

**EXPLANATORY MEMORANDUM TO
THE MAGISTRATES' COURTS (INJUNCTIONS: ANTI-SOCIAL
BEHAVIOUR) RULES 2015**

2015 No 423 (L. 5)

1. This Explanatory Memorandum has been prepared by the Ministry of Justice and is laid before parliament by Command of Her Majesty.
2. **Purpose of the instrument**
 - 2.1 These Rules contain provisions for the procedure for applications to the youth court for injunctions in relation to anti-social behaviour under Part 1 of the Anti-Social Behaviour, Crime and Policing Act 2014, and related proceedings such as applications for variation, or in the event of breach of an injunction.
3. **Matters of Special interest to the Joint Committee on Statutory Instruments.**
 - 3.1 None
4. **Legislative Context**
 - 4.1 Section 144 of the Magistrates' Courts Act 1980 allows the Lord Chief Justice with the concurrence of the Lord Chancellor to make rules regulating and prescribing the practice and procedure of Magistrates' Courts, except in relation to any criminal cause or matter, or family proceedings. .
 - 4.2 Part 1 of the Anti-Social Behaviour, Crime and Policing Act 2014 replaced numerous provisions for orders to deal with anti-social behaviour of various forms. It gives local authorities, the police (including the British Transport Police) , social landlords and others the power to apply for an injunction against a person aged 10 or over (the respondent) if the court is satisfied, on the balance of probabilities, that the respondent has engaged or threatens to engage in anti-social behaviour and that it is just and convenient to grant the injunction. The injunction is available in the county court for adults and the Youth Court for under 18s.
 - 4.3 These Rules deal with the procedure in relation to such injunctions in the Youth Court (including the possibility of having related proceedings against both under-18s and over-18s heard together in the Youth Court), and in addition allow for the transfer of the proceedings to the County Court or High Court (or retention at the Youth Court in certain cases) upon the respondent turning 18.
5. **Territorial Extent and Application**
 - 5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy Background

- What is being done and why

- 7.1 The overall policy aims of the anti-social behaviour reforms in the Anti-social Behaviour, Crime and Policing Act 2014 are to:
- Ensure that frontline professionals have effective formal powers that are quick, practical and easy to use, and act as real deterrents to perpetrators – replacing 19 of the complex previous powers with six simpler and flexible new ones to better victims and communities from anti-social behaviour.
 - Introduce the community trigger which gives victims and communities the right to require agencies to deal with persistent anti-social behaviour that has previously been ignored.
 - Introduce the community remedy which requires Police and Crime Commissioners to consult victims and the public on the menu of sanctions available for those committing low-level crime and anti-social behaviour.
 - Bring faster relief to victims and witnesses by removing the court's discretion to consider whether it would be reasonable to grant possession of a dwelling house where serious housing related anti-social behaviour or criminality has already been proven, and enabling possession to be sought by landlords where tenants have committed certain offences beyond the locality of the property in exceptional cases.
- 7.2 Part 1 of the Act introduces Injunctions which are available to a range of agencies to tackle anti-social behaviour: local authorities, housing providers, the chief officer of police (including the British Transport Police), Transport for London, the Environment Agency, the Natural Resources Body for Wales, NHS Protect (or its successor) and the relevant body in Wales exercising corresponding functions or other body in Wales exercising any such functions on the direction of the Secretary of State or Welsh Ministers. The Act sets out when an injunction can be issued, by whom, against whom, and what happens if it is breached.
- 7.3 The Rules are intended to operate largely as a self-contained body of rules and to be as simple as possible. In the interests of the latter aim, the Rules do not prescribe any forms, but instead mandate the use of written complaint (the procedure for which is contained in the Magistrates' Courts Act 1980 and Magistrates' Courts Rules 1981) and set out the information which is required to be provided for each sort of application which may be made in anti-social behaviour proceedings.

7.3 The Rules make provision for the court to consider, when a respondent to a gang injunction attains the age of 18, whether the proceedings should be transferred to the High Court or County Court (in which case the existing provisions of Part 65 of the Civil Procedure Rules 1998 will apply to any continuing proceedings) or retained in the youth court (for example, if proceedings are almost completed and it is considered appropriate to conclude them in the youth court rather than transfer them).

- Consolidation

7.4 These Rules are in themselves largely new and self-contained. They do not directly amend the Magistrates' Courts Rules 1981, and there are no immediate plans to consolidate those rules.

8. Consultation outcome

8.1 In February 2011 the Government published a consultation document, 'More effective responses to anti-social behaviour'¹, outlining the reform of anti-social behaviour powers which set out the intention to introduce a new civil injunction. In May 2012, the Government published a White Paper, 'Putting Victims First: More effective responses to anti-social behaviour'², which set out the Government's final proposals for replacing the 19 formal anti-social behaviour powers with six new ones, including a new civil injunction.

8.2 No formal consultation was undertaken on the Rules, but former members of the Magistrates' Courts Rules Committee were consulted, and provided comments on a technical basis which were taken into account in the development of the Rules.

9. Guidance

9.1 In October 2013, the Home Office published draft guidance for frontline professionals who will use the six new anti-social behaviour powers, including the new civil injunction. The draft guidance provided information on the new powers and how they could be used. The guidance was updated to reflect amendments made to the Anti-social Behaviour, Crime and Policing Act 2014 in Parliament as well as from agencies such as the police, local councils, social landlords and also other government departments. The draft guidance is now statutory and was published on 21 July 2014³.

10. Impact

¹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/118297/asb-consultation-document.pdf

² https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/228863/8367.pdf

³

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/332839/StatutoryGuidanceFrontline.pdf

- 10.1 Business would not be expected to do anything additional as a result of the reform of anti-social behaviour powers. Although some of the new powers can be used directly against businesses such as community protection notices or the closure power, the injunction can only be used against an individual. The anti-social behaviour reforms are also intended to benefit businesses by creating an improved environment for local communities in giving frontline professionals flexible and faster powers to protect people from anti-social behaviour in public places or in their neighbourhoods.
- 10.2 The impact on the public sector is that councils, the police, social landlords and other public sector organisations such as the CPS, NHS Protect and the Environment Agency will be able to use the new anti-social behaviour powers and measures. The new powers will be more flexible and make them quicker and less expensive to use. For example, we have removed some of the bureaucracy associated with the anti-social behaviour orders from the two orders that will replace them: Injunctions under Part 1 of the Anti-social Behaviour, Crime and Policing Act 2014 and the criminal behaviour order under Part 2. The injunction will be available on the civil standard of proof and the prosecution will not have to prove “necessity” when applying for a criminal behaviour order. There are also likely to be longer-term benefits associated with the use of positive requirements in these orders to enable agencies deal with the underlying drivers of an individual’s anti-social behaviour.
- 10.3 There are also savings to be made for the police and local authorities from the removal of the need to designate a dispersal zone as required when using the new dispersal power under Part 3 of the 2014 Act compared to the dispersal power established by sections 30 to 36 of the Anti-social Behaviour Act 2003. In addition, the community protection notice and the public spaces protection order under Part 4, Chapter 2 of the 2014 Act can be used to cover a wider range of behaviours than the powers they have replaced rather than specifically stating the behaviour covered (for example, litter or graffiti or dog-related anti-social behaviour).
- 10.4 An Impact Assessment for the Anti-social Behaviour, Crime and Policing Bill was published on 9 May 2013⁴. Two impact assessments covering the specific powers and measures that will be introduced under the new legislation were also published including one which covers the Injunction under Part 1 of the Anti-social Behaviour, Crime and Policing Act 2014⁵.

⁴ <http://www.parliament.uk/documents/impact-assessments/IA13-17.pdf>

⁵ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/197611/ReformingASB_tools_and_powers_CBO-CPIandDispersal130509.pdf

11. Regulating small business

11.1 The legislation does not apply to small businesses.

12. Monitoring and review

12.1 We are in discussions with Ministry of Justice and Her Majesty's Courts and Tribunal Service on data collection for injunctions in the Youth Court. It is also expected that a post-legislative review of the Anti-social Behaviour, Crime and Policing Act 2014 will take place three to five years after Royal Assent of the Act.

13. Contact

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