



Anti-social Behaviour – The Government's Proposals

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The Government set out its proposals to reform the powers which police, local authorities and others have to deal with anti-social behaviour in a February 2011 consultation document [More effective responses to anti-social behaviour](#). The consultation process ran until 17 May 2011. Whilst it was the abolition of Anti Social Behaviour Orders (ASBOs) which received the most publicity, the proposals would replace a range of disposals with a smaller number of new tools, which the Government called “a radical streamlining of the toolkit”. Following the consultation, the Government published a White Paper, [Putting Victims First: More effective responses to anti-social behaviour](#), on 22 May 2012.

Under the White Paper's proposals, 19 tools would be reduced to six.

ASBOs and some other court orders would be abolished and replaced by two new tools:

- the Criminal Behaviour Order (CBO) which could be attached to a criminal conviction
- the Crime Prevention Injunction (CPI) for other cases.

Unlike ASBOs, both these orders could have positive requirements as well as prohibitions attached to them. The CPI would use the same test as the current anti-social behaviour injunction – that is that, on the balance of probabilities, the person has engaged in conduct capable of causing nuisance or annoyance – which is a less demanding test than the current equivalent for ASBOs. As is the case with ASBOs, breach of a CBO would be a criminal offence with a maximum prison sentence of five years. Breach of a CPI would be punished as contempt of court. The maximum penalty for contempt is normally two years in prison or an unlimited fine. It would not be a criminal offence and thus would not result in a criminal record.

New Community Protection Orders would replace a range of other orders which deal with powers to deal with environmental anti-social behaviour, anti-social behaviour in specific public places and various premises closure powers. Legislation will be introduced in the form of a draft Bill and will be subject to pre-legislative scrutiny.

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1 Background

1.1 The effects of anti-social behaviour

There have been some terrible examples in recent years of individuals who have had their lives blighted by anti-social behaviour, including some which have resulted in the deaths of the victims. Fiona Pilkington killed herself and her disabled daughter in 2007 following years of harassment¹ and (according to the Independent Police Complaints Commission) failure by the police to deal with the problems in a cohesive way.² There have been other high profile examples of cases where anti-social behaviour has led to tragic consequences, such as the murder of Garry Newlove in August 2007 by teenagers he confronted, and the death of David Askew, a man with learning difficulties who collapsed confronting youths after he and his family had reported anti-social behaviour and crimes to the police 88 times.³ Whilst there have been improvements in the public's perceptions of anti-social behaviour in their local areas, MPs' postbags still contain many examples where constituents are distressed or angered by such behaviour. A report by Ipsos Mori for Her Majesty's Inspectorate of Constabulary showed that, from just over 9,300 people who had called the police about anti-social behaviour in September 2011, one third said it affected their daily routine, with many having to take steps such as avoiding certain areas or not going out at night.⁴

1.2 Perceptions of anti-social behaviour

The Crime Survey of England and Wales (CSEW – formerly the British Crime Survey) asks respondents about perceptions of problems with different types of anti-social behaviour in their local area. Seven of these questions, referred to as anti-social behaviour strands, are used to provide an overall index of perceived anti-social behaviour.

In the 2010/11 survey, 13.7% of respondents perceived there to be a high level of anti-social behaviour in their local area, down from 14.4% in 2009/10 and the peak of 20.7% in 2002/03. There has been a general decline in all anti-social behaviour strands since 2002/03, except for drunk and rowdy behaviour and noisy neighbours, which have remained fairly constant.

1.3 Labour's approach

Tackling anti-social behaviour was a major preoccupation of the Labour Government. It set up an Anti-Social Behaviour Unit in 2003 under the Home Secretary, and launched a *Together* campaign, with helplines and online information for practitioners and the public, firstly through its *Together*⁵ website and then through the Home Office's *Respect* website. It set up Crime and Disorder Reduction Partnerships (which later came to be known as Community Safety Partnerships) and provided funding for anti-social behaviour co-ordinators in local areas. Labour brought in a large number of new powers for the police, local authority staff, other officials and social landlords to deal with the problem. These new tools were brought in by a series of Acts of Parliament throughout their time in office, starting with the *Crime and Disorder Act 1998*. A brief description of some of these remedies is provided in Library Standard Note 4073, *Anti-social behaviour remedies - an overview*.

¹ Independent Police Complaints Commission, *IPCC publishes Fiona Pilkington investigation report*, 24 May 2011, and Independent Police Complaints Commission, *IPCC report into the contact between Fiona Pilkington and Leicestershire Constabulary 2004-2007*, 2011

² Independent Police Complaints Commission, *IPCC report into the contact between Fiona Pilkington and Leicestershire Constabulary 2004-2007*

³ See Independent Police Complaints Commission press release, *IPCC publishes findings from investigation into GMP contact with David Askew*, 21 March 2011

⁴ Ipsos Mori, *Policing anti-social behaviour - The public perspective: Wave 2*, 27 April 2012

⁵ Still available on the National Archive website, although easier to search than to browse

1.4 The Government's approach

The Government's reforms are mainly a rationalisation of these tools. However, there are some important policy changes, and the very fact of rationalising the tools will presumably mean wider powers for some agencies.

The Home Secretary, Theresa May, gave a speech to the Conservative Party Conference on 5 October 2010 in which she set out her objections to Labour's legislation:

We will also need to bring some sanity to the alphabet soup of police powers Labour invented.

Week after week, they announced initiative after initiative to deal with anti-social behaviour.

The result was lots of headlines, but a sanctions regime so cluttered and complicated that it doesn't just confuse the perpetrators and victims, but police officers themselves.

There are ISOs, ABCs, ASBIs, ASBOs and CRASBOs. Crack house closure orders, dog control orders and graffiti removal orders. Litter and noise abatement orders, housing injunctions and parenting orders.

It's bureaucratic, expensive and ineffective, and it's got to end.

So we'll soon be coming forward with an alternative sanctions regime that is consolidated and clear; that offers restorative justice where appropriate and tougher punishments where necessary; that acts as a real deterrent to criminality; and - unlike Labour's ASBOs - provides meaningful penalties when they are breached.⁶

She went on to describe the Government's proposals for a Community Trigger, which is the subject of a separate standard note.⁷

2 The Government's consultation

On 7 February 2011, the Home Office published a consultation document, [More effective responses to anti-social behaviour](#). The consultation ran until 17 May 2011.

The White Paper [Putting Victims First: More effective responses to anti-social behaviour](#), was published over a year later on 22 May 2012. The Home Office received 1,704 responses, including 425 (the largest group) from members of the public, the rest coming from local authorities, housing providers, justice and police organisations, voluntary and community organisations and other stakeholders.⁸ [Annex A](#) of the report summarises the consultation responses. Some responses are available online, but of course these tend to be from the larger organisations rather than, say, members of the public. It is difficult, therefore, to get a fully representative selection of responses, but some are provided in the Annex to this Standard Note.

⁶ Theresa May, [A plan to fight crime](#), 5 October 2010

⁷ Library Standard Note 6343, [The "Community Trigger": The Government's proposals on Anti-social Behaviour](#)

⁸ Home Office, [Putting Victims First: More effective responses to anti-social behaviour](#), Cm 8367, 22 May 2012

3 The current system

3.1 Anti social behaviour orders

Anti-social Behaviour Orders are civil orders which were introduced by the *Crime and Disorder Act 1998*. Through them the court can **prohibit** certain behaviours. Before the court can grant them, it has to be satisfied that:

- the person has acted in an anti-social manner, which is defined as “a manner that caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household as himself”; and
- the order is necessary to protect others from further anti-social acts by him.

Breach of the ASBO is a criminal offence punishable by up to five years imprisonment and an unlimited fine.

The police, local authorities and certain others can apply to the courts for ASBOs. The *Police Reform Act 2002* also introduced “interim ASBOs” which can be made before the court has made its final decision about the application, if it thinks this is “just”.

The ASBO has a mixture of criminal and civil elements:

- It is a civil order, but, as a result of the McCann case,⁹ it has been established that the fact that the anti-social behaviour has taken place has to be established according to the criminal standard of proof, i.e. beyond reasonable doubt.
- Because it is a civil order, hearsay evidence is admissible (which would not normally be the case in a criminal case, and this allows (for example) a police officer to give evidence on behalf of an anonymous witness
- Breach of an ASBO is a criminal offence.

The *Police Reform Act 2002* introduced a new kind of ASBO, which is often called a CRASBO.¹⁰ These apply where a person is convicted of a criminal offence. The court can issue these if the prosecutor asks them to, or if the court thinks it appropriate. The same two part test applies (i.e. that the person has acted anti-socially and that the order is necessary). CRASBOs can be easier for practitioners to obtain than a stand-alone ASBO if a perpetrator is due to appear in court in the near future.

Following the introduction of the CRASBO, the other kind of ASBO is often referred to as a “stand alone” ASBO, or an ASBO “on application”.

Further details are given in Library Standard Note 1656, [Anti-social Behaviour Orders](#).

3.2 Anti-social Behaviour Injunctions

Section 13 of the *2003 Anti-social Behaviour Act* created three types of injunction:

The **anti-social behaviour injunction** (ASBI) which relates to conduct which is capable of causing nuisance or annoyance to any person, and which directly or indirectly relates to or

⁹ *R(on the application McCann and others) v Crown Court at Manchester; Clingham v Kensington and Chelsea Royal Borough Council* [2002] UKHL 39, [2002] 3 WLR 1313, [2002] 4 All ER 593, HL

¹⁰ It is also referred to as an ASBO on conviction or an “order on conviction in criminal proceedings”

affects the housing management functions of a relevant landlord.¹¹ Registered Social Landlords and Housing Action Trusts can apply for these injunctions in addition to local authorities.

Injunctions against unlawful use of premises which is available where the conduct consists of or involves the using or threatening to use housing accommodation owned by or managed by a relevant landlord for an unlawful purpose.

Exclusion order and power of arrest – if a court grants one of the injunctions described above the court may prohibit the defendant from entering or being in any premises or any area specified in the injunction. Additionally, a power of arrest can be attached to any provision of the injunction where the court is satisfied that either conduct consists of or includes the use or threatened use of violence or there is a significant risk of harm.

Further details are in Library Standard Note 264, [Anti-social behaviour in social housing](#).

Breach of an ASBI is not a criminal offence. Rather it is punishable as a contempt of court. The maximum penalty for contempt of court in the county court would be two years imprisonment and/ or an unlimited fine, although it should not be assumed that this penalty would automatically follow. The court might issue a fine, or it may decide not to impose any sanction at all beyond the “public humiliation” of being found in contempt. A legal textbook, *Arlidge, Eady and Smith on Contempt* (2011) notes:

Imprisonment has always been a sanction in cases of contempt. It should now be regarded, however, as a matter of last resort, and especially in cases of civil contempt.¹²

Some limited information on sentencing to imprisonment for contempt of court is available in a Parliamentary Written Answer from November 2011.¹³

3.3 Other tools

There is also a huge range of other tools. An overview of the remedies is set out in Library Standard Note 4073, [Anti-social behaviour remedies - an overview](#), in a 2008 Home Office publication, [Anti-social behaviour tools and powers: a guide](#) and in a March 2010 Department for Communities and Local Government publication, [Tackling anti-social behaviour: Tools and powers – toolkit for social landlords](#).

The orders which are of particular relevance to the White Paper, in that they, along with ASBIs and ASBOs, are going to be consolidated into six new remedies are as follows:

- Individual Support Orders under the *Criminal Justice Act 2003*, which can be made in respect of 10-17 year olds who have been the subject of an ASBO, and can impose positive obligations on them, intended to address the cause of the anti-social behaviour. Further information on these is available from [Individual Support Orders](#) page the Ministry of Justice website.¹⁴
- Drink banning orders under the *Violent Crime Reduction Act 2006* which are similar to ASBOs, and available both on application or on conviction to address an individual's

¹¹ This injunction can be sought against people who are not tenants.

¹² p1142

¹³ [HC Deb 23 November 2011 c358W](#)

¹⁴ Accessed 30 April 2012

alcohol misuse behaviour, and protect others and their property from such behaviour. For further information see Crown Prosecution Service guidance, [Drinking Banning Orders \(DBOs\): Sections 1 - 14 Violent Crime Reduction Act 2006](#).

- Intervention orders, introduced by section 20 of the *Drugs Act 2005* which can be attached to ASBOs to tackle the anti-social behaviour of a person who acts anti-socially because of drugs misuse. Further background is in [Library Research Paper 05/07](#) (pp 35-8) and [Home Office Circular 032/2006](#), *Intervention Orders*.
- Orders to close particular kinds of premises including crack houses¹⁵ and other premises associated with significant and persistent disorder or persistent serious nuisance. Further information on these is contained in Crown Prosecution Service guidance, [Closure of Premises Associated with Persistent Disorder or Nuisance](#) and the [Closure of premises for persistent disorder or nuisance](#) page on the archived version of the Home Office Website.¹⁶
- Orders to close premises under section 161 of the *Licensing Act 2003*. This allows a senior police officer to close down instantly for up to 24 hours licensed premises where public nuisance is being caused by noise coming from the premises. Further information on this is available from June 2007 guidance from the Department of Culture, Media and Sport, [Police Powers to Close Premises under the Licensing Act 2003](#).
- “Designated Public Place” Orders under section 13 of the *Criminal Justice and Police Act 2001*. This allows local authorities to designate areas that have experienced alcohol-related disorder or nuisance so that there can be restrictions on public drinking. Further information is in Library Standard Note 4606, [Designated Public Places Orders](#).
- Other orders to deal with specific problems such as Defacement Removal Notices, Dog Control Orders, Litter Clearing Notices and Gating Orders¹⁷ under the *Clean Neighbourhood and Environment Act 2005*. There is a series of guides on these measures on the archived Department for Food and Rural Affairs’ [Clean Neighbourhoods and Environment Act](#) page.
- Dispersal powers under the section 30 of the *Anti-Social Behaviour Act 2003*, whereby police can designate an area and then disperse groups, and take unsupervised children home between the hours of 9pm and 6am. Further information is available from Library Standard Note 4048, [Police powers to disperse children and groups under the Anti-Social Behaviour Act 2003](#)
- Directions to Leave under section 27 of the *Violent Crime Reduction Act 2006*, which allow the police to deal with alcohol related disorder by prohibiting an individual from returning to a place within 48 hours. There is further information on these in 2010 Home Office/ National Policing Improvement Agency guidance, [Giving directions to individuals to leave a locality \(section 27 of the Violent Crime Reduction Act 2006\): Practical advice](#).

¹⁵ Crack House Closure Orders

¹⁶ Accessed 1 June 2012

¹⁷ to restrict public access to public rights of way to assist in the reduction of crime or anti-social behaviour.

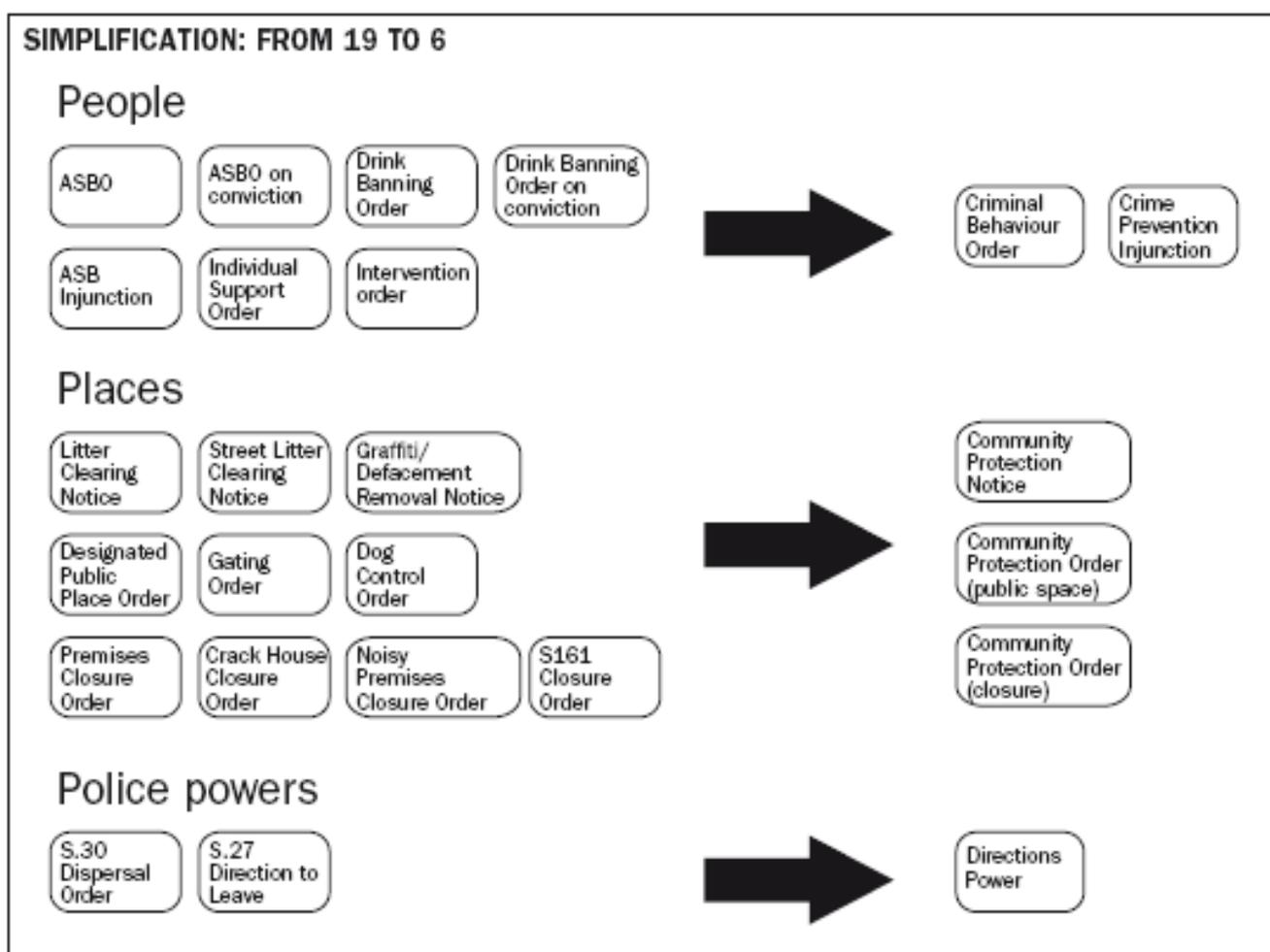
- Penalty Notices for Disorder (PNDs) under the *Criminal Justice and Police Act 2001*. Further information on these is available from the [Penalty Notices for Disorder](#) page of the Home Office website.

4 The new system

4.1 Overview

The consultation document proposed a “radical streamlining” of the “toolkit” of remedies available to practitioners,¹⁸ providing a [chart](#) of how 18 powers were going to be reduced to five new measures.¹⁹

The proposals in the White Paper are very similar, although there are some minor changes.²⁰ The chart on page 24 of the report shows this.



¹⁸ Home Office, *More effective responses to anti-social behaviour*, February 2011, p5

¹⁹ *Ibid*, p12

²⁰ The tools from the existing system to be consolidated into the new orders include s 161 Closure Orders (under the Licensing Act to deal with the imminent threat of disorder); Noisy Premises Closure Orders and Drink Banning Orders in the White Paper, instead of Brothel Closure Orders, Noise Abatement Notices and Special Interim Management Orders in the consultation document. New tools include the Community Protection Notice in the White Paper

4.2 What would replace ASBOs?

Anti-social Behaviour Orders would be abolished. It was seen in paragraph 1.1 of this Standard Note that there are “stand alone” ASBOs and CRASBOs which can be issued where there is a criminal conviction.

The new system would separate out these two strands:

- The CRASBO would be replaced by the new Criminal Behaviour Order (dubbed a CRIMBO in the press)
- The stand-alone ASBO would be one of the tools replaced by the Crime Prevention Injunction.

Both of these measures would differ from ASBOs in that they could include positive requirements as well as prohibitions.

4.3 Civil/criminal boundaries

One of the criticisms of the ASBO made by civil rights organisations and some other commentators is the blurring of the boundaries between the civil and the criminal law. It is indeed one of a number of hybrid orders, where breach of a civil order is a criminal offence.²¹ This issue was discussed in some detail by the Home Affairs Committee in their 2005 report, *Anti-social Behaviour*.²²

191. During the course of the inquiry, we heard extensive criticisms of ASBOs, from a number of sources, including children’s charities, think-tanks and civil liberties organisations. The following criticisms came up repeatedly:

ASBOs blur the boundaries between civil and criminal law, with implications both for human rights, and for the possibility of a twin-track approach under which someone can be given an ASBO in response to criminal behaviour that— in a different part of the country—might lead to criminal prosecution;

The use of ASBOs against young people runs the risk of net-widening: bringing more young people into contact with the criminal justice system, and especially increasing the number of young people in custody;

The previous Government did not see this as a problem:

195. The Home Office argued that the prospect of the same behaviour being treated variably through the civil or criminal route was not a matter for concern:

What is important is selecting the intervention that will best deal with the situation, providing an effective and swift remedy with further protection for individuals and the community.

The Committee itself not convinced that there was a problem either, commenting that it had come across considerable confusion on the point, and agreeing with one commentator that whilst individual rights had to be protected, this should not be at the expense of the community’s rights.²³

²¹ Other examples include the civil remedy under section 3 of the *Protection from Harassment Act 1997*, and Non-Molestation Orders under the *Family Law Act 1996*. In both cases, breach is a criminal offence.

²² Home Affairs Committee, *Anti-social Behaviour*, 22 March 2005, HC 80 2004-05, pp 65-6 and p74

²³ p66

The Government's proposals do separate out the civil and criminal strands to some extent, in that the Criminal Behaviour Order, breach of which is an offence, could only be available where a criminal offence has been committed. The Crime Prevention Injunction, by contrast, would be punishable as contempt of court by up to two years in prison or an unlimited fine, as set out in the *Contempt of Court Act 1981*. This would mean that the perpetrator would not have a criminal record. This contrasts with the stand-alone ASBO.

However, both these orders still have prison as a last resort for behaviour which may not count as a criminal offence.

4.4 Criminal Behaviour Orders

The new Criminal Behaviour Order (CBO) would only be available where a person had been convicted for an offence. This could be any offence, not just one involving anti-social behaviour. The order would still be a civil one, and breach would be a criminal offence with a maximum sentence of five years' imprisonment, as is currently the case with the stand alone ASBO and the CRASBO.

The main difference between CRASBOs and CBOs is the ability to impose positive requirements as well as prohibitions – see section 4.6 below.

4.5 Crime Prevention Injunctions

In cases where a perpetrator had not been convicted of a criminal offence, then the replacement for the ASBO would be the new Crime Prevention Injunction (CPI). Unlike the ASBO, this would be a purely civil order with civil sanctions for breaches. Like the current ASBI, breach would usually be punished as contempt of court, although special arrangements would have to be made for under 18s as there are no powers to detain anyone under 18 for contempt and fines are difficult to enforce. The Government proposes introducing a supervision order with requirements based on part the sanctions regime available for gang injunctions, including detention in the case of serious breaches.

The Government's aim with the CPI is to "create a purely civil order (i.e. with sanctions under the civil, rather than criminal, law) that agencies can secure quickly to stop an individual's anti-social behaviour".²⁴

Of course, one consequence of this being a purely civil order is that the standard of proof would be the civil one: on the balance of probabilities rather than beyond reasonable doubt. This contrasts with the ASBO, where, after some initial confusion about which standard should apply, the House of Lords determined in 2002 that the question of whether or not the defendant had acted in an anti-social manner must be established "beyond reasonable doubt". The fact that the new order is a civil one would also mean that hearsay evidence would be acceptable, as is currently the case with ASBOs.

The "Test" – "Nuisance or annoyance" or "harassment, alarm or distress"?

The test of anti-social behaviour which could result in a CPI is the same one as is currently used for ASBIs:

The test to get an injunction would be that the person has engaged in conduct which is capable of causing nuisance or annoyance to any person and that it is just and convenient to grant the injunction.²⁵

²⁴ Home Office, [More effective responses to anti-social behaviour](#), February 2011, p16

The Human Rights organisation, *Liberty*, has questioned whether it is right that an order which is able to impose positive and negative requirements should be made on this basis.

Allowing punitive restriction (which under the consultation's proposals could for the first time include positive obligations) to be imposed on the basis that someone might cause future 'annoyance' to another person is so low and subjective a test as to render it almost meaningless.²⁶

The National Housing Federation, by contrast, said that applying the "harassment, alarm or distress" to the new injunction would be a "backwards step":

We accept that that the Government's view on this matter is not settled, and would strongly argue that the lower test be adopted. Failure to do so would compromise the effectiveness of the CPI from the outset.²⁷

The White Paper's summary of consultation responses noted that there was mixed feedback on the question of the test. It noted that social landlords argued for the ASBI model to be kept because it was "seen as reducing evidence requirements and helping provide respite to communities more quickly". Overall, for those who answered the relevant question in the consultation document, "64% opted for 'nuisance and annoyance' whilst only 25% wanted 'harassment, alarm or distress'.²⁸

4.6 Should the new orders impose positive requirements?

The White Paper said that most of the feedback had been positive:

58% of respondents welcomed the inclusion of positive requirements in the Criminal Behaviour Order (CBO) and Crime Prevention Injunction (CPI), and a further 38% supported the idea but had concerns about how these would be funded locally. However, the majority agreed that this was not a reason to not pursue this option as the potential benefits in terms of reduced reoffending and reduced downstream costs were seen to be substantial.²⁹

In their response to the consultation, *Liberty* argued that the new power to make positive requirements in a CPI made it "much more akin to a community sentence":

Crucially, and as is the case with the ASBO (...) CPIs will be able to be imposed on those who have never come close to anything like criminal behaviour, let alone been convicted for any offence. The imposition of positive obligations through a new souped-up ASBO will represent a significant shift from the original model where the stated emphasis was on injuncting or restricting someone from doing 'anti-social' things, nor requiring them to comply with positive obligations.³⁰

The Police Foundation pointed out that with ASBOs, "many of the young people who breach requirements come from chaotic and troubled home lives, making it difficult to comply with

²⁵ Home Office, *Putting Victims First: More effective responses to anti-social behaviour*, Cm 8367, 22 May 2012, p48

²⁶ *Liberty*, *Liberty's Response to the Home Office's Proposals on More Effective Responses to Anti-Social Behaviour*, May 2011, p8

²⁷ National Housing Federation, *Anti-social behaviour: response to Home Office consultation*, 17 May 2011, p7

²⁸ Home Office, *Putting Victims First: More effective responses to anti-social behaviour*, Cm 8367, 22 May 2012, p48

²⁹ *Ibid*

³⁰ *Liberty*, *Liberty's Response to the Home Office's Proposals on More Effective Responses to Anti-Social Behaviour*, May 2011, p9

instructions to attend appointments and observe curfews". It argued that the positive requirements should focus on rehabilitation:

Although we support measures that may assist an offender to resolve underlying problems such as drug dependency or anger management, we are concerned that positive requirements may be difficult for offenders to comply with. We propose that, while prohibitive elements should take into account the victim, society and the offender, positive requirements should be focuses on rehabilitation. The focus should be that of assisting the offender and his/her best interests should be taken into account. As such, legislation should not include specific examples, but should make the aim of the positive requirement clear.³¹

The Children's Society argued that positive requirements should be imposed only with consent:

It is also vital that positive requirements are only imposed with the consent of the individual concerned, and that refusal to participate in such requirements does not result in the imposition of more burdensome sanctions. The experience from our practice is that positive requirements are most successful where a young person has been involved in setting them.³²

4.7 Breach of the orders

The Criminal Behaviour Order

As with the ASBO, breach of the new "CRIMBO" would be a criminal offence with a maximum of five years in custody. The White Paper notes that "as it is an order on conviction, there is not risk of criminalising someone for the first time for breach of a civil order".³³ It also states that the police will be given "flexibility to deal with a first breach to determine its seriousness" so that minor breaches could be dealt with quickly and informally.

The 2011 consultation document said that the Government was "considering whether different sanctions should apply for any breach of the positive requirements".³⁴ This issue is not resolved in the White Paper.

The Crime Prevention Injunction

One contrast with ASBOs which the consultation document stresses is breach of the CPI would need to be proved "beyond reasonable doubt", but would not be a criminal offence and would not result in a criminal record."³⁵ The White Paper summarises the consultation responses on the penalties for breaches by adults and juveniles:

Breach sanctions: We asked whether respondents agreed with the proposed breach sanctions. Some respondents were concerned about the loss of a criminal sanction on breach in the CPI. For example, once local authority commented "the sanctions need to be greater to add weight to the CPI". Whereas others supported this because of the advantages in a purely civil injunction being quicker to get, and as they would be able to take action themselves to address breaches of injunctions they have applied for, thus having control of the process from end to end. For example, the Law Society

³¹ The Police Foundation, *More Effective Responses to Anti-Social Behaviour The Police Foundation's Response*, 2011

³² The Children's Society, *The Children's Society's response to the Home Office consultation „More Effective Responses to Anti-Social Behaviour“*, May 2011

³³ Ibid p 50

³⁴ Home Office, *More effective responses to anti-social behaviour* , February 2011, p15

³⁵ Ibid p18

commented that “on balance, we prefer the use of injunction-based remedies for anti-social behaviour, resulting in a civil penalty rather than a criminal conviction, and thus avoiding the mixing of criminal and civil legal processes”. However, there were some concerns as to whether County Court judges have sufficient flexibility on sentencing for contempt of court, especially as they do not have access to rehabilitative orders or community sentences.

For young people, 57% agreed with the CPI breach sanctions for under-18s, and only 22% disagreed, with a further 4% against any custody for under-18s. In relation to the question of custody for under-18s for breach of a civil order, a number of children’s charities were strongly against this, whereas the majority of ASB practitioners across all sectors were supportive.³⁶

The Government’s White Paper confirms that breach by an adult will be treated as contempt of court by up to two years in prison or an unlimited fine.³⁷ There will be further consideration of whether there should be custodial sentences for breaches by juveniles:

Breach by someone aged 10 to 17 would result in a curfew, activity or supervision requirement, or as a very last resort, repeated breach causing serious harm could result in custody for up to three months for someone aged 14 to 17 years old. Questions were raised in the consultation as to whether it is proportionate to have a custodial penalty for breach at all. As a result, we will continue to seek the views of individuals and organisations as to whether a custodial sentence should be available for breach of a Crime Prevention Injunction by a young person. The government is committed to ensuring the judiciary have tough powers at their disposal on breach, but also that custody is used in a proportionate way. This is something we will return to as part of the process of pre-legislative scrutiny.³⁸

The following table summarises the maximum penalty for breaches by adults under the current system for ASBOs and Anti-social Behaviour Injunctions and under the new system for CBOs and CPIs:

³⁶ Home Office, *Putting Victims First: More effective responses to anti-social behaviour*, Cm 8367, 22 May 2012, p43

³⁷ *Contempt of Court Act 1981*

³⁸ Home Office, *Putting Victims First: More effective responses to anti-social behaviour*, Cm 8367, 22 May 2012, p48

Summary – maximum penalties for adults

| | Maximum penalty for breach – Magistrate’s Court | Maximum penalty for breach – Crown Court | Maximum penalty for breach – County Court |
|--|---|---|---|
| The current ASBO | Six months imprisonment or fine or both | Five years imprisonment or a fine or both | N/A |
| The current Anti-social Behaviour Injunction | N/A | N/A | Contempt of court – Two years imprisonment or unlimited fine. |
| The new Criminal Behaviour Order (replaces CRASBOs) | Maximum sentence of five years in prison | | |
| The new Crime Prevention Injunctions (replaces stand alone ASBOs, Anti-Social Behaviour Injunctions and some other tools) | Fines and a maximum sentence of 6 months | | Two years imprisonment or unlimited fine. |

It is worth looking at what sentences for breach have been in practice.

- Between 1 June 2000 and 31 December 2010, only around half the people who breached ASBOs received custodial sentences rather than community sentences, fines or other disposals.
- Of those who were given custodial sentences, just over half a per cent (32 out of 6,007) received more than two years in prison.
- The average custodial sentence for breach of ASBOs is just over five months, with under 5% of those given a custodial sentence serving more than a year in prison.³⁹

Penalties for contempt of court are considered above in section 3.2 of this Standard Note.

5 Informal powers

The White Paper proposes giving professionals more discretion in responding to anti-social behaviour, and sharing evidence about the effectiveness of informal tools such as Acceptable Behaviour Contracts:

³⁹ Home Office, *Anti-social behaviour order statistics - England and Wales 2010*, Tables 12 and 13

1.18 Evidence shows that early intervention, informal interventions, such as through restorative and reparative approaches are successful in stopping the ASB committed by the vast majority of perpetrators. For example, a recent HouseMark survey showed that 76% of ASB cases dealt with by social landlords were resolved through early intervention⁹. One tool that can be used early is an Acceptable Behaviour Contract (also known as an Acceptable Behaviour Agreement) which gets the individual to acknowledge their behaviour and its effect on victims, with the aim of stopping it quickly. Acceptable Behaviour Contracts are informal, voluntary agreements between an individual who has committed ASB, and a local agency (and also sometimes involving the local community). In addition, verbal or written warnings can be very effective at stopping people behaving anti-socially at an early stage.

1.19 By giving professionals a means of challenging all unacceptable behaviour immediately, rather than going through a formal court process, these informal tools can establish clear standards of behaviour and reinforce the message that ASB will not be tolerated. In many cases, awareness of the impact of the behaviour on their neighbours, and the threat of more formal enforcement tools, can be a sufficient incentive for an individual to change their behaviour. It is for local areas to decide when and how to use these approaches, not Whitehall, but we would like to encourage professionals to use informal methods where they deem them to be appropriate.⁴⁰

This is discussed in more detail in chapter three of the White Paper

6 The Community Trigger

The Government's February 2011 consultation paper proposed that there should be a new duty on police, local authorities and some other partners to take action to deal with persistent anti social behaviour. Much press attention focused on the criteria envisaged by the Green Paper:

- that five individuals from five different households had complained about the same issue and no issue had been taken; or
- if the behaviour had been reported the authorities by an individual at least three times”.

Malicious complaints could be rejected.

However, the Green Paper went on to say that there would be “minimal central prescription over how areas operate the trigger”.

The May 2012 White Paper announced that the legislation would not prescribe exactly how local areas should implement the trigger, and the “criteria” (such as the number of complaints which would lead to action) would be left to local discretion. However, the trigger would be piloted in Manchester using the criteria envisaged in the Green Paper. Local authorities would be required to decide and publish the thresholds, criteria, process and reporting mechanism they proposed to use locally.

The White Paper did indicate that, under the Government's final proposals:

- Local authorities, police and specified health bodies would have a “high level” duty to deal jointly with complaints raised by the community regarding anti-social behaviour where no action had been taken;

⁴⁰ Home Office, *Putting Victims First: More effective responses to anti-social behaviour*, Cm 8367, 22 May 2012, p16

- Authorities would be able to reject vexatious or malicious complaints;
- Anti-social behaviour would be defined as causing “harassment, alarm or distress” to members of the public (the same as is used for Anti-social Behaviour Orders) not, for example, “nuisance or annoyance”;
- Third parties (in the case of vulnerable victims) and businesses would be able to initiate the trigger as well as individual members of the public.

Further detail is in Library Standard Note 6343, [The "Community Trigger": The Government's proposals on Anti-social Behaviour](#).

7 What happens next?

The White Paper makes it clear that the Government intends to publish a draft bill which will be subject to pre-legislative scrutiny:

As we are proposing simplification of a wide range of existing law, we want to consider all the detailed issues fully in order to get it right first time. Rather than introducing reactive initiatives and narrow powers one after another, like the last Government, we know we need to involve the experts who will use these powers in their development. As a result we will publish our legislative proposals as part of a draft Bill for pre-legislative scrutiny. We will continue to work closely with victims, communities, businesses and practitioners to shape the legislation so that it offers the best possible protection to the public and reflects the likely impacts across the wide range of groups affected by anti-social behaviour.⁴¹

⁴¹ Home Office, [Putting Victims First: More effective responses to anti-social behaviour](#), Cm 8367, 22 May 2012, p23

Appendix – Responses to the consultation document

The following are amongst the responses which are available online. Of course, these tend to be from the larger organisations rather than members of the public, and the summary makes it clear that there were areas, for example, where the public had rather different views from agencies involved in service provision. It is difficult, therefore, to get a fully representative selection of responses. [Annex A](#) of the White Paper provides the Government's summary of the responses.

ACPO, [ACPO Anti-Social Behaviour Portfolio response to 'More Effective Responses to Anti-Social Behaviour'](#) 17 May 2011

Barnardos, [ASB plans could put vulnerable children at risk, says Barnardo's](#), Press Release, 9 May 2011

Centrepont, [More effective responses to anti-social behaviour: Centrepont response](#), March 2011

The Children's Society, [The Children's Society's response to the Home Office consultation „More Effective Responses to Anti-Social Behaviour“](#), May 2011

Colchester Borough council, [Response to the Home Office consultation "More Effective Responses to Anti-social Behaviour"](#)

Cornwall council, [A joint response with police and community safety partners on plans to streamline the toolkit used to tackle anti-social behaviour](#), May 2011, [under 'public protection' heading]

Coventry City council, [Council Response to the Home Office Consultation - "More Effective Responses to Anti-Social Behaviour"](#), April 2011

Criminal Justice Alliance, [Response to 'More effective responses to antisocial behaviour'](#), May 2011

G15, [More Effective Responses to Antisocial Behaviour](#), May 2011

Howard League for Penal Reform, [Consultation: More effective responses to anti-social behaviour](#), 17 May 2011

Justice, [Response to Home Office consultation More Effective Responses to Anti-Social Behaviour](#), May 2011

Liberty, [Liberty's Response to the Home Office's Proposals on More Effective Responses to Anti-Social Behaviour](#), May 2011

Local Government Information Unit, [Policy Briefing: Putting victims first: More effective responses to anti-social behaviour](#), June 2012

Magistrates Association, [More effective responses to anti-social behaviour](#), 3 May 2011

Nacro, [Nacro responds to government's plans to tackle anti-social behaviour](#), May 2012

National Council for Voluntary Youth Services, [More effective responses to anti-social behaviour](#), 17 May 2011

National Housing Federation, *Anti-social behaviour: response to Home Office consultation*, 17 May 2011

Office of the Children's Commissioner, *Office of the Children's Commissioner's response to the Home Office consultation*, May 2011

The Police Foundation, *More Effective Responses to Anti-Social Behaviour The Police Foundation's Response*, 2011

Prison Reform Trust, *Prison Reform Trust consultation submission More effective responses to anti-social behaviour*, 2011

Sentencing Council, *More Effective Responses to Anti-Social Behaviour Response from the Sentencing Council*, April 2011

Shelter, *More effective responses to anti-social behaviour*, 3 May 2011