

The Anti-Social Behaviour, Crime & Policing Act 2014

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1. Introduction

- 1.1 The Anti-Social Behaviour Crime & Policing Act 2014 ("the Act") received royal assent on Thursday, 13 March 2014. It can be bought for £28.75 or downloaded online at: http://www.legislation.gov.uk/ukpga/2014/12/pdfs/ukpga_20140012_en.pdf but this briefing note seeks to explain the main changes to anti-social behaviour injunctions (ASBIs), anti-social behaviour orders (ASBOs), possession claims relating to anti-social behaviour under the Housing Acts of 1985 and 1988, and related remedies brought in by Parts 1 to 6 of the Act¹ as far as they concern local housing authorities (LHAs) and private registered providers (PRPs)².
- 1.2 The Parliamentary passage of the Act commenced with the 1st reading of the Bill in the House of Commons on 9 May 2013 but of course its journey commenced some time before this and in May 2012 the Home Office produced its White Paper – 'Putting victims first: more effective responses to anti-social behaviour' – in which the Home Secretary Theresa May pledged:

'We will introduce faster and more effective powers to stop the dangerous and yobbish behaviour of those who make victims' lives a misery. We will replace 19 complex existing powers with six simple new ones. The powers will include a new court order available on conviction that will stop the behaviour of the most destructive individuals and will address the underlying causes of that behaviour – addressing one of the main failings of the ASBO. There will be a new civil injunction that agencies can use immediately to protect victims and communities; simpler powers to close premises that are a magnet for trouble; and a more effective police power to stop anti-social behaviour in public places. We will also help speed up the

¹ Part 7 of the Act – sections 106 and 107 - deals with dangerous dogs and a useful December 2013 factsheet on this issue and the amendments to the Dangerous Dogs Act 1991, prepared by the Department for Environment, Food and Rural Affairs, can be found at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/269155/Factsheet_dangerous_dogs_provisions_updated_for_Lords_Report.pdf

² Though Criminal Behaviour Orders are briefly described at section 3 and dispersal orders at section 4 of this briefing note

eviction of anti-social tenants to stop ‘nightmare neighbours’ who ruin the lives of those around them.’

- 1.3 One of the prime aims therefore of this legislation, at least as far as anti-social behaviour is concerned, is to make the responses to anti-social behaviour more victim centred and “streamline” the myriad of measures currently available to tackle different facets of this problem into clearer, more defined and less (in number) measures. For example, as noted by the Home Secretary in the White Paper, Parts 1 to 4 of the Act – injunctions, criminal behaviour orders, dispersal powers, community protection notices, public spaces protection orders and closure notices/orders – replace 19 previous powers to deal with anti-social behaviour and one obvious ‘casualty’ of this process has been the abolition of ASBOs.
- 1.4 At the time of writing this note there has been no clear indication from the Government as to when Parts 1 to 6 of the Act will come into force though it is likely to be later in the coming summer and so it is essential that those who advise on and litigate in respect of anti-social behaviour become quickly acquainted with the impending changes.

2. Injunctions – Sections 1 to 21

2.1 For most of the passage of the Act through the House of Commons and House of Lords the new injunctions, set to replace ASBIs & ASBOs, were known as ‘Injunctions to Prevent Nuisance and Annoyance’, IPNAs. The Act has rather simply termed them as **‘Injunctions’** but their import remains highly significant in a number of regards, not least in respect of the ability to include positive requirements and the need for consultation.

2.2 The new Injunctions are tenant neutral and replace ASBIs, ASBOs on application, Drinking Banning Orders (DBOs) on application, intervention orders and individual support orders.

Who can apply for the Injunction?

2.3 These injunctions are **available to** (section 5)³:

- (a) a local authority,
- (b) a housing provider,
- (c) the chief officer of police for a police area,
- (d) the chief constable of the British Transport Police Force,
- (e) Transport for London,
- (f) the Environment Agency,
- (g) the Natural Resources Body for Wales,
- (h) the Secretary of State exercising security management functions, or a Special Health Authority exercising security management functions on the direction of the Secretary of State, or
- (i) the Welsh Ministers exercising security management functions, or a person or body exercising security management functions on the direction of the Welsh Ministers or under arrangements made between the Welsh Ministers and that person or body.

2.4 However, as far as the **housing provider** is concerned at (b), and in a mirror of the current ASBI regime⁴, sub-paragraph (3) of section 5 makes it clear that they may

³ Sub-paragraphs (a) to (d) are included in the current ASBO list of relevant authorities able to obtain such an order by reason of section 1(1A) of the Crime & Disorder Act 1998

⁴ Section 153A(1) of the Housing Act 1996

make an application ‘only if the application concerns anti-social behaviour that directly or indirectly relates to or affects its housing management functions’.

2.5 ‘**Housing management functions**’ are defined, again in a repeat of current ASBO requirements⁵, by section 5(4) as including:

- (a) *functions conferred by or under an enactment;*
- (b) *the powers and duties of the housing provider as the holder of an estate or interest in housing accommodation.*

Venue

2.6 Section 1(8) of the Act provides that applications for an Injunction shall be in the Youth Court if the respondent is under 18 years of age and otherwise in the High Court or **county court**⁶. The likelihood is that for most Injunction applications against a respondent aged 18 or over the normal venue will be the county court and CPR Part 65 will need to be amended accordingly when the relevant provisions are brought into force.

2.7 Section 15 of the Act confirms that appeals against youth court decisions are to the Crown Court which ‘*may make whatever orders are necessary to give effect to its determination of the appeal*’, as well as any incidental or consequential orders that appear just.

Conditions for the Injunction

2.8 The injunction is available, as with ASBOs, if the respondent is aged 10 or over⁷ and can only be granted by the court if **two conditions** are met:

First, is the court satisfied, on the balance of probabilities that the respondent has engaged or threatens to engage in anti-social behaviour: section 1(2).

⁵ Ibid at Section 153E(11)

⁶ Section 18(2) of the Act provides that ‘(2) Rules of court may provide for a youth court to give permission for an application for an injunction under section 1 against a person aged 18 or over to be made to the youth court if—(a) an application to the youth court has been made, or is to be made, for an injunction under that section against a person aged under 18, and (b) the youth court thinks that it would be in the interests of justice for the applications to be heard together. (3) In relation to a respondent attaining the age of 18 after proceedings under this Part have begun, rules of court may—(a) provide for the transfer of the proceedings from the youth court to the High Court or the county court;(b) prescribe circumstances in which the proceedings may or must remain in the youth court.’

⁷ Ibid at section 1(1) – this brings it in line with ASBOs and section 1(1) of the Crime & Disorder Act 1998

Second, is the court of the view that it is just and convenient to grant the injunction for the purpose of preventing the respondent from engaging in anti-social behaviour: section 1(3).

2.9 When one considers that ‘**anti-social behaviour**’ is defined by section 2(1) as:

- (a) *conduct that has caused, or is likely to cause, harassment, alarm or distress to any person,*
- (b) *conduct capable of causing nuisance or annoyance to a person in relation to that person’s occupation of residential premises⁸, or*
- (c) *conduct capable of causing housing-related⁹ nuisance or annoyance to any person.*

it is clear that the ASBO and ASBI concepts have both been used (sub-paragraph (a) being ‘lifted’ from the former requirement¹⁰ and sub-paragraph (c) being in essence taken from the latter¹¹).

2.10 In an approach familiar to the ASBO route but new to ASBI applications the applicant must, by reason of section 14 of the Act, also **consult** with the youth offending team (if the respondent will be under 18 years when the application will be made) or otherwise ‘*any other body or individual the applicant thinks appropriate of the application*¹² (one can imagine that this may include support workers, GPs, Social Services, Community Psychiatric Nurses, etc.).

2.11 This consultation requirement does not apply to without notice applications, unless the application is adjourned, but they do apply to applications by the original applicant to vary or discharge an injunction¹³.

⁸ This sub-paragraph only applies where the injunction is applied for by a housing provider, local authority or chief officer of police: section 2(2) of the Act

⁹ Section 2(3) of the Act – this is a similar definition used at present for ASBIs, pursuant to section 153A(1) of the Housing Act 1996, “*housing-related*” means directly or indirectly relating to or affecting the housing management functions of a relevant landlord, and section 2(4) confirms that “*housing management functions*” are referable to the local authority as landlord or functions conferred by or under an enactment (as with section 153E(11) of the Housing Act 1996)

¹⁰ Section 1(1) of the Crime & Disorder Act 1998

¹¹ Section 153A(3) of the Housing Act 1996

¹² Section 14(1) of the Act

¹³ Ibid at section 14(2)(3)

Terms of the Injunction

2.12 Unlike ASBI's at present, which only allows terms prohibiting specified conduct¹⁴, the new Injunction will allow **positive requirements** to be included in its terms (e.g. attendance at alcohol/drug rehabilitation, removal of rubbish or obstructions, etc.), though how these will be funded is less clear (see paragraph 2.13 below): section 1(4)(b).

2.13 Section 3 of the Act also provides in respect of any such requirement that:

- It must identify an individual or organisation that will be responsible for supervising compliance and evidence is required pre-imposition from these sources as to the requirements suitability and enforceability: section 3(1)(2).
- The specified individual/organisation must inform the applicant and chief officer of police¹⁵ of any non-compliance with the requirement: section 3(4).
- The respondent must keep in touch with the specified individual/organisation and notify them of any change of address: section 3(6).

2.14 **Exclusion orders** remain and are provided for at section 13 of the Act, being available where:

- (a) The respondent is aged 18 or over: section 13(1)(a).
- (b) The Injunction was applied for by the local authority, chief officer of police for the police area in which the premises are situated or a housing provider who owns¹⁶ or manages the said premises.
- (c) The court thinks that, in the words of section 13(1)(c):
 - (i) *the anti-social behaviour in which the respondent has engaged or threatens to engage consists of or includes the use or threatened use of violence against other persons, or*

¹⁴ Section 153A(1) of the Housing Act 1996 provides: “*anti-social behaviour injunction*” means an injunction that prohibits the person in respect of whom it is granted from engaging in housing-related anti-social conduct of a kind specified in the injunction

¹⁵ Defined at section 3(5) of the Act

¹⁶ See section 13(2) of the Act in the Appendix for the definition of ‘owns a place’

(ii) there is a significant risk of harm to other persons from the respondent.

2.15 This is a repeat of the current ASBI provisions to be found at section 153C(1) of the Housing Act 1996.

2.16 The terms, whether positive or negative in nature should, so far as is practicable, avoid:

1(5) ...

- (a) any interference with the times, if any, at which the respondent normally works or attends school or any other educational establishment;
- (b) any conflict with the requirements of any other court order or injunction to which the respondent may be subject.

2.17 Like ASBIs, the Injunction can be either for a **specified period** or state that it has effect until further order (though if awarded against a respondent under 18 then the period must be specified and cannot exceed 12 months)¹⁷. Section 1(7) of the Act also states that provision can be made for different prohibitions/requirements to have effect for different periods.

2.18 The Injunction is always open to an **application to vary or discharge** from either party¹⁸ – as it is at present for ASBIs by reason of section 153E(3) of the Housing Act 1996 – though if such an application is dismissed no further application is allowed without the consent of the Court or agreement of the other party¹⁹.

Power of Arrest

2.19 The **power of arrest** provisions provided for by section 4 of the Act are in similar form to those at present required for ASBIs²⁰ - the anti-social behaviour (actual or threatened) complained of consists of the use or threatened use of violence against others or there is a significant risk of harm to others from the respondent - save that

¹⁷ Section 1(6) of the Act

¹⁸ Ibid at section 8(1)

¹⁹ Ibid at section 8(4)

²⁰ Section 153C(1) of the Housing Act 1996

as with the requirements for the Injunction in the first place there is no need for the conduct/risk of harm to be directed towards a specified type of persons²¹.

2.20 They do not however apply to any requirement for the respondent to participate in particular activities²² but can be for different periods than the prohibition or requirement to which it relates²³.

Interim Injunctions

2.21 One very useful provision under the Act is section 7 which allows a court, when adjourning an application for an Injunction, to make an **interim injunction** until the final hearing or further order if it is just to do so.

2.22 It may be said that this is what often happens at present but whilst that may be ‘custom and practice’ the rules ordinarily require an application notice²⁴.

2.23 Section 7(3) of the Act means that a positive requirement for the respondent to participate in certain activities cannot be made at any without notice hearing.

Without Notice Injunctions

2.24 Section 6 of the Act provides that:

6 Applications without notice

- (1) *An application for an injunction under section 1 may be made without notice being given to the respondent.*
- (2) *If an application is made without notice the court must either—*
 - (a) *adjourn the proceedings and grant an interim injunction (see section 7),*
or
 - (b) *adjourn the proceedings without granting an interim injunction, or*
 - (c) *dismiss the application.*

²¹ As is presently the case with ASBIs at section 153A(3) and 153C(1)(b) of the Housing Act 1996

²² Section 4(1) of the Act

²³ Ibid at section 4(2)

²⁴ See CPR Practice Direction 23APD.3 as to when an application can be made without serving an application notice. The circumstances include exceptional urgency, the consent of the parties or the permission of the court.

2.25 For ASBIs at present section 153E of the Housing Act 1996 provides that:

(4) If the court thinks it just and convenient it may grant or vary an injunction without the respondent having been given such notice as is otherwise required by rules of court.

2.26 Though section 6 may at first flush therefore seem a dilution of the current provision it should be remembered that section 1(3) of the Act expressly provides that to get an Injunction the court must consider it “just and convenient” to so grant, and of course the **lack of notice** to any respondent will be a relevant factor in this analysis.

Breach of an Injunction

2.27 The impact of an alleged breach of an Injunction is very similar in the Act as it is under the current ASBI provisions. Section 9 provides that where the **power of arrest** is attached to the provision said to have been breached then the respondent can be arrested by the police if the officer '*has reasonable cause to suspect that the respondent is in breach of the provision*'²⁵.

2.28 The applicant will be informed of any arrest and the respondent brought before the Court within 24 hours of the arrest (ignoring Christmas Day, Good Friday and any Sunday).

2.29 Section 10 gives the applicant the right to apply for the issue of an **arrest warrant** to the Court if they think that the respondent is in breach of any of the Injunction's provisions.

2.30 **Remand** provisions under sections 9 and 10 of the Act are set out at Schedule 1 which is exhibited to this report, whilst Schedule 2 deals with the powers of the Court in respect of those respondents under 18 years of age.

²⁵ Ibid at section 9(1)

3. Criminal Behaviour Orders – Sections 22 to 33

3.1 The **criminal behaviour order** (CBO) will replace the ASBO on conviction and the DBO on conviction and will be available in the Crown Court, magistrates' courts, or the youth court. It is an order that prohibits the offender from doing anything, or alternatively requires them to do anything, in the order²⁶. The CBO can only, by reason of section 22(7) of the Act, be made on the application of the prosecutor (in most cases the Crown Prosecution Service, either at their own initiative or at the request of the police or local authority) following conviction of an offence²⁷.

3.2 In granting a CBO, the court must be satisfied of two conditions provided for at section 22(2) of the Act – (1) they are satisfied beyond reasonable doubt that the offender has committed behaviour causing harassment, alarm and distress (the same test used for the ASBO) and (2) that granting the order would help prevent such future behaviour.

3.3 This note does not propose to go into any detail as to the provisions of CBOs as they are not obtainable by LHAs or PRPs. Suffice to say as an overview however:

- (a) For those aged 18 or over when the CBO is made the period of the order is 2 years or an indefinite period. If under 18 it must be for a fixed period of not less than 1 year and not more than 3 years: section 25(4)(5) of the Act.
- (b) Applications can be made by the offender or prosecution to vary or discharge them, and they are subject to annual review: sections 27 and 28 of the Act.
- (c) Breach of a CBO is a criminal offence which can lead to a fine and/or imprisonment for up to 5 years: section 30(1)(2) of the Act.
- (d) The CBO can relate to wider relevant behaviour than that proved through the criminal conviction. Hearsay evidence (which may not have been admissible in the criminal proceedings) is allowed in CBO proceedings: sections 22-23 of the Act.

²⁶ Ibid at section 22(5)

²⁷ Ibid at section 22(1)

4. Dispersal Powers – Sections 34 to 42²⁸

4.1 The **dispersal power** is intended to allow the police to disperse anti-social individuals and provide immediate respite to a local community. The current regime provided for by section 30 of the Anti-Social Behaviour Act 2003 includes the section 31 requirement of consultation with and approval of the relevant local authority, for any such dispersal, which can lead to delays.

4.2 The new section 35 dispersal power will be authorised by an officer of at least the rank of inspector for a period of not more than 48 hours²⁹ and does not require consultation with the local authority. The said officer may give such an authorisation (section 34(2) of the Act):

...only if satisfied on reasonable grounds that the use of those powers in the locality during that period may be necessary for the purpose of removing or reducing the likelihood of—

- (a) *members of the public in the locality being harassed, alarmed or distressed, or*
 - (b) *the occurrence in the locality of crime or disorder.*
- (3) In deciding whether to give such an authorisation an officer must have particular regard to the rights of freedom of expression and freedom of assembly set out in articles 10 and 11 of the Convention.*

4.3 Two primary conditions then need to be met for a dispersal order to be given:

- (a) The officer has to have reasonable grounds to suspect that the behaviour of the person has contributed or is likely to contribute to, members of the public in the locality being harassed, alarmed or distressed, or the occurrence of crime or disorder: section 35(2).
- (b) Secondly, the officer has to consider that giving a dispersal order to the person is necessary for the purpose of removing or reducing the likelihood of ASB, crime or disorder: section 35(3).

²⁸ See the Home Office's useful May 2013 factsheet on the dispersal powers at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/202891/Fact_sheet_Police_Powers.pdf

²⁹ Ibid at section 34(1) of the Act

- 4.4 Police officers and police community support officers (if designated the power by their chief constable³⁰) will be able to require a person to leave an area and not return for up to 48 hours³¹. The power can be used in any public place and in common areas of private land with the landowner or occupier's consent (such as shopping centres).
- 4.5 There must be approval from an officer of at least the rank of inspector to use the power and the inspector can authorise the use of the power in a specific area for a period of up to 48 hours. The dispersal notice cannot prevent the person to whom it is given having access to medical treatment, training, education, their home or employment (section 36(2) (3) of the Act).
- 4.6 The direction must be given in writing, unless that is not reasonably practicable, and will specify the locality to which it relates and can impose requirements as to the time by which the person must leave the locality and the manner and route they must take³². Section 35(6) of the Act also provides that the officer must tell the individual that failure to comply is an offence.
- 4.7 The direction can be given to anyone who appears to the police officer to be over the age of 10³³. The officer will be able to return children who they reasonably believe to be under 16 home or to another place of safety if they are subject to a direction³⁴.
- 4.8 The police officer or PCSO will be able, under section 37(1) of the Act, to require the individual to hand over items causing or likely to cause ASB (for example, alcohol, fireworks, or spray paint). Section 37 of the Act goes on to provide that confiscated items will be held at the police station and can be collected after the period of the dispersal. If the individual is under the age of 16 they can be required to be accompanied by a parent or other responsible adult to collect the item; this will help encourage greater parental responsibility.

³⁰ Section 40 of the Act

³¹ Ibid at section 35(4)

³² Ibid at section 35(5)

³³ Ibid at section 36(1)

³⁴ Ibid at section 35(7)

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4.9 Section 39 of the Act provides that failure to comply with the dispersal will be a criminal offence and will carry a maximum penalty of a £2,500 fine and/or three months imprisonment. Failure to hand over confiscated items would also be a criminal offence and would have a penalty of up to a £500 fine.

5. Community Protection Notices – Sections 43 to 58³⁵

5.1 Section 43(1) of the Act provides that a ‘community protection notice’ can be issued by the police, local authority or person designated by the local authority (e.g. officers of a local housing association)³⁶ if a written warning has been previously given, any body or individual has been contacted as thought appropriate³⁷ and the officer is satisfied on reasonable grounds that:

- (a) *the conduct of the individual or body is having a detrimental effect, of a persistent or continuing nature, on the quality of life of those in the locality, and*
- (b) *the conduct is unreasonable.*

5.2 The notice will direct the individual, business or organisation responsible to stop causing the problem and it could also require the person responsible to take reasonable steps to ensure that it does not occur again³⁸.

5.3 This notice is intended to replace current measures such as litter clearing notices, defacement removal notices and street litter control notices. It is not meant to replace the statutory nuisance regime – and where the behaviour is such as to amount to a statutory nuisance under section 79 of the Environmental Protection Act 1990 (EPA), it should be dealt with as such.

5.4 Section 46 provides an appeal mechanism for aggrieved recipients of a community protection notice. They have 21 days from being issued with the notice to appeal to a magistrates’ court. Subsection (1) sets out the grounds:

- 1 *That the conduct specified in the community protection notice—*
 - (a) *did not take place,*
 - (b) *has not had a detrimental effect on the quality of life of those in the locality,*
 - (c) *has not been of a persistent or continuing nature,*

³⁵ See the Home Office’s October 2013 factsheet on Environmental anti-social behaviour at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/251313/01_Factsheet_Environmental_ASB_-_updated_for_Lords.pdf

³⁶ Section 53(1) of the Act

³⁷ Ibid at section 43(5)(6)

³⁸ Ibid at section 43(3)(4)

(d) is not unreasonable, or

(e) is conduct that the person cannot reasonably be expected to control or affect.

2 That any of the requirements in the notice, or any of the periods within which or times by which they are to be complied with, are unreasonable.

3 That there is a material defect or error in, or in connection with, the notice.

4 That the notice was issued to the wrong person.

5.5 Breach of any requirement in the notice, without reasonable excuse, will be a criminal offence, subject to a fixed penalty notice or prosecution³⁹. On summary conviction an individual would be liable to a fine not exceeding level 4 on the standard scale (currently set at £2,500). An organisation is liable to a fine of up to £20,000. On conviction, the magistrates' court would also have the power to order forfeiture and destruction of any item used in the commission of the offence. An alternative to prosecution would be for the relevant agency to make good any damage itself, and recover the costs of doing so from the person concerned.

5.6 Community protection notices will represent a change from current procedures indicated at paragraph 5.3 above and in particular:

- i. they cover a wider range of behaviour - i.e. all behaviour that is detrimental to the local community's quality of life, including noise - rather than specifically stating the behaviour covered (e.g. litter or graffiti).
- ii. the notices can be issued by more agencies: police, local authorities and private registered providers of social housing (if approved by local authorities) meaning that the most appropriate agency can deal with the situation.
- iii. the notices can apply to businesses and individuals (which is the case for some of the notices it will replace but not all).
- iv. it will be a criminal offence if a person does not comply, with a sanction of a fine or fixed penalty notice for non-compliance (again, this is not the case for all of the notices that it replaces.)

³⁹ Ibid at sections 48 and 52

6. Closure Orders – Sections 76 to 93

6.1 This new power to close premises is in reality a consolidation provision and has two stages – the **closure notice** and the **closure order**. In that sense it mirrors the existing closure provisions set down at Parts 1 and 1A of the Anti-Social Behaviour Act 2003.

6.2 The test for issuing a notice will be that the police (of at least the rank of inspector) or local authority are satisfied on reasonable grounds (section 76(1)):

(a) that the use of particular premises has resulted, or (if the notice is not issued) is likely soon to result, in nuisance to members of the public, or

(b) that there has been, or (if the notice is not issued) is likely soon to be, disorder near those premises associated with the use of those premises,

and that the notice is necessary to prevent the nuisance or disorder from continuing, recurring or occurring.

6.3 Before issuing the notice, the police or local authority must consult any person or agency they consider appropriate, as well as informing the owner, landlord, licensee and anyone who appears to be residing in the premise⁴⁰.

6.4 The notice must state that access by any person other than someone who habitually lives on the premises or the owner of the premises, is prohibited; state that failure to comply is an offence; give details as to when and where the notice will be considered by the magistrates' court; and give information about persons and organisations in the area that provide advice about housing and legal matters⁴¹.

6.5 The police or local authority must take into account any special considerations arising from the presence, or likely presence of any children or vulnerable adults on the premises. Authorised persons will have a power of entry to the premises, using reasonable force if necessary, to serve the notice.

⁴⁰ Ibid at sections 76(6)(7)

⁴¹ Ibid at section 76(5)

6.6 The closure notice lasts for 24 hours though this period can be extended to 48 hours if the issuing officer was a police officer of the rank of at least superintendent (or if issued by the local authority was signed by the chief executive or someone designated by her/him). Otherwise the relevant section – 77 – provides at subsection (4) that these persons can issue an extension notice of up to 24 hours.

6.7 The matter must be brought to the magistrates' court no later than 48 hours after the service of the closure notice and the court can make a closure order for a maximum period of three months if it is satisfied that⁴²:

- (a) *that a person has engaged, or (if the order is not made) is likely to engage, in disorderly, offensive or criminal behaviour on the premises, or*
- (b) *that the use of the premises has resulted, or (if the order is not made) is likely to result, in serious nuisance to members of the public, or*
- (c) *that there has been, or (if the order is not made) is likely to be, disorder near those premises associated with the use of those premises,*

and that the order is necessary to prevent the behaviour, nuisance or disorder from continuing, recurring or occurring.

6.8 Before the time specified in the order expires, the police or local authority will be able to apply to the magistrates' court for a further extension of the order if this were deemed necessary. The maximum period an order could last overall would be six months (section 82(7)(8) of the Act).

6.9 Section 84 of the Act provides that appeals are to the Crown Court and must be made by any of the parties within 21 days of the decision to which it relates.

6.10 Breach of the order, without reasonable excuse, will be a criminal offence⁴³. On summary conviction, a person would be liable to a fine and/or up to three months imprisonment if in breach of a notice and up to 51 weeks' imprisonment if in breach of an order.

⁴² Ibid at section 80

⁴³ Ibid at section 86

7. Possession Proceedings – Sections 94 to 100

7.1 The Act has introduced **mandatory grounds** for possession in relation to secure tenancies (sections 94-96) and assured tenancies (section 97). Before the ground is used the tenant has a statutory right to review (if a secure tenant) and a defence under Article 8 of the European Convention on Human Rights remains expressly available⁴⁴.

7.2 This means that for secure tenant a particular notice must be served prior to the issue of possession proceedings seeking to rely on the new mandatory ground and details of its contents are contained in section 83ZA of the Housing Act 1985⁴⁵. The absence of a statutory review procedure for assured tenancies means that the changes are less significant (though proceedings cannot be immediate upon service of the notice if Ground 14 is also relied upon as is otherwise the case⁴⁶) and section 8(3A) of the Housing Act 1988 requires a minimum 28 day period (or one month if a monthly periodic tenancy) to expire following service of the notice seeking possession relying on the new Ground 7A before proceedings can be issued⁴⁷.

7.3 The amendments to section 8 of the Housing Act 1988⁴⁸ also provide a restriction on service of any notice in terms of time that has elapsed from any conviction, finding or closure order:

- (4D) Where the landlord proposes to rely on condition 1, 3 or 5 in Ground 7A, the notice must be served on the tenant within—*
- (a) the period of 12 months beginning with the day of the conviction, or*
 - (b) if there is an appeal against the conviction, the period of 12 months beginning with the day on which the appeal is finally determined or abandoned.*

⁴⁴ Section 94(1) of the Act

⁴⁵ Ibid at section 95

⁴⁶ By reason of section 8(4) of the Housing Act 1988 – the amendment provided for at section 97(2)(c) of the Act making this clear

⁴⁷ Section 97(2) of the Act – it will need to allow for the calculation of the last day of a period of tenancy. For example, if in a weekly periodic tenancy case (Monday to Sunday tenancy) served on Tuesday 1 April the earliest proceedings could be issued would be Monday 5 May

⁴⁸ Ibid at section 97

(4E) Where the landlord proposes to rely on condition 2 in Ground 7A, the notice must be served on the tenant within—

(a) the period of 12 months beginning with the day on which the court has made the finding, or

(b) if there is an appeal against the finding, the period of 12 months beginning with the day on which the appeal is finally determined, abandoned or withdrawn.

(4F) Where the landlord proposes to rely on condition 4 in Ground 7A, the notice must be served on the tenant within—

(a) the period of 3 months beginning with the day on which the closure order was made, or

(b) if there is an appeal against the making of the order, the period of 3 months beginning with the day on which the appeal is finally determined, abandoned or withdrawn.”

7.4 As for the review process, details of this are set out at section 96 of the Act and require a written request for a review within 7 days of the service of the notice referred to at paragraph 7.2 above. The process is not in broad terms dissimilar from that experienced for introductory and flexible tenancies as provided for at section 129 of the Housing Act 1996⁴⁹ and section 107E of the Housing Act 1985⁵⁰ respectively.

7.5 The likelihood is that regardless of the lack of statutory review mechanism for assured tenancies, many PRPs will in fact, as they have done with starter tenancies, invoke a voluntary review process prior to the issuing of any proceedings.

7.6 Turning to the ground itself – to be found at section 84A of the Housing Act 1985 (for secure tenancies) and Ground 7A of Schedule 2 to the Housing Act 1988 (for assured tenancies) – the landlord has to show that one of 5 conditions is met in order to obtain the mandatory possession order:

⁴⁹ Further explained in the Introductory Tenants (Review) Regulations 1997 (SI No. 1997/72) – section 96(7) and (8) of the Act provide for the Secretary of State and Welsh Ministers introducing similar regulations for this review procedure

⁵⁰ Supplemented by the Flexible Tenancies (Review Procedures) Regulations 2012 (SI No. 2012/695)

Hardwicke

Condition 1 — the tenant, or a person residing in or visiting the dwelling-house, has been convicted of a serious offence⁵¹, and the serious offence was either — committed (wholly or partly) in, or in the locality of, the dwelling-house or was committed elsewhere against a person with a right (of whatever description) to reside in, or occupy housing accommodation in the locality of, the dwelling-house, or was committed elsewhere against the landlord of the dwelling-house, or a person employed (whether or not by the landlord) in connection with the exercise of the landlord's housing management functions, and directly or indirectly related to or affected those functions.

Condition 2 - a court has found in relevant proceedings⁵² that the tenant, or a person residing in or visiting the dwelling-house, has breached a provision of an injunction under section 1 of the Act, other than a provision requiring a person to participate in a particular activity, and the breach occurred in, or in the locality of, the dwelling-house, or the breach occurred elsewhere and the provision breached was a provision intended to prevent—

- (i) conduct that is capable of causing nuisance or annoyance to a person with a right (of whatever description) to reside in, or occupy housing accommodation in the locality of, the dwelling-house, or
- (ii) conduct that is capable of causing nuisance or annoyance to the landlord of the dwelling-house, or a person employed (whether or not by the landlord) in connection with the exercise of the landlord's housing management functions, and that is directly or indirectly related to or affects those functions.

Condition 3 - the tenant, or a person residing in or visiting the dwelling-house, has been convicted of an offence under section 30 of the Act consisting of a breach of a

⁵¹ Section 94(9) of the Act - “serious offence” means an offence which— (a) was committed on or after the day on which subsection (3) comes into force, (b) is specified, or falls within a description specified, in Schedule 2A at the time the offence was committed and at the time the court is considering the matter, and (c) is not an offence that is triable only summarily by virtue of section 22 of the Magistrates' Courts Act 1980 (either-way offences where value involved is small).

⁵² Ibid at section 94(9) - “relevant proceedings” means proceedings for contempt of court or proceedings under Schedule 2 of the Act (breach of Injunctions by those under 18)

provision of a CBO prohibiting a person from doing anything described in the order, and the offence involved—

- (a) a breach that occurred in, or in the locality of, the dwelling-house, or
- (b) a breach that occurred elsewhere of a provision intended to prevent—
 - (i) behaviour that causes or is likely to cause harassment, alarm or distress to a person with a right (of whatever description) to reside in, or occupy housing accommodation in the locality of, the dwelling-house, or
 - (ii) behaviour that causes or is likely to cause harassment, alarm or distress to the landlord of the dwelling-house, or a person employed (whether or not by the landlord) in connection with the exercise of the landlord's housing management functions, and that is directly or indirectly related to or affects those functions.

Condition 4 — the dwelling-house is or has been subject to a closure order under section 80 of the Act, and access to the dwelling-house has been prohibited (under the closure order or under a closure notice issued under section 76 of that Act) for a continuous period of more than 48 hours.

Condition 5 — the tenant, or a person residing in or visiting the dwelling-house, has been convicted of an offence under—

- (i) section 80(4) of the Environmental Protection Act 1990 (breach of abatement notice in relation to statutory nuisance), or
- (ii) section 82(8) of that Act (breach of court order to abate statutory nuisance etc), and
- (b) the nuisance concerned was noise emitted from the dwelling-house which was a statutory nuisance for the purposes of Part 3 of that Act by virtue of section 79(1)(g) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance).

7.7 If there is an appeal against any conviction, finding or other order then these cannot be relied upon in seeking to satisfy one of the 5 conditions⁵³.

7.8 As for changes to **discretionary grounds** these are two-fold and applicable to both secure and assured tenancies:

- (a) Section 98 of the Act adds a third possibility to Grounds 2 (secure tenancies) and 14 (assured tenancies), to provide for behaviour directed at the landlord,

⁵³ Ibid at section 94(8)

contractors etc. but outside the locality⁵⁴, namely that the tenant or a person residing in or visiting the dwelling-house:

"(aa) has been guilty of conduct causing or likely to cause a nuisance or annoyance to the landlord of the dwelling-house, or a person employed (whether or not by the landlord) in connection with the exercise of the landlord's housing management functions, and that is directly or indirectly related to or affects those functions".

- (b) In an obvious reaction to the 2011 'riots' across the United Kingdom Grounds 2ZA (secure tenancy) and 14ZA (assured tenancies) have been introduced by section 99 of the Act and provide that any person aged 18 or over residing in the subject premises who has been convicted of an indictable offence "which took place during, and at the scene of, a riot⁵⁵ in the United Kingdom" will lead to these new discretionary grounds being satisfied.

⁵⁴ Grounds 2 and 14 at (a) read "*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*"

⁵⁵ Ibid at section 99(1) – the new Grounds provide that "riot" is to be construed in accordance with section 1 of the Public Order Act 1986: (1) *Where 12 or more persons who are present together use or threaten unlawful violence for a common purpose and the conduct of them (taken together) is such as would cause a person of reasonable firmness present at the scene to fear for his personal safety, each of the persons using unlawful violence for the common purpose is guilty of riot.* (2) *It is immaterial whether or not the 12 or more use or threaten unlawful violence simultaneously.* (3) *The common purpose may be inferred from conduct.* (4) *No person of reasonable firmness need actually be, or be likely to be, present at the scene.* (5) *Riot may be committed in private as well as in public places.*

8. Miscellaneous

8.1 **Public spaces protection orders** (sections 59 to 75 of the Act) enable a local authority to make such an order if satisfied on reasonable grounds of two conditions (section 59 of the Act):

(2) *The first condition is that—*

- (a) *activities carried on in a public place within the authority's area have had a detrimental effect on the quality of life of those in the locality, or*
- (b) *it is likely that activities will be carried on in a public place within that area and that they will have such an effect.*

(3) *The second condition is that the effect, or likely effect, of the activities—*

- (a) *is, or is likely to be, of a persistent or continuing nature,*
- (b) *is, or is likely to be, such as to make the activities unreasonable, and*
- (c) *justifies the restrictions imposed by the notice.*

8.2 Section 59 of the Act explains:

(4) *A public spaces protection order is an order that identifies the public place referred to in subsection (2) ("the restricted area") and—*

- (a) *prohibits specified things being done in the restricted area,*
- (b) *requires specified things to be done by persons carrying on specified activities in that area, or*
- (c) *does both of those things.*

8.3 The order – which can be varied or discharged⁵⁶ - must clearly state what behaviour it is seeking to prevent, what the prohibitions or requirements are in the specified area (which the local authority reasonably believes will remedy the problem), the specified area itself and the consequences of not complying. The order must be in writing and it must be published. Reasonable signage should be put up in the areas affected⁵⁷.

8.4 The order will be able to last for up to three years unless the local authority are satisfied that an extension for up to a further three years is necessary to prevent (section 60 of the Act):

⁵⁶ Ibid at section 61

⁵⁷ Ibid at section 59

(a) occurrence or recurrence after that time of the activities identified in the order, or

(b) an increase in the frequency or seriousness of those activities after that time.

8.5 Breach of the order without reasonable excuse will be a criminal offence, subject to a fixed penalty notice or prosecution. On summary conviction, an individual would be liable to a fine not exceeding level 3 on the standard scale (currently set at £1,000)⁵⁸.

8.6 Any person who consumes alcohol in an area where this has been prohibited could be required to hand over any containers believed to contain alcohol. Failure to comply would be a criminal offence which on summary conviction means an individual is liable to a fine not exceeding level 2 on the standard scale (currently set at £500). If alcohol is confiscated, it can also be disposed of by the person who confiscates it⁵⁹.

8.7 The **Community trigger** has been a much heralded tool to allow local people to ‘have a say’ in how local authorities, the police, PRPs, etc.⁶⁰ are dealing with anti-social behaviour.

8.8 Section 104 of the Act requires such bodies to carry out reviews of such cases (and publish their review procedures). Action will be capable of being demanded in the form of case reviews where at least 3 qualifying complaints (or less if the review procedures provide so) have been made about the anti-social behaviour to which the application relates.

8.9 The mechanism for carrying out the case review will be set locally and each local area will set a threshold which must be met for the trigger to be used. The threshold must include the frequency of complaints, which cannot be greater than three reports in a six month period⁶¹. It could also consider the effectiveness of the response as well as potential harm to the victim or victims making the complaint.

⁵⁸ Ibid at sections 67 and 68

⁵⁹ Ibid at section 63

⁶⁰ The definition of the ‘relevant bodies’ is to be found at section 105(2) of the Act

⁶¹ Ibid at section 104(11)

Complaints may either come directly from the victims of ASB or from a third party, such as a family member or local elected representative (a councillor or MP).

- 8.10 When a community trigger is received, agencies must decide whether the threshold has been met and communicate this to the victim. If the threshold is met, a case review will be undertaken by the partner agencies (police, local authority, social landlord, etc.). Agencies will share information related to the case, review what action has previously been taken and decide whether there are additional actions that can be taken.
- 8.11 Section 104(8) of the Act then provides that the complainant has to be informed of the outcome of the review and any recommendations to any person exercising public functions.
- 8.12 Agencies will have a duty to publish data on the number of triggers received, how many were held not to meet the threshold, how many reviews were carried out and the number that resulted in further action.
- 8.13 Under the **Community remedy** police are required by reason of section 101 of the Act to prepare a community remedy document for its area and to also revise it from time to time. This document will be defined at section 101(2) as:

*...a list of actions any of which might, in the opinion of the local policing body, be appropriate in a particular case to be carried out by a person who—
(a) has engaged in anti-social behaviour or has committed an offence, and
(b) is to be dealt with for that behaviour or offence without court proceedings.*

- 8.14 The provisions at sections 101 to 103 of the Act are intended to give victims of low-level crime and anti-social behaviour a say in the punishment of offenders out of court⁶². Typically therefore, the community remedy will be used by police officers when dealing with low-level criminal damage, low value theft, minor assaults (without injury) and anti-social behaviour.
- 8.15 The options on the menu will depend on the views of the community in each police force area but could include, for example:

⁶² See especially section 102(3) of the Act

Hardwicke

- (a) mediation (for example, to solve a neighbour dispute);
- (b) the offender signing an acceptable behaviour contract – where they agree not to behave anti-socially in the future – or face more formal consequences;
- (c) participation in structured activities funded by the Police and Crime Commissioner/Mayor of London as part of their efforts to reduce crime; or
- (d) reparation to the community (for example, by doing local unpaid work for up to 10 hours).

9. Conclusion

9.1 The Act's main changes to those acting on behalf of LHAS and PRPs are, in the Injunction field, in relation to the availability of positive requirements and the consultation requirement whereas in possession work it is the availability of a new mandatory ground that stands out as the most important development.

9.2 How the new 'streamlined' approach to anti-social behaviour works out is of course unknown at present but for many landlords in many respects I suspect it is a case of plus ca change, plus c'est la même chose.

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April 2014

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