

# **POLICE AND JUSTICE ACT 2006**

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## **EXPLANATORY NOTES**

### **THE ACT**

#### *Commentary on Sections*

#### **Part 3: Crime and anti-social behaviour**

#### *Section 19: Local authority scrutiny of crime and disorder matters*

188. This section extends the remit of local authorities to scrutinise the functioning of the local Crime and Disorder Reduction Partnership (CDRP)/Community Safety Partnership (CSP).
189. *Subsection (1)* requires every local authority to have a crime and disorder committee with the power to review and scrutinise, and make reports or recommendations, regarding the functioning of the responsible authorities of the local CDRP/CSP, as defined under section 5 of the Crime and Disorder Act 1998.
190. *Subsection (2)* requires the committee to provide a copy of any report or recommendations they make by virtue of *subsection (1)(b)* to all the responsible authorities and co-operating bodies of the CDRP/CSP.
191. *Subsection (3)* puts ward councillors under a duty to respond to a “community call for action” from anybody living or working in the area which they represent, on a matter concerning crime and disorder (including anti-social behaviour and behaviour adversely affecting the environment) or substance abuse in that area. The ward councillor’s response must indicate what (if any) action he or she proposes to take to resolve the matter. The ward councillor may refer any such matter to the local authority’s crime and disorder committee for consideration. The ward councillor might be expected to do this when reasonable steps to resolve the problem through more informal means have been taken but have failed.
192. The obligation imposed by this section does not apply to a councillor who is a member of a county council for an area in which there are district councils. Nor do the obligations imposed by subsections (4) to (6) apply in relation to a county council for an area in which there are district councils.
193. *Subsection (4)* provides for the person raising the matter to refer it to the local authority executive for consideration, if the ward councillor does not take the matter forward.
194. *Subsection (5)* requires the council executive to consider any matter referred to them and to respond indicating what (if any) action they propose to take, and enables them to refer the matter to the crime and disorder committee.
195. *Subsection (6)* requires the committee to consider a crime and disorder matter referred to it by a ward councillor or the council executive, and enables the committee to make a report or recommendations on it to the local authority.

*These notes refer to the Police and Justice Act 2006  
(c.48) which received Royal Assent on 8 November 2006*

196. *Subsection (7)* requires the committee to send a copy of any report or recommendations made under *subsection (6)* to such of the responsible authorities and co-operating bodies of the CDRP/CSP as it considers appropriate.
197. *Subsection (8)* puts the responsible authorities and co-operating bodies which receive a copy of the report or recommendations under a duty to consider the report or recommendations and respond to the committee indicating what (if any) action they will take. It requires them to have regard to the report or recommendations.
198. *Subsection (9)* provides for the crime and disorder committee to be an overview and scrutiny committee for councils operating executive arrangements.
199. *Subsection (10)* gives effect to *Schedule 8*, which contains further provision about the crime and disorder committees of local authorities not operating executive arrangements, and in particular the City of London.
200. *Subsection (11)* contains further definitions of the terms used in the section.

***Schedule 8: Further provision about crime and disorder committees of certain local authorities***

201. This Schedule makes provision, corresponding to that made by section 21 of the Local Government Act 2000, about crime and disorder committees of local authorities not operating executive arrangements under Part 2 of the Local Government Act 2000.
202. *Paragraph 2* limits the functions of crime and disorder committees to those set out under section 19, or this Schedule. However, there is no requirement on a local authority to set up a separate committee. If there is one committee including crime and disorder in a range of functions, then this limitation operates on the committee in its capacity as a crime and disorder committee.
203. *Paragraph 3* enables the crime and disorder committee to set up one or more sub-committees and arrange for the discharge of any of its functions by any such sub-committee.
204. *Paragraph 4* enables any member of a crime and disorder committee or sub-committee to ensure that any relevant matter is put on the agenda and discussed at a meeting of the committee.
205. *Paragraph 5* allows crime and disorder committees or sub-committees to co-opt people who are not members of the authority. However, in general, such co-optees will not have voting rights.
206. *Paragraph 6* allows a crime and disorder committee to require officers and members of the local authority to appear before it. It is also allowed to invite any other person to appear before it.
207. *Paragraphs 7 to 9* set out how relevant legislation will apply to crime and disorder committees.
208. *Paragraphs 10 to 12* enable the Common Council of the City of London to use its existing committee structure, rather than to have to set up a bespoke crime and disorder committee. The Common Council of the City of London will therefore be able to act as both the local authority and the crime and disorder committee. The City of London currently operates a number of committees which scrutinise different aspects of community safety in the square mile in the same way as the crime and disorder committee will in under the new provisions. The Common Council will be able to delegate the functions to several of its existing committees as it does at the present, rather than establishing a new committee.

***Section 20: Guidance and regulations regarding crime and disorder matters***

209. *Subsection (1)* gives the Secretary of State the power to issue guidance regarding the overview and scrutiny of CDRPs either to local authorities in England, to local councillors of those authorities or to their crime and disorder committees directly.
210. *Subsection (2)* gives a similar power to the National Assembly for Wales, exercisable after consultation with the Secretary of State, in relation to Wales.
211. *Subsection (3)* enables the Secretary of State to make regulations to supplement the provisions of section 19 in relation to local authorities in England. *Subsection (4)* enables the Secretary of State, after consultation with the National Assembly for Wales, to make similar provision in relation to local authorities in Wales.
212. *Subsection (5)* provides a non-exhaustive list of matters which might be dealt with in regulations. The regulations may include provisions in relation to co-option of members to the crime and disorder committee, the frequency with which the committee should scrutinise the functioning of the CDRP/CSP, what information can be sought by the committee, requiring representatives of co-operating bodies or responsible authorities to attend before the committee to answer questions, the period within which the council executive and/or councillor must respond to a matter referred to it by a complainant, the period within which the committee should consider a matter referred by the councillor or council executive, the period within which the responsible authorities and co-operating bodies should respond to a report or recommendations made by the committee, and how a person should refer a matter to a member of a local authority or its executive.
213. *Subsection (6)* allows the regulations to give co-opted members of crime and disorder committees voting rights on the committee.
214. *Subsection (7)* provides that the terms “local authority”, “crime and disorder committee”, “responsible authorities” and “co-operating persons and bodies” have the same meaning as in section 19.

***Section 21: Joint crime and disorder committees***

215. This section inserts two new subsections into section 5 of the Crime and Disorder Act 1998, to extend the order-making power to enable the Secretary of State to require councils to appoint a joint committee to carry out crime and disorder scrutiny functions. This will be used where CDRP mergers have taken place, so that responsible authorities and co-operating bodies are not required to answer to two or more separate crime and disorder committees.
216. New subsection (1C) also allows the order to apply any legislative provisions affecting single committees to a joint committee – either directly, or modified if necessary to reflect the different characteristics of a joint committee.
217. New subsection (1D) explains that “crime and disorder scrutiny functions” are those that would otherwise be exercisable by the crime and disorder committee of the council under section 19.

***Section 22: Amendments to the Crime and Disorder Act 1998***

218. This section gives effect to Schedule 9 which amends the Crime and Disorder Act 1998 in relation to crime and disorder strategies and other matters.

***Schedule 9: Amendments to the Crime and Disorder Act 1998***

219. Section 5 of the Crime and Disorder Act 1998 lists the “responsible authorities” that comprise CDRPs and CSPs as local authorities, chief police officers, police authorities,

fire and rescue authorities and primary care trusts in England and health boards in Wales.

220. *Paragraph 2* amends section 5 of the 1998 Act by including new subsection (6) which enables the appropriate national authority to add to or otherwise change the list of responsible authorities and new subsection (7) which provides a definition for “appropriate national authority” – the Secretary of State in relation to English bodies and Welsh bodies whose functions are not devolved, the National Assembly for Wales in relation to bodies whose functions are wholly devolved and both acting jointly in other cases. The paragraph also makes consequential amendments to the section.
221. *Paragraph 3* replaces sections 6 and 6A (which provide for the formulation and implementation of crime and disorder reduction strategies) of the 1998 Act with a new section 6. The new section extends the scope of the strategies from the reduction of crime and disorder and the combating of the misuse of drugs to the reduction of crime and disorder (including in particular forms of crime and disorder that involve anti-social behaviour or other behaviour adversely affecting the local environment) and the combating of the misuse of drugs, alcohol and other substances. The new section also enables the appropriate national authority to make regulations making further provision in connection with the formulation, implementation and review of the strategies. These regulations will be known as national standards. This section also allows the appropriate national authority to issue guidance.
222. Section 17 of the 1998 Act currently states that defined bodies have a duty to do all that they reasonably can to prevent crime and disorder. *Paragraph 4* will amend the scope of duty so as to extend it to include the misuse of drugs, alcohol and other substances, anti-social behaviour and other behaviour adversely affecting the local environment. It also amends section 17 to enable the appropriate national authority to extend the duty to other persons or bodies as required. Appropriate national authority is given the same definition as in the amendments made by *paragraph 2*.
223. *Paragraph 5* amends section 115 of the 1998 Act (which enables information sharing between authorities for the purposes of crime reduction and community safety) and creates a new section 17A which places specified agencies in England and Wales under a duty to share depersonalised data that is already held in a depersonalised format for the purposes of reducing crime and disorder and is of a prescribed description as set out by the Secretary of State in regulations. The Secretary of State may also prescribe the intervals and the form that this data must be shared in. The definition of personal data is as set out in the Data Protection Act 1998.
224. *Paragraph 6* makes amendments to section 114 of the 1998 Act (orders and regulations) as a consequence of the other amendments made by this Schedule.
225. *Paragraph 7* extends the list of authorities to which the duty applies to the London Fire and Emergency Planning Authority, and all other fire and rescue authorities. It will also enable the appropriate national authority to extend the duty to other persons or bodies by means of secondary legislation.

### ***Section 23: Parenting contracts: local authorities and registered social landlords***

226. *Subsection (1)* of this section inserts two new sections (25A and 25B) in Part 3 of the Anti-social Behaviour Act 2003 so as to enable a local authority or a registered social landlord to enter into a parenting contract with a parent in respect of anti-social behaviour by his or her children. These provisions supplement the powers of schools and Local Education Authorities to enter into parenting contracts in cases of exclusion from school or truancy and youth offending teams to enter into parenting contracts in respect of criminal conduct or anti-social behaviour contained in Part 3 of the Anti-Social Behaviour Act 2003.

**New section 25A: Parenting contracts in respect of anti-social behaviour: local authorities**

227. New section 25A(1) sets out the circumstances in which a local authority can enter into a parenting contract with a parent of a child or young person. These are where it has reason to believe that the child or the young person has engaged, or is likely to engage, in anti-social behaviour and where the child or the young person resides, or appears to reside, in the authority's area.
228. New section 25A(2) indicates that a parenting contract is a document containing a statement by the parent that he or she agrees to comply with any requirements specified in the contract, for any period so specified, and a statement by the local authority that it agrees to provide support to the parent to help him or her comply with the requirements of the contract. New section 25A(3) states that the contract may, in particular, include a requirement for the parent to attend a counselling or guidance programme.
229. New section 25A(4) states that the purpose of any requirement in a parenting contract is to prevent the child or young person from engaging in anti-social behaviour, or further such behaviour. New section 25A(5) specifies that the contract must be signed by the parent and on behalf of the authority.
230. New section 25A(6) makes clear that no obligations in contract or tort are to arise from any breach of the contract.
231. New section 25A(7) requires local authorities in England, when carrying out their functions in relation to such contracts, to have regard to any guidance issued by the Secretary of State. It also requires local authorities in Wales, when carrying out their functions in relation to such contracts, to have regard to any guidance issued by the National Assembly for Wales.

**New section 25B: Parenting contracts in respect of anti-social behaviour: registered social landlords**

232. New section 25B(1) sets out the circumstances in which a registered social landlord (an "RSL") can enter into a parenting contract with the parent of a child or a young person. These are where the RSL has reason to believe that the child or young person has engaged in anti-social behaviour, or is likely to engage in such behaviour, and that the behaviour directly or indirectly relates to, or affects, the RSL's housing management functions or, in the case of likely behaviour, would do so.
233. New section 25B(2) indicates that a parenting contract is a document containing a statement by the parent that he or she agrees to comply with any requirements specified in the contract for any period so specified, and a statement by the RSL that it agrees to make arrangements for the provision of support to the parent to help him or her to comply with those requirements. New section 25B(3) states that the contract may, in particular, include a requirement for the parent to attend a counselling or guidance programme.
234. New section 25B(4) states that the purpose of any requirement in the contract is to prevent the child or young person from engaging in anti-social behaviour, or further such behaviour. New section 25B (5) specifies that the contract must be signed by the parent and on behalf of the RSL.
235. New section 25B(6) makes clear that no obligations in contract or tort are to arise from any breach of the contract.
236. New section 25B(7) requires RSLs in England, when carrying out their functions in relation to such contracts, to have regard to any guidance issued by the Secretary of State. It also requires RSLs in Wales, when carrying out their functions in relation to such contracts, to have regard to any guidance issued by the National Assembly for Wales.

237. *Subsection (2)* of the section inserts in section 29(1) of the Anti-social Behaviour Act 2003 various definitions relating to the new sections 25A and 25B, namely, the definitions of “housing accommodation”, “housing management functions”, “local authority” and “registered social landlord”.

***Section 24: Parenting orders: local authorities and registered social landlords***

238. This section inserts in Part 3 of the Anti-social Behaviour Act 2003 two new sections (26A and 26B), so as to enable a local authority or a registered social landlord to apply to a magistrates’ court for a parenting order against a parent in respect of anti-social behaviour by his or her children, and a new section (26C) so as to enable a local authority or a RSL to apply for such an order as an adjunct to certain proceedings in the county court. These provisions supplement the powers of magistrates’ courts to make parenting orders in cases of exclusion from school or truancy and in respect of criminal conduct or anti-social behaviour contained in sections 8 to 10 of the Crime and Disorder Act 1998 and Part 3 of the Anti-Social Behaviour Act 2003.

**New section 26A: Parenting orders in respect of anti-social behaviour: local authorities**

239. New section 26A(1) sets out the circumstances in which a local authority can apply to a magistrates’ court (or in certain circumstances a county court) for a parenting order in respect of a parent of a child or young person. These are where the authority has reason to believe that the child or young person has engaged in anti-social behaviour and where the child or young person resides, or appears to reside, in the authority’s area.
240. New section 26A(2) provides that the court may make such an order if it has reason to believe that the child or young person has engaged in anti-social behaviour and that it would be in the interests of preventing him or her from engaging in further such behaviour. New section 26A(3) indicates that a parenting order is an order which requires the parent to comply, for not more than twelve months, with any requirements specified in the order and, subject to new section 26A(4) to attend, for no more than three months, a counselling or guidance programme specified in directions given by the responsible officer.
241. New section 26A(4) indicates that a parent is not necessarily to be required to attend a counselling or guidance programme when he or she has already been subject to a parenting order.
242. New section 26A(5), (6) and (7) provides that a counselling or guidance programme which a parent is required to attend by virtue of a parenting order may be residential, only if that is likely to be more effective than a non-residential course in preventing the child or young person from engaging in further anti-social behaviour, and if any interference with family life is likely to be proportionate.
243. New section 26A(8) makes clear that the responsible officer is required to be an officer of the local authority or a person or body nominated by that local authority. A person cannot be nominated by the local authority without their consent.

**New section 26B: Parenting orders in respect of anti-social behaviour: registered social landlords**

244. New section 26B(1) sets out the circumstances in which a RSL can apply for a parenting order in respect of a parent of a child or young person. These are where the RSL has reason to believe that the child or the young person has engaged in anti-social behaviour and the behaviour directly or indirectly relates to or affects the RSL’s housing management functions.
245. New section 26B(2) to (7) makes parallel provisions to new section 26A(2) to (7) described above.

246. New section 26B(8) requires an RSL to consult with the local authority in whose area the child or young person resides before applying for a parenting order.
247. New section 26B(9) and (10) makes clear the responsible officer may be an officer of the RSL or a person nominated by the RSL. A person may not be nominated by the RSL without their consent. When deciding whom to nominate the RSL must take into account the views of the local authority and other appropriate persons and bodies.

**New section 26C: Applications under section 26A or 26B in county court proceedings**

248. New section 26C(1) provides that where a local authority or an RSL is a party to proceedings in the county court and it considers that another party is a person in relation to whom it could be reasonable to apply for a parenting order it may make such an application to the court.
249. New section 26C(2) provides that where a local authority or an RSL is not a party to proceedings but considers that a party is a person in relation to whom it would be reasonable to make an application, it may apply to be joined to the proceedings for that purpose.
250. New section 26C(3) provides that where a local authority or an RSL is a party to proceedings, and considers that a child or young person has engaged in anti-social behaviour which is material in relation to the proceedings, the local authority or the RSL may apply for a person who is the parent of the child or the young person to be joined to enable it to apply for a parenting order in respect of that person.
251. New section 26C(4) makes it clear that a person is not to be joined under new section 26C(3) unless the anti-social behaviour in question is material to the proceedings.

***Section 25: Contracting out of local authority functions with regard to parenting contracts and parenting orders***

252. This section inserts a new section 28A in Part 3 of the Anti-social Behaviour Act 2003 so as to make it possible for the Secretary of State to make an order enabling a local authority to contract out to a person specified in the order (subject to the negative resolution procedure) the functions of entering into parenting contracts and applying for parenting orders.
253. New section 28A(1) confers on the Secretary of State the power to make an order providing for a local authority to make arrangements with a specified person, or a person of a specified description, for the exercise of any of its functions under the new sections 25A and 26A. The power is conferred on the National Assembly for Wales to make such an order in relation to Welsh local authorities.
254. New section 28A(2) indicates that such an order may provide, first that the local authority's power to contract out is subject to any conditions specified in the order, secondly that the contracting out arrangements must be subject to such conditions as are so specified and, thirdly, that the contracting out arrangements may be subject to any other conditions which the local authority considers appropriate.
255. New section 28A(3) indicates that the order may also provide that the contracting out arrangements can authorise the exercise of the function wholly or to such an extent as may be specified, and generally or in specified cases or areas.
256. New section 28A(4) indicates that the order may provide that the person with whom the contracting out arrangements are made is to be treated as a public body for the purposes of section 1 of the Local Authorities (Goods and Services) Act 1970.

257. New section 28A(5) stipulates that before making an order under the new section the Secretary of State and the National Assembly for Wales must consult with such representatives of local government, and with such other persons, as he or it thinks appropriate.
258. New section 28A(6) provides that any contracting out arrangements made under such an order are not to prevent the local authority from exercising the functions to which the arrangements relate.
259. New section 28A(7) and (8) provides that certain provisions of the Deregulation and Contracting Out Act 1994 are to apply for the purposes of arrangements made in the pursuance of an order under this section.
260. New section 28A(9) requires local authorities in England and any person to whom they contract out functions by arrangements made in pursuance of an order under section 28 to have regard to any guidance issued by the Secretary of State for the purposes of that section.
261. New section 28A(10) requires local authorities in Wales and any person to whom they contract out functions by arrangements made in pursuance of an order under section 28 to have regard to any guidance issued by the National Assembly for Wales for the purposes of that section.

### ***Section 26: Anti-social behaviour injunctions***

262. *Section 26* replaces the existing section 153A of the Housing Act 1996, which extended the powers of certain social landlords to apply for injunctions to prohibit housing-related anti-social behaviour and allowed social landlords to obtain injunctions against a wide range of persons, not just residents, in order to protect other residents, visitors and their own staff. It also applied to situations where the conduct in question was capable of causing nuisance or annoyance (even if a complaint had not been received), but which directly or indirectly affected the landlord's management of its housing stock.
263. The section re-enacts section 153A of the Housing Act 1996 with modifications. In particular, the effect of the definition of “anti-social behaviour” in subsection (1) of the new section 153A, and of subsection (4), is that a housing related anti-social behaviour injunction may be granted without a particular individual being named as someone adversely affected by the conduct referred to in the injunction. An injunction may be granted in respect of conduct which is not described by reference to any person or persons at all. If conduct is described in an injunction by reference to a person or persons, these may be persons generally, or persons of a particular description, or a specified person.

### ***Section 27 and Schedule 10: Injunctions in local authority proceedings: power of arrest and remand***

264. Under section 222 of the Local Government Act 1972, a local authority may in certain cases apply to the High Court or a county court for an injunction to stop anti-social behaviour.
265. Section 91 of the Anti-social Behaviour Act 2003 provides that, where such an injunction is granted, the court may attach a power of arrest to the injunction in certain cases, namely where the conduct in question consists of or includes the use of violence, or there is a significant risk of harm. That means that a person who is suspected of breaching the conditions of an injunction can be arrested.
266. However, section 91 makes no provision for what happens when a person is arrested. That means that a person arrested has to be released on bail pending a court hearing. The release may cause problems because of the subsequent behaviour of the person who has been arrested, or because the victim(s) of the anti-social behaviour may believe that the matter will not be taken seriously or dealt with swiftly.



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(c.48) which received Royal Assent on 8 November 2006*

267. [Section 91](#) is repealed by Schedule 14 to the Act. In its place, section 27 of the Act gives the court the power to remand a person in custody pending trial, where he has been arrested for breach of an injunction.
268. The power to attach a power of arrest to the injunction remains as it was (*subsections (2) and (3)*). But the section and [Schedule 10](#) go on to make new provision about what happens thereafter.
269. In essence, where a power of arrest is attached to an injunction, if the person against whom the injunction is taken out is suspected of breaching it, he may be arrested by a constable without warrant (*subsection (4)*). The constable must inform the local authority forthwith (*subsection (5)*).
270. The person arrested must then be brought before the court within 24 hours (*subsection (6)*). If the court does not deal with him immediately, it must remand him either on bail, or in custody, in accordance with the remaining provisions of the section and the provisions of Schedule 10.
271. Those provisions closely follow sections 155 and 156 of, and Schedule 15 to, the Housing Act 1996 (which deal with the arrest of a person suspected of breaching an injunction under section 153A, 153B and/or 153D of that Act). There are similar provisions in sections 47 and 48 of, and Schedule 5 to, the Family Law Reform Act 1996.
272. Under [paragraph 4\(1\)](#) of Schedule 10 a person may not be remanded in custody or on bail for a period of more than eight days at a time, except with the consent of all parties in a case where the person arrested is remanded on bail, or where the case is adjourned to allow for a medical examination.
273. A person remanded in custody for a period not exceeding three days may be remanded to police custody ([paragraph 4\(2\)](#) of Schedule 10).