

ANTI-SOCIAL BEHAVIOUR, CRIME AND POLICING ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2: Criminal behaviour orders

133. The criminal behaviour order (“CBO”) will be an order on conviction, available following a conviction for any criminal offence in the Crown Court, a magistrates’ court or a youth court. This would replace the ASBO on conviction and the drinking banning order on conviction. A court will be able to make a criminal behaviour order against an offender only if the prosecutor applies for it. This would normally be at the instigation of the police or local authority. Unlike the current process, local authorities would be able to apply directly to the prosecution without requesting the permission of the police.
134. [Section 22](#) sets out the two-part test for granting an order. An order may be made against a person over the age of 10 if the court is satisfied that the offender has engaged in behaviour that caused, or was likely to cause, harassment, alarm or distress to any person and that the court considers that making the order will assist in preventing the offender from engaging in such behaviour. The standard of proof would be the criminal standard, that is, “beyond reasonable doubt” (*subsection (3)*).
135. The order could include prohibitions and/or positive requirements that assist in preventing the offender from engaging in behaviour that could cause harassment, alarm or distress in the future (*section 22(5)*). Such prohibitions could include 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. The requirements in an order could include attendance at a course to educate offenders on alcohol and its effects.
136. An order may only be made against an offender when he or she has been sentenced for the offence or given a conditional discharge (*section 22(6)*). No order may be made where the offender has been given an absolute discharge or has only been bound over to keep the peace.
137. A court may only make a criminal behaviour order against an offender if the prosecution applies for an order; it may not make an order on its own volition (*section 22(7)*).
138. Where the offender is under the age of 18, the police or local authority must consult the local youth offending team and must inform the prosecutor of the views of the youth offending team. The consultation requirement does not give the youth offending team a veto power over applications for criminal behaviour orders (*section 22(8)*). Accompanying guidance will also recommend that the young person is given the chance to express their views, in line with their rights under the UN Convention on the Rights of the Child.
139. The court can consider evidence which was inadmissible in the criminal proceedings. This could include hearsay or bad character evidence (*section 23(2)*). The automatic reporting restrictions of certain information (such as the name, address or school of a

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child or young person) that normally apply in respect of legal proceedings in relation to a person under 18 (section 49 of the Children and Young Persons Act 1933) do not apply to proceedings in which a CBO is made (section 23(7) and (8)). However, section 39 of that Act does apply which gives the court the discretion to prohibit the publication of certain information that would identify the child or young person.

140. [Section 24](#) provides that if an order includes a requirement it must specify the person responsible for supervising compliance. The court must receive evidence on the enforceability and suitability of the requirement from the individual specified or, in the case of an organisation, an individual representing that organisation. Such individuals or organisations could be the local authority, recognised providers of substance misuse recovery or dog training providers for irresponsible dog owners.
141. Where a criminal behaviour order is made against a person under 18 years of age the order must be for a fixed period of between one and three years. In the case of an adult, a criminal behaviour order must be for either a fixed period of two years or more or for an indefinite duration – there is no maximum length (section 25).
142. Where the court adjourns a hearing for an order, it can place an interim order on the offender that lasts until the final hearing of the application if the court thinks it is just to do so (section 26).
143. A court can vary or discharge an order upon the application of the offender or the prosecution (section 27). However, where a previous application has been dismissed, that party cannot make a further application to vary or discharge the order without the consent of the court or agreement of the other party (the offender or prosecution).
144. Reviews must be held every 12 months for offenders under the age of 18 (section 28). The 12 month period starts from the date the order was made, or from the date it was subsequently varied. The review must consider the offender’s compliance with the order and the support provided to help him or her comply with it, and give consideration to whether an application should be made to vary or discharge the order. The review should be carried out by the police with the local authority and any other relevant person or body (section 29).
145. 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 CBO breach proceedings (section 30(5)). However, section 45 of the Youth Justice and Criminal Evidence Act 1999 applies to CBO breach proceedings against someone aged under 18. That section gives the court the discretion to restrict the publication of certain information (for example, the respondent’s name or address) in criminal proceedings in order to protect the identity of the child or young person. The court must give reasons if it decides to give a direction and exercise its discretion under section 45. (Section 45 of that Act applies to criminal proceedings and allows the court to restrict reporting of this kind of information if it feels that the reporting would lead to the identification of the child in question.)
146. In any proceedings in relation to a CBO it is open to the court to make a special measures direction in relation to vulnerable and intimidated witnesses. Such measures may include the physical screening of a witness, enabling evidence to be given in private or the use of a video-recorded interview.
147. [Section 32](#) provides that the Secretary of State may issue and revise guidance to chief officers of police and local authorities about the exercise of their functions under Part 2 of the Act.
148. [Section 33](#) makes certain saving and transitional provisions in respect of ASBOs on conviction, individual support orders and drinking banning orders on conviction made before the commencement of the provisions in Part 1 of Schedule 11 to the Act repealing the legislation providing for such orders. Five years after the commencement of Part

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2 of the Act any such orders still in force will be automatically treated as criminal
behaviour orders.