

ANTI-SOCIAL BEHAVIOUR, CRIME AND POLICING ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: Injunctions

114. The injunction under Part 1 (presented as the crime prevention injunction in the White Paper) is a purely civil injunction available in the county court for adults and in the youth court for those under the age of 18. The injunction replaces a range of current tools including the anti-social behaviour order (“ASBO”) on application, the anti-social behaviour injunction (“ASBI”), the drinking banning order on application, intervention orders and individual support orders. The injunction can be used to tackle a range of anti-social behaviour problems. For example, an individual regularly hangs around inside local hospital waiting areas. He is always drunk and aggressive to hospital staff, often allowing his dog to jump at staff and others in an uncontrolled manner. Under the new system, NHS Protect (or its successor), the body responsible for protecting NHS staff, property and resources against crime and disorder in England, and the body in Wales carrying out corresponding functions, could apply for an injunction directly to the court to stop the individual’s anti-social behaviour. Along with prohibitions, the injunction could also include positive requirements to get the individual to deal with the underlying cause of his behaviour, that is, his misuse of alcohol, and require him to attend dog training classes so he can learn how to control his dog and understand its welfare needs.
115. **Section 1** sets out a two-part test for granting an injunction. An injunction may be made against a person aged 10 or over if the court is satisfied, on the balance of probabilities (the civil standard of proof), that the person has engaged in, or is threatening to engage in, anti-social behaviour and that it is just and convenient to grant the injunction. Section 2 defines “anti-social behaviour” for this purpose. Where the applicant is a housing provider, local authority or chief officer of police and the anti-social behaviour is related to a housing context, it is defined as “conduct capable of causing nuisance or annoyance” (*subsections (1)(b) and (c) and (2)*). This is similar to the current ASBI, which is used by registered providers of social housing and local authorities (in relation to their housing management functions) to stop anti-social behaviour. Otherwise, for the purposes of the test for an injunction, “anti-social behaviour” is defined as “conduct that has caused, or is likely to cause, harassment, alarm or distress to any person”. Both definitions are capable of including allowing, inciting or encouraging any other person to engage or threaten to engage in anti-social behaviour.
116. The injunction could include prohibitions or requirements that assist in the prevention of future anti-social behaviour (section 1(3)). Such prohibitions may include, for example, not being in possession of a can of spray paint in a public place, not entering a particular area, or not being drunk in a public place. Requirements would be designed to deal with the underlying causes of an individual’s anti-social behaviour and could include, for example, attendance at an alcohol or drugs misuse course or dog training in the case of irresponsible dog owners.

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117. Where an injunction imposes requirements on the respondent, it must specify the person (an individual or an organisation) who is responsible for supervising compliance (section 3). The court must receive evidence on the suitability and enforceability of a requirement from this person. Such individuals or organisations could include the local authority, youth offending teams, recognised providers of substance misuse recovery or dog training providers for irresponsible dog owners.
118. There is no minimum or maximum term for the injunction for adults, so the court may decide that the injunction should be for a specified period or an indefinite period. However, in the case of injunctions against under-18s, the maximum term is 12 months (section 1(6)). The duration of any prohibitions or requirements may be shorter than the duration of the injunction itself.
119. There will be a wider range of potential applicants for the new injunction than the current ASBI to bring it more in line with the breadth of the ASBO. This is intended to help reduce the burden falling on any particular agency to make applications on behalf of others. The following agencies would be able to apply (section 5): a local authority; a housing provider; a chief officer of police (including of the British Transport Police); Transport for London; the Environment Agency; the National Resources Body for Wales; and NHS Protect in England (or its successor) and the relevant body in Wales exercising corresponding functions or other body in Wales exercising any such functions on the direction of the Secretary of State or Welsh Ministers.
120. The list of bodies that may apply for an injunction may be varied by order, subject to the affirmative resolution procedure (section 5(5) and section 182(2)(a)).
121. The Secretary of State has a power to issue and revise guidance to those entitled to apply for injunctions, in relation to their exercise of functions under Part 1 of the Act (section 19).
122. There is a formal requirement for the applicant to consult with the local youth offending team (“YOT”) before making an application, if an injunction is against someone under the age of 18. The consultation requirement does not give a veto power to the local YOT. The applicant must also inform any other body or individual about the application that they think appropriate (section 14), again before making an application. This could include a social landlord (when an application is made by another body against one of their tenants) or mental health team.
123. Applications for an injunction would normally be made to the county court or High Court where the respondent is an adult, or to the youth court where the respondent is under 18. However, section 18(2) makes provision for cases involving multiple respondents where one (or more) of them is aged 18 or over and one (or more) is under that age. In such a case, an applicant may apply at the time of the application to the youth court for permission for the application in respect of the adult(s) to be heard in that court. The youth court would be able to grant the application if it was in the interest of justice. Sections 8(2)(b), 9(3)(b) and 10(2)(b) ensure that while an application in respect of an under-18 will be heard by the youth court, subsequent proceedings against a defendant who has attained the age of 18 since the injunction was made would take place in the appropriate adult court.
124. Applications for an injunction would normally be made following the giving of notice to the respondent. However, section 6 allows an application for an injunction to be made without notice. Without notice applications would, in practice, only be made in exceptional or urgent circumstances and the applicant would need to produce evidence to the court as to why a without notice hearing was necessary. Where a without notice application is made, the court would be able to grant an interim injunction pending a full hearing following the giving of notice to the respondent (sections 6 and 7). The consultation requirements in section 14 do not apply to without notice applications.

125. A court may vary or discharge an injunction upon application by the original applicant or respondent (section 8). A variation may take a number of forms including the addition of a new prohibition or requirement or the removal of an existing one, the extension or reduction of the duration of an existing prohibition or requirement, or the attachment of a power of arrest.
126. A power of arrest may be attached to any prohibition or requirement contained in an injunction if the court believes that the individual has used violence, or threatened violence against another person when they committed the anti-social behaviour, or if there is risk of significant harm by the respondent to others (section 4). A power of arrest attached to an injunction allows a police officer to arrest the respondent without a warrant if the respondent breached a condition in the injunction, that is, a prohibition or a requirement (section 9). Where no power of arrest is attached to the injunction, the applicant may apply to the court to issue a warrant of arrest of a respondent if the applicant thinks that the respondent has breached the injunction (section 10). Section 11 and Schedule 1 make provision for the remand, whether on bail or in custody, of a person arrested for breach of an injunction.
127. Breach of an injunction by an adult will be contempt of court, punishable in the usual way by the county court by a term of imprisonment of up to two years or an unlimited fine. Breach of an injunction by someone aged under 18 could result in the youth court imposing a supervision order or a detention order. A detention order can be made for breaching the injunction or for breaching a supervision order that was imposed for breaching the injunction. The court may revoke the supervision order and impose a new one or it may revoke the supervision order and make a detention order. The court can only impose a detention order where it considers that the severity or extent of the behaviour warrants it and that no other sanction available to it is appropriate. The court must be satisfied beyond reasonable doubt that the under 18 has, without reasonable excuse, breached the injunction or breached a supervision order that was imposed for breaching the injunction before it can make the detention order. The court must also consider any representations from the YOT specified in the supervision order before imposing a detention order. The maximum duration of a detention order is three months and it cannot be imposed on under 14s (section 12 and Schedule 2). A supervision order may contain one or more of the following requirements: a supervision requirement, an activity requirement or a curfew requirement. An electronic monitoring requirement may be attached to a curfew requirement in order to monitor compliance.
128. In granting an injunction to a housing provider, local authority or the police, the court may attach a power to exclude the respondent from their home or a specified area, provided the respondent is aged 18 or over. The court may exclude the respondent if it thinks that they have been violent or threatened violence to other persons, or if there is a significant risk of harm from the respondent to other persons (section 13). In the case of a housing provider, exclusion can only relate to the property owned or managed by them. There is no such limitation in the case of the police or local authority and exclusion would be tenure neutral.
129. There is a right of appeal against a decision of the youth court under this Part (section 15). A decision of the county court is appealable to the High Court.
130. [Section 16](#) enables the court to give a special measures direction to protect vulnerable or intimidated witnesses in injunction proceedings. Such measures may include giving evidence behind a screen or by video link or in private.
131. The automatic restriction on reporting legal proceeding in relation to someone aged under 18 (section 49 of the Children and Young Persons Act 1933) does not apply to proceedings for an injunction under section 1 (section 17). However, section 39 of that Act does apply to these proceedings and gives the court the discretion to restrict the publication of certain information (for example, the respondent's name and address) in order to protect the identity of the child or young person.

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Act 2014 (c.12) which received Royal Assent on 13 March 2014*

132. **Section 21** makes certain saving and transitional provisions in respect of ASBOs on application, anti-social behaviour injunctions and drinking banning orders made before the commencement of the provisions in the Act repealing the legislation providing for such orders and injunctions. Five years after the commencement of Part 1 of the Act any of these orders or injunctions still in force will automatically be treated as an injunction under Part 1.