

More effective responses to anti-social behaviour – Home Office proposals on changes to legislation

Section 4: Reforming the toolkit

Q1	<i>What do you think of our proposals for reform? In particular, do you think merging existing powers into the new orders proposed is a good idea?</i>	Legislation available currently has been around for some time and is well known. Some of the proposed legislation appears to be change for change sake. The Criminal Behaviour Order is an ASBO by another name. It has become more confused by trying to introduce positive conditions which all have to be resourced. In times of tight fiscal budgets this is unlikely to generate positive conditions as there will be no-one to monitor and manage them
Q2	<i>Are there other tools and powers for dealing with anti-social behaviour you think should be repealed? If so, why?</i>	No
Q3	<i>Do you think these proposals will reduce bureaucracy for front line professionals? Will they have other benefits as well?</i>	It is unlikely that these proposals will reduce bureaucracy particularly in the court environment.
Q4	<i>Do you think there are risks related to the introduction of any of the new orders?</i>	There needs to be consistent application of the new tools and powers nationally so as not to de-value their effectiveness by scatter-gun type use. This means some accurate guidelines on their use. When ASBOs were initially introduced they were subject to target quotas which were set by government. This quotas immediately devalued ASBOs as many applications were poorly thought through and were made to hit a target. This also produced negative publicity and an opportunity to restore public confidence was lost. Courts became more demanding on the standard of evidence that was required as a result.
Q5	<i>Do you think these proposals risk particular groups being disadvantaged in a disproportionate way? If so, how?</i>	No more than already exists, that is to say young people can be disadvantaged by ASB legislation and therefore any use of the powers would need to be closely monitored for justification and proportionality.

Q6	<i>Because community safety is a nondevolved matter in Wales, are there any specific issues there that should be recognised</i>	N/A
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4.1: Criminal Behaviour Order

Q 1	<i>What do you think of the proposal to create a Criminal Behaviour Order?</i>	This is very similar to an ASBO on conviction. The ASB is proved to the criminal standard on the guilty finding of committing a crime and therefore negates the need to provide witness testimony from those who may have been intimidated or threatened by the actions of the perpetrator. The difference seems to be the introduction of positive conditions into the CBO. This would require resources to oversee and monitor. In times of strict budget control positive conditions are only likely to succeed if there is provision to oversee and manage them.
Q2	<i>Thinking of existing civil orders on conviction, are there ways that you think the application process for a Criminal Behaviour Order could be streamlined?</i>	There does not seem to be a provision for applying for ex-parte urgent interim orders to provide a degree of immediate control on serious cases of ASB, particularly when involving vulnerable victims. Urgent interims although not streamlining the process do provide an opportunity for immediate action.
Q3	<i>What are your views on the proposal to include a report on the person's family circumstances when applying for an order for someone under 16?</i>	This would appear to be similar to pre-sentence reports that are ordered by a court. It is not clear who would carry out the writing of such a report and whether they would be independent to the partner organisations applying for the order. This may cause undue delay and also a conflict with the reasons for the application. There may be some professional conflicts of interest.
Q4	<i>Are there other civil orders currently available on conviction you think should be incorporated in the Criminal Behaviour Order? (for example the Drinking Banning Order)</i>	Drinking Banning Orders are part of a large amount of specific legislation which would be easy to incorporate into a CBO. This is particularly the case if there are to be positive conditions. DBOs are not widely used as they cannot be obtained against alcohol dependant individuals.

Q5	<i>Should there be minimum and maximum terms for Criminal Behaviour Orders, either for under 18s or for over 18s? If so, what should they be, and should they be different for over or under 18s?</i>	There needs to be minimum terms for CBOs, both for under 18 and over 18 particularly when there is a support plan concerning positive conditions. This will allow support agencies to engage with the individual and a sanction that can be applied should there be a lack of co-operation on the perpetrator's part. The CBO is there to convince a perpetrator to moderate his or her behaviour and therefore should be in place until that behaviour is moderated to the satisfaction of the court.
Q6	<i>Should the legislation include examples of possible positive requirements, to guide applicant authorities and the courts?</i>	This would provide guidelines to applicants and also identify a consistency nationally in the type of positive requirements required. Many support orders are not applied for now as there are insufficient resources to manage them.
Q7	<i>Are there examples of positive requirements (other than formal support provided by the local authority) which could be incorporated in the order?</i>	
Q8	<i>Do you think the sanctions for breach of the prohibitive elements of the order should be different to those for breach of the positive elements?</i>	Sanctions applied to any breach should be the same this will provide a consistent standard and unnecessary complication of the legislation. It will also be easier for the perpetrator to understand.
Q9	<i>In comparison to current orders on conviction, what impact do you think the addition of positive requirements to a Criminal Behaviour Order will have on the breach rate?</i>	If the positive aspects of the order are properly resourced this may have an effect of reducing the breach rate. Positive requirements will only have a positive effect if they are properly resourced. Most orders on conviction are used as a last resort when all other interventions have failed and therefore are needed to provide some degree of public protection, this normally means that the individual is highly likely to breach. The CBO would not require the proof of other interventions being tried and failed and this may address behaviour quicker. However, this may create a practice of applying for a CBO before trying less intrusive but just as effective interventions. It is not the intention to unnecessarily criminalise members of the community by not taking a proportionate response. Members of some organisations could

		abuse this process which would eventually lead to a de-valuation of the effectiveness of the order through misuse and therefore additional requirements from the court before the order was granted generating more bureaucracy.
Q10	<i>In comparison to current orders on conviction, what do you think the impact would be of the Criminal Behaviour Order on i) costs and ii) offending outcomes?</i>	Costs may increase, particularly where positive conditions need to be resourced. Offending outcomes may reduce should positive conditions be resourced and this in turn would reduce costs, so overall there may be cost neutral.
Q11	<i>In comparison to current orders on conviction, how many hours, on average, of police and practitioner time do you think it would take to prepare and apply for a Criminal Behaviour Order?</i>	Each order is different and it is impossible to give any quantitative response.

4.2: Crime Prevention Injunction

Q1	<i>What do you think of our proposals to replace the ASBO on application and a range of other court orders for dealing with anti-social individuals with the Crime Prevention Injunction?</i>	This would provide a more consistent and streamlined application
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Q2	<i>Which test should the court apply when deciding whether to impose a Crime Prevention Injunction – that the individual’s behaviour caused ‘harassment, alarm or distress’ or the lower threshold of ‘nuisance or annoyance’?</i>	The lower threshold of nuisance or annoyance would be easier to prove in court and would be understood by other departments such as housing and legal services who currently apply for injunctions.
Q3	<i>Do you think the Crime Prevention Injunction should be heard in the County Court or the Magistrates Court?</i>	The ability to hear the injunction at either venue would then allow for more high risk applications to be heard at Magistrates Court (sitting in their civil capacity) who have security arrangements already in place. Simple applications could be heard in County Court.
Q4	<i>If you think that the injunction should be heard in the Magistrates’ Court, do you think the Crime Prevention Injunction for those under the age of 18 should be heard in the Youth Court?</i>	If the court is sitting in it’s civil capacity it should make no difference.
Q5	<i>Should the Crime Prevention Injunction carry a minimum and/or maximum term. If so, how long should these be, and should they be different for over or under 18s?</i>	There needs to be minimum terms for CPIs, both for under 18 and over 18 particularly when there is a support plan concerning positive conditions. This will allow support agencies to engage with the individual and a sanction that can be applied should there be a lack of co-operation on the perpetrator’s part. The CPI is there to convince a perpetrator to moderate his or her behaviour and therefore should be in place until that behaviour is moderated to the satisfaction of the court.
Q6	<i>Should there be a list of possible positive requirements in the primary legislation to provide guidance to judges?</i>	This would provide guidelines to applicants and also identify a consistency nationally in the type of positive requirements required. Many support orders are not applied for now as there are insufficient resources to manage them.

Q7	<i>Are there examples of positive requirements (other than formal support provided by the local authority) which could be incorporated in the order?</i>	
Q8	<i>What are your views on the proposed breach sanctions for over 18s and for under 18s for the Crime Prevention Injunction?</i>	If the breach of a CPI occurred and was serious the circumstances of the breach may also include criminal offences which would need to be dealt with separately. Breach sanctions appear logical.
Q9	<i>In comparison to current tools, what do you think the impact would be of the Crime Prevention Injunction on i) costs and ii) offending outcomes?</i>	(i) No change. (ii) Unable to say
Q10	<i>What impact do you think the inclusion of positive requirements would have on the Crime Prevention Injunction breach rate?</i>	Unable to say at this stage.
Q11	<i>Thinking of other civil injunctions available, how many hours, on average, of police and practitioner time do you think it would take to prepare and apply for a Crime Prevention Injunction?</i>	Unable to answer.

4.3: Community Protection Order

Q1	<i>What do you think of the proposal to bring existing tools for dealing with persistent place-related anti-social behaviour together into a single Community Protection Order?</i>	Orders will be easier to secure as a considerable amount of diverse legislation dealing with individual situations can be confusing. This will definitely streamline the process and provide more consistency of approach when obtaining necessary evidence and presenting it to a court.
Q2	<i>Are there problems with the existing tools you think should be addressed in the Community Protection Order?</i>	
Q3	<i>Are there other existing tools you think should be included, such as a Special Interim Management Order?</i>	
Q4	<i>Who should be given the power to use a Level 1 Community Protection Order?</i>	Police, local authority, extended policing/local authority accredited officers
Q5	<i>In comparison to current tools, what do you think the impact of the Community Protection Order would be on (i) costs and (ii) offending outcomes?</i>	Not known
Q6	<i>In your area, is there any duplication of current orders issued to deal with the problems tackled by either level of the Community Protection Order? If so, could you indicate the extent of duplication.</i>	Not known

Q7	<i>What impact do you think the introduction of the proposed Community Protection Order would have on the number of orders issued?</i>	Not known
Q8	<i>Thinking of current orders to tackle environmental disorder, how many hours do you think it would take to prepare and issue a Level 1 Community Protection Order? Is this more or less than the time taken to issue current notices aimed at tackling the same problems?</i>	
Q9	<i>Thinking of the place-related orders that it would replace, how many hours do you think it will take, on average, to prepare, issue, and implement a Level 2 Community Protection Order?</i>	Not known

4.4: The Direction Power

Q1	<i>What do you think of the proposal to combine these existing police powers for dealing with anti-social behaviour into a single Directions power?</i>	These are likely to be more operationally effective and specifically targeted to a identified problem. There would be no consultation requirements as with the current Groups Dispersal Order due to the fact that the power would only be exercised when there was a specific problem.
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Q2	<i>Do you think the power should be available to PCSOs as well as police officers?</i>	PCSOs can currently seize alcohol but cannot carry out arrests. If PCSOs are to exercise this power they must have the ability and means to enforce it. This would mean a fundamental review of PCSO powers.
Q3	<i>What safeguards could be put in place to ensure that this power is used proportionately and does not discriminate against certain groups, particularly young people?</i>	Police to complete paperwork with the individuals details and reasons why they are being directed to leave. They should also be able to specify what areas are covered in the direction which would allow breaches to be proved. This should include a description of the action witnessed to issue the direction.
Q4	<i>What do you think would be the most appropriate sanction for breach of the new Direction power?</i>	Arrest. PND fine, prison
Q5	<i>Thinking of existing powers to leave a locality, how much police and local authority time do you think would be saved by removing the requirement of having a designated area from which to move individuals or groups from?</i>	Considerable amount of time would be saved particularly when instigating a Sec 30 Groups Dispersal application. Responses would be immediate and targeted and therefore proportionate to what they seek to achieve.
Q6	<i>What do you think the impact would be of removing the need for a pre-designated area on the volume of Directions issued?</i>	The benefit of a pre-designated area is that the public are notified through various newspapers, notice boards and web sites as to the intention to disperse, the reason to disperse, the locality the power will be exercised, the start date of the order and the consequences of non-compliance. The power is quite draconian and not particularly targeted. This will now be carried out by individual officers responding to events. However because the power is exercised as required it may reduce the number of directions issued.

Q7	<i>Do you expect there to be a change in the use of the Direction power (compared to the use of existing tools)? If so, what do you estimate the change would be and what proportion of the Direction powers used will be aimed at those under 18?</i>	The direction power is likely to be exercised more when needed and in a specifically targeted way making it more proportional to Human Rights issues.
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4.5: Informal Tools and Out-of-court disposals

Q1	<i>How do you think more restorative and rehabilitative informal tools and out-of-court disposals could help reduce antisocial behaviour?</i>	Informal tools when used in conjunction with housing powers and anti-social behaviour enforcement legislation can be compelling and persuasive. They can also make perpetrators face up to the consequences of their actions.
Q2	<i>What are the barriers to communities getting involved in the way agencies use informal and out-of-court disposals in their area?</i>	For communities to get involved this requires strong guidance and leadership from partner agencies to set structures. Community engagement could identify Neighbourhood agreements and priorities which communities could agree to manage. This may involve litter clearance, graffiti removal or grass cutting. Community pay-back schemes could be used to help this also engagement in Final Warning Clinics by those Neighbourhood Groups could set local restorative justice punishment for low level offending. This would engage communities in the problem setting objectives and problem solving outcomes.
Q3	<i>Are there any other changes to the informal and out-of-court disposals that you think could help in tackling anti-social behaviour?</i>	Far more involvement in reprimands and warnings with some form of community payback punishment as a condition of receiving the reprimand or warning.

4.6: The Community Trigger

Q1	<i>What do you think of the proposal to introduce a duty on Community Safety Partnerships to deal with complaints of persistent anti-social behaviour?</i>	CSPs can deal when they have the ability. If the complaint involved a lack of action from a registered social landlord this would allow the RSL to stand back and let the local authority, under their statutory responsibility, deal with the issues that should have been resolved by the RSL. There would also need to be the ability to filter out malicious complaints without committing too many resources to investigate.
Q2	<i>Do you think the criteria for the Community Trigger are the right ones? Are there other criteria you think should be added?</i>	No other criteria.
Q3	<i>Do you think this proposal risks particular groups being disadvantaged in a disproportionate way? If so, what measures could be put in place to prevent this?</i>	No.