

# **ANTI-SOCIAL BEHAVIOUR, CRIME AND POLICING ACT 2014**

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## **EXPLANATORY NOTES**

### **BACKGROUND**

#### **Parts 1 to 6: Anti-social Behaviour**

##### **What is anti-social behaviour?**

7. The term “anti-social behaviour” describes the everyday nuisance, disorder and crime that has a huge impact on victims’ quality of life. In the year ending March 2013, 2.3 million incidents of anti-social behaviour were recorded by the police in England and Wales, equivalent to around 6,300 incidents every day. However, many incidents are not reported at all, or are reported to other agencies such as local councils or social landlords.
8. Much of what is described as anti-social behaviour is criminal (for example, vandalism, graffiti, aggressive begging and people being drunk or rowdy in public), but current legislation also provides a range of civil powers, such as the anti-social behaviour order (“ASBO”) and the anti-social behaviour injunction (“ASBI”). These offer an alternative to criminal prosecution and give the police and other agencies the ability to deal with the cumulative impact of an individual’s behaviour, rather than focus on a specific offence. Some powers, such as the ASBI, have a lower standard of proof (that is, the civil “balance of probabilities” rather than the criminal “beyond reasonable doubt”). While the ASBO can be used by a number of agencies, the ASBI can only be used by social landlords.
9. In addition, informal interventions and out-of-court disposals are an important part of professionals’ toolkit for dealing with anti-social behaviour, offering a proportionate response to first-time or low-level incidents and a chance to intervene early and prevent behaviour from escalating. For example, tools such as warning letters and acceptable behaviour agreements are often used to deal with low-level anti-social behaviour, with one intervention frequently enough to stop the behaviour.

##### **Consultation**

10. *The Coalition: Our Programme for Government* outlined a commitment to reform the powers available to deal with anti-social behaviour. Specifically it said:  
  
“We will introduce effective measures to tackle anti-social behaviour and low-level crime
11. In response to this, a consultation document was published in February 2011.<sup>1</sup> The consultation outlined proposals to streamline radically the current range of powers available to tackle anti-social behaviour. In particular, the consultation sought views on the replacement of the current tools for tackling anti-social behaviour with a new suite of

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<sup>1</sup> <https://www.gov.uk/government/consultations/more-effective-responses-to-anti-social-behaviour>

powers: the criminal behaviour order; the crime prevention injunction; the community protection order; the direction power; and the community trigger.

### **Putting victims first: More effective responses to anti-social behaviour**

12. In May 2012, the Home Office published a White Paper, *Putting victims first: more effective responses to anti-social behaviour* (the White Paper included a summary of responses to the earlier consultation).<sup>2</sup> This set out how the Government would support local areas to:
  - a. **Focus the response to anti-social behaviour on the needs of victims** – helping agencies to identify and support people at high risk of harm, giving frontline professionals more freedom to do what they know works, and improving our understanding of the experiences of victims;
  - b. **Empower communities to get involved in tackling anti-social behaviour** – by, among other things, giving victims and communities the power to ensure action is taken to deal with persistent anti-social behaviour through a new community trigger, and making it easier for communities to demonstrate in court the harm they are suffering;
  - c. **Ensure professionals are able to protect the public quickly** – giving them faster, more effective formal powers, and speeding up the eviction process for the most anti-social tenants, in response to consultations by the Home Office and Department for Communities and Local Government; and
  - d. **Focus on long-term solutions** – by addressing the underlying issues that drive anti-social behaviour, such as binge drinking, drug use, mental health issues, troubled family backgrounds and irresponsible dog ownership.
13. The reforms proposed were designed to provide better protection for victims and communities, and ensure that professionals had effective powers that were quick, practical and easy to use, and acted as real deterrents to perpetrators – replacing 19 of the complex existing powers (see Annex B) with six simpler and more flexible new ones, and giving victims a say in how agencies tackle anti-social behaviour.

### **Pre-legislative scrutiny**

14. On 13 December 2012, the draft Anti-social Behaviour Bill was published for pre-legislative scrutiny by the Home Affairs Select Committee. The Committee published its report on 15 February 2013 (Twelfth Report of Session 2012-13, HC836). The Government response to this was published on 16 April 2013 (Cm 8607). In its response to the Committee's recommendations, the Government indicated that it would make three main changes to the policy as set out in the draft Bill, namely:
  - a. Provide for a limit on the maximum length of injunctions for under 18s of 12 months;
  - b. Introduce a requirement for pre-approval of the use of a dispersal order by an officer of at least the rank of inspector; and
  - c. Set a maximum threshold for the community trigger that local agencies could use when establishing their processes.

### **Recovery of possession of dwelling-houses on anti-social behaviour grounds**

15. Under current housing legislation, landlords may apply to the county court to evict tenants who are behaving anti-socially using the relevant "ground for possession". These are ground 2 of Schedule 2 to the Housing Act 1985 for secure tenants (mostly

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<sup>2</sup> Cm 8367, <http://www.official-documents.gov.uk/document/cm83/8367/8367.pdf>

tenants of local authorities) and ground 14 of Schedule 2 to the Housing Act 1988 for assured tenants (tenants of housing associations and landlords in the private rented sector) respectively.<sup>3</sup> These grounds are discretionary, that is, the court must be satisfied that anti-social behaviour has occurred and that it would be reasonable to grant possession.

16. In practice, eviction for anti-social behaviour is exceptional: social landlords in England own around four million homes but only evict about 2,000 tenants for anti-social behaviour each year. Available evidence suggests that early interventions by social landlords successfully resolve over 80% of complaints about anti-social behaviour. However, where social landlords resort to eviction where all other intervention measures have been tried and have failed, that process can be protracted (on average around seven months from the date of application to the court for a possession order to an outcome).
17. In August 2011 the Department for Communities and Local Government (“DCLG”) consulted on proposals to expedite the possession process where serious housing related anti-social behaviour or criminality had already been proved in another court. In these circumstances landlords could choose to use, instead of existing discretionary grounds for possession, a new mandatory ground. This would provide the landlord with an unqualified right of possession, subject only to the court’s considering the proportionality of the decision to seek possession (where the landlord is a public authority) where this is required by the decision of the Supreme Court in *Manchester City Council v Pinnock* [2011] 2 AC 104.
18. The discretionary grounds for possession for anti-social behaviour (which also includes criminal behaviour) referred to above apply only where the behaviour has taken place in, or in the locality of, the dwelling house.
19. Following the riots in August 2011, and concerns about “riot tourism”, DCLG broadened the consultation on the new mandatory power of possession to cover proposals to extend the scope of the discretionary ground so that landlords would have powers to seek to evict a tenant where they, or a member of their household, are engaged in riot related offences anywhere in the UK.
20. Final proposals, in the light of consultation, were published alongside and as part of the May 2012 White Paper *Putting victims first: more effective responses to anti-social behaviour*. Part 5 gives effect to these. In addition, following representations from landlords, and in light of the submissions to the Home Affairs Select Committee on the draft Anti-social Behaviour Bill, Part 5 extends the existing discretionary grounds for possession for anti-social behaviour to enable landlords to seek possession where criminality or anti-social behaviour is directed against them or their contractors or staff, wherever this occurs.

### **The Community Remedy**

21. On 9 October 2012, the Home Secretary announced her intention to legislate to introduce a community remedy. This would be a menu of community sanctions for low-level crime and anti-social behaviour, sponsored by the Police and Crime Commissioner (“PCC”) (or in London, the Mayor’s Office for Policing and Crime and the Common Council of the City of London). It would be used as part of informal and formal out-of-court disposals. The aim is to help PCCs make community justice more responsive and accountable to victims and the public, with proportionate but meaningful punishments.

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<sup>3</sup> These relevant grounds on which a court may order repossession under these provisions are that: the tenant or a person residing in or visiting the dwelling-house: (a) has been guilty of conduct causing or likely to cause a nuisance or annoyance to a person residing, visiting or otherwise engaging in a lawful activity in the locality; or (b) has been convicted either of using the dwelling-house or allowing it to be used for immoral or illegal purposes, or of an indictable offence committed in, or in the locality of, the dwelling-house.

*These notes refer to the Anti-Social Behaviour, Crime and Policing Act 2014 (c.12) which received Royal Assent on 13 March 2014*

A consultation on the community remedy ran from December 2012 to March 2013. The results of the consultation were published on 9 May 2013.<sup>4</sup>

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<sup>4</sup> <https://www.gov.uk/government/consultations/community-remedy-consultation>