

# ANTI-SOCIAL BEHAVIOUR ACT 2003

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 1: Premises Where Drugs Used Unlawfully**

9. This part grants the police the power to close down premises being used for the supply, use or production of Class A drugs where there is associated serious nuisance or disorder. Service of a notice temporarily closes the premises to all of the public except the owner or those who habitually reside there, until a magistrates' court decides whether to make a closure order. The court must consider the notice within 48 hours. If it is satisfied the relevant conditions are met, the court can make a closure order which closes the premises altogether for a period of up to 3 months, with possible extension to a maximum of 6 months.

#### ***Section 1: Closure Notice***

10. *Subsection (1)* sets out the test which must be met before a police superintendent (or officer of higher rank) can authorise the issue of a closure notice. *Subsection (2)* requires that the superintendent must be satisfied that the local authority has been consulted and that reasonable steps have been taken to identify those living on the property or with an interest in it before the authority for the issue of the notice is given.
11. *Subsection (4)* sets out the contents of the closure notice. These must include details of the time and place of the court hearing in relation to a closure order and a statement that access to the property during the period of the notice is prohibited to anyone other than someone who is usually resident in or the owner of the premises. It must also contain information about local sources of housing and legal advice.
12. *Subsections (6) and (7)* set out requirements in relation to service of the notice. The notice must be attached to the building and given to people identified as living in or having an interest in the property or whose access to other premises may be adversely affected by a closure order. *Subsection (8)* makes clear that no drug specific criminal offence has to be proved before a notice can be served or an order made. *Subsection (9)* enables the Secretary of State by regulations to exempt premises or descriptions of premises from the application of this section.

#### ***Section 2: Closure Order***

13. Once a closure notice has been issued, the police must apply to the magistrates' court for the making of a closure order.
14. *Subsection (2)* provides that the court must hear the application within 48 hours. The 48 hours runs from posting of the notice on the property. *Subsection (3)* sets out the test of which the court must be satisfied before making a closure order. As well as being satisfied that the premises have been used for the unlawful supply, use or production of Class A drugs, and that the use of the premises is associated with serious nuisance or disorder, the court must be satisfied that the making of the order is necessary to prevent

future disorder or serious nuisance. An order may be made in relation to part only of the property affected by the notice (*subsection (8)*).

15. *Subsection (4)* sets out that the effect of the closure order is to close the premises altogether, including to owners and residents, for up to 3 months. *Subsection (5)* provides that the order may make special provision for access to any part of the building in which the premises are included (for example, stairways or shared parts). *Subsection (6)* allows the court to adjourn the hearing for up to 14 days to allow the occupier or someone else with an interest in the property to show why an order should not be made, for example because the problems have ceased or the occupiers have been evicted. The court can order that the closure notice continues to have effect during this period (*subsection 7*).

### ***Section 3: Closure order: enforcement***

16. When a closure order is made a constable or any other person authorised by the chief officer of police for the area in which the premises are situated may enter the property and secure it against entry by any other person, using reasonable force if necessary. These persons may also enter the premises at any time to carry out essential maintenance or repairs.

### ***Section 4: Closure of premises: offences***

17. This section creates offences of remaining in or entering property subject to a closure notice or order without reasonable excuse or of obstructing a constable or authorised person carrying out certain functions under these provisions. The maximum penalty is a fine of £5000, imprisonment for 6 months or both. There is a power of arrest for a constable in uniform in relation to these offences. The maximum period of imprisonment will, in due course, be increased to 51 weeks by provisions in the Criminal Justice Act 2003.

### ***Section 5: Extension and discharge of closure order***

18. This section allows the police to apply for an extension of the period for which the order has effect up to a maximum period of 6 months (including the period for which the original order(s) had effect). Such an application must be authorised by a superintendent (or police officer of higher rank), who must:
- have reasonable grounds for believing that the extension of the order is necessary for the purpose of preventing the occurrence of disorder or serious nuisance to the public; and
  - be satisfied that the local authority has been consulted about the intention to make the application.
19. *Subsection (6)* allows a constable, the local authority, persons on whom the closure notice was served under section 1 and any other person with an interest in the closed premises to apply for the order to be discharged at any time. *Subsection (9)* sets out requirements relating to the service of notice on persons summoned to appear before the court under this section.

### ***Section 6: Appeals***

20. This section allows for appeals to the Crown Court against closure orders and against a refusal to make one by all interested parties.

### ***Section 7: Access to other premises***

21. This section ensures that a court may make an order concerning access to any part of a building or structure in which closed premises are situated, where the part itself is not affected by a closure order. Thus, a person who occupies or owns such a part of

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(c.38) which received Royal Assent on 20 November 2003*

a building or structure may apply to the court for an order enabling him to retain the access to that part that he had before the closure order took effect (particularly if the closure order had rendered access to his part of the building or structure more difficult or impossible). The court may exercise its discretion by way of variation of the original order.

### ***Section 8: Reimbursement of costs***

22. This section allows the court to make an order that the owner of the premises must reimburse any costs incurred by the police or local authority in clearing, securing or maintaining the premises.

### ***Section 9: Exemption from liability for certain damages***

23. This section creates a partial exemption from liability in damages for the police in carrying out their functions under this Part. It does not extend to any acts in bad faith or acts which are in breach of the police's duty as a public authority to exercise their functions compatibly with the European Convention on Human Rights.

### ***Section 10: Compensation***

24. This section allows for compensation payments to be made by the court out of central funds where it is satisfied that:
- a person has suffered financial loss as a result of a closure notice being issued or a closure order having effect;
  - the person had no connection with the use of the premises subject to the notice or order for the supply, use or production of Class A drugs (such use having been associated with the occurrence of disorder or serious nuisance to the public);
  - if he is the owner or occupier, that he took reasonable steps to prevent that use; and
  - it is appropriate in all the circumstances to compensate the person for that loss.

*Subsection (3)* deals with the time within which an application for compensation must be made.

## **Part 2: Housing**

25. This part gives local authorities, housing action trusts and social landlords registered with the Housing Corporation new and more effective tools to deal with anti-social behaviour. The Bill also introduces a new duty on social landlords to publish their anti-social behaviour policies so that tenants and members of the public are informed about the measures that social landlords will use to address anti-social behaviour in their stock. In addition to the White Paper *'Respect and Responsibility'* these measures were the subject of public consultation from 2 April until 12 July 2002.

### ***Section 12: Anti-social behaviour: landlords' policies and procedures***

26. This section introduces a new section 218A into the Housing Act 1996. This requires certain social landlords to prepare and publish policies and procedures on anti-social behaviour, and to make them available to the public.
27. New section 218A(3) to (6) gives details relating to the times at which a statement of policies and procedures must be published and reviewed, and how the statement must be made available to the public. The duty comes into effect within 6 months of the date of commencement of this section.
28. New section 218A(7) requires social landlords to have regard to relevant guidance when preparing or reviewing their policies and procedures. Guidance may be issued to local housing authorities or housing action trusts in England by the Secretary of State or, in

Wales, by the National Assembly for Wales. Guidance to registered social landlords may be issued by the Housing Corporation in England or, in Wales, by the National Assembly for Wales.

***Section 13: Injunctions against anti-social behaviour on application of certain social landlords***

29. This section repeals sections 152 and 153 of the Housing Act 1996 and introduces new provisions allowing certain social landlords to apply for injunctions to prohibit anti-social behaviour which relates to or affects their management of their housing stock. *Subsection (3)* introduces new sections 153A, 153B, 153C, 153D and 153E into the Housing Act 1996.
30. New section 153A(1) provides that the conduct to which that provision applies is conduct which is capable of causing nuisance or annoyance (even if no complaint has been received) and which directly or indirectly relates to or affects the landlord's management of its housing stock.
31. New section 153A(2) to (5) sets out the conditions that have to be met before an injunction against anti-social behaviour can be granted. An injunction may be granted against any person whose behaviour could cause nuisance or annoyance to anyone in any of classes of people listed in S153A(4). These include:
  - Anyone who has a right to live in property owned or managed by the landlord (for example, tenants, licensees, long leaseholders and their families)
  - Anyone who has a right to live in any other property in the neighbourhood (for example owner occupiers, tenants of other landlords).
  - Anyone else lawfully in such property or in the neighbourhood. This could include anyone visiting family or friends, using local facilities, passing through, or working in the neighbourhood.
  - Staff employed in connection with the management of the landlord's stock.
32. The conduct need not cause any such nuisance or annoyance to any specific individual. It is sufficient that it is capable of having that effect.
33. New section 153A(5) provides that the anti-social behaviour need not occur in the vicinity of the landlord's housing accommodation. However the behaviour will still need to be related, at least indirectly, to the landlord's management of its accommodation. For example a landlord should be able to apply for an injunction to protect a tenant who has been regularly harassed by other residents of an estate even if the incident itself which gave rise to the injunction application happened elsewhere. The anti-social behaviour in this example is clearly related to the tenant's occupation of a home owned or managed by the landlord.
34. New section 153B allows specified landlords to apply for injunctions where someone has used or threatened to use their housing for an illegal purpose. This could cover, for example, drug dealing or use of the premises as a brothel.
35. New section 153C allows the court granting an injunction under new sections 153A or 153B to attach a power of arrest or to exclude a person from specified premises or a specified area where there is the use or threat of violence or a significant risk of harm to any person mentioned in new section 153A(4) (see above). Consequently a power of arrest will be available in cases where there is a significant risk of harm even if there has been no actual or threatened violence. Significant risk of harm is defined in new section 153E(12). It could include emotional or psychological harm. This could apply, for example, in cases of racial or sexual harassment. The existing provisions, which are being repealed, only allow a power of arrest when there is either violence or threatened violence together with a significant risk of harm.

36. New section 153D applies in relation to injunctions sought by a local authority, a housing action trust, a registered social landlord or a charitable housing trust on the grounds of a breach or anticipated breach of a tenancy agreement by a tenant. If the behaviour is prohibited by the terms of the tenancy agreement and satisfies the criteria described in paragraphs (a) and (b) of new section 153D(1) (as outlined in the next paragraph), the court may exclude a person from specified premises or a specified area and attach a power of arrest to any provision of the injunction.
37. The breach (or anticipated breach) of the tenancy agreement must relate to conduct which is capable of causing nuisance or annoyance to any person. The tenant may have engaged or threatened to engage in the conduct directly or have allowed, incited or encouraged another person to engage in such conduct. In addition the conduct must include violence or the threat of violence or a significant risk of harm to any person.
38. New section 153E includes provisions supplementing sections 153A to 153D, including provisions for the variation or discharge of an order. New subsection 153E(2)(b) confirms that an injunction under new section 153A, 153B or 153D may exclude someone from his own place of residence. New subsection 153E(4) allows an injunction under sections 153A, 153B or 153D to be made without notice having been given to the respondent, although the respondent must subsequently be given the chance to make representations. *Subsections (4) to (7)* of section 13 make consequential amendments to housing legislation to give effect to the new provisions for injunctions under new sections 153A, 153B and 153D of the Housing Act 1996.

#### ***Section 14 : Security of tenure: anti-social behaviour***

39. *Subsection (1)* amends section 82 of the Housing Act 1985 to allow a secure tenancy to be brought to an end by a demotion order. *Subsection (2)* inserts new section 82A into the Housing Act 1985.
40. New section 82A of the 1985 Act provides that a local authority, a housing action trust or a registered social landlord can apply for a demotion order. A demotion order will end the secure tenancy on a specified date. If the tenant remains in occupation, a new demoted tenancy will begin on the same date. The court may only make the order if the tenant, another resident of or visitor to the tenant's home has behaved in a way which is capable of causing nuisance or annoyance or if such a person has used the premises for illegal purposes. In addition the court must be satisfied that it is reasonable to make the order.
41. New section 82A(8) of the 1985 Act defines what is meant by a demoted tenancy by reference to new section 143A of the Housing Act 1996 and new section 20B of the Housing Act 1988. Subsections (3)(c) and (d) of new section 82A confirm that any rent owed or overpaid on the tenant's rent account under the secure tenancy will be transferred across to the demoted tenancy. Subsection (5) of new section 82A sets out certain basic terms of the demoted tenancy at the point at which it is created.
42. *Subsection (3)* of section 14 amends section 83 of the Housing Act 1985 to ensure that landlords are required to serve notice on secure tenants before issuing demotion proceedings, and specifies the information which the notice should contain.
43. *Subsection (4)* of section 14 inserts new section 6A into the Housing Act 1988, dealing with the demotion of assured tenants of registered social landlords. A demotion order will end the assured tenancy on a specified date. If the tenant remains in occupation, a new demoted assured shorthold tenancy will begin on the same date. The court may only make the order if the tenant, another resident of or visitor to the tenant's home has behaved in a way which is capable of causing nuisance or annoyance or if such a person has used the premises for illegal purposes. In addition the court must be satisfied that it is reasonable to make the order.

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44. Subsection (3)(c) and (d) of new section 6A of the 1988 Act confirm that any rent owed or overpaid on the tenant's rent account under the secure tenancy will be transferred across to the new demoted tenancy. Subsections (4A) and 4(B) of the new section 6A require landlords to serve notice on assured tenants before issuing demotion proceedings, and specify the information which the notice should contain. Subsection (5) of new section 6A sets out certain basic terms of the demoted tenancy at the point at which it is created.
45. *Subsection (5)* of section 14 introduces Schedule 1, which amends the Housing Act 1996 and the Housing Act 1985 and sets out the legal position regarding demoted tenancies where the landlord is a local authority or a housing action trust.

### ***Section 15: Demoted assured shorthold tenancies***

46. *Section 15* introduces new section 20B into the Housing Act 1988 which sets out the legal basis for the form of demoted tenancy that can be used by registered social landlords. A demoted assured shorthold tenancy is an assured shorthold tenancy during the demoted period but there is provision for the demoted assured shorthold tenancy automatically to turn into an assured tenancy after one year unless the landlord has issued a notice of proceedings for possession during that year.
47. If a notice is issued the tenancy will remain a demoted assured shorthold tenancy beyond the first year until the notice is withdrawn or six months have passed and no proceedings have been issued; or, if proceedings have been issued, until they are determined in favour of the tenant.
48. A demoted assured shorthold tenancy can be ended at any time during the demotion period. Unlike non-demoted assured shorthold tenancies a possession order granted on the basis that the landlord has given the required notice under section 21(4) of the Housing Act 1988 can take effect within the first six months of the tenancy.

### ***Section 16: Proceedings for possession: anti-social behaviour***

49. This section introduces new provisions relating to the court's exercise of discretion in possession proceedings. *Subsection (1)* introduces a new section 85A into the Housing Act 1985. *Subsection (2)* introduces new section 9A into the Housing Act 1988.
50. The effect of these changes is that when a court is considering whether it is reasonable to grant a possession order against a secure or assured tenant under one of the nuisance grounds for possession, the court must give particular consideration to the actual or likely effect which the anti-social behaviour has had or could have on others.

### ***Section 17: Devolution: Wales***

51. This section ensures that all functions of the Secretary of State arising from the amendments to the Housing Acts mentioned are, so far as exercisable in relation to Wales, to be carried out by the National Assembly for Wales.

## **Part 3: Parental Responsibilities**

### ***Section 18: Parenting Orders under the 1998 Act***

52. This section amends the existing power to make parenting orders contained in section 8 of the Crime and Disorder Act 1998 by removing the restriction that guidance and counselling sessions cannot be provided more than once in any week. The term "sessions" is replaced by the term "programme". The new section also inserts a new power to allow a programme to consist of or to include a residential course provided the court is satisfied that this is likely to be more effective than a non-residential course and that any interference with family life is proportionate.

***Section 19: Parenting contracts in cases of exclusion from school or truancy***

53. This section sets out provisions for schools and local authorities to enter into parenting contracts. Local education authorities (LEAs) and schools will not be required to use parenting contracts and parents will not be required to sign them. For parents, signing a contract will be voluntary.
54. *Subsections (1) and (2)* explain the circumstances in which a school-related parenting contract can be made. They are where a pupil has:
- been excluded from school for a fixed period or permanently; or
  - failed to attend regularly at the school at which he is registered.
55. *Subsection (3)* enables local education authorities and schools to make such contracts with parents. *Subsection (4)* defines a parenting contract as a document containing (a) a statement by the parent that he agrees to comply with the requirements laid down by the contract for the specified period; and (b) a statement by the local education authority or school governing body that they will provide or arrange support to the parent to help them comply with the requirements. *Subsection (5)* provides for the requirements to include attending counselling or guidance sessions. *Subsection (6)* defines the purpose of the requirements as improving the pupil's behaviour and/or securing his regular attendance at school. *Subsection (8)* means that parenting contracts cannot result in certain types of legal action by either party – these are actions for breach of contract and for civil damages.
56. This section complements section 25, which enables youth offending teams to arrange parenting contracts for parents of children who have engaged or are likely to engage in criminal conduct or anti-social behaviour.

***Section 20: Parenting orders in cases of exclusion from school***

57. Existing legislation provides for parenting orders for parents convicted of school attendance offences. This section complements that provision by enabling LEAs to apply to magistrates' courts for parenting orders for parents of children who have been excluded from school.
58. *Subsection (1)* defines the circumstances in which parenting orders in cases of exclusion from school may be made. These are where a pupil has been excluded from school for a fixed term or permanently and where conditions prescribed by regulations made the Secretary of State for Education and Skills for England or the National Assembly for Wales are met.
59. *Subsection (2)* and *subsection (3)* enables local education authorities (LEAs) to apply for parenting orders in such circumstances and magistrates' courts to make them. *Subsection (4)* defines a parenting order as an order that requires the parent to comply with the requirements specified in the order for a period of up to one year, and with one exception, set out in *subsection (5)*, attend a counselling or guidance programme specified by the LEA or school representative overseeing the order (the responsible officer) for up to three months. *Subsection (5)* makes the requirement to attend a counselling or guidance programme an optional part of an order made for a parent who has already been subject to a parenting order. *Subsections (6) to (8)* state that the counselling or guidance programme may include a residential component when the court considers that this is likely to be more effective than a non-residential course and where any interference with family life is proportionate.
60. An LEA may apply for a parenting order as a first response or it may make an application following a parent's refusal to sign, or breach of, a parenting contract. This section complements section 26, which enables youth offending teams to apply for parenting orders for parents of children who have engaged or are likely to engage in criminal conduct or anti-social behaviour.

### ***Section 21: Parenting orders: supplemental***

61. This section relates to the process of making a parenting order under the previous section. *Subsection (1)* prescribes some of the things a court must take into account in deciding whether to make a parenting order; these include any previous refusal by the parent to sign a parenting contract, or any failure to comply with a contract which they have signed. *Subsection (2)* requires the court to obtain and consider information about a pupil's family circumstances and the effect on an order on those circumstances before making an order.
62. *Subsection (3)* applies section 9(3) to (7) of the Crime and Disorder Act 1998 (the Act that established parenting orders) to these parenting orders. These provisions:
- require the court to explain to the parent the effect of the order and the consequences of breaching it;
  - specify that, as far as practical, the requirements in the order and directions given under it should not conflict with a parent's religious beliefs or interfere with a parent's work or education;
  - enable the court to discharge or vary the order; and
  - make parents convicted of failing to comply with requirements in or directions given under an order liable to a fine.
63. *Subsection (4)* enables regulations to be made by the Secretary of State for Education and Skills for England and the National Assembly for Wales to make provision as to how the costs associated with the requirements of a parenting order (including counselling or guidance sessions) should be met. *Subsection (5)* allows the Secretary of State for Education and Skills for England and the National Assembly for Wales to issue guidance which local education authorities and responsible officers would have to take into account in deciding whether to apply for a parenting order and what counselling or guidance sessions should be specified.

### ***Section 22: Parenting orders: appeals***

64. *Subsection (1)* provides that an appeal against a school exclusion-related parenting order is to the Crown Court. *Subsection (2)* applies provisions of the Crime and Disorder Act 1998 to such appeals. These provisions:
- enable the Crown Court to make any orders needed to give effect to its determination of the appeal; and
  - require any order made by the Crown Court (other than an order for re-hearing by the magistrates' court) to be treated as an order by the magistrates' court from which the appeal was brought.

### ***Section 23: Penalty notices for parents in cases of truancy***

65. Parents of a registered pupil whose child fails to attend school regularly are guilty of an offence. At present, prosecution is the only available sanction. Fixed penalty notices will provide an alternative. This section enables authorised local education authority and school staff and the police to issue such notices, although there is no requirement for them to do so.
66. Section 444 of the Education Act 1996 provides that a parent commits an offence if his or her compulsory school age child who is a registered pupil fails to attend school regularly. Subsection (1) of this section adds two new sections (444A and 444B) after section 444.
67. New section 444A(1) enables an authorised officer to issue a penalty notice where he believes that a parent has committed an offence under section 444 and that the



pupil in question is registered at a relevant school. New section 444A(2) specifies that a penalty notice offers the parent the opportunity of discharging any liability to conviction for the offence by paying a penalty in accordance with the notice (the notice will specify the amount to be paid and deadlines for payment). New sections 444A(3) and 444A(4) prevent the parent from being prosecuted for the particular offence for which the notice was issued until after the final deadline for payment has passed and from being convicted of that offence if he pays a penalty in accordance with the notice. New section 444A(5) provides for penalties to be paid to local education authorities. New section 444A(6) enables local authorities to use revenue for purposes specified in regulations. Local authorities will be able to use such revenue to pay for the administration and enforcement of penalty notices.

68. New section 444B(1) enables the Secretary of State to make regulations governing the form and content of penalty notices, the monetary value of penalties, how the local authority to which a penalty is payable will be decided, methods by which penalties may be paid, records to be kept and the types of staff whom local education authorities or headteachers may authorise to issue notices. The regulations will also govern the circumstances in which penalty notices may be issued, the withdrawal of penalty notices in prescribed circumstances and preventing or stopping prosecution for the particular offence for which the notice was issued, the issuing certificates confirming payment of the penalty, the action to be taken if a penalty is not paid and codes of conduct relating to penalty notices.
69. The Department for Education and Skills will consult local authorities, headteachers and the police about implementation before determining these details. Section 444B(2) allows the regulations provide for different penalty levels for different circumstances and payment periods. Among other things, this makes lower penalties for early payment possible. Section 444B(3) requires local education authorities, headteachers and all authorised officers to have regard to guidance on penalty notices published by the Secretary of State for Education and Skills.
70. *Subsection (2)* amends section 572 of the Education Act 1996 (which deals with the service of notices) to make it clear that a penalty notice may be handed to a parent as well as delivered to his home.
71. *Subsections (3) to (8)* amend Schedules 4 and 5 of the Police Reform Act 2002 to enable community support officers and accredited persons to issue penalty notices for truancy. They will be able to issue fixed penalty notices to parents in their police area regardless of where the child is at school. *Subsections (9) and (10)* allow the National Assembly for Wales to make an order applying these provisions to Wales. If such an order is made regulations for Wales will be made and guidance issued by the National Assembly.

### ***Section 25: Parenting contracts in respect of criminal conduct and anti-social behaviour***

72. This section makes provision for parenting contracts to be entered into when a child has been referred to a youth offending team.
73. *Subsections (1) and (2)* set out the circumstances in which a parenting contract can be made. This is where a child or young person has been referred to a youth offending team and where a member of that team has reason to believe that he has engaged, or is likely to engage, in criminal conduct or anti-social behaviour.
74. *Subsection (3)* explains that a parenting contract is a document containing a statement by the parent that he will comply with the requirements specified in the contract and a statement by the youth offending team that it agrees to provide support to the parent to help him comply with the requirements of the contract. *Subsection (4)* states that this may include a requirement for the parent to attend a counselling or guidance programme.

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75. *Subsection (5)* describes the purpose of a parenting contract being to prevent the child or young person from engaging in criminal conduct or anti-social behaviour or further criminal conduct or anti-social behaviour. *Subsection (6)* specifies that the contract must be signed by both the parent and on behalf of the youth offending team.
76. *Subsection (7)* sets out that there are no obligations in contract or tort for the breach of the contract. However, the youth offending team could use its experience of the parents' engagement during the contract process in any future application for a parenting order under section 26.
77. *Subsection (8)* requires youth offending teams to have regard to guidance on parenting contracts which may be issued by the Secretary of State.
78. This section complements section 19 which enables local education authorities or governing bodies to arrange parenting contracts for parents of children who have been excluded from school for a fixed period or have failed to regularly attend the school at which they are registered.

***Sections 26 – 29: Parenting orders in respect of criminal conduct and anti-social behaviour***

79. **Sections 26 - 29** make provision to extend the circumstances in which parenting orders in respect of criminal conduct or anti-social behaviour can be made under sections 8 to 10 of the Crime and Disorder Act 1998. *Subsections (1) and (2)* of section 26 outline the circumstances in which the youth offending team can apply to the court for a parenting order. *Subsection (3)* sets out the circumstances in which the court can make the order. *Subsection (4)* sets out what the requirements of the parenting order will be.
80. *Subsection (5)* of section 26 mirrors the provision in section 8(5) of the Crime and Disorder Act 1998 that a parent is not necessarily required to attend a counselling or guidance programme when a parent has already been subject to a parenting order. However, if a parent has entered into a parenting contract including a guidance or counselling programme he may still be required to attend such a programme by a parenting order. *Subsection (6)* allows the programme to include a residential component where the conditions set out in *subsections (7) and (8)* are met.
81. *Subsection (1)* of section 27 provides that in deciding whether to make a parenting order, the court must consider any refusal by the parent to enter into a parenting contract under section 25 or any failure to comply with the requirements of such a contract. *Subsection (2)* of section 27 requires that where the child or young person is below 16 the court must, before it makes the order, consider the likely effect of the order on his family circumstances. *Subsection (3)* of section 27 applies provisions of the Crime and Disorder Act 1998 to these parenting orders. These provisions:
  - require the court to explain to the parent the effect of the order and the consequences of breaching it;
  - specify that, as far as practical, the requirements in the order and directions given under it should not conflict with a parent's religious beliefs or interfere with a parent's work or education;
  - enable the court to discharge or vary the order; and
  - make parents convicted of failing to comply with requirements in or directions given under an order liable to a fine.
82. *Subsection (4)* of section 27 requires youth offending teams to have regard to guidance on these parenting orders which may be issued by the Secretary of State.
83. *Subsection (1)* of section 28 specifies that appeals against parenting orders under section 26 will be to the Crown Court and *subsection (2)* applies the mechanisms for appeal set out in section 10 of the Crime and Disorder Act 1998.

84. **Section 29** sets out the meaning of terms used in sections 25-28. “Anti-social behaviour” means behaviour which causes or is likely to cause harassment, alarm or distress to one or more other persons not of the same household as himself and “criminal conduct” is defined to include behaviour by children below the age of criminal responsibility that would be criminal were they above that age.
85. “Child” and “young person” have the same meaning as in the Crime and Disorder Act 1998. A “child” is a person under the age of 14. A “young person” is a person who has attained the age of 14 and is under the age of 18. All reference to “parent” includes “guardian” which takes its meaning from the Children and Young Person Act 1933 and includes anyone who, in the opinion of the court, has for the time being the care of the child or young person.
86. A “youth offending team” has the same definition as in the Crime and Disorder Act 1998. The Crime and Disorder Act 1998 sets out that it is the duty of each local authority to establish for their area one or more youth offending teams. This will include at least one of the following:
- an officer of a local probation board;
  - a social worker of a local authority social services department;
  - a police officer;
  - a person nominated by a health authority any part of whose area lies within the local authority's area;
  - a person nominated by the chief education officer appointed by the local authority under section 532 of the Education Act 1996.
87. *Subsection (2)* of section 29 provides that the definition of “youth justice services” in section 38(4) of the Crime and Disorder Act will be amended to include youth offending teams performing functions relating to parenting contracts and orders under sections 25-27.

#### **Part 4: Dispersal of Groups Etc.**

##### ***Section 30: Dispersal of groups and removal of person under 16 to their place of residence***

88. This section contains new police powers to disperse groups of 2 or more and return young people under 16 who are unsupervised in public places after 9pm to their homes.
89. These new powers will only be available where an authorisation has been made by an officer of at least the rank of superintendent regarding a designated area. *Subsection (1)* sets out the conditions which need to exist before this authorisation can be made. Before giving an authorisation, the officer must be satisfied that significant and persistent anti-social behaviour has occurred in the locality and that intimidation, harassment, alarm or distress has been caused to members of the public by the presence or behaviour of groups in that locality. *Subsection (2)* provides for an authorisation to be given for a period which does not exceed 6 months.
90. When an authorisation has been made regarding a specific area *subsection (3)* sets out the circumstances where a constable in uniform can give the directions set out in *subsection (4)*. *Subsection (5)* provides exemptions for lawful industrial disputes and public processions. *Subsection (6)* allows the police to return young people under 16 who are unsupervised in public places in areas covered by an authorisation after 9pm to their homes.

***Section 31: Authorisations: supplemental***

91. This section sets out the process by which an authorisation can be made to designate an area for the purposes of the powers outlined in section 30. *Subsection (1)* sets out that the authorisation must be in writing, signed and specify the locality, the period of the authorisation and the grounds for giving it. *Subsection (2)* ensures that the local authority must agree to any authorisation before it is given by the relevant officer. *Subsection (3)* details the publicity arrangements for the authorisation and *subsection (5)* ensures that it is published before the beginning of the authorisation period. *Subsections (6) to (9)* deal with withdrawal of an authorisation.

***Section 32: Powers under section 30: supplemental***

92. This section provides further detail regarding the directions that a constable can make under section 30. *Subsection (1)* sets out how a direction under *subsection (4)* of section 30 may be given, withdrawn or varied. *Subsection (2)* sets out the offence of knowingly contravening a direction and *subsection (3)* introduces a power of arrest. *Subsection (4)* ensures that where the power to take a young person under 16 home in *subsection (6)* of section 30 is exercised, the local authority should be notified.

***Section 33: Powers of community support officers***

93. This section amends the Police Reform Act to allow community support officers to be given the powers to disperse groups and remove persons under 16 to their place of residence as described in section 30. Community support officers are civilian employees of police forces designated by chief officers to exercise a range of powers within the relevant police area.

***Section 34: Code of practice***

94. This section gives the Secretary of State the power to issue a code of practice about the exercise of these powers. *Subsection (1)* states that the code of practice will cover the giving or withdrawal of the authorisations and the exercise of the power to disperse groups and return young people under 16 who are unsupervised in public places after 9 pm to their homes. *Subsection (2)* allows the Secretary of State to revise the code of practice. *Subsection (3)* requires the Secretary of State to lay the code and any revisions before Parliament. *Subsections (4) and (5)* requires both the officers giving the authorisation and exercising the powers under this Part to have regard to the code.

***Section 35: Authorisations by British Transport Police***

95. This section ensures that the powers to make authorisations and to make directions in this Part of the Act apply to British Transport Police officers.

**Part 5: Firearms**

96. This part of the Act introduces a number of changes to the Firearms Act 1968 with a view to tackling the misuse of air weapons and imitation firearms, and introducing stricter controls over especially dangerous air weapons.

***Section 37: Possession of air weapon or imitation firearm in public place***

97. This section amends section 19 of the 1968 Act, which deals with the carrying of firearms in a public place, so as to include air weapons and imitation firearms. These amendments mean it will be an offence to carry an air weapon (whether loaded or not) or an imitation firearm in a public place without lawful authority or reasonable excuse. An "imitation firearm" is defined in section 57(4) of the 1968 Act. It covers anything which has the appearance of being a firearm whether or not it is capable of discharging a shot or bullet. *Subsection (3)* makes this an arrestable offence by adding the new offence to

the list of arrestable offences set out in Schedule 1A to the Police and Criminal Evidence Act 1984. This will be subject to a maximum penalty of 6 months imprisonment.

### ***Section 38: Air weapons: age limits***

98. This section makes a number of amendments to sections 22, 23 and 24 of the Firearms Act 1968 in order to change the age at which a young person may own an air weapon and to tighten up on when it may be used unsupervised. The present limit is raised from fourteen to seventeen and it will also be an offence for anybody to give an air weapon to a person under seventeen. This means that no-one under 17 will be able to have an air weapon in their possession at any time unless supervised by someone who is aged at least 21 or as part of an approved target shooting club or shooting gallery. However, 14 to 16 year olds (inclusive) will be permitted to have air weapons unsupervised when on private land, provided they have the consent of the occupier. It will be an offence for them to shoot beyond the boundaries of that land.

### ***Section 39: Prohibition of certain types of weapon***

99. This section contains a ban on air weapons that use the self-contained gas cartridge system, which are vulnerable to conversion to fire conventional ammunition and have been increasingly used in gun crime. The section adds the weapons to section 5(1) of the 1968 Act, thereby making them prohibited weapons which cannot be possessed, purchased, acquired, manufactured, sold or transferred without the authority of the Secretary of State. Provision is made for existing owners of the weapons to retain possession, provided they obtain a firearms certificate from the police.
100. This section also creates an order making power that will enable the Secretary of State to prohibit or introduce other controls in respect of any air weapon which appears to him to be especially dangerous.

## **Part 6: the Environment**

### **Noise**

#### ***Sections 40: Closure of noisy premises***

101. **Section 40** allows a chief executive of a local authority to issue a closure order in relation to licensed premises or premises operating under a temporary event notice which are causing a public noise nuisance. *Subsection (1)* sets out the circumstances under which a closure order can be made. *Subsection (3)* states that the closure order can apply for a maximum of 24 hours, starting from the time when the notice was issued to the manager. *Subsections (4)* and *(5)* provide that if a person disobeys a closure order they are committing an offence and can receive a penalty of up to 3 months imprisonment or a fine of up to £20,000.

#### ***Sections 41: Closure of noisy premises: supplemental***

102. *Subsection (1)* of section 41 outlines the circumstances under which an order can be cancelled, and requires the officer issuing the order to inform the relevant licensing authority. *Subsection (2)* sets out the process by which the chief executive officer of a local authority can authorise environmental health officers to issue closure orders. *Subsection (3)* defines terms used in this section and in section 40.

#### ***Section 42: Dealing with noise at night***

103. This section amends the Noise Act 1996, which currently gives powers to deal with noise at night (by way of warning notices, fixed penalties etc.). These powers have previously only applied to a local authority (in England, Wales or Northern Ireland) that adopts to apply them in its area. *Subsection (2)* removes the adoptive nature of the powers in respect of England and Wales, thereby bestowing these powers on all English

and Welsh local authorities. *Subsection (3)* removes the previously associated duty (once the powers had been adopted) to take reasonable steps to investigate a complaint, and substitutes a discretionary power to take such steps in response to a complaint. *Subsection (4)* removes a provision that applied to the situation where one authority had adopted powers under the Act but a neighbouring authority had not, as this will no longer apply. *Subsection (5)* makes provision as to what local authorities can do with penalty receipts.

### **Penalty Notices for graffiti and fly-posting**

104. *Sections 43 – 47* give authorised local authority officials the ability to issue fixed penalty notices to offenders who have perpetrated acts of graffiti or fly posting. The intention is to levy the penalties only on the persons actually committing these acts, and not in the case of fly-posting on the person (unless he is one and the same) whose goods or services are advertised on the poster.

#### ***Section 43: Penalty notices for graffiti or fly-posting***

105. *Subsection (1)* sets out the power for the local authority official to issue a penalty for the relevant offence (defined at section 44). *Subsection(2)* excludes from the scope of such offences capable of being dealt with by means of a fixed penalty notice any that is racially or religiously targeted or motivated. *Subsection (3)* restricts the possibility of being issued with a fixed penalty notice in lieu of prosecution for an offence under s.224(3) Town and Country Planning Act 1990 to the person personally affixing or placing the unlawful advertisement in question. *Subsection (4)(a)* provides that offenders have 14 days in which to pay the penalty, after which prosecution for the offence may be initiated. *Subsection (4)(b)* sets out that no proceedings may be brought where payment of the fixed penalty has been made within the 14 day period. *Subsection (5)* provides that in issuing a fixed penalty a local authority officer must provide a written statement setting out the particulars of the offence. *Subsection (6)(a), (b) and (c)* sets out that the notice setting out the particulars of the offence must state that legal proceedings will not be initiated until after 14 days, the amount of the fixed penalty and details of where and to whom the penalty should be paid.
106. *Subsection (7)* provides that payment of a penalty may be made by pre-paying and posting a letter containing the full amount of the penalty (in cash or otherwise) to the person named on the notice. *Subsection (8)* provides that where a letter is sent containing payment of the penalty, that payment is deemed as having been made at the time the letter would ordinarily be expected to be delivered. *Subsection (9)* provides that the penalty notice shall be in such form as the “appropriate person” (i.e. the Secretary of State, in England, or the National Assembly for Wales, in Wales) shall prescribe. *Subsection (10)* provides that the penalty for these offences is £50. *Subsection (11)* provides that the appropriate person may subsequently change the amount of the fixed penalty by means of an order (i.e. a statutory instrument).

#### ***Section 44: Relevant offences***

107. This section describes the offences in respect of which fixed penalty notices may be issued, being the graffiti-type and fly-posting-type offences otherwise prosecutable under the enactments listed at *subsection (1)(a)-(f)*. It is understood that graffiti-type offences are almost always prosecuted under the Criminal Damage Act 1971, although the enactments listed at *subsection (1)(a),(b),(d) and (e)* contain provisions which might also equate to the same offence.

#### ***Section 45: Penalty receipts***

108. *Subsection (1)* provides that penalties issued under section 43 are payable to the local authority. *Subsection (2)* sets out that a local authority officer may make a statement/certificate stating the facts about payments which may be used in evidence in any

proceedings. *Subsection (3)* provides that any sums received by a local authority from fixed penalties may be used by it only for the purposes of its “qualifying functions” (being its functions under section 43 and any subsequently so specified in Regulations made by the appropriate person). *Subsection (4) and (5)* relate to the qualifying functions. *Subsection (6)* sets out that the local authority must provide the appropriate person with information relating to the use of the penalty receipts. *Subsection (7)* provides that the appropriate person may, by Regulations, make provision for what local authorities must do with receipts if they are not being spent, and make provision for appropriate accounting arrangements. *Subsection (8)* says that such Regulations may provide that where a local authority has not spent these receipts they may be required to surrender them to another person (including the appropriate person). *Subsection (9)* sets out that the appropriate person must consult with local authorities and others he considers appropriate before making any Regulations under this section.

#### ***Section 46: Powers of police civilians***

109. *Subsection (1)* amends Schedule 4 to the Police Reform Act 2002 to include powers for a community support officer to issue penalty notices in respect of graffiti and fly posting (as they currently have for issuing penalties in respect of littering and dog fouling). *Subsection (2)* amends Schedule 5 to the Police Reform Act 2002 in respect of powers of accredited persons to issue fixed penalty notices to include being able to do so in respect of graffiti and fly-posting.

#### ***Section 47: Interpretation***

110. *Subsection (1)* defines “advertisement”, “land” “appropriate person”, “authorised officer”, “local authority”, “racial group” and “religious group”. *Subsection (2)* applies a provision of the Crime and Disorder Act 1998. *Subsection (3)* permits the appropriate person to issue guidance to local authorities in respect of the exercise of their officers’ discretion to issue fixed penalty notices under section 43 and about the giving of such notices. The intention is to specify that such notices are appropriate only in the case of “minor” instances of graffiti or fly-posting; where major criminal damage has been done, criminal prosecution will continue to be the appropriate course.

### **Removal of graffiti**

#### ***Section 48: Graffiti removal notices***

111. *Subsections (1) and (2)* enable a local authority to serve a “graffiti removal notice” on the owners of street furniture, statutory undertakers and educational institutions whose property is defaced with graffiti that is either detrimental to the amenity of the area or offensive. *Subsection (3)* sets out that the notice will require them to remove the graffiti within a specified period of time, a minimum of 28 days. *Subsections (4) and (5)* state that if the person responsible for the property fails to remove the graffiti, the local authority can intervene and clean up the graffiti. *Subsection (6)* requires that the notice should detail the consequences of non-compliance and *subsection (7)* sets out the process for serving a notice. *Subsection (8)* allows that the local authority may affix a notice to the offending surface if they are unable to locate the person responsible. *Subsections (9) and (10)* define the surfaces covered, *subsection (11)* sets out whom the notice should be served upon and *subsection (12)* provides the definition of remaining terms.

#### ***Section 49: Recovery of expenditure***

112. *Section 49* sets out the process for local authorities to recover costs from the persons responsible for the property they clean under section 48(4). *Subsection (1)* allows the local authority to recover costs if the expenditure claimed is reasonable. *Subsection (2)* requires that the local authority concerned must have previously served a notice on the

persons concerned, detailing the expenditure to be recovered. *Subsection (3)* sets out the process for serving a notice.

### ***Section 50: Guidance***

113. **Section 50** requires the Secretary of State (or National Assembly for Wales) to issue guidance on the operation of these sections, with which local authorities must comply.

### ***Section 51: Appeals***

114. **Section 51** sets out grounds and processes for appeal. *Subsection (1)* allows appeal to be made to a magistrates' court within 21 days of the serving of the notice. *Subsection (2)* allows appeal on the grounds that the graffiti does not merit removal or in connection with the notice. Under *subsection (3)* any notice is suspended pending the appeal. *Subsection (4)* requires the court either to quash or modify the notice, or to dismiss the appeal. *Subsection (5)* allows the court to extend the period specified in the notice when it does not allow the appeal. *Subsection (6)* allows appeal on the grounds that the amount charged is excessive. *Subsection (7)* requires the court either to confirm the amount the authority seeks to recover or to substitute a lower amount.

### ***Section 52: Exemption from liability in relation to graffiti removal notices***

115. **Section 52** sets out the terms of the exemption from liability for damages that protects those taking action to remove the graffiti under section 48(4).

## **Advertisements**

### ***Section 53: Display of advertisements in contravention of regulations***

116. This section increases, from level 3 (£1,000) to level 4 (£2,500), the maximum level of penalty for an offence under s.224(3) of the Town and Country Planning Act 1990 (i.e. displaying an advertisement in contravention of Regulations made under s.220 of the Act - currently the [Town and Country Planning \(Control of Advertisements\) Regulations 1992 \(S.I. 1992/666\)](#)). The increase recognises the growing incidence of fly-posting and the need to have a more punitive deterrent for those responsible for the crime. The section has the effect of raising the maximum penalty for all advertisements displayed in contravention of the Regulations.

## **Aerosol Paints**

### ***Section 54: Sale of aerosol paint to children***

117. This section makes it an offence to sell aerosol spray paints to persons aged under 16. The objective is to reduce the incidence of criminal damage caused by acts of graffiti. *Subsection (2)* contains a definition of aerosol spray paints. *Subsection (3)* sets out the maximum penalty for the offence which is a fine of £2,500. *Subsection (4)* provides a defence for those who took all reasonable steps to determine the purchaser's age and reasonably believed he was 16 or over. *Subsection (5)* provides a defence for someone who is charged with an offence but did not carry out the sale themselves (such as a shopkeeper) if they took all reasonable steps to avoid the commission of an offence.

## **Waste and litter**

### ***Section 55: Unlawfully deposited waste etc***

118. This section gives waste collection authorities (as defined in section 30(3)(a), (b) and (bb) of the Environmental Protection Act 1990) in England and Wales a strategic role for dealing with the illegal deposit or other disposal of waste (or "fly-tipping"), facilitates the definition of this role further to the receipt of statutory directions and extends the range of powers available to them. This should lead to better enforcement



of current legislation, a significant increase in investigation activity, better detection of the perpetrators of the crime and, eventually, a reduction in levels of unlawfully deposited waste.

119. *Subsections (1) and (2)* correct an error in the [Control of Pollution \(Amendment\) Act 1989 \(c. 14\)](#). *Subsections (1) and (3)* amend the [Control of Pollution \(Amendment\) Act 1989 \(c.14\)](#) to give waste collection authorities in England and Wales the powers to stop, search and (after the issue of a warrant) seize a vehicle they suspect of being used for the unlawful deposit of waste. *Subsection (4)*, by means of an amendment to the Environmental Protection Act 1990 (introducing to that Act a new section 59A), gives the Secretary of State the power to issue statutory directions to clarify the roles and responsibilities in the exercise of their powers under section 59 of that Act of the waste regulation authority (the Environment Agency) and waste collection authorities when dealing with illegally deposited waste.
120. *Subsection (5)* amends section 71 of the Environmental Protection Act 1990 so as to provide that any of these authorities may be required to supply the Secretary of State with such information as he shall specify in relation to the categories and quantities of waste that they have dealt with whether under section 59 or under any other enactment in respect of any unlawful deposit or disposal of waste in contravention of section 33 of the 1990 Act. *Subsection (10)* provides that this power and the power under subsection (5) is exercisable by the National Assembly for Wales in Wales. *Subsections (6) to (9)* amend section 108 of the Environment Act 1995 to give waste collection authorities certain powers relating to the investigation of incidents of unlawfully deposited waste.

### ***Section 56: Extension of litter authority powers to take remedial action***

121. This section amends section 92(10) of the Environmental Protection Act 1990 to remove the barrier which currently prevents local authorities from entering relevant land (Crown land or land owned by a Statutory Undertaker), clearing that land of litter, and recovering its costs through the courts. Exceptions will still apply to land occupied for naval, military or air force purposes.

## **Part 7: Public Order and Trespass**

### ***Section 57: Public assemblies***

122. Section 14 of the Public Order Act 1986 gives a senior police officer power to impose conditions on public assemblies. Before doing so, he must reasonably believe that serious public disorder, serious damage to property or serious disruption to the life of the community might result, or that the purpose of a demonstration is the intimidation of others with a view to compelling them to act in a particular way. Conditions include the location of the assembly, its maximum duration or the maximum number of persons who may constitute it. At present these provisions only apply to groups of 20 or more persons.
123. [Section 57](#) amends the definition of public assembly in section 16 of the Public Order Act 1986 from “20 or more persons” to “2 or more persons” so that the powers in that Act to impose conditions on public assemblies apply to groups of two or more people. The requirement for a senior officer to hold beliefs described in the previous paragraph is unchanged.
124. The section would not affect peaceful picketing by members of a trade union at their place of work. Picketing is protected by section 220 of the Trade Union and Labour Relations (Consolidation) Act 1992 which makes lawful certain activities done for the purpose of peacefully obtaining or communicating information or of peacefully persuading a person to work or not to work.

**Section 58: Raves**

125. **Section 58** amends section 63 of the Criminal Justice and Public Order Act 1994 (the 1994 Act) to extend it to cover raves where 20 or more persons are present. At present, section 63 of the 1994 Act only applies to raves where 100 or more persons are present.
126. **Subsection (3)** extends section 63 of the 1994 Act to cover raves in buildings, if those attending the rave are trespassing.
127. **Subsection (6)** makes it an offence for a person to make preparations for or attend a rave within 24 hours of being given a direction under section 63(2) of the 1994 Act to leave land where the person was attending or preparing for another rave. The offence is summary and the maximum penalty is 3 months imprisonment or a level 4 fine (or both).

**Section 59: Aggravated trespass**

128. **Section 59** amends sections 68 and 69 of the Criminal Justice and Public Order Act 1994 (the 1994 Act) to extend provisions relating to the offence of aggravated trespass to cover trespass in buildings, as well as in the open air. The result is that the offence of aggravated trespass will be constituted where a person trespassing, whether in a building or in the open air, does anything which is intended to intimidate or deter persons from engaging in a lawful activity, or to obstruct or disrupt that activity.
129. The amended provisions might be used in respect of activists who invade the building of a targeted company with the intention of conducting an intimidating and disruptive protest. **Subsection (2)** amends section 68 by removing the words “in the open air” so that the offence in section 68 of the 1994 Act becomes aggravated trespass on land. **Subsection (3)** amends section 69 of the 1994 Act by removing the words “in the open air” so that where a senior officer reasonably believes that a person or persons are committing or participating in aggravated trespass he may direct them to leave the land. Land is defined in the Interpretation Act 1978 so as to include buildings.

**Section 60: Power to remove trespassers: alternative site available**

130. This section inserts a new section 62A into the Criminal Justice and Public Order Act 1994 so as to create a new power for a senior police officer to direct a person to leave land and remove any vehicle or other property with him on that land. **Subsection (2)** sets out the conditions that the senior police officer must believe to be satisfied before he can give a direction to leave the land to a person. At least two persons must be trespassing on land; they must have between them at least one vehicle; they must be present on the land with the intent of residing there; and the occupier of the land must have asked the police to remove them. In addition, it must appear to the senior police officer, after consultation with the local authority, that there are relevant caravan sites with suitable pitches available for the trespassers to move to. **Subsections (6) and (7)** enable the Secretary of State to make an order subject to the negative resolution procedure to change the definition of ‘relevant site manager’.

**Section 61: Failure to comply with direction: offences**

131. This section inserts a new section 62B into the 1994 Act. Its effect is that a person commits an offence if he fails to comply with a direction given under section 62A, or if, within 3 months of the direction being given, he returns to any land in the area of the relevant local authority as a trespasser with the intention of residing there. The maximum penalty is 3 months imprisonment or a level 4 fine (or both). **Subsection (5)** provides a defence to this offence if the accused was not a trespasser, or had a reasonable excuse for failing to leave or returning to relevant land, or was under 18 and living with his parent or guardian when the direction under section 62A was given.

***Section 62: Failure to comply with direction: seizure***

132. This section inserts a new section 62C into the 1994 Act. This provides the power for a constable to seize and remove a vehicle, if he reasonably suspects that the person who owns or controls the vehicle has committed an offence under section 62B, and the offence relates to the vehicle in question.

***Section 63 and 64: Common land: modifications and interpretation***

133. New section 62D of the 1994 Act (inserted by section 63) makes necessary modifications to new sections 62A to 62C of the 1994 Act in their application to common land. New section 62E of the 1994 Act (inserted by section 64) provides for the interpretation of terms used in new sections 62A to 62D of the 1994 Act. Unlike the existing powers in section 61 of the 1994 Act, the definition of "land" includes roads.

***Part 8: High Hedges***

134. This Part gives local authorities the powers to deal with complaints about high hedges which are having an adverse effect on a neighbour's enjoyment of his property. Such a system was favoured by the majority of respondents to the 1999 consultation paper 'High hedges: possible solutions'. Complaining to the local authority would always be a last resort and neighbours would be expected to have made every effort to resolve the issue amicably. If the local authority, having taken all views into account, found that the hedge was having an adverse effect it could order the hedge-owner to take action to remedy the problem and to prevent it recurring. Failure to comply with such an order could result in a fine not exceeding level 3 on the standard scale in the Magistrate's Court. The local authority would have the power to go in and do the work itself, recovering the costs from the hedge-owner.

***Section 65: Complaints to which this Part applies***

135. Complaints must be made by the owner or occupier of a domestic property, on the grounds that his reasonable enjoyment of that property is being adversely affected by the height of a high hedge situated on land owned or occupied by another person (the "neighbouring land"). Even if the property is currently unoccupied, the owner may still bring a complaint under the amendments (subsection (2)). Complaints about the effects of roots are specifically excluded (subsection (4)).

***Section 66: High Hedges***

136. A "high hedge" is defined as so much of a barrier to light or access as is formed wholly or predominantly by a line of two or more evergreen or semi-evergreen trees or shrubs and rises to a height of more than two metres above ground level.

***Section 67: Domestic Property***

137. This section defines "domestic property" as a dwelling or its associated garden or yard.

***Complaints procedure***

***Section 68: Procedure for dealing with complaints***

138. Complaints must be made to the local authority whose area contains the land on which the hedge is situated. Complaints must also be accompanied by any fee set by the authority. The level of such a fee must not exceed the amount specified in regulations made under this section (subsection (7)).
139. The local authority may reject the complaint if they consider that the complainant has not taken all reasonable steps to resolve the matter without involving the authority, or if they consider that the complaint is frivolous or vexatious (subsection (2)). If the local

authority decide, on this basis, not to proceed with the complaint, they must inform the complainant as soon as is reasonably practicable and must explain the reasons for their decision (subsections (5) and (6)).

140. Where the local authority proceed with the complaint, they must decide in the first place whether the height of the high hedge is adversely affecting the complainant's reasonable enjoyment of his property. If so, the authority must then consider what, if any, action to require to be taken in relation to the hedge in order to remedy the adverse effect and to prevent it recurring (subsection (3)).
141. The authority must, as soon as is reasonably practicable, inform the parties of their decision and the reasons for it. If the authority decide that action should be taken, they must also issue a remedial notice (under section 69).

### ***Section 69: Remedial Notices***

142. The remedial notice must specify the hedge it relates to; what action is required to be taken in relation to the hedge in order to remedy the adverse effect and by when; what further action, if any, is required to prevent recurrence of the adverse effect; what date the notice takes effect; and the consequences of failure to comply with the requirements of the notice.
143. The action specified in a remedial notice may not involve reducing the height of the hedge below 2 metres, or its removal.
144. While the remedial notice is in force, there is an obligation on the local authority to register it as a local land charge. In addition, the notice is binding not only on whoever is the owner or occupier of the neighbouring land at the time it is issued but also on their successors.

### ***Section 70: Withdrawal or relaxation of requirements of remedial notices***

145. A local authority can withdraw a remedial notice or waive or relax its requirements. If they do so, they must notify the complainant and the owner/occupier of the neighbouring land.

## **Appeals**

### ***Section 71: Appeals against remedial notices and other decisions of relevant authorities***

146. This section sets out rights of appeal against the local authority's decisions under sections 68 and 70, and against any remedial notice issued by them. The appeal authority is the Secretary of State in respect of appeals relating to hedges situated in England, and the National Assembly for Wales in respect of appeals relating to hedges situated in Wales.

### ***Section 72: Appeals procedure***

147. The appeal authority can set down in regulations the procedure for dealing with such appeals. The appeals authority may appoint another person to hear and determine appeals under the Bill, and may also require such a person to carry out all or any of its appeals functions (subsection (4)).

### ***Section 73: Determination or withdrawal of appeals***

148. The appeal authority may allow or dismiss an appeal, either in total or in part. If the appeal authority decides to allow the appeal, it may quash or vary the remedial notice to which the appeal relates. It may also issue such a notice in those cases where the local authority decided not to do so in response to the original complaint.

Whatever its decision on the appeal, the appeal authority may correct any defect, error or misdescription in the original remedial notice if it considers this will not cause injustice.

## **Powers of entry**

### ***Section 74: Powers of entry for the purpose of complaints or appeals***

149. This section gives local authorities and the appeal authority powers to enter the neighbouring land in order to carry out their functions under the Bill. They must give 24 hours' notice of their intended entry and, if the land is unoccupied, leave it as effectively secured as they found it. Intentionally obstructing a person exercising these powers is an offence punishable on summary conviction by a fine not exceeding level 3 on the standard scale.

## **Enforcement powers etc.**

### ***Section 75: Offences***

150. Failure to comply with a remedial notice is a criminal offence punishable on summary conviction by a fine not exceeding level 3 on the standard scale. There is also provision for daily fines if the requisite work remains outstanding following a court order.

### ***Section 76: Power to require occupier to permit action to be taken by owner***

151. This applies section 289 of the Public Health Act 1936 with modifications to allow the owner of the land where the hedge is situated, rather than the occupier or another person with an interest in the land, to comply with a remedial notice.

### ***Section 77: Action by relevant authority***

152. This section gives the local authority power to enter the neighbouring land and carry out the works specified in the remedial notice, if the owner or occupier of the land fails to comply with its requirements. It will be open to the authority to exercise these powers whether or not criminal proceedings are brought under section 75. The costs of this work can then be recovered from the owner or occupier of the land. Any unpaid expenses would (until recovered) be registered as a local land charge. When exercising these powers, the local authority must give 7 days' notice of their intended entry on to the land.

### ***Section 78: Offences committed by bodies corporate***

153. Where offences are committed by bodies corporate, proceedings may, in certain circumstances, be taken against individual officers as well as against the body corporate.

## **Supplementary**

### ***Section 79: Service of documents***

154. This section explains how documents referred to in this Part should be delivered to the recipients.

### ***Section 80: Documents in electronic form***

155. This deals with delivery of documents in electronic form. In particular, it prevents the use of electronic communications for sending copies of a remedial notice (under section 69).

***Section 81: Power to make further provision about documents in electronic form***

156. This section gives the Secretary of State and the National Assembly for Wales power to make regulations amending the provisions about the delivery of documents in electronic form.

***Section 83: Power to amend sections 65 and 66***

157. This section gives the Secretary of State and the National Assembly for Wales power to extend the scope of complaints covered by this Part (under section 65) and to alter the definition of 'high hedge' (in section 66) through regulations. Such regulations are subject to the affirmative resolution procedure.

***Section 84: Crown application***

158. This section applies the provisions to the Crown. Crown employees (but not the Crown itself) will be liable to prosecution for a criminal offence under this Part. A local authority will be able to investigate and determine complaints about high hedges on Crown land, for example a hedge on land owned by a Government Department may be affecting neighbouring domestic property.

**Part 9: Sanctions Etc.**

***Section 85: Anti-social behaviour orders***

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

the relevant authority who obtained the order. This will enable the authority to monitor the proceedings and report back on the outcome to colleagues, as well as to support witnesses and victims as necessary.

163. *Subsection (5)* inserts new subsections (3A), (3B) and (3C) into section 1B of the 1998 Act. These provisions enable relevant authorities to apply to have a person:
- who is not a party to the principal proceedings in the county court, but
  - whose anti-social behaviour is material to those proceedings,
- to be joined to the proceedings so that an order can be applied for against that person. *Subsection (8)* enables the provisions inserted by *subsection (5)* to be piloted for a specified period and to be commenced on different dates in relation to different age groups.
164. *Subsection (6)* extends section 1B(5) of the 1998 Act to allow an individual against whom an order has been made, subsequent to his being joined to proceedings in the county court, to apply to the court which made the order for the variation or discharge of the order.
165. *Subsection (7)* amends section 1E of the 1998 Act to remove the requirement for a county council making an application for an ASBO to consult the council for the area in which the person who is the subject of the application resides in a case where there is no district council for that area. In such a case, the county council is the only relevant council. The amendment prevents a county council from being required to consult itself.
166. *Subsection (8)* inserts a new subsection (1B) into section 9 of the 1998 Act to require a court making an ASBO against a person under the age of 16 to make a parenting order against the parents of that child if it is satisfied that the relevant condition contained in section 8(6) of the 1998 Act is fulfilled (or, if it is not so satisfied, to state in open court why it is not). The condition under section 8(6) is that the parenting order would be desirable in the interests of preventing repetition of the behaviour which led to the ASBO.

### ***Section 86: Certain orders made on conviction of offences***

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

***Section 87: Penalty Notices for disorderly behaviour by young persons***

171. This section amends the Criminal Justice and Police Act 2001 which introduced a penalty notice scheme for disorderly behaviour. *Subsection (2)* extends the scheme to 16 and 17 year olds and *subsection (3)* provides a power, by affirmative resolution procedure, to extend it to a lower age group. If so extended, there is also a power to make provision for a parent or guardian of an under 16 year old to be notified that a penalty notice has been given and for the parent or guardian to be liable to pay the penalty. *Subsection (4)* permits different levels of penalty to be set for different age groups. For the present, it is not intended to have a different level of penalty in respect of 16 and 17 year olds.
172. The extension of the scheme to 16 and 17 year olds will be piloted and supplementary guidance will be issued to the police on the use of their discretion. The power to extend the scheme to a younger age group at this stage will be revisited in the light of the outcome of these pilots for 16 and 17 year olds.

***Section 88: Curfew orders and supervision orders***

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

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

176. The Police Reform Act 2002 created the new civilian role of community support officer. A community support officer is a uniformed police authority employee under the direction and control of a chief officer of police who can be designated by that chief officer with a specific range of police powers set out in Part 1 of Schedule 4 to that Act.
177. The Police Reform Act also enables a chief officer of police to establish and maintain a scheme that accredits suitably skilled and trained non-police employees involved in the provision of community safety with powers to undertake specified functions in support of the police. For example, a chief officer may accredit neighbourhood wardens employed by the local authority or a social landlord, with powers to address antisocial behaviour. Regulations will be in place to enable the chief constable of the British Transport Police (BTP) to maintain a railway safety accreditation scheme, which will be similar to those of Home Office police forces.
178. *Subsections (3) and (6)* of this section amend the Police Reform Act 2002 by adding to the powers that can be conferred on community support officers and accredited persons. They have already been given the power to issue fixed penalty notices for cycling on the



pavement. This amendment makes it easier to enforce this power by conferring power to stop cyclists. It only applies when the community support officer or accredited person believes that an offence of cycling on the pavement has been committed. Failing to stop a cycle when required to do so is an offence under the Road Traffic Act 1988 and is liable to a fixed penalty notice of £30.

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

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

182. This section inserts a provision into the Children and Young Person Act 1969 following section 23A. Section 23A provides that where a court does not grant bail, remands and committals of a child or young person charged with or convicted of an offence must be to local authority accommodation.
183. Section 23(4) of the Children and Young Persons Act 1969 gives the court the power to impose a security requirement when remanding a child to local authority accommodation. However, by section 23(5) of the Children and Young Persons Act 1969 the court may not impose a security requirement in respect of a child who has not reached the age of 12.
184. This provision is designed for serious or persistent 10 and 11 year old young offenders in cases where the court might have considered remanding a child to secure accommodation if they were aged 12 or over. The provision of a report by the local

authority will enable the court to be aware where the child would be placed if the court decided to remand the child to local authority accommodation. In particular this would allow the court to see if the local authority would use their discretion to send the child home. If the court was satisfied with the local authority's initial report, it could, either remand the child into local authority accommodation if it thought that this placement would be best for the child's welfare, or continue bail if it was satisfied that there were no difficulties with the child remaining with his parents. If the court was not satisfied with the local authority's initial report, it could then direct the local authority to make investigations under section 9 Children and Young Persons Act 1969. The results of any such investigations would be taken into account at the sentencing stage.

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

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

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

**Part 10 :General**

***Section 96: Extent***

189. This section provides that Part 5 and Part 10 of the Act extend to England and Wales, and Scotland. The rest of the Act extends to England and Wales only.