

Anti-social Behaviour, Crime and Policing Bill

Fact sheet: Environmental anti-social behaviour (Part 4)

Background

1. Everyone wants to live in a safe, secure and welcoming environment and not to be a victim of anti-social behaviour (ASB) in their own neighbourhood. Yet environmental anti-social behaviour and nuisance are perceived to be a problem by members of the public across the country. According to the most recent figures in the Office for National Statistics' Crime Survey for England and Wales (2013), 29 per cent of people think that litter is a big problem in their area, and 21 per cent said the same for drunk and rowdy behaviour. Graffiti and other criminal damage also ranks highly with 19 per cent saying it is an issue. At the same time, only around half of people felt that the police and partners in their area were tackling anti-social behaviour effectively.
2. Since 1998, the range of powers available to frontline professionals to deal with environmental ASB has grown substantially. Powers tended to be introduced to deal with very specific issues, and measures to deal with environmental ASB and nuisance include: litter clearing notices; street litter control notices; defacement removal notices; gating orders; dog control orders; designated public place orders; crack house closure orders; and premises closure orders.
3. Such a wide range of powers means that responsibility for dealing with environmental ASB is shared between a number of agencies, in particular the police, local authorities and social landlords. This profusion of powers, with different tests, thresholds and safeguards, can be confusing for professionals and the public alike. Through these reforms, we are giving local authorities, the police and, in some cases, social landlords, simpler, more effective powers to deal with a wider range of environmental ASB.

The community protection notice

4. The community protection notice is intended to deal with particular, ongoing problems or nuisances which negatively affect the community's quality of life by targeting the person responsible. The notice will direct the individual, business or organisation responsible to stop causing the problem and it could also require the person responsible to take reasonable steps to ensure that it does not occur again.
5. This notice is intended to replace current measures such as litter clearing notices, defacement removal notices and street litter control notices. It is not meant to replace the statutory nuisance regime – and where the behaviour is such as to amount to a statutory nuisance under section 79 of the Environmental Protection Act 1990 (EPA), it should be dealt with as such. The statutory nuisance regime is long established and covers a number of different issues including noise, artificial light, insects and smoke.
6. The power to issue a notice will be available to police officers (and police community support officers (PCSOs) if designated by the chief constable), authorised persons within the local authority and staff of registered providers of social housing (if designated by the relevant local authority).

7. The test will be that the local authority or police officer reasonably believes that the behaviour is detrimental to the local community's quality of life, unreasonable, and persistent. Before issuing a notice, an officer would be required to inform whatever agencies or persons he or she considered appropriate (for example, the landlord of the person in question, or the local authority), partly in order to avoid duplication.
8. The notice must clearly state what the behaviour or action is that is having a detrimental effect on the quality of life of those in the local community. It could also include what action is required from the individual and must outline the consequences of not complying. The requirement(s) set out in the notice could include a requirement to desist from a specified action or behaviour, a requirement to make reasonable efforts to make good any outstanding issues within a specified period of time and/or a requirement to take reasonable steps to prevent future occurrence of the behaviour or problem.
9. Breach of any requirement in the notice, without reasonable excuse, would be a criminal offence, subject to a fixed penalty notice or prosecution. On summary conviction an individual would be liable to a fine not exceeding level 4 on the standard scale (currently set at £2,500). An organisation is liable to a fine of up to £20,000. On conviction, the magistrates' court would also have the power to order forfeiture and destruction of any item used in the commission of the offence. An alternative to prosecution would be for the relevant agency to make good any damage itself, and recover the costs of doing so from the person concerned.
10. Community protection notices will be different from the powers being replaced in the following ways:
 - they cover a wider range of behaviour (all behaviour that is detrimental to the local community's quality of life) rather than specifically stating the behaviour covered (e.g. litter or graffiti);
 - noise disturbance could be tackled, particularly if it is demonstrated to be occurring in conjunction with other anti-social behaviour;
 - the notices can be issued by more agencies: police, local authorities and private registered providers of social housing (if approved by local authorities) meaning that the most appropriate agency can deal with the situation;
 - the notices can apply to businesses and individuals (which is the case for some of the notices it will replace but not all); and
 - it would be a criminal offence if a person did not comply, with a sanction of a fine (or fixed penalty notice) for non-compliance. (Again, this is not the case for all of the notices that it replaces.)

Case study – Building works

The owner of a mid-terrace property has decided to refurbish several of the rooms. In doing this, he placed all the rubbish in the front garden ahead of ordering a skip at the end of the process to save on costs. The owner spoke to neighbours and made them aware – on the whole, they were content for this to happen for a short period of time while the refurbishment continued.

Towards the end of the project, the owner bought another property as an investment and turned his attention to refurbishing that ahead of renting it out. He neglected to deal with the building rubbish in his front garden.

Local residents complained to the local authority about the waste. In turn, the local authority approached the owner and asked him to clear up the rubbish. They made clear that if he did not, they would issue him with a community protection notice.

The litter was not cleared and so a community protection notice was issued giving the owner 14 days to clear the litter. It also made clear that if the litter was not cleared by then, the local authority would clear it at a cost of £1,500 which the owner would have to pay.

Public spaces protection orders

11. Public spaces protection orders are intended to deal with a particular nuisance or problem in a particular area that is detrimental to the local community's quality of life, by imposing conditions on the use of that area which apply to everyone. The order could also be used to deal with likely future problems.
12. Only a local authority could issue the order, and before doing so, they must consult with the chief officer of police, the Police and Crime Commissioner¹ and any representatives of the local community they consider appropriate. The test for issuing the order will be that the local authority reasonably believes that the behaviour is detrimental to the local community's quality of life, and that the impact merits restrictions being put in place. The behaviour must also be ongoing or persistent (or there must be a reasonable belief that future behaviour will be ongoing or persistent).
13. The order must clearly state what behaviour it is seeking to prevent, what the prohibitions or requirements are in the specified area (which the local authority reasonably believes will remedy the problem), the specified area itself and the consequences of not complying. The order must be in writing and it must be published. Reasonable signage should be put up in the areas affected. The order could last for up to three years and could be renewed before the three year time period expired.
14. Breach of the order without reasonable excuse would be a criminal offence, subject to a fixed penalty notice or prosecution. On summary conviction, an individual would be liable to a fine not exceeding level 3 on the standard scale (currently set at £1,000). Any person who consumes alcohol in an area where this has been prohibited could be required to hand over any containers believed to contain alcohol. Failure to comply would be a criminal offence which on summary conviction means an individual is liable to a fine not exceeding level 2 on the standard scale (currently set at £500). If alcohol is confiscated, it can also be disposed of by the person who confiscates it.

¹ In London, the Mayor's Office for Policing and Crime and the Common Council of the City of London.

15. The public spaces protection order will be different from the powers it seeks to replace in the following ways:

- it can prohibit a wider range of behaviour, which makes the new power more like the “good rule and government byelaws” under the Local Government Act 1972, but with a fixed penalty notice available on breach. This follows feedback in the consultation from local authorities that current byelaws are hard to enforce as they do not all allow for fixed penalty notices to be issued, so the only option available to local agencies is to take an individual to court if they fail to comply, which can be costly and time-consuming;
- there would be no central government reporting requirements as with designated public place orders. This would reduce bureaucracy; and
- there will be lighter touch consultation requirements to save costs (e.g. there will be no requirement to advertise in local newspapers). This follows feedback in the consultation from local authorities that the current processes for consultation outlined in secondary legislation are costly and time-consuming.

Case study – Youths drinking

The local authority receives a number of complaints that a local park has become a ‘no-go zone’ in the evening as groups of youths have been congregating, drinking alcohol and swearing. A number of houses back onto the park and this has meant local residents are unable to use their gardens.

The local authority decides to deal with the issue by putting in place a public spaces protection order. This bans the drinking of alcohol at any time and also sees the park closed at 9pm every night.

A specific individual continues to drink in the park during the day. When challenged by a police officer, he routinely pours his alcohol away as requested and therefore does not commit an offence. However, this persistent breach of the rules leads to the police applying for an injunction to prevent nuisance and annoyance.

The injunction bans the individual from going to the park in question and drinking in public, and also includes a positive requirement to attend an alcohol rehabilitation course to deal with the underlying issues causing the ASB.

Closure of premises associated with nuisance or disorder

16. This new power to close premises has two stages – the closure notice and the closure order. It consolidates various existing closure powers related to licensed and all other premises which are causing anti-social behaviour. This power will be available to the police (officers of the rank of inspector and above) and the local authority.

17. The test for issuing a notice will be that the police or local authority reasonably believes that there is, or is likely soon to be, a nuisance to members of the public or that there is, or is likely to be, disorder in the vicinity of, and related to the premises. They must also reasonably believe that the notice is necessary in the interest of preventing the occurrence or reoccurrence of such disorder or behaviour.

18. Before issuing the notice, the police or local authority must consult any person or agency they consider appropriate, as well as informing the owner, landlord, licensee and anyone who appears to be residing in the premise.
19. The notice must state that access by any person other than someone who habitually lives on the premises or the owner of the premises, is prohibited; state that failure to comply is an offence; give details as to when and where the notice will be considered by the magistrates' court; and give information about persons and organisations in the area that provide advice about housing and legal matters.
20. The police or local authority must take into account any special considerations arising from the presence, or likely presence of any children or vulnerable adults on the premises. Authorised persons will have a power of entry to the premises, using reasonable force if necessary, to serve the notice.
21. Within 24 hours of the notice being issued, it must, in order to continue to be valid, be signed off by a senior officer. In the case of a police notice, this should be by an officer of at least superintendent rank and, in the case of a local authority notice, by either the Chief Executive or a person designated by them. This would extend the notice to a maximum of 48 hours.
22. Unless the police or local authority cancels the notice within the 48 hour period, they must apply to the magistrates' court for a court order. The court can make a closure order for a maximum period of three months if it is satisfied that:
 - a person has engaged in disorder, anti-social or criminal behaviour on the premises (or that such behaviour is likely if the order is not made);
 - the use of the premises is associated with the occurrence of disorder or serious nuisance to members of the public (or that such disorder or serious nuisance is likely if the order is not made); and
 - that the order is necessary to prevent the occurrence or reoccurrence of such disorder or behaviour.
23. Before the time specified in the order expires, the police or local authority could apply to the magistrates' court for a further extension of the order if this were deemed necessary. The maximum period an order could last overall would be six months.
24. Breach of the order, without reasonable excuse, would be a criminal offence. On summary conviction, a person would be liable to a fine and/or up to three months imprisonment if in breach of a notice and up to 51 weeks' imprisonment if in breach of an order.

Case study – Accident and Emergency

Local residents in a block of flats have complained that one flat receives visitors throughout the day and night. These visitors stay for a short period of time and sometimes they can over-hear swearing and shouting.

The police have reason to believe that class A drugs are being sold and taken at the property and so the property is closed through the issue of a closure notice – signed off by the inspector. The closure notice is extended to 48 hours when it is signed off by the superintendent, however, as the owner of the property is still allowed to access the property, it is believed that the drug taking has continued.

At the end of the notice period (max 48 hours), the closure is referred to the magistrates' court where the police apply to have the property closed for 3 months, barring access by anybody, including the owner. The court agrees and the property is closed.

The owner then tries to access the property on several occasions. In doing so, he is arrested as this is criminal offence. When he is found guilty, the prosecution applies for a criminal behaviour order to be attached.

The court agrees and a criminal behaviour order is placed on the owner which includes a positive requirement to attend a drug rehabilitation centre. This aims to deal with his underlying drug addiction.

Home Office
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