

# **VIOLENT CRIME REDUCTION ACT 2006**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 1: Alcohol-related violence and disorder**

##### ***Chapter 1: Drinking banning orders***

##### ***Section 1: Drinking banning orders***

72. This section provides for a new civil order, a drinking banning order (DBO), which is designed to protect persons and their property from criminal or disorderly conduct by an individual while he is under the influence of alcohol.
73. *Subsection (1)* explains that a DBO would prohibit the individual subject to the order from doing the things described in the order. *Subsection (2)* explains that a DBO may impose any prohibition on the individual that would protect others from his criminal or disorderly conduct while under the influence of alcohol. *Subsection (3)* provides that the prohibitions in the order must include whatever the court thinks necessary with regard to the subject's entering premises that sell alcohol, and club premises that can supply alcohol to members or guests.
74. *Subsection (4)* contains safeguards to ensure that the court may not impose a prohibition on the subject that prevents him from having access to a place where he lives, works or studies, or receives medical treatment, or any place he is required to attend as a result of a court order or an enactment.
75. *Subsection (5)* sets out that expressions used in *subsection (3)* have the same meaning as in the Licensing Act 2003.

##### ***Section 2: Duration of drinking banning orders***

76. This section provides for the duration of a DBO and enables this to be reduced if an individual satisfactorily completes an approved course specified in the order to address their alcohol misuse behaviour.
77. *Subsection (1)* provides that the term of a DBO, known as "the specified period", is to be between a minimum 2 months and a maximum two years. *Subsection (2)* enables different prohibitions within a DBO to take effect for different periods but in each case the "prohibition period" must be within the overall maximum and minimum specified period.
78. *Subsection (3)* provides that the terms of a DBO or the prohibitions in an order **may** cease to apply before the end of the specified period or the prohibition period if an individual successfully completes an approved course that is specified in the order.
79. *Subsection (4)* explains that under subsection (3) a time must be fixed by the court when an order, or prohibition contained in the order, would cease to have effect upon satisfactory completion by the individual of a course. It will be for the court to decide

what the appropriate length of the reduction of the order, or prohibitions therein, might be on satisfactory completion of a course.

80. But *Subsection (5)* provides that the reduction cannot be any more than half of the specified period or the prohibition period.
81. *Subsection (6)* provides that the court may only propose to an individual that they attend a specified approved course if the court is satisfied that a place is available for the individual and that the subject has voluntarily agreed to the inclusion of the provision in the order.
82. *Subsection (7)* provides that before the court makes provision about attending a course in the order the individual has to be informed in ordinary language (in writing or by other means) about the effect that including the provision in the order would have, what in general terms, attendance on the course will involve if the individual voluntarily agrees to undertake the course, any fees that would need to be paid by the individual for undertaking the course, and when the fees would need to be paid by the individual.
83. *Subsection (8)* requires that if the court decides it is not going to include provision in an order for an individual to attend an approved course then it must give its reasons for not doing so in open court.
84. *Subsection (9)* allows the Secretary of State to make regulations to modify the minimum duration of an order or prohibition where a course has been completed satisfactorily.

### ***Section 3: Orders on an application to magistrates' court***

85. *Subsection (1)* enables relevant authorities, defined in section 14 as the chief officer of a police force for a police area, the Chief Constable of the British Transport Police Force and a local authority, to apply to the magistrates' court for the imposition of a DBO on an individual aged at least 16. *Subsections (2) and (5)* provide that a DBO can be made against an individual if he has engaged in criminal or disorderly conduct while under the influence of alcohol and such an order is necessary to protect other persons from further conduct by him of that kind. The criminal or disorderly conduct must have taken place after this section has been brought into force.
86. *Subsections (3) and (4)* provide that the application for a DBO has to be made by complaint and can only be made after the applicant has consulted the "appropriate persons" specified in section 14(1).
87. *Subsection (6)* provides that nothing in the section affects the operation of section 127 of the Magistrates' Courts Act 1980. Consequently, some conduct within the six-month period preceding the application is necessary to obtain an order.

### ***Section 4: Orders in county court proceedings***

88. *Subsection (1)* enables relevant authorities (defined in section 14) to apply to the county courts in certain circumstances for a DBO against an individual. *Subsection (2)* allows a relevant authority to apply for an order in the county courts if that authority is already party to the proceedings and believes that it would be reasonable to apply for a DBO against an individual who is also already party to the proceedings. If the relevant authority is not party to such proceedings, *subsection (3)* allows it to apply to the court to be joined to such proceedings in order to apply for a DBO. A relevant authority which is already party to proceedings can also make an application for an individual to be joined to the proceedings where it believes that the individual has engaged in criminal or disorderly conduct whilst under the influence of alcohol, and where that conduct is material in relation to the proceedings in question. The relevant authority may then apply for a DBO if that individual is so joined.
89. *Subsection (6)* provides that before making such an application, the relevant authority must consult the appropriate persons as defined in section 14.

90. *Subsection (7)* provides that if it is proved that the conditions set out in section 3(2) have been met – that the individual has engaged in criminal or disorderly conduct while under the influence of alcohol and that a DBO is necessary to protect relevant persons from further such conduct by the individual – and that his criminal or disorderly conduct while under the influence of alcohol is material in relation to the proceedings, the court may make a DBO against him.

#### ***Section 5: Variation or discharge of orders under section 3 or 4***

91. *Subsection (1)* provides for the variation and discharge of DBOs made in the magistrates' court on complaint and in county court proceedings. *Subsection (2)* provides that an application to the court for variation or discharge of a DBO may be made by the person subject to the order or the relevant authority on whose application the order was made. *Subsection (3)* provides that an order made by a magistrates' court under section 3 can be varied or discharged by a relevant local court as defined in section 14.
92. *Subsections (4) and (5)* provide that an application to vary or discharge a DBO has to be made by complaint and that the order may not be varied so as to extend the specified period for which it has effect to more than two years. *Subsection (6)* provides that the order may not be discharged before the end of the period which is half the duration of the specified period, unless consent is given by the relevant authority.

#### ***Section 6: Orders on conviction in criminal proceedings***

93. *Subsections (1), (2) and (3)* provide that the court may make a DBO against an offender following criminal proceedings, where that offender is aged at least 16, was under the influence of alcohol when committing the offence and the court decides that the conditions set out in section 3(2) are satisfied. The court must at least consider whether those conditions are so satisfied. *Subsection (4)* requires that if the court decides that the conditions are satisfied but it decides not to make a DBO, it must give the reasons for not doing so in open court. *Subsection (5)* requires the court to state in open court if it decides that the conditions in section 3(2) are not satisfied, and give its reasons.

#### ***Section 7: Supplementary provision about orders on conviction***

94. *Subsection (1)* provides that on deciding whether to make a DBO following a conviction in criminal proceedings the court may consider evidence led by the prosecution and evidence led by the defence. *Subsection (2)* provides that it is immaterial whether the evidence would have been admissible in the proceedings in which the offender was convicted.
95. *Subsection (3)* provides that a DBO made following a conviction must not be made except in addition to a sentence or in addition to an order discharging the offender conditionally.
96. *Subsection (4)* provides that the court may adjourn any proceedings in relation to a DBO made following a conviction after sentencing the offender. *Subsection (5)* provides that if the offender does not appear for any adjourned proceedings, the court may further adjourn the proceedings or may issue a warrant for his arrest. *Subsection (6)* provides that the court may not issue a warrant for the offender's arrest unless it is satisfied that he has had adequate notice of the time and place of the adjourned proceedings.
97. *Subsection (7)* provides that a DBO made following conviction in criminal proceedings takes effect on the day on which it is made or, if the person is in legal custody at that time, on the day on which the offender is released from that custody.
98. *Subsection (8)* notes that *subsection (9)* applies in respect of a DBO made on conviction in criminal proceedings against a young person. *Subsection (9)* provides that in proceedings brought against a young person (16 to 18 year old) a court will not be

bound by section 49 of the Children and Young Persons Act 1933 and so will not have automatically to impose reporting restrictions. However, it states that the court will retain discretion to apply reporting restrictions under section 39 of that Act.

99. *Subsection (10)* amends the Prosecution of Offences Act 1985 to include in the functions of the Director of Public Prosecutions the ability to apply for a DBO.

### ***Section 8: Variation or discharge of orders under section 6***

100. *Subsection (1)* provides for the variation or discharge of a DBO made following a conviction. The subject of the DBO, the Director of Public Prosecutions or a relevant authority may apply for variation or discharge.
101. *Subsection (2)* provides that if the subject makes an application for variation or discharge he must send notice of his application to the Director of Public Prosecutions. *Subsection (3)* obliges the Director of Public Prosecutions or relevant authority to send notice of an application to vary or discharge to the subject of the DBO. *Subsection (4)* provides that a DBO made on conviction in criminal proceedings in the magistrates' court can be varied or discharged by a relevant local court as defined in Section 14.
102. *Subsection (5)* prevents a DBO made under section 6 from being varied to extend the specified period to over 2 years. *Subsection (6)* provides that the order may not be discharged before the end of the period which is half the duration of the specified period of the DBO, or without the consent of the Director of Public Prosecutions, if earlier.
103. *Subsection (7)* amends the Prosecution of Offences Act 1985 to include in the functions of the Director of Public Prosecutions the ability to apply for variation or discharge of DBOs made under section 6 and to appear on such applications by a subject of a DBO.

### ***Section 9: Interim orders***

104. This section enables the court to make an interim order when an application is made for a DBO under section 3 or 4 or where the court is considering making a DBO on criminal conviction under section 6. *Subsection (2)* provides that the court can make an interim order if it thinks it is just to do so.
105. Where an application has been made for a DBO under section 3 or 4, *subsections (3) and (4)* enable an application for an interim order to be made without notice being given to the potential subject, and heard in the absence of that individual when the permission of the court (in the case of proceedings before the county court) or permission of the proper officer as defined in section 14 (in the case of proceedings before a magistrates' court) has been given.
106. *Subsection (5)* specifies that permission for the making of an application for an interim order without notice and for hearing the application in the individual's absence may only be given where the court or proper officer is satisfied it is necessary for the application to be made without the individual concerned receiving notice and that it is not necessary for it to be heard in his presence.
107. *Subsection (6)(a)* enables an interim order to contain any provision that could be in a full DBO. *Subsection (6)(b)* limits its duration, unless renewed, to the time specified in the order, which may not exceed 4 weeks.
108. *Subsection (7)(a)* provides that an interim order may be renewed once or more but not for longer than 4 weeks from the time it would otherwise have expired. *Subsection (7)(b)* provides it must in any event cease to have effect on the court's decision on whether or not to make a DBO.
109. *Subsections (8) and (9)* provide for applications for variation or discharge of an interim order that are made on application to the magistrates' court, in county court proceedings and on conviction in criminal proceedings. However, the provisions that prevent a full

DBO from being extended beyond 2 years do not apply as interim orders are subject to a shorter renewable 4 week limit.

### **Section 10: Appeals**

110. *Subsection (1)* provides the route through which appeals against the making of a DBO in the magistrates' courts can be made to the Crown Court.
111. *Subsection (2)* provides that on an appeal the Crown Court may make such orders as may be necessary and may also make such incidental or consequential orders as appear to it to be just. *Subsection (3)* provides that an order of the Crown Court made on an appeal shall be treated for the purposes of the provisions relating to variation and discharge of orders (sections 5 and 8) as an order of the magistrates' court from which the appeal was brought.

### **Section 11: Breach of drinking banning orders**

112. *Subsection (1)* provides that a breach of a DBO without reasonable excuse is an offence. *Subsection (2)* provides that someone found guilty on summary conviction is liable to a fine not exceeding level 4 (currently £2,500). *Subsection (3)* provides that a conditional discharge cannot be made in relation to the breach of a DBO.
113. *Subsection (4)* enables a local authority to bring proceedings for breach of a DBO, and *subsection (5)* gives the Secretary of State the power to provide by order (subject to the negative resolution procedure) that further specified persons may bring proceedings for breach of a DBO.
114. *Subsection (6)* provides that in proceedings for breach of a DBO, a copy of the DBO or interim order, certified as such by the proper officer, is admissible as evidence of its having been made and of its contents to the same extent as oral evidence of those things is admissible in those proceedings.
115. *Subsection (7)* provides that when proceedings for a breach of a DBO are brought in a youth court, a person authorised by a relevant authority is entitled to be present. *Subsection (8)* provides that in relation to proceedings brought against a young person for a breach of a DBO, a court will not be bound by automatic reporting restrictions as set out in section 49 of the Children and Young Persons Act 1933. However, the court will retain discretion to apply restrictions under section 45 of the Youth Justice and Criminal Evidence Act 1999.
116. *Subsection (9)* provides that if the court does exercise its power to give a direction imposing prohibitions on reporting information on identification of witnesses, complainants or defendants under the age of 18, then it must give its reasons for doing so.

### **Section 12: Approved courses**

117. This section sets out the basis for operating and running approved courses to address an individual's alcohol misuse behaviour.
118. *Subsection (1)* provides that applications can be made to the Secretary of State to run such a course and a decision would then be taken as to whether the course should be approved or not. Under *subsection (2)* when considering and deciding on the suitability of a proposed course the Secretary of State must consider the nature of the course as well as whether the person providing it is an appropriate person to do so and would run and administer the courses efficiently and effectively. In reaching that decision the Secretary of State may seek the views of other persons that have been appointed to consider such applications.
119. *Subsection (3)* allows for a course to be approved subject to specific conditions. *Subsection 4* states that where a course is approved it may remain so for a period



specified by the Secretary of State which must not exceed 7 years. *Subsection (4)(b)* allows for approval of a course to be withdrawn by the Secretary of State at any time.

120. *Subsection (5)* allows the Secretary of State to make regulations on the approval of courses that may include provision about making applications for course approval; payment of fees of the amounts prescribed in respect of applications for approval, the giving of approval or both; the maximum fees that an individual may pay for course and when fees have to be paid; the monitoring of courses and of persons providing the courses; details about the withdrawal of approvals; and making information available about courses and about those persons providing courses on payment of a fee or otherwise.
121. *Subsection (6)* allows the Secretary of State to issue guidance about the conduct of approved courses and requires him to have regard to this guidance in exercising his duties under subsections (1) to (5). *Subsection (7)* provides for the courts to also have regard to such guidance when considering what, for the purposes of section 13 (Certificates of completion of approved courses) constitutes reasonable instructions or reasonable requirements by a person providing an approved course.

### ***Section 13: Certificates of completion of approved courses***

122. This section makes provision about the certificates to be issued on completion of approved courses by individuals subject to a DBO.
123. *Subsection (1)* provides that an individual will only be regarded as having satisfactorily completed an approved course where he has been given a certificate to that effect by the course provider and the certificate has been received by the proper officer of the court that made the DBO.
124. *Subsection (2)* allows the Secretary of State to prescribe in regulations the form of the certificate and what it should contain. *Subsection (3)* provides that a course provider must give a certificate unless the individual who is subject to a DBO and is undertaking an approved course fails to pay the fees for the course, fails to attend the course in line with the reasonable instructions of the course provider or fails to comply with any other reasonable requirement of the course provider.
125. *Subsection (4)* provides that if the course provider decides not to issue a certificate then they must give the individual written notice of that decision and the reasons for not doing so. *Subsection (5)* provides that the course provider must provide a certificate of successful completion of an approved course by the individual, or a notice stating it is not going to provide a certificate, before the end of 14 days beginning with the day on which any request to do so is made by the individual. *Subsection (6)* provides that where an individual is given a notice refusing a certificate or has not received either a certificate or a notice within 14 days of their request then they can apply to the court which made the DBO, or if that court is not the Crown Court or a relevant local court, to a relevant local court for a declaration that the course provider has failed to meet its obligation under *subsection (3)*. Under *subsection (7)* if this is found to be the case the individual will be treated as having satisfactorily completed the approved course at the time the declaration is given for the purposes of reducing the length of the DBO.
126. *Subsection (8)* allows the Secretary of State to make regulations about the form of the notices (*under subsection (4)*) that are given to individuals who fail to satisfactorily undertake a course, the manner in which such a notice is given and when such a notice is given and considered to be effective.

### ***Section 14: Interpretation of Chapter 1***

127. This section sets out definitions for the purposes of sections 1 to 13. By virtue of the definition of “local authority” in *subsection (1)*, both district councils and county councils in two-tier local government areas can apply for a DBO.

*These notes refer to the Violent Crime Reduction Act 2006  
(c.38) which received Royal Assent on 8 November 2006*

128. *Subsection (2)* explains that protecting persons from criminal or disorderly conduct includes references to protecting their property from unlawful loss or damage. A DBO could therefore be made where such an order is necessary to protect property.
129. *Subsection (3)* provides a power to add a “relevant authority” by order at a later date for the purposes of applying for a DBO.
130. *Subsections (4) to (7)* make provision about the powers in Chapter 1 to make orders or regulations.