



## Anti-social behaviour- new provisions

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Author: Oonagh Gay

Section Parliament and Constitution Centre

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Substantial changes to the law on anti-social behaviour have come into force as a result of the [Anti-social Behaviour Crime and Policing Act 2014](#). The legal remedies currently available have changed. Library Standard Note 4073, [Anti-Social Behaviour Remedies- an overview](#) offers a general overview of the previous position, published in 2012.

One of the main changes is the replacement of Anti-social Behaviour Orders with Injunctions to Prevent Nuisance and Annoyance (IPNAs) When the Bill was originally introduced, the definition of anti-social behaviour to be used with the IPNA was broad: that the respondent “has engaged or is threatening to engage in conduct capable of causing nuisance or annoyance to any person” (see [clause 1](#)).

In the event, the definition was changed in the Lords ([HL Deb 8 January 2014 c1543](#)) and the Government did not reverse this in the Commons. The definition in [section 2](#) of the 2014 Act will be very similar to the existing one, and is, “conduct that has caused, or is likely to cause, harassment, alarm or distress to any person”. Housing-related anti-social behaviour will be defined as conduct capable of causing nuisance or annoyance to any person in relation to that person’s occupation of residential premises.

The Home Office published in July 2014 [its statutory guidance](#) to the anti-social behaviour powers in the *Anti-Social Behaviour, Crime and Policing Act 2014*.. This gives a good overview of the new powers in comparison with current ones still in force. The new powers include community triggers, behaviour orders and dispersal powers as well as IPNAs.

In an updating note ([Crime and Policing News Update July 2014](#)), the Government indicated that the new powers in Parts 1 to 6 of the Act would come into force on 20 October 2014. However, the need to make changes to allow minors under 18 access to legal aid delayed the commencement of IPNAs, and part 1 will now come into force on 23 March 2015.

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# 1 Introduction

Anti-social Behaviour Orders (ASBOs) are civil orders which were introduced by the *Crime and Disorder Act 1998*. Through them the court can prohibit certain behaviours. Before the court can grant them, it has to be satisfied that:

- the person has acted in an anti-social manner, which is defined as “a manner that caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household as himself”; and
- the order is necessary to protect others from further anti-social acts by him.

The police, local authorities and certain others can apply to the courts for ASBOs. The ASBO has a mixture of criminal and civil elements:

- It is a civil order, but, as a result of a court case,<sup>1</sup> it has been established that the fact that the anti-social behaviour has taken place has to be established according to the criminal standard of proof, i.e. beyond reasonable doubt.
- Because it is a civil order, hearsay evidence is admissible (which would not normally be the case in a criminal case, and this allows (for example) a police officer to give evidence on behalf of an anonymous witness
- Breach of an ASBO is a criminal offence punishable by up to five years imprisonment and an unlimited fine.

Since the ASBO is a civil order, professional witnesses can be used and can include Housing Association officials, social workers, local council officials or even private security firms which may have been employed to patrol a given area.

There are four different kinds of ASBOs:

- ASBOs in civil proceedings – often referred to as “stand alone” ASBOs
- ASBOs made on conviction in criminal proceedings – sometimes called “CRASBOs”
- Interim ASBOs introduced by the *Police Reform Act 2002*
- Orders in the county court where the principle proceedings involved some kind of anti-social behaviour.

Library Standard Note 1656, [Anti-social Behaviour Orders](#) published in 2010 offered a general overview. This notes that a breach of an ASBO was punishable on indictment by up to five years’ imprisonment. On summary conviction (i.e. in a magistrate’s court), the maximum sentence is 6 months imprisonment and a fine not exceeding £5,000.

Section 13 of the *Anti-social Behaviour Act 2003* created the **anti-social behaviour injunction** (ASBI) which relates to conduct which is capable of causing nuisance or annoyance to any person, and which directly or indirectly relates to or affects the housing management functions of a relevant landlord.<sup>2</sup> Registered Social Landlords and Housing

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<sup>1</sup> *R(on the application McCann and others) v Crown Court at Manchester; Clingham v Kensington and Chelsea Royal Borough Council* [2002] UKHL 39, [2002] 3 WLR 1313, [2002] 4 All ER 593, HL

<sup>2</sup> This injunction can be sought against people who are not tenants.

Action Trusts can apply for these injunctions in addition to local authorities. The Act also created:

- **Injunctions against unlawful use of premises** which is available where the conduct consists of or involves the using or threatening to use housing accommodation owned by or managed by a relevant landlord for an unlawful purpose.
- **Exclusion order and power of arrest** – if a court grants one of the injunctions described above the court may prohibit the defendant from entering or being in any premises or any area specified in the injunction. Additionally, a power of arrest can be attached to any provision of the injunction where the court is satisfied that either conduct consists of or includes the use or threatened use of violence or there is a significant risk of harm.

All three types of injunctions were replaced by other powers when the 2014 Act came into effect. Further details are in [Library Standard Note 264 Anti-social behaviour in social housing](#) (June 2014).

The previous Government issued guidance on these: see Home Office, [A guide to anti-social behaviour orders](#) (2006) [pages 25-27](#) and [Supporting Victims and Witnesses in Anti-Social Behaviour Court Cases: A Comprehensive Guide to Civil Courts](#) (2008).

## **2 Anti-Social Behaviour, Crime and Policing Act 2014**

Library Research Paper 13/34 [Anti-Social Behaviour, Crime and Policing Bill 2013-14](#) provides background to the new anti-social behaviour legislation, See also Standard Note 6639 [Anti-Social Behaviour Crime and Policing Bill: the debate in Parliament](#). Under Part 1, a new civil order, the Injunction to Prevent Nuisance and Disorder (IPNA) replaces the current “stand alone” Anti-social Behaviour Order (ASBO). This is the ASBO which does not require a criminal conviction.

The IPNA also replaces other orders including the Anti-social Behaviour Injunction (ASBI), which social housing providers use currently. Library Standard Note 264 [Anti-Social Behaviour in Social Housing](#) The IPNA is very like the ASBI but unlike ASBOs and ASBIs, IPNAs can impose positive requirements as well as prohibitions. In contrast to ASBOs, a breach is not be a criminal offence, but is punished as contempt of court. Cases are heard in the county court or High Court, whereas stand-alone ASBOs are heard in magistrates’ courts.

When the Bill was originally introduced, the definition of anti-social behaviour to be used with the IPNA was that the respondent “has engaged or is threatening to engage in conduct capable of causing nuisance or annoyance to any person” (see [clause 1](#) of the Bill as introduced). In the event, the definition was changed in the Lords ([HL Deb 8 January 2014 c1543](#)) and the Government did not reverse this in the Commons. The definition in [section 2](#) will be very similar to the conduct capable of causing nuisance or annoyance to any person in relation to that person’s occupation of residential premises.e existing one. There is a separate definition for housing-related anti-social behaviour.

### 3 Statutory guidance on anti-social behaviour

The Home Office published in July 2014 its [statutory guidance](#) on parts 1 to 7 of the *Anti-Social Behaviour, Crime and Policing Act 2014*.<sup>3</sup> The guidance issued under sections 19, 32, 41, 56, 73 and 91 of the Act. This gives a good overview of the new powers in comparison with current ones still in force.

There is also draft Government advice on how the new anti-social behaviour powers can be used to deal with irresponsible dog ownership. See DEFRA's [Tackling irresponsible dog ownership](#).

The paragraphs below offer a brief overview of the new powers, based on the wording of the Home Office guidance.

#### 3.1 Community trigger and remedy

Two new policies in the legislation are designed to offer victims an opportunity to initiate action. The guidance summarises them:

The Community Trigger, gives victims the ability to demand action, starting with a review of their case, where the locally defined threshold is met.

The Community Remedy, gives victims a say in the out-of-court punishment of perpetrators for low-level crime and anti-social behaviour.

The Community Trigger can also be used by any person on behalf of a victim, for example a family member, friend, carer, councillor, Member of Parliament or other professional person. This is intended to ensure that all victims are able to use the Community Trigger. However, the victim's consent should be sought by the person using the Community Trigger on their behalf.

The local PCC must be consulted on the Community Trigger procedure when it is set up, and must also be consulted whenever the procedure is reviewed. Depending on how the local council areas are arranged for the purposes of the Community Trigger, there may be a number of different procedures in one police force area.

The Community Trigger was piloted in Manchester, Brighton and Hove, West Lindsey and Boston, and Richmond upon Thames. The Home Office report 'Empowering Communities, Protecting Victims: summary report on the community trigger trials', published in May 2013

([https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/207468/community-trigger-trials-report-v4.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/207468/community-trigger-trials-report-v4.pdf)), highlights the lessons identified by the pilot areas and will help assist the relevant bodies which are setting up their Community Trigger procedures.

The relevant bodies must publish a 'point of contact' for victims (or anyone acting on their behalf) who have decided to use the Community Trigger. This may include a phone number, email address, postal address, and a form which can be completed online.

The Community Remedy gives victims a say in the out-of-court punishment of perpetrators for low-level crime and anti-social behaviour.

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<sup>3</sup> HL Deb 17 July 2014 Written question HL1223: Lord Greaves

The Community Remedy document should be considered when it is proposed that a perpetrator be given a conditional caution or youth conditional caution as a means of consulting the victim about the possible conditions to be attached to the caution.

The guidance goes on to stress the value of information sharing and a system of early warnings, especially in relation to the behaviour of young people. These include Acceptable Behaviour Contracts and Parenting Contracts.

### **3.2 Civil injunctions**

The guidance then considers more formal methods. The injunction (IPNI) under Part 1 of the *Anti-social Behaviour, Crime and Policing Act 2014* is a civil power which can be applied for to deal with anti-social individuals. The guidance sets out the tests to be used:

There are two tests for an injunction under Part 1 of the 2014 Act.

#### **Non-housing related**

For anti-social behaviour in a non-housing related context the test is conduct that has caused, or is likely to cause, harassment, alarm or distress to any person. This will apply, for example, where the anti-social behaviour has occurred in a public place, such as a town or city centre, shopping mall, or local park, and where the behaviour does not affect the housing management functions of a social landlord or people in their homes.

#### **Housing-related**

For anti-social behaviour in a housing context the nuisance or annoyance test will apply, that is, where the conduct is capable of causing nuisance or annoyance to a person in relation to that person's occupation of residential premises or the conduct is capable of causing housing-related nuisance or annoyance to any person. Only social landlords, local councils or the police will be able to apply for an injunction under these provisions in the legislation. In the case of social landlords only, "housing-related" means directly or indirectly relating to their housing management function.

The injunction can be applied for by the police, local councils and social landlords against perpetrators in social housing, the private-rented sector and owner-occupiers. This means that it can be used against perpetrators who are not even tenants of the social landlord who is applying for the order.

Duration of injunctions: Prohibitions or requirements in the injunction can be for a fixed or indefinite period for adult perpetrators. In the case of under 18s the prohibitions or requirements must have a specified time limit, and the maximum term is 12 months.

Exclusion from the home: The court may exclude a perpetrator over the age of 18 from any premises or an area specified within the terms of the injunction. This can include their home, where the court thinks that the anti-social behaviour includes the use, or threatened use, of violence against other persons, or there is a significant risk of harm. The word harm is defined in section 20 of the legislation as including "serious ill-treatment or abuse, whether physical or not" – which means that it could include emotional or psychological harm, such as harassment or racial abuse.

Different types of injunctions will be available:

- 'Without notice' applications:
- Interim injunctions:

- Variation and discharge of injunctions:

The court can attach a power of arrest to any prohibition or requirement in the injunction, except a positive requirement.

Hearsay and professional witness evidence allow for the identities of those who are unable to give evidence due to fear or intimidation, to be protected.

The guidance sets out the penalties for breaching the injunction:

The breach of the injunction is not a criminal offence. However, due to the potential severity of the penalties which the court can impose on respondents, the criminal standard of proof – ‘beyond reasonable doubt’ – is applied in breach proceedings.

For adults, breach is dealt with by a civil contempt of court, which is punishable by up to two years in prison and/or an unlimited fine. The imprisonment is for contempt of court, not for the conduct. For under 18s, breach proceedings are dealt with in the youth court and could result in a supervision order with a supervision, curfew or activity requirement. In the most serious cases, (that is, ‘where the court determines that because of the severity or extent of the breach no other power available to it is appropriate’) the court may impose a detention order on a young person for breaching the terms of the injunction – including breach of a positive requirement. For under 18s, only those between 14 and 17 years of age can be detained for breaching the injunction and they cannot be detained for longer than three months.

As noted in the summary, part 1 of the Act was delayed to allow for unavoidable and necessary changes to be made to the civil legal aid system to ensure that applications for advocacy assistance can be assessed for those involved in civil injunction hearings. The new date of commencement for IPNAs is set at 23 March 2015.<sup>4</sup>

### **3.3 Criminal behaviour order**

The Criminal Behaviour Order (CBO) is available on conviction for any criminal offence in any criminal court. The order is aimed at tackling the most serious and persistent offenders where their behaviour has brought them before a criminal court. It is issued by any criminal court against a person who has been convicted of an offence to tackle the most persistently anti-social individuals who are also engaged in criminal activity.

### **3.4 Dispersal Power**

The dispersal power will be a flexible power which the police can use in a range of situations to disperse anti-social individuals and provide immediate short-term respite to a local community. It requires a person committing or likely to commit anti-social behaviour, crime or disorder to leave an area for up to 48 hours. The guidance notes that it can be used to provide immediate respite to a community from anti-social behaviour, crime or disorder. An area does not need to be designated as a dispersal zone in advance.

### **3.5 Community Protection Notice**

The community protection notice (CPN) is intended to deal with particular, ongoing problems or nuisances which negatively affect the community’s quality of life by targeting those responsible. Its purpose is to stop a person aged 16 or over, business or organisation

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<sup>4</sup> [The Civil and Criminal Legal Aid \(Remuneration\) \(Amendment\) Regulations 2015](#) made under *Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012*  
Act 2012

committing anti-social behaviour which spoils the community's quality of life. Behaviour has to:

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

The CPN can deal with a wider range of behaviours for instance, it can deal with noise nuisance and litter on private land not open to the air. The CPN can be used against a wider range of perpetrators and can include requirements to ensure that problems are rectified and that steps are taken to prevent the anti-social behaviour occurring again.

The guidance warns that the new power does not replace legislation on statutory nuisances:

Issuing a community protection notice (CPN) does not discharge the council from its duty to issue an Abatement Notice where the behaviour constitutes a statutory nuisance for the purposes of Part 3 of the Environmental Protection Act 1990. A statutory nuisance is one of the matters listed in section 79(1) of that Act that, given all the surrounding circumstances, is judged to be 'prejudicial to health or a nuisance'.

### **3.6 Public spaces protection order**

Public spaces protection orders (PSPOs) are intended to deal with a particular nuisance or problem in a particular area that is detrimental to the local community's quality of life, by imposing conditions on the use of that area which apply to everyone. Behaviour being restricted has to:

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

The guidance considers its use in relation to dogs and alcohol:

In relation to dogs and their owners, a PSPO could, for example:

exclude dogs from designated areas (e.g. a children's play area in a park);

require dog faeces to be picked up by owners;

require dogs to be kept on leads;

restrict the number of dogs that can be walked by one person at any one time; and

put in place other restrictions or requirements to tackle or prevent any other activity that is considered to have a detrimental effect on the quality of life of those in the locality, or is likely to have such an effect.

A PSPO can be used to restrict the consumption of alcohol in a public space where the test has been met.



The PSPO can also be used to restrict access to a public right of way. Any challenge to the PSPO must be made in the High Court by an interested person within six weeks of it being made. The draft DEFRA guidance on [tackling irresponsible dog ownership](#) published in October 2013 is also relevant.

### **3.7 Closure power**

The power comes in two stages: the closure notice and the closure order which are intrinsically linked. The closure notice can be used by the council or the police out of court. Following the issuing of a closure notice, an application must be made to the magistrates' court for a closure order, unless the closure notice has been cancelled. Breach of the order is a criminal offence.

### **3.8 New absolute ground for possession**

The Act introduces a new absolute ground for possession of secure and assured tenancies where anti-social behaviour or criminality has already been proven by another court. It is available both to social landlords and private rented sector landlords. Offence/breach needs to have occurred in the locality of the property or affected a person with a right to live in the locality or affected the landlord or his or her staff/ contractors; Unlike the existing discretionary grounds for possession, the landlord will not be required to prove to the court that it is reasonable to grant possession. This means the court will be more likely to determine cases in a single, short hearing. For further information see section 5 of Library Standard Note 264 Anti-[Social Behaviour in Social Housing](#) and Standard Note 1012 [Anti-Social Behaviour in Private Housing](#)