licensing Act 2003).

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<sup>12</sup> *City of London Corporation –v- Samede* and others [2012] EWHC 34 (QB).

<sup>13</sup> See *Vendittelli –v- Italy* (1994) 19 E.H.R.R. 464 at paragraph 38 and *X –v- Netherlands* App. No. 7721/76.

104. A notice can be issued by a police officer of the rank of at least inspector or the local authority if there is reason to believe that the use of particular premises has resulted in nuisance to members of the public, or that there is likely soon to be disorder on or near those premises associated with the use of those premises, and that the order is necessary to prevent the nuisance or disorder from continuing or occurring. A decision to issue a notice may be the subject of a challenge by way of judicial review. This is considered a sufficient level of review in respect of the notice since there is an obligation to make an application to a court when a notice is issued; this has the effect that a fair and impartial tribunal will consider whether a order can be made (and at the same time, whether the notice should have been issued). The only time where an application does not need to be made to the court is when the police or local authority has cancelled the notice before the time limit (maximum of 48 hours) expires. If there is no need for a notice to continue in the form of an order, the government considered it better for the individual that the notice can be cancelled immediately. The safeguard against any improper use of notices which are then cancelled is the ability for the individual affected to seek a judicial review of the police or local authority decision to issue the notice.
105. The closure notice cannot prohibit access to the property in relation to any person who lives there or the owner of the property and can be issued for a maximum of 24 hours unless there is sign off at superintendent level (if it is a police issued notice) or chief executive level (if it is a local authority issued notice) in which case it may be issued for a maximum of 48 hours (or extended to a maximum of 48 hours).
106. Breach of the notice without reasonable excuse is an offence. If the police issued the notice, they must apply to the magistrates' court for a closure order (the local authority must apply if the authority issued the notice) unless the notice has been cancelled. The court can make a closure order if a person has engaged in disorderly, anti-social, nuisance or criminal behaviour on the premises; and the making of the order is necessary to prevent the occurrence or reoccurrence of such behaviour for the period specified in the order. The order can last no more than three months although this can be extended to a total of six months upon application to the court. The order may prohibit the person who resides in the premises and/or owns the premises from entering the premises. Breach of the closure order is a criminal offence. An order may be appealed to the Crown Court.
107. These provisions may engage Article 8 and Article 1 of Protocol 1 ("A1P1").

#### *Article 8*

108. In terms of any interference with Article 8, the legitimate aim pursued is that of protecting the rights and freedoms of others not to be subjected to disorderly, anti-social, nuisance or criminal behaviour, which means that there is a balance to be struck between the rights of the individual and the rights of the general public. The closure notice does not prevent a person who habitually resides in the premises from continuing to do so; and a closure order will do so only after the court has heard representations from those with an interest in making them (that is, the person with control or responsibility for the premises and any other person with an interest in the premises).

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109. The test for the notice to be issued and the order granted is that the notice or order must be necessary to prevent the nuisance or disorder from continuing which the Government considers will ensure that only notices or orders which are proportionate to the nuisance or disorder are issued or granted.
110. The Government therefore is satisfied that these provisions are compatible with Article 8.

*Article 1 Protocol 1*

111. Since the maximum time for which an order can be made (taking into account extensions) is 6 months therefore the issue of deprivation of property under A1P1 does not arise; rather this is a control of property or possession under A1P1.
112. This is a justified control of possessions for a limited period of time in accordance with the general interest of preventing disorderly, anti-social, nuisance or criminal behaviour.<sup>14</sup>
113. Therefore the Government is satisfied that these provisions comply with A1P1.
114. The Government also notes that persons who may issue a notice are public bodies which are obligated to act compatibly with the ECHR under section 6 of the Human Rights Act 1998 and that only those of a sufficient senior status in those public bodies may issue a notice.

**Part 5 - Recovery of possession of dwelling-houses: anti-social behaviour grounds**

115. The Bill introduces an absolute ground for possession in certain circumstances related to anti-social behaviour for secure tenancies under the Housing Act 1985 (“the 1985 Act”) and assured tenancies under the Housing Act 1988 (“the 1988 Act”); amends provisions relating to secure and assured tenants rights when possession is sought on the absolute ground; and introduces a discretionary ground for possession for riot-related anti-social behaviour into Schedule 2 to the 1985 Act and Schedule 2 to the 1988 Act.
116. In all but a few cases, secure tenants are local authority tenants. An assured tenancy may be granted by a private registered provider of social housing (“PRP”) (registered in England), a registered social landlord (“RSL”) (registered in Wales) or a private landlord.
117. These provisions will only apply where the anti-social behaviour concerned was committed after commencement of the provisions.
118. These provisions are likely to engage Articles 6 and 8 and Article 1 of Protocol 1 (“A1P1”).

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<sup>14</sup> Air Canada –v- United Kingdom (1995) 20 E.H.R.R. 150 at paragraph 42 in relation to seizing aircraft in the general interest of combating international drug trafficking.

*Article 6*

119. Insofar as Article 6 may be engaged in the granting of an order of possession, with both the absolute ground of possession and the new discretionary ground the landlord may only gain possession of the property by obtaining a court order for possession and executing that order.<sup>15</sup> Therefore the usual procedural safeguards will apply through the court process.
120. The Government therefore is satisfied that these provisions fully respect Article 6.

*Article 8*

121. It is likely Article 8 will be engaged by the provisions of the Bill which provide for an absolute ground for possession in certain circumstances related to anti-social behaviour; and a discretionary ground for possession for riot-related offences, as an individual's right to respect for his family life and his home may be affected by an eviction.
122. Any interference with Article 8 rights will be in accordance with the law because there will be clear provision in primary legislation about the additional circumstances in which landlords will be able to seek possession and any evictions must be carried out in accordance with the legislation. With secure and assured tenancies, the landlord may only gain possession of the property by obtaining an order for possession and executing that order.<sup>16</sup>
123. The provisions pursue the legitimate aims of the protection of the rights and freedoms of others, the prevention of disorder and crime and public safety.

*Absolute ground for possession*

- 124.
125. The absolute ground for possession may be used where the tenant, a person living in the tenant's property or a visitor to that property has been found by another court to have committed anti-social behaviour. Its purpose is to protect other people from the consequences of that behaviour (which may include violence, harassment or nuisance), to discourage such behaviour and to improve public safety. It is intended to provide an additional, faster route for ending serious distress being caused to people living in the vicinity of those who commit serious anti-social behaviour and to enable landlords to evict tenants for such behaviour that affects their housing management functions.
- 126.
127. Local authorities are public authorities for the purposes of the Human Rights Act 1998. A PRP in receipt of public money and exercising similar functions to a local authority has been found to be a hybrid public authority exercising public functions when terminating a tenancy (*R (Weaver) v London and Quadrant Housing Association*).<sup>17</sup>

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<sup>15</sup> Section 82 Housing Act 1985 and section 5 Housing Act 1988.

<sup>16</sup> Section 82 Housing Act 1985 and section 5 Housing Act 1988.

<sup>17</sup> *R (on the application of Weaver) v London and Quadrant Housing Association* [2009] EWCA Civ 589.



128. In *Manchester City Council v Pinnock*<sup>18</sup> the Supreme Court held that any person who risked losing his home in possession proceedings involving a public authority had a right to raise Article 8 and have the matter determined by an independent tribunal, even if his right to occupation under domestic law had come to an end. In such cases the court must be able to determine relevant disputes of fact. Where there is more than one stage to the proceedings, the proceedings as a whole must be considered in order to see if Article 8 has been complied with. In summary, where the landlord is a public authority, any interference with a tenant's Article 8 rights would need to be proportionate.

*Discretionary ground for possession for riot-related offences*

129. Ground 2 of Schedule 2 to the Housing Act 1985 and Ground 14 of Schedule 2 to the Housing Act 1988 provide the existing discretionary grounds for possession for anti-social behaviour and criminality for secure tenancies and assured tenancies respectively. Possession can however only be sought under these grounds where the anti-social behaviour or criminality has taken place in, or in the locality of, the dwelling house. The court may order possession only if it is satisfied that it is reasonable to do so.
130. The Bill introduces a new discretionary ground of possession for riot-related anti-social behaviour to enable landlords of dwelling-houses in England to apply for possession where a tenant or person living in the property has been convicted of a riot-related offence committed anywhere in the UK. The amendment is to enable the court to order possession where a riot-related offence has been committed beyond the immediate neighbourhood of the property but causes significant harm to the wider community. It is also intended to deter and prevent such behaviour.
131. The court may only order possession on the discretionary ground where it considers it reasonable to do so. Reasonableness has been held to require the judge to take into account *all relevant circumstances at they exist at the date of the hearing in a broad commonsense way*<sup>19</sup>. A court required to consider reasonableness is unlikely to reach a substantially different decision from that which it would reach if considering the proportionality of the decision.<sup>20</sup>
132. The Government is therefore satisfied that these provisions are compatible with Article 8.

*Article 1 Protocol 1*

133. It is likely that A1P1 will be engaged by the provisions of the Bill which provide for: an absolute ground for possession in certain circumstances related to anti-social behaviour; the amendment to tenants' rights when possession is sought on that ground; and, the new discretionary ground for possession for riot-related anti-social behaviour.

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<sup>18</sup> *Manchester City Council v Pinnock* [2010] UKSC 45 [2011] 1 All ER 285.

<sup>19</sup> *Cumming v Danson 2* [1942] All ER 653.

<sup>20</sup> *Lambeth LBC v Howard* [2001] EWCA Civ 468 (2001) 33 HLR 58.

134. The concept of “possessions” has been given a broad interpretation in case law. A contractual right, such as a tenancy agreement, is property for the purposes of A1P1.<sup>21</sup> It is therefore arguable that the statutory rights that secure and assured tenants possess may be considered by a court to be an aspect of their property rights.
135. Any interference with the A1P1 rights will be in accordance with the law because there will be clear provision in primary legislation about the circumstances in which landlords will be able to seek possession on the absolute and the new discretionary ground. The proposed provisions were also the subject of a wide public consultation which ended in November last year.
136. In relation to housing, states have a wide margin of appreciation and their actions will be justifiable unless the action is manifestly unreasonable.<sup>22</sup> These provisions of the Bill are not unreasonable.

*Absolute ground for possession*

137. For the reasons given above in relation to Article 8, any interference with the A1P1 rights is considered to be in pursuit of a legitimate aim.
138. A1P1 exists to protect the individual’s possessions from arbitrary interference or deprivation by public authorities; however the proposed provisions address circumstances in which the actions of the tenant or a person for whose behaviour the tenant is responsible (such as a member of the tenant’s household or a visitor to the property) and the effect of those actions on others are the reasons for the loss of their tenancy. Deprivation would be justifiable as it could only occur once a tenant, or a person for whose behaviour the tenant is responsible, had been adjudged, through a proper court process, guilty of the kind of behaviour in question, to the extent necessary for a court to impose a sanction against them.
139. It is also relevant to note that the landlord’s property interests are engaged and are in need of protection, as are the rights of other tenants to the peaceful enjoyment of their properties free from intimidation, violence, nuisance, or annoyance.
140. Where the landlord is a public authority, the court could also, if required, determine whether a fair balance had been struck between the general interest of the community (including other tenants) and the need to protect the individual’s fundamental rights, by applying a proportionality test.

*Absolute ground of possession: effect on the right to buy*

141. If possession proceedings on the absolute ground are pending before any court, the landlord will be under no duty to convey the freehold or grant a lease to a secure tenant who has applied to exercise the right to buy the property under Part V of the 1985 Act. The landlord is already under no duty to convey the freehold or grant a lease where possession

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<sup>21</sup> *Mellacher v Austria* (1989) 12 EHRR 391.

<sup>22</sup> *James v United Kingdom* (1986) 12 EHRR 391.

proceedings are pending before any court on the discretionary ground for anti-social behaviour or for proceedings for a demotion order. (A demotion order temporarily removes security of tenure and certain rights from secure tenants in cases of housing-related anti-social conduct.) In all cases, the right to buy will be reinstated if the possession proceedings fail or are withdrawn.

142. The amendment to the right to buy provisions may amount to a temporary interference with the tenant's A1P1 rights. However, for the reasons given above, this is in pursuit of a legitimate aim. As above, any interference with the tenant's rights is a result of either the tenant's actions or the actions of a person for whom the tenant is responsible and is therefore justifiable. The landlord's property rights are also relevant and, of particular importance, are the rights of other residents to peaceful enjoyment of their properties, which may be overridden if the tenant responsible for anti-social behaviour were able to avoid eviction simply by exercising the right to buy.

*Absolute ground of possession: effect on mutual exchange and transfer*

143. Secure tenants have the right to assign the tenancy by way of exchange ("mutual exchange") with another secure tenant or an assured tenant of a social landlord<sup>23</sup>. Whilst the landlord's permission is required, the landlord may only refuse on one of the grounds in Schedule 3 to the 1985 Act. The Bill amends Schedule 3 so that landlords may refuse where possession proceedings are pending before any court on the absolute ground, in the same way that permission may currently be refused based upon the discretionary ground for anti-social behaviour or for proceedings for a demotion order. In all cases, if the court does not grant possession, the tenant's original rights will be reinstated.
144. The Localism Act 2011 gives some secure tenants and assured tenants the right to exchange properties but keep their original security of tenure. Whilst the landlord's permission is required, the landlord may only refuse on one of the grounds in Schedule 14 to that Act. The Bill amends Schedule 14 so that it applies in relation the absolute ground for possession in the same way as it applies to the discretionary ground for possession and demotion orders.
145. As with the right to buy, the amendment to the mutual exchange and transfer provisions may amount to a temporary interference with the tenant's A1P1 rights. However, for the reasons given above, this is in pursuit of a legitimate aim. As above, any interference with the tenant's rights is a result of either the tenant's actions or the actions of a person for whom the tenant is responsible and is therefore justifiable. Of particular importance here are the landlord's property rights, as landlords should be able to decide whether to accept into their housing stock a tenant against whom another landlord is seeking possession based on the absolute ground for possession. This will enable landlords to consider the potential prospect of interference with their existing tenants' rights, in particular, those tenants' right to peaceful enjoyment of their property.

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<sup>23</sup> Section 92 of the 1985 Act.

*Discretionary ground for possession for riot-related anti-social behaviour*

146. For the reasons given in relation to Article 8 and the amendment to the discretionary ground for possession, any interference with the tenant's A1P1 rights is considered to be in pursuance of a legitimate aim.
147. As with the absolute ground for possession, if the tenant were to be evicted from the property, this would be a result not of arbitrary interference by the state but as a result either of the actions of the tenant or the action of a person living in the tenant's property. Any interference or deprivation is therefore justifiable. In addition, not only must the tenant or a person living with the tenant have committed a criminal offence during a riot but the court must also consider it reasonable to grant possession based upon these actions.
148. The Government therefore is satisfied that these provisions are compatible with A1P1.

**Part 6 – Local involvement and accountability**

*Community remedies*

149. These provisions oblige a Police and Crime Commissioner (or the London equivalent) to consult members of the public about the sorts of sanctions which are offered to offenders who are dealt with outside of the formal criminal justice process (i.e. those against whom criminal proceedings are not brought). This is done either by way of informal sanctions or as part of a conditional caution. Although members of the public may suggest any sort of sanctions, only those agreed with the chief constable will be put forward on the agreed list. The chief constable will only agree to sanctions that are achievable and realistic (for example community work options or certain types of courses). These informal sanctions are already available and used; the new part of the proposal is the public consultation on the options.
150. When dealing with an offender informally the police constable will be obliged to consult any person who it appears is a victim of the offenders' behaviour (or has been otherwise affected by the offender's behaviour) as to what sort of sanction on the agreed list should be offered to the offenders. Despite this input from the victim, the final decision as to what sanction should be offered remains that of the police officer, who will know best what sort of sanction is proportionate to the offenders' behaviour, what is realistic and achievable in the particular area and circumstances and also will be aware that any sanction proposed must comply with the offender's ECHR rights in light of section 6 the Human Rights Act 1998.
151. This consultation with the victim already takes place in practice in many cases; the new part of the proposal is to require such consultation (unless the victim cannot be identified or does not wish to be consulted). This does not any ECHR concerns since the police are not obliged to follow the victim's wishes if they are not appropriate in the particular case.
152. The offender is not obliged to carry out whatever sanction is proposed. They are free not to comply, at which stage the police and Crown Prosecution Service may consider whether to bring criminal proceedings.

*These notes refer to the draft Anti-Social Behaviour Bill as published for pre-legislative scrutiny by the Home Affairs Select Committee on 13 December 2012*

153. The Government therefore is satisfied that these provisions are compatible with ECHR rights.

*Responses to complaints about anti-social behaviour*

154. These provisions impose a duty on a group of authorities to create a structure by which complaints, which have not previously been properly addressed, should be dealt with. This would include repeated complaints made by an individual. The provisions are not overly prescriptive to ensure that local issues are properly addressed.

155. This does not raise any significant ECHR issues. The group of authorities will not have the power to impose any sanctions, they are only empowered to issue recommendations to persons carrying out public functions.

156. The Government therefore is satisfied that these provisions are compatible with ECHR rights.

**Home Office/Department for Communities and Local Government  
December 2012**

## **ANNEX D**

### **DELEGATED POWERS**

#### **MEMORANDUM BY THE HOME OFFICE AND THE DEPARTMENT FOR COMMUNITIES AND LOCAL GOVERNMENT**

##### **Introduction**

This Memorandum identifies the provisions of the draft Anti-social Behaviour Bill which confers powers to make delegated legislation, and explains in each case why the power has been taken and the nature of, and reason for, the procedure selected.

2. The Bill is in seven parts. Part 1 makes provision for a civil injunction to prevent nuisance and annoyance. Part 2 makes provision for an order on conviction to prevent behaviour which causes harassment, alarm or distress. Part 3 contains a power for the police to disperse people causing harassment, alarm or distress. Part 4 makes provision for a community protection notice and a public space protection order, both of which have the aim of preventing behaviour which is detrimental to the local community. It also makes provision for premises closure notices and orders to be issued and made in respect of premises which cause nuisance to the public. Part 5 makes provision for the possession of dwelling houses on anti-social behaviour grounds. Part 6 contains provisions on establishing a community remedy document and dealing with responses to complaints of anti-social behaviour. Part 7 contains miscellaneous provisions including provisions in respect of the parliamentary procedure to be applied to orders and regulations made under the Bill (clause 95).

##### **PART 1: INJUNCTIONS TO PREVENT NUISANCE AND ANNOYANCE**

###### **Clause 4(4): Power to amend clause 4 to vary the list of persons who can apply for an injunction**

*Power conferred on:* Secretary of State

*Power exercisable by:* Order made by Statutory Instrument

*Parliamentary procedure:* Negative resolution

Clause 4(1) sets out the persons who may apply for a crime prevention injunction under clause 1. The order-making power enables the Secretary of State to amend the clause so as to allow other persons or categories of person to apply for an injunction under clause 1 and to otherwise amend the list of persons who may apply. The power ensures that there is the flexibility to add, remove and vary the list of persons who may apply for a crime prevention injunction, for example, to take account of the creation of new bodies or the extension of the functions of existing bodies such that they take on new or enhanced responsibilities for tackling anti-social behaviour or to update references to existing bodies if necessary. Although this is a power to amend primary legislation it is considered that the negative resolution procedure provides sufficient parliamentary scrutiny considering that the power is very tightly prescribed. Section 1A of the Crime and Disorder Act 1998 contains a similar power which enables the Secretary of State to

provide, by order, for other persons to apply for an anti-social behaviour order; although this is a power to specify additional persons by an order (rather than through amendments to primary legislation), the effect is much the same as the proposed power in clause 4(4) and is also subject to the negative resolution procedure.

**Clause 18(1) and (2): 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 section 144A of the Magistrates' Courts Act 1980)

*Power exercisable by:* Rules of court made by Statutory Instrument

*Parliamentary procedure:* Negative resolution

Clause 18 enables rules of court to be made in relation to the injunction. Such injunctions are 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. Rules of court may be made to enable appeals against decisions of the county court (or High Court) or youth court to be appealed without giving notice to the other side. Rules of court may also provide for the transfer of cases between the youth court and county court when the respondent turns 18. It is appropriate that these procedural matters are dealt with in rules of court, the procedure for which is well established.

**PART 4, CHAPTER 1: COMMUNITY PROTECTION NOTICES**

**Clause 48(4): Power to specify description of person who may be designated by a local authority for the purpose of issuing a community protection notice**

*Power conferred on:* Secretary of State

*Power exercisable by:* Order made by statutory instrument

*Parliamentary procedure:* Negative resolution

A community protection notice ("CPN") may be issued by an authorised person. Clause 48(1) sets out who those authorised persons are which are as follows: a constable, the relevant local authority and a person designated by the relevant local authority. The order-making power in clause 48(4) enables the Secretary of State to restrict that latter category to a type of person set out in the order, to ensure that the CPN cannot be issued by any person at all authorised by the local authority. It is envisaged that an order under this provision may result in housing providers being designated by the local authority where appropriate. It is considered appropriate to retain flexibility in who might be appropriate to be an authorised person, hence the order making power. Since this order making power restricts the scope of clause 48(1) it is considered that the negative resolution procedure provides adequate parliamentary scrutiny.

## **PART 4, CHAPTER 2: PUBLIC SPACE PROTECTION ORDERS**

**Clause 53(9): Power to specify form of publication of a public space protection order**

**Clause 54(3)(b): Power to specify form of publication of an extension to a public space protection order**

**Clause 55(7): Power to specify form of publication of a variation to a public space protection order**

**Clause 55(8): Power to specify form of publication of the discharge of a public space protection order**

*Power conferred on:* Secretary of State

*Power exercisable by:* Regulations made by statutory instrument

*Parliamentary procedure:* Negative resolution

All of these provisions enable the Secretary of State to make provision in regulations about the publication of a public spaces protection order, the extension of such an order, the variation of such an order and the discharge of such an order. Although it is important that these orders are published so that local residents and other users of the affected public spaces are familiar with the terms of any order, it is necessary to afford some flexibility about how these orders should be published, for example to take account of new technology. Furthermore, such detail is an appropriate matter for secondary legislation. The negative resolution procedure is considered to provide an appropriate level of Parliamentary scrutiny. There is a similar power in section 13(5) of the Criminal Justice and Police Act 2001 to make regulations governing the requirements on local authorities to publicise the making and effect of a designated public places order; that regulation-making power is also subject to the negative procedure.

**Clause 59(1)(e) and (f): Power to prescribe description of a highway**

*Power conferred on:* Secretary of State and Welsh Ministers

*Power exercisable by:* Regulations made by statutory instrument

*Parliamentary procedure:* Negative resolution

These provisions enable the Secretary of State and Welsh Ministers to set out what type of highway may not be subject to a public space protection order which restricts the public right of way over such a highway. This provides sufficient flexibility should experience show that in fact another type of highway (in addition to those listed in clause 59(1)) should not be subject to such restrictions. It is considered that the negative resolution procedure provides sufficient Parliamentary scrutiny for this level of detail and is consistent with similar provisions in section 129A(5)(e) of the Highways Act 1980.



#### **PART 4, CHAPTER 3: CLOSURE OF PREMISES ASSOCIATED WITH NUISANCE OR DISORDER**

##### **Clause 66(8): Power to prescribe premises or description of premises in relation to which a premises closure order may not be issued**

*Power conferred on:* Secretary of State

*Power exercisable by:* Regulations made by statutory instrument

*Parliamentary procedure:* Negative resolution

This power enables the Secretary of State to make provision for certain types of premises to be exempt from the premises closure notice and premises closure order provisions in Chapter 3 of Part 4. It is considered appropriate to have this delegated power in the event that experience of the provisions shows that some premises should be exempt. It is considered that the negative resolution procedure provides sufficient Parliamentary scrutiny for this level of detail and is consistent with similar provisions in sections 1(9) and 11A(10) of the Anti-Social Behaviour Act 2003.

#### **PART 5: RECOVERY OF POSSESSION OF DWELLING-HOUSES: ANTI-SOCIAL BEHAVIOUR GROUNDS**

##### **Clause 83(1) – new section 84A(10) and (11) of the Housing Act 1985: Power to amend new Schedule 2A of the Housing Act 1985 (absolute grounds for possession for anti-social behaviour: serious offences)**

*Power conferred on:* Secretary of State and the Welsh Ministers

*Power exercisable by:* Order made by statutory instrument

*Parliamentary procedure:* Negative resolution

Clause 83(1) inserts new section 84A into the Housing Act 1985 (“the 1985 Act”). Section 84A introduces the new absolute ground for possession into the 1985 Act. Unlike the existing grounds for possession in Part 1 of Schedule 2 (where the court may order possession only if it considers it reasonable to do so) under section 84A the court will be required to order possession provided one of the five conditions for possession in section 84A is met and the landlord has complied with the procedural requirements in the new sections 83B (notice requirements) and 85ZA (review requirements) of the 1985 Act. (If the tenant raises proportionality as a defence to possession proceedings and the landlord is a public authority, the court will be required to consider proportionality too.) Condition 1 will be met if the tenant or a person residing in or visiting the dwelling-house has committed one of the serious offences listed in the new Schedule 2A to the 1985 Act (inserted into that Act by clause 83(2) and Schedule 4). The offence must have been committed in the locality of the dwelling-house, against a person who lives in the locality of the dwelling-house or against the landlord or a person employed in connection with the landlord’s housing management functions.

Clause 86 inserts a new ground for possession (ground 7A) into Part 1 of Schedule 2 to the Housing Act 1988 (grounds on which court must order possession). The court will be required to order possession under the new ground 7A if one of the five conditions in that ground, which are identical to those in the new section 84A of the 1985 Act, is met. Schedule 2A to the 1985 Act is therefore also relevant to condition 1 in ground 7A.

New section 84A(10) enables the Secretary of State to amend new Schedule 2A to the 1985 Act, insofar as it applies to England, by order, subject to the negative resolution procedure. New section 84A(11) confers the same power on the Welsh Ministers, insofar as Schedule 2A to the 1985 Act applies to Wales. The power to amend Schedule 2A is limited to adding indictable offences and removing offences.

It is intended that the power will be used to add or remove offences from Schedule 2A to take into account changes in legislation, in particular the repeal of existing offences and the creation of new ones. As the purpose is to ensure that Schedule 2A remains up-to-date and that only relevant offences are included, it is considered that the negative resolution procedure provides the appropriate level of Parliamentary scrutiny.

**Clause 85 – new section 85ZA(7) and (8) of the Housing Act 1985: Power to make provision about the procedure to be followed in connection with a review of a decision to seek possession on absolute ground for anti-social behaviour**

*Power conferred on:* Secretary of State and the Welsh Ministers

*Power exercisable by:* Regulations made by statutory instrument

*Parliamentary procedure:* Negative resolution

Clause 85 inserts new section 85ZA into the 1985 Act. New section 85ZA provides secure tenants of local housing authorities and housing action trusts with a right to request a review of the landlord's decision to seek possession on the absolute ground. The landlord must review the decision, if the tenant requests it.

New section 85ZA(7) provides that the Secretary of State may make regulations setting out the procedure to be followed for such a review in relation to dwelling-houses in England, and new section 85ZA(8) provides that the Welsh Ministers may make regulations setting out the procedure to be followed for such a review in relation to dwelling-houses in Wales. Subsection (9)(a) provides that this may include ensuring that the decision maker on the review is senior to and different from those involved in the original decision. Subsection (9)(b) provides that the regulations may make provision for the circumstances in which the tenant would be entitled to an oral hearing and whether and by whom the tenant may be represented at that hearing.

Regulations currently prescribe the procedure in the parallel circumstances of a tenant seeking review of a decision to end an introductory tenancy under section 129(3) and (4) of the Housing Act 1996. It is considered that secondary legislation is appropriate because the regulations are likely to need to set out the situation in considerable detail and that, as these matters are unlikely to be contentious, the negative resolution procedure provides an appropriate level of Parliamentary scrutiny.

## **PART 8: MISCELLANEOUS AND GENERAL**

### **Clause 94(2) and (3): power to make consequential amendments to enactments**

*Power conferred on:* Secretary of State and the Welsh Ministers

*Power exercisable by:* Order made by statutory instrument

*Parliamentary procedure:* Negative resolution (if it does not amend primary legislation), otherwise affirmative resolution

Clause 94 confers power on the Secretary of State and the Welsh Ministers to make such consequential provision as he or she considers appropriate for the purposes of the Bill. The powers conferred by this clause are wide. But there are various precedents for such provisions including section 173 of the Serious Organised Crime and Police Act 2005, section 51 of the Police and Justice Act 2006, section 148 of the Criminal Justice and Immigration Act 2008 and section 113 of the Protection of Freedoms Act 2012. There are far-reaching changes to existing tools for tackling anti-social behaviour made by the Bill and it is possible that not all of the consequences of them have been identified in the Bill's preparation. The Government considers that it would therefore be prudent for the Bill to contain a power to deal with these in secondary legislation. If an order under this clause does not amend primary legislation it will be subject to the negative resolution procedure. If an order under this clause does amend primary legislation it will be subject to the affirmative resolution procedure; it is considered that this provides the appropriate level of parliamentary scrutiny for the powers conferred by this clause.

### **Clause 97: Commencement power.**

*Power conferred on:* Secretary of State and the Welsh Ministers

*Power exercisable by:* Order made by statutory instrument

*Parliamentary Procedure:* None

Subsection (1) of clause 97 contains a standard power for the Secretary of State to bring provisions of the Bill into force by commencement order. As usual with commencement powers, orders made under subsection (1) are not subject to any parliamentary procedure. Parliament has approved the principle of the provisions to be commenced by enacting them; commencement by order enables the provisions to be brought into force at a convenient time.

Subsection (4) confers power on the Secretary of State to make such transitional, transitory or saving provisions as he or she considers appropriate in connection with the coming into force of the provisions in the Bill. This is a standard power to enable the changes made by the Bill to be implemented in an orderly manner. Such powers are often included as part of the power to make commencement orders (for example, section 116 of the Protection of Freedoms Act 2012) and, as such, are not subject to any parliamentary procedure on the grounds that Parliament has already approved the principle of the provisions in the Bill by enacting them. Although drafted as a free standing power on this occasion, the same principle applies and accordingly the power is not subject to any parliamentary procedure.

*These notes refer to the draft Anti-Social Behaviour Bill as published for pre-legislative scrutiny by the Home Affairs Select Committee on 13 December 2012*

The Secretary of State does not have the power to commence the provisions that relate to the absolute ground for possession insofar as they apply to Wales (subsection (2)). Subsection (3) confers on the Welsh Ministers the power to commence sections 83 to 86, section 88 and the corresponding paragraphs in Schedule 6 insofar as they apply to Wales. Subsection (5) enables the Welsh Ministers to make such transitional, transitory or saving provisions as they consider appropriate in connection with the coming into force of those provisions in the Bill.

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