

ANTI-SOCIAL BEHAVIOUR ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 9: Sanctions Etc.

Section 85: Anti-social behaviour orders

159. This section amends section 1 of the Crime and Disorder Act 1998 (the 1998 Act). Section 1 of the 1998 Act (as amended by the Police Reform Act 2002) permits the police, the British Transport police, local authorities and registered social landlords to apply for anti-social behaviour orders (ASBOs). Magistrates' courts can issue orders to persons over the age of 10 years who have acted in an anti-social manner, where the order is necessary to protect others from further anti-social acts. Section 1 of the 1998 Act defines an anti-social manner as that which causes or is likely to cause harassment, alarm and distress to one or more persons not of the same household as the person against whom the order is made. An ASBO prohibits that person from doing anything described in the order. Equivalent orders are available in the county court and in the Crown Court under sections 1B and 1C respectively of the 1998 Act.
160. *Subsection (2)* amends section 1(1A) of the 1998 Act by adding housing action trusts (HATs) and English county councils to the list of relevant authorities who can apply for an ASBO or an order in county court proceedings. The addition of HATs and county councils to the list also makes them subject to the requirement in section 1E(4) of the 1998 Act to consult the police and the local authority for the area in which the person resides or appears to reside. *Subsection (3)* amends section 1(1B) of the 1998 Act. The effect is that applications by HATs are limited to applications for an order which would protect from anti-social behaviour persons who reside in or who are in the vicinity of premises provided or managed by HATs and applications by county councils are limited to applications for an order which would protect from anti-social behaviour persons within the county of the county council.
161. *Subsection (4)* inserts new subsections (10A) and (10B) into section 1 of the 1998 Act. Section 1(10A) will allow a local authority to prosecute for breach of an order where it is the relevant authority which obtained the order or where the person subject to the order resides or appears to reside in the authority's area. The Crown Prosecution Service will retain discretion to prosecute in relation to breach of an ABSO; this section confers a concurrent power on local authorities.
162. New subsection (10B) will give applicant authorities a right to attend ASBO breach hearings in the youth court. Section 47(2) of the Children and Young Persons Act 1933 sets out the persons who have a right to attend a hearing at a youth court and section 1(10B) extends this automatic right of attendance to one representative from the relevant authority who obtained the order. This will enable the authority to monitor the proceedings and report back on the outcome to colleagues, as well as to support witnesses and victims as necessary.
163. *Subsection (5)* inserts new subsections (3A), (3B) and (3C) into section 1B of the 1998 Act. These provisions enable relevant authorities to apply to have a person:

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- who is not a party to the principal proceedings in the county court, but
 - whose anti-social behaviour is material to those proceedings,
- to be joined to the proceedings so that an order can be applied for against that person. *Subsection (8)* enables the provisions inserted by *subsection (5)* to be piloted for a specified period and to be commenced on different dates in relation to different age groups.

164. *Subsection (6)* extends section 1B(5) of the 1998 Act to allow an individual against whom an order has been made, subsequent to his being joined to proceedings in the county court, to apply to the court which made the order for the variation or discharge of the order.
165. *Subsection (7)* amends section 1E of the 1998 Act to remove the requirement for a county council making an application for an ASBO to consult the council for the area in which the person who is the subject of the application resides in a case where there is no district council for that area. In such a case, the county council is the only relevant council. The amendment prevents a county council from being required to consult itself.
166. *Subsection (8)* inserts a new subsection (1B) into section 9 of the 1998 Act to require a court making an ASBO against a person under the age of 16 to make a parenting order against the parents of that child if it is satisfied that the relevant condition contained in section 8(6) of the 1998 Act is fulfilled (or, if it is not so satisfied, to state in open court why it is not). The condition under section 8(6) is that the parenting order would be desirable in the interests of preventing repetition of the behaviour which led to the ASBO.

Section 86: Certain orders made on conviction of offences

167. *Subsection (1)* amends section 1C of the 1998 Act to make clear that a court may make an order on conviction either at the request of the prosecutor or of its own volition.
168. *Subsection (2)* inserts new subsections (3A) and (3B) into section 1C to clarify that the court may consider evidence from the prosecution and defence when deciding whether to make an order. It also allows for evidence not admissible in the criminal proceedings to be presented for the purpose of deciding whether to make an order.
169. *Subsection (3)* inserts new subsection (9A) into section 1C to allow the local authority where a person subject to an order resides or appears to reside to prosecute for breach of that order. *Subsection (3)* also inserts new subsections (9B) and (9C) to remove automatic reporting restrictions from the order on conviction stage of a hearing against a juvenile in the youth court. Under new subsection (9C)(b) the court retains discretion to apply reporting restrictions.
170. *Subsection (5)* inserts new subsections (3A) and (3B) into section 14A of the Football Spectators Act 1989 to clarify that the court may consider evidence from the prosecution and defence when deciding whether to make an order. It also allows for evidence not admissible in the criminal proceedings to be presented for the purpose of deciding whether to make an order. *Subsection (6)* inserts new paragraph (fa) into section 3(2) of the Prosecution of Offences Act 1985 to allow CPS prosecutors to conduct applications for orders on conviction for anti-social behaviour and football banning orders on conviction.

Section 87: Penalty Notices for disorderly behaviour by young persons

171. This section amends the Criminal Justice and Police Act 2001 which introduced a penalty notice scheme for disorderly behaviour. *Subsection (2)* extends the scheme to 16 and 17 year olds and *subsection (3)* provides a power, by affirmative resolution procedure, to extend it to a lower age group. If so extended, there is also a power to make provision for a parent or guardian of an under 16 year old to be notified that a

penalty notice has been given and for the parent or guardian to be liable to pay the penalty. *Subsection (4)* permits different levels of penalty to be set for different age groups. For the present, it is not intended to have a different level of penalty in respect of 16 and 17 year olds.

172. The extension of the scheme to 16 and 17 year olds will be piloted and supplementary guidance will be issued to the police on the use of their discretion. The power to extend the scheme to a younger age group at this stage will be revisited in the light of the outcome of these pilots for 16 and 17 year olds.

Section 88: Curfew orders and supervision orders

173. This section introduces Schedule 2 which amends the existing provisions relating to supervision orders and curfew orders. Curfew orders and supervision orders are both community sentences. Supervision orders are available only for offenders aged under 18. Curfew orders require the offender to remain for specified periods at a specified place. This may reduce the risk of further offending. A curfew order can be monitored electronically. A supervision order can include a range of requirements, such as a requirement to participate in specified activities or a requirement to make specified reparation. A supervision order lasts for at least 6 months but not more than 3 years.
174. *Schedule 2* increases the maximum length of a curfew order for an offender aged 10 but under 16 from 3 months to 6 months. The Schedule makes it clear that a curfew order and a supervision order may be imposed at the same time. It increases the maximum period during which the offender may be required by a supervision order to comply with specific directions of the supervising officer or specific requirements of the court as to activities etc. from 90 days to 180 days.
175. *Schedule 2* also enables the court to include in a supervision order a requirement that the offender live with local authority foster parents for a specified period of not more than 12 months (extendable for up to 18 months.). This new requirement is available only in the case of an offender who would otherwise meet the criteria for a custodial sentence and whose offending is to a great extent due to his home circumstances.

Section 89: Extension of powers of community support officers etc.

176. The Police Reform Act 2002 created the new civilian role of community support officer. A community support officer is a uniformed police authority employee under the direction and control of a chief officer of police who can be designated by that chief officer with a specific range of police powers set out in Part 1 of Schedule 4 to that Act.
177. The Police Reform Act also enables a chief officer of police to establish and maintain a scheme that accredits suitably skilled and trained non-police employees involved in the provision of community safety with powers to undertake specified functions in support of the police. For example, a chief officer may accredit neighbourhood wardens employed by the local authority or a social landlord, with powers to address antisocial behaviour. Regulations will be in place to enable the chief constable of the British Transport Police (BTP) to maintain a railway safety accreditation scheme, which will be similar to those of Home Office police forces.
178. *Subsections (3) and (6)* of this section amend the Police Reform Act 2002 by adding to the powers that can be conferred on community support officers and accredited persons. They have already been given the power to issue fixed penalty notices for cycling on the pavement. This amendment makes it easier to enforce this power by conferring power to stop cyclists. It only applies when the community support officer or accredited person believes that an offence of cycling on the pavement has been committed. Failing to stop a cycle when required to do so is an offence under the Road Traffic Act 1988 and is liable to a fixed penalty notice of £30.

179. *Subsection (5)* adds the power to issue fixed penalty notices for disorder under the Criminal Justice and Police Act 2001 to the powers that can be conferred on suitably trained persons who are accredited under either a community safety accreditation scheme or a railway safety accreditation scheme. This power is already available to community support officers. Accredited persons will be given the power to issue fixed penalty notices under this scheme but *subsection (5)* excludes two offences where the offender must be drunk for the offence to apply. The excluded offences are being drunk in a highway, other public place or licensed premises and disorderly behaviour while drunk in a public place.
180. The offences for which accredited persons will be able to issue notices are:
- Use of insulting or abusive behaviour to cause harassment alarm or distress.
 - Throwing fireworks in a thoroughfare.
 - Trespassing on a railway
 - Throwing stone etc at trains or other things on railways
 - Buying or attempting to buy alcohol for consumption in a bar in licensed premises by a person under 18
 - Knowingly giving a false alarm to the fire brigade
 - Wasting police time or giving a false report
 - Consumption of alcohol in a designated public place
 - Using a public communications system for sending messages known to be false in order to cause annoyance.
181. Section 1(2) of the Criminal Justice and Police Act 2001 allows the Secretary of State to add to or remove from the list of offences in section 1 by order. *Subsections (4) and (7)* give the Secretary of State power by order to provide that any offence for the time being included in section 1 should not be one in respect of which community support officers or accredited persons can issue fixed penalty notices. New section 15A(2) and new section 9A(2) have the effect that any such order would be subject to the affirmative resolution procedure.

Section 90: Report by local authority in certain cases where person remanded on bail

182. This section inserts a provision into the Children and Young Person Act 1969 following section 23A. Section 23A provides that where a court does not grant bail, remands and committals of a child or young person charged with or convicted of an offence must be to local authority accommodation.
183. Section 23(4) of the Children and Young Persons Act 1969 gives the court the power to impose a security requirement when remanding a child to local authority accommodation. However, by section 23(5) of the Children and Young Persons Act 1969 the court may not impose a security requirement in respect of a child who has not reached the age of 12.
184. This provision is designed for serious or persistent 10 and 11 year old young offenders in cases where the court might have considered remanding a child to secure accommodation if they were aged 12 or over. The provision of a report by the local authority will enable the court to be aware where the child would be placed if the court decided to remand the child to local authority accommodation. In particular this would allow the court to see if the local authority would use their discretion to send the child home. If the court was satisfied with the local authority's initial report, it could, either remand the child into local authority accommodation if it thought that this placement

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would be best for the child's welfare, or continue bail if it was satisfied that there were no difficulties with the child remaining with his parents. If the court was not satisfied with the local authority's initial report, it could then direct the local authority to make investigations under section 9 Children and Young Persons Act 1969. The results of any such investigations would be taken into account at the sentencing stage.

185. *Subsection (6)* allows the Secretary of State to extend this provision by order to 12-16 year olds who met the criteria for a secure remand, and whose behaviour was due, to a significant extent, to their home circumstances.

***Section 91: Proceedings under section 222 of the Local Government Act 1972:
power of arrest attached to injunction***

186. **Section 91** is a new provision. It allows a local authority to request a power of arrest to be attached to any provision of an injunction obtained under section 222 of the Local Government Act 1972 where the injunction is to prohibit behaviour which is capable of causing nuisance or annoyance to any person.
187. Section 222 of the Local Government Act 1972 gives local authorities a general right to institute legal proceedings in their own name to promote or protect the rights of inhabitants of their area. It also enables a local authority to appear in civil proceedings for the purpose of protecting public rights where the authority is not prosecuting or defending those proceedings.
188. The court may attach the power of arrest if there is the use or threat of violence, or a significant risk of harm to any person. Consequently a power of arrest will be available in cases where there is a significant risk of harm even if there has been no actual or threatened violence. Significant risk of harm is defined in new section 43(4). It could include emotional or psychological harm. This could apply, for example, in cases of racial or sexual harassment.