

LGA Briefing – Draft Anti-Social Behaviour Bill

Thursday 13 December 2012



On-the-day briefing

Headlines

The Government has published a draft bill on the future of anti-social behaviour (ASB), which applies in England and Wales and takes forward measures to:

- focus the response to anti-social behaviour on the needs of victims
- empower communities to get involved in tackling anti-social behaviour
- ensure professionals can protect the public quickly through faster, more effective powers and proposals to speed up the eviction of the most anti-social tenants
- focus on long-term solutions.

Among the 98 clauses in the draft bill there are two important new measures to help focus the response to anti-social behaviour on the needs of victims:

- the 'community trigger' to give victims and communities the right to require agencies to deal with persistent ASB that has previously been ignored. The trigger could be activated by a member of the public, a community or a business if repeated complaints about ASB have been ignored.
- the 'community remedy' to give victims of low-level crime and anti-social behaviour a say in the punishment of offenders out of court. This means victims will get justice quickly, and the offender has to face immediate and meaningful consequences for their actions.

The draft bill and other related documents including the community remedy consultation can be found on the Home Office website at:

[Draft bill and other related documents including the community remedy consultation](#) – on the Home Office website

Please email your views on this subject to community.safety@local.gov.uk by 11 January 2013, as the LGA will be giving oral evidence to the Home Affairs Pre-legislation Scrutiny Committee on 15 January.

The Government's parallel consultation exercise on the 'community remedy' closes on 7 March 2013.

LGA key messages

- Local government welcomes the added flexibility to tackle anti-social behaviour that this package of measures provides. We are pleased that the Government has listened to practitioners and the proposals for Crime Prevention Injunctions now include a power of arrest.
- Police and crime commissioners (PCCs) and councillors know that anti-social behaviour continues to be the top concern for residents. As PCCs draw up their police and crime plans over the next few weeks, they will want to draw on the wealth of experience and expertise in councils to ensure all resources are brought to bear to tackle this issue.

Briefing

- Working in partnership with schools, health, fire and probation services, councils know that most effective way of tackling anti-social behaviour is to stop it happening in the first place. This means working in partnership with and the police to steer people away from activity which causes harassment or distress to others and can end up making people's lives a misery.
- The proposal to make PCCs responsible for out-of-court disposals will be valuable in ensuring victims have a strong voice and see swift and effective remedies.
- Proposals for a community trigger are unproven. Although we recognise the issue this is trying to solve, we would urge the Government to consider the evaluation of the pilots before finalising their proposals.

In summary, the main elements and key proposals in the draft bill are as follows:

Part 1: Crime Prevention Injunctions to prevent nuisance and annoyance (replacing the standalone Anti-Social Behaviour Order)

Youth courts, county courts or the High Court can grant an injunction against anyone aged 10 or over where they have engaged or threaten to engage in anti-social behaviour.

Anti-social behaviour (ASB), in the context of this power, is defined as conduct capable of causing nuisance or annoyance to any person.

Councils, housing providers, the police (including BTP), TfL, the Environment Agency and in Wales the NHS Business Services Authority can all apply for the injunction, if necessary without having to give notice, though the most the court can do in these circumstances is grant an interim injunction. Interim injunctions cannot include requirements on the respondent to participate in particular activities.

Where the respondent is under 18, the youth offending team (YOT) has to be consulted before an application is made.

The injunction can both prohibit activity on the part of the respondent and require positive activity, provided they do not conflict with the respondent's religious belief, do not prevent someone working or going to school or college or conflict with any other court orders.

In addition, the injunction can only exclude someone from where they live if they are in social housing, and either the council or housing provider applied for the injunction, and the ASB the respondent has been involved with includes the use or threat of violence or there is a significant risk of harm to others.

Councils and social housing providers can apply for these 'tenancy injunctions' only against their tenants where they have breached their tenancy agreement by engaging or threatening to engaging in ASB, and the ASB involves or threatens violence or significant risk of harm. As well as excluding the tenant from specified premises they can also be excluded from an area, and again a power of arrest can be attached to the injunction.

The injunctions can be time limited or indefinite.

Any requirements in the injunction must specify who is responsible for supervising compliance with it, and before including a requirement the court must take evidence about its suitability from the individual or organisation to be specified in the injunction.

Where a respondent fails to comply with the requirements the person who applied for the injunction and the police must be informed.

A power of arrest can be attached to any prohibition or requirement in the injunction if the court thinks the ASB the respondent has engaged in or threatened to engage in will result in violence, or there is a significant risk of harm to others from the respondent. Where the power of arrest has been exercised, the court can either remand the person in custody (for up to three days if it is with a police officer) or bail them.

This allows the police to arrest the respondent if the officer believes they are in breach of the injunction.

Where an organisation that has applied for an injunction thinks the respondent is in breach of it they can apply for an arrest warrant. The court will only grant this where it has reasonable grounds for believing the injunction is being breached. With a child between 10 and 17, breach of the injunction can result in being subject to supervision, a curfew, electronic monitoring, having to undertake an activity or being detained.

Transitional arrangements mean that existing orders to deal with ASB continue in force after the bill comes into effect, but cannot be varied or extended, and after five years will come to an end.

LGA view

- The LGA supports the creation of a genuine civil order that allows councils and other partners to act swiftly to protect victims and communities, and can be obtained on a civil burden of proof. The LGA called for the definition of anti-social behaviour used for anti-social behaviour injunctions to be adopted for Crime Prevention Injunctions and we are pleased to see the Government has accepted this.
- As the proposals were being developed we were concerned that a power of arrest could not be attached to the injunction, so the Government's decision to provide for a power of arrest to be attached to the injunction is welcome.
- We were also expressed concerns that breach of the injunction would just be treated as contempt of court where no power of arrest was attached. The ability of organisations to apply for an arrest warrant addresses this point, which is again a welcome change.
- We also support the ability of the court to impose positive requirements as part of the injunction. Councils take their supportive role seriously here and have a good track record of providing services that turn lives around. However continuing this support will not be easy due to the budget pressures on councils and other public services. It is deeply concerning therefore that, in the impact assessment, **the Home Office has not quantified the cost of imposing positive requirements** on probation, councils and others and relies on costs being met through other, unquantified, savings.

Part 2: Criminal Behaviour Orders

Courts can grant these orders on application by the prosecution where an offender has been convicted or been given a conditional discharge.

The court can only grant this order where the offender has caused or is likely to cause harassment, alarm or distress to people outside their household, and making the order will help prevent them doing it again.

The prosecution have to consult the YOT before seeking an order against someone under 18.

They come into effect on the day they are made, and must set out how long they will last, with the minimum for an adult offender being a fixed period of at least two years. For those under 18, the order has to last for more than a year and no more than three years.

These orders can prohibit or require the offender to undertake positive activities, within the same restrictions set out for the crime prevention injunctions.

The order can make provision for it to end where the offender satisfactorily completes an approved course, provided there are places available on the course and the offender agrees to this requirement in the order.

These courses are to be approved by county, metropolitan and unitary councils, London boroughs, and the City of London and fees can be charged. This is not available to district councils. In giving approval, councils can only do so for a maximum of seven years, and can impose conditions, as well as withdraw their approval.

In considering an order the court can hear evidence from the prosecution and the offender and take into account evidence not related to the case.

As with crime prevention injunctions in imposing requirements the court must specify who is responsible for supervising compliance with the order, and before including a requirement the court must take evidence about its suitability from the individual or organisation to be specified in the injunction.

Where an offender fails to comply with the requirements the prosecution and the police must be informed.

Breach of the order is an offence punishable on summary conviction by up to 6 months in prison or a fine or both, and on indictment by up to five years in prison or a fine, or both. Where someone is convicted of breaching an order the court cannot grant a conditional discharge.

Again there are transitional arrangements which mean that existing orders continue in force after the bill comes into effect, but cannot be varied or extended, and after five years will come to an end.

LGA view

- This order is in many ways similar to the anti-social behaviour order (ASBO) currently available on conviction.

- The new element so far as councils are concerned is the requirement on upper-tier local authorities in England, and councils in Wales to approve courses for offenders to complete. This is a new burden that is financed by the ability under the bill for councils to charge fees for approving courses, though it is not clear from the power given to the Secretary of State to issue general directions to councils whether this will allow the government to specify what the fees are.

Part 3: Dispersal powers

These allow police officers and PCSOs to direct people to leave a public place and not return for a specified time (but not more than 48 hours) provided the officer has reasonable ground for suspecting the presence or behaviour of the person will result in people being harassed, alarmed or distressed, or will lead to crime and disorder, and ordering a person to leave will reduce or end the likelihood of this happening.

In making a direction under this part, the officer must if possible put it in writing, specify the area it applies to, and by when the person must have left and how – including their route. The direction can be varied but cannot extend the duration of the direction beyond 48 hours from when it was originally given.

The direction cannot prevent a person having access to where they live, or work or have to go by virtue of a court order, or a place where they would have to go to receive medical treatment or education or training. It also cannot be used to disperse people engaged in lawful picketing.

Where someone is under 16, the officer can escort the person home or take them to a place of safety, but cannot issue a direction to children under 10.

In directing people police officers can also tell people to surrender items they have with them that could be used in behaviour causing harassment, alarm or distress, provided they also tell them how to recover it.

Failure to comply with a direction to leave is an offence liable on summary conviction to up to 3 months in prison or a fine not exceeding level 4, while failing to hand over an item is also an offence punishable by a fine.

LGA view

- These provisions would see the decision made on whether to use dispersal powers resting solely in the hands of the police. While rationalisation of the powers is welcome, the current powers are exercised in consultation with the local authority, while in some cases councils have responsibility for making the orders. Use of such powers can on occasion prove very controversial, which is why their use should be dependent on democratic oversight. This can be provided by PCCs, but given the local nature of issues dispersal powers are used for, and the large geographic area PCCs cover, this will be challenging. Councillors on Police and Crime Panels (PCPs), and local authority scrutiny of the responsible authorities on community safety partnerships may also provide alternative mechanisms. Councillors should be seen as vital people to consult as key partners.

Part 4: Community protection

Community protection notices

Designed to deal with particular, ongoing instances of environmental anti-social behaviour. They can be used against individuals, businesses or organisations, and can be issued by the police, council officers or staff of social housing providers.

In issuing a notice the person doing so has to believe the behaviour is detrimental to the local community's quality of life, is unreasonable and is having a persistent effect.

Community protection notices can impose a requirement to stop or start specified activity to achieve specified results.

Breach of the notices is a criminal offence. An individual guilty of an offence under this section is liable to a fine not exceeding level 4 on the standard scale. A body is liable to a maximum fine of up to £20,000.

Local authorities can take remedial action if a person issued with this notice does not comply with it.

They cannot be issued for nuisance matters regarding the Environment Protection Act 1990.

LGA view

- We are pleased that local authorities will have the power to issue these orders. This will enable councils to take action swiftly and effectively and impose sanctions on non-compliance.
- The proposals give councils greater flexibility to deal issues which are not dealt with effectively by existing legislation, such as greater scope for dealing with litter on private land, and for nuisance not covered by the Environmental Protection Act 1990, for example, 'people noise', including banging and shouting.
- The potential new powers are relatively unrestricted and unspecific, giving councils flexibility to decide how to use them. We welcome this, and will be seeking to work with councils to make effective use of these powers.
- Because the potential new powers create an arrestable offence, it extends current powers and could help speed up the time taken to deal with offences.

Public spaces protection orders

These orders are intended to deal with a particular nuisance or problem in a particular area and apply to everyone.

The orders relate to a restricted area and can impose a requirement to stop or carry out specified activity for a maximum of three years, with the possibility to extend the order for up to a further three years.

A local authority can make these orders if activities in a public place have had or are likely to have a detrimental effect on the quality of life of local people, and are

or likely to be of a persistent or continuing nature, unreasonable and justifies the restrictions of the notice.

Local authorities must consult the police and appropriate community representatives before issuing these orders.

A prohibition in these orders on consuming alcohol does not apply to premises licensed to sell alcohol.

A person is guilty of an offence if they breach this order and are liable on summary conviction to a fine not exceeding level 3 on the standard scale and/or a fixed penalty notice.

LGA view

- We are pleased that local authorities will have the power to issue these notices, which will enable them to take action swiftly and effectively with local partners.
- Councils already regulate premises through the Licensing Act and recently introduced Early Morning Restriction Orders offer other ways of managing the way licensed premises are run.

Closure notices and orders

A closure notice prohibits access to the premises for a specified period up to a maximum of 48 hours. A closure order prohibits access to a premise for a maximum of three months.

A local authority or the police can issue a closure notice if it believes that the use of a particular premise has resulted or is likely to result in nuisance to the public, or there is or likely to be such nuisance nearby.

Appropriate bodies or individuals must be consulted.

Local authorities or the police must apply to a magistrate's court for closure orders, which must be heard no later than 48 hours after service of the notice closure.

Local authorities and the police can apply to extend the closure order before its expiry.

A person guilty of an offence under this section is liable to imprisonment up to 51 weeks, or a fine not exceeding level 5 on the standard scale.

LGA view

- We are pleased that local authorities will have the power to issue these notices. Councils are familiar with problem premises and will be able to take action swiftly and effectively with local partners to ensure property does not house or lead to anti-social behaviour.
- The bill extends councils' licensing powers, which may facilitate partnership working and shared enforcement.
- We have a concern, however, about closure notices only being made if 'reasonable' efforts have been made to inform the owner in advance. Sometimes premises need to be shut down immediately for the protection

of the public, so the process should not be delayed and this should be clarified in any subsequent guidance.

Part 5: Recovery of possession of dwelling-houses: anti-social behaviour grounds

Currently the court is left with discretion as to whether to evict a tenant under the Housing Acts 1985 and 1988 when landlords seek possession of secure and assured tenancies because the tenant has been involved in anti-social behaviour. The bill seeks to amend these acts so landlords can seek to evict tenants involved in anti-social behaviour or criminal activity on the basis that if proves the involvement of the tenant in this behaviour the courts will have to order the eviction of the tenant.

Grounds for such possession include, but are not exclusive to a tenant, or a person residing or visiting the dwelling-house:

- being convicted of a serious offence in or near the house
- the serious offence being committed elsewhere against a person with a right to reside in or occupy housing in the locality of the dwelling house or against the landlord (or a connected employer) of the dwelling house
- being found by a court to have breached certain conditions of a criminal behaviour order
- the dwelling house being subjected to a closure order, and
- being convicted of an offence under certain sections of the Environment Protection Act 1990.

The tenant may raise the issue of proportionality as a defence to the proceedings.

LGA view

- These proposals will rest on a) ensuring the landlord can easily demonstrate that the criteria for awarding possession is met and b) the anti-social behaviour is serious, housing related and that the landlord's actions are proportionate.
- These powers represent a serious sanction and councils will continue to use them in a proportionate way, investing in prevention and working with partners. Clearly it is crucial that the use of these powers do not result in displacement of the problem rather than solution. **This is particularly important when considering councils' homelessness duties and Government should clarify how the new powers will interact together.**

Part 6: Local involvement and accountability

Police and crime commissioners will be required to consult, prepare and publish a community remedy document for their force area in consultation and with the agreement of the chief constable.

This will set out what reasonable and proportionate 'punishment' they think it would be appropriate for an offender to undertake where there is an out-of-court disposal.

The draft bill also imposes a duty on councils, the police, health providers and social housing providers to set up a community trigger mechanism, with an agreed trigger point, to carry out a review of the response.

The arrangements for reviewing complaints must be published, with the PCC having to be consulted before making and revising the arrangements. The bill also provides for joint arrangements to be made over a larger area.

In conducting a review recommendations can be made which any person or body carrying out public functions will have to have regard to.

Information will have to be published about the number of applications and number of reviews undertaken.

LGA view

- Councils face a continual challenge to ensure the most vulnerable victims of anti-social behaviour do not slip through the net. The police now have a casework system clearly identifying vulnerability of victims of anti-social behaviour and people who make regular complaints already have the ear of their local council. Evidence from the community trigger pilots will be important in assessing the value and reach of the community trigger proposal.

Part 7: General

This includes details of minor and consequential amendments.

Timetable and next steps

15 January 2013: Councillor Anita Lower will be giving oral evidence to the Home Affairs Pre-legislative Scrutiny Committee in the House of Commons.

This draft bill will progress to a Government bill, which we expect to be announced in the Queen's Speech in May 2013.

Please email your views on this subject to community.safety@local.gov.uk by 11 January 2013.

For further information on this briefing, please contact Mark Norris, Senior Adviser Programmes Team at email: mark.norris@local.gov.uk or Lee Bruce, Public Affairs and Campaigns Adviser, at email: lee.bruce@local.gov.uk