

Councillors' Guide to changes to Anti-Social Behaviour Legislation



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peopleMatter

Introduction

This aide memoire outlines the key changes to anti-social behaviour legislation set out in Parts 1-6 of the Anti-Social Behaviour, Crime and Policing Act 2014.

The aide memoire is designed to be used as a quick reference tool to help identify the most appropriate response to tackle anti-social behaviour. It describes what tools could be used but is not about Borough Council policy and practice.

The primary source of content used to create this document is the Home Office (July 2014) Anti-Social Behaviour Crime and Policing Act 2014: Reform of anti-social behaviour powers, Statutory Guidance for Frontline Professionals.

The Home Office Guidance can be found at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/332839/StatutoryGuidanceFrontline.pdf



From 19 Powers to 6

The Act replaces 19 previous powers dealing with anti-social behaviour with 6 broader powers, streamlining procedures to allow a quicker response to anti-social behaviour. The government feels that these powers make it easier for agencies and regulators to take action against anti-social behaviour and reduce repeat victimisation to protect victims and communities.

Powers for dealing with people	
Previous Powers:	Replaced by:
<ul style="list-style-type: none"> • Anti-Social Behaviour Order (ASBO) • Drink Banning Order (DBO) • Anti-Social Behaviour Injunction (ASBI) • Individual Support Officer • Intervention Order 	<ul style="list-style-type: none"> • Civil Injunction
<ul style="list-style-type: none"> • ASBO on conviction • DBO on conviction 	<ul style="list-style-type: none"> • Criminal Behaviour Order (CBO)

Powers for dealing with places	
Previous Powers:	Replaced by:
<ul style="list-style-type: none"> • Litter Clearing Notice • Street Litter Clearing Notice • Graffiti/Defacement Removal Notice 	<ul style="list-style-type: none"> • Community Protection Notice
<ul style="list-style-type: none"> • Designated Public Place Order • Gating Order • Dog Control Order 	<ul style="list-style-type: none"> • Public Spaces Protection Order (PSPo)
<ul style="list-style-type: none"> • Premises Closure Order • Crack House Closure Order • S.161 (Licensing) Closure Order 	<ul style="list-style-type: none"> • Closure Power (Notice and Order)

Police powers	
Previous Powers:	Replaced by:
<ul style="list-style-type: none"> • S.30 Dispersal Order • S.27 Direction to Leave 	<ul style="list-style-type: none"> • Dispersal Power

With the exception of the Civil Injunction, all the replacement tools and powers commenced 20 October 2014, with the effect that the powers being replaced are no longer available. The Injunction commenced in early 2015.



Early and Informal Interventions

The Act introduces new formal powers to tackle anti-social behaviour. However the vast majority of incidents can and should be dealt with through early and informal measures. We know from our own practice, by establishing clear standards of behaviour and ensuring anti-social behaviour is not tolerated, it has been proven that the use of early and informal interventions can be successful in stopping anti-social behaviour.

Professional judgement and all of the available information, intelligence and evidence should be used to determine whether or not it is appropriate to use an informal intervention on a case by case basis. Some tried and tested examples of early and informal interventions being used in Maidstone are shown on the table overleaf:

Tried and tested examples of early and informal interventions being used in Maidstone

Intervention	Summary:
Verbal Warnings	<ul style="list-style-type: none"> • Must be specific and clear about what it relates to • Individuals should be made aware of: <ul style="list-style-type: none"> - The impact of their ASB on victims and the community - The consequences of continuing with the problem behaviour
Written Warnings	<ul style="list-style-type: none"> • Must be specific and clear about what it relates to • Individuals should be made aware of the impact of their ASB on victims and the community • Information about written warnings should be shared with relevant partners to monitor the impact of intervention
Restorative Intervention	<ul style="list-style-type: none"> • Primarily aimed at first time perpetrators and those who express genuine remorse • Informal agreement between involved parties • Should take into account the needs of the victim, perpetrator and wider community
Mediation/Conflict Resolution	<ul style="list-style-type: none"> • All parties must be willing participants • A mediator facilitates a meeting and ensures both parties adhere to meeting ground rules • Where agreements are made at the meeting the mediator can put this in writing and ask each party to sign a document to formalise what was agreed • Effective when responding to: <ul style="list-style-type: none"> - Neighbour disputes - Family conflicts - Noise complaints - Situations when it is difficult to establish who is the victim and who is the perpetrator

<p>Acceptable Behaviour Contracts (ABCs)</p>	<ul style="list-style-type: none"> • A written agreement between a perpetrator of ASB and an agency working with them • No formal sanction for failing to sign or comply • ABCs should be specific about what further action may be taken if a perpetrator fails to comply • Can be submitted as evidence if subsequent court proceedings are deemed necessary • Effective when dealing with young people and preventing a further escalation of unacceptable behaviour
<p>Parenting Contracts</p>	<ul style="list-style-type: none"> • Similar to ABCs but signed by a parent or guardian • Might be used when: <ul style="list-style-type: none"> - A parent is a bad influence to a child - A parent is failing to provide suitable supervision • If a parenting contract is to be used as an informal intervention against a young person under 18, their parents or guardians should be contacted first
<p>Support and Counselling</p>	<ul style="list-style-type: none"> • Addresses underlying causes of ASB for example, misuse of alcohol or drugs before further low level crime and anti-social behaviour is committed.



The following is a summary of the tools and powers introduced by the Act. The tools which they replace are repealed by the Act. There are transitional arrangements for example an existing Dog Control Order will automatically become a Public Space Protection Order after a period of 3 years.

Civil Injunction

Purpose	To stop or prevent individuals engaging in anti-social behaviour quickly, nipping problems in the bud before they escalate.
Applicants	<ul style="list-style-type: none"> • Local councils; • Social landlords; • Police (including British Transport Police); • Transport for London; • Environment Agency and Natural Resources Wales; and • NHS Protect and NHS Protect (Wales)
Test	<p>On the balance of probabilities;</p> <ul style="list-style-type: none"> • Behaviour likely to cause harassment, alarm or distress (non-housing related anti-social behaviour); or • Conduct capable of causing nuisance or annoyance (housing-related anti-social behaviour); and • Just and convenient to grant the injunction to prevent anti-social behaviour.
Details	<ul style="list-style-type: none"> • Issued by the county court and High Court for over 18s and the youth court for under 18s. • Injunction will include prohibitions and can also include positive requirements to get the perpetrator to address the underlying causes of their anti-social behaviour. • Agencies must consult youth offending teams in applications against under 18s.

Penalty on Breach	<ul style="list-style-type: none"> • Breach of the injunction is not a criminal offence, but breach must be proved to the criminal standard, that is, beyond reasonable doubt. • Over 18s: civil contempt of court with unlimited fine or up to two years in prison. • Under 18s: supervision order or, as a very last resort, a civil detention order of up to three months for 14-17 year olds.
Appeals	<ul style="list-style-type: none"> • Over 18s to the High Court; and • Under 18s to the Crown Court.
Important changes / differences	<ul style="list-style-type: none"> • Available to a wider range of agencies than Anti-Social Behaviour Injunctions. • Obtainable on a civil standard of proof unlike Anti-Social Behaviour Orders (ASBOs). • No need to prove “necessity” unlike ASBOs. • Breach is not a criminal offence. • Scope for positive requirements to focus on long-term solutions.



Criminal Behaviour Order

Purpose	Issued by any criminal court against a person who has been convicted of an offence to tackle the most persistently antisocial individuals who are also engaged in criminal activity.
Applicants	The prosecution, in most cases the Crown Prosecution Service (CPS), either at its own initiative or following a request from the police or council.
Test	<ul style="list-style-type: none"> • If the court is satisfied beyond reasonable doubt that the offender has engaged in behaviour that has caused or is likely to cause harassment, alarm or distress to any person; and • The court considers that making the order will help prevent the offender from engaging in such behaviour.
Details	<ul style="list-style-type: none"> • Issued by any criminal court for any criminal offence. • The anti-social behaviour does not need to be part of the criminal offence. • Order will include prohibitions to stop the anti-social behaviour but it can also include positive requirements to get the offender to address the underlying causes of the offender's behaviour. • Agencies must find out the view of the youth offending team (YOT) for applications for under 18s.
Penalty on Breach	<ul style="list-style-type: none"> • Breach of the order is a criminal offence and must be proved to a criminal standard of proof, that is, beyond reasonable doubt. • For over 18s on summary conviction: up to six months imprisonment or a fine or both. • For over 18s on conviction on indictment: up to five years imprisonment or a fine or both. • For under 18s: the sentencing powers in the youth court apply
Appeals	<ul style="list-style-type: none"> • Appeals against orders made in the magistrates' court (which includes the youth court) lie to the Crown Court. • Appeals against orders made in the Crown Court lie to the Court of Appeal.
Important changes / differences	<ul style="list-style-type: none"> • Consultation requirement with YOTs for under 18s. • No need to prove "necessity" unlike Anti-Social Behaviour Orders. • Scope for positive requirements to focus on long-term solutions.

Dispersal Powers

Purpose	Requires a person committing or likely to commit anti-social behaviour, crime or disorder to leave an area for up to 48 hours.
Applicants	<ul style="list-style-type: none"> • Police officers in uniform; and • Police Community Support Officers (if designated the power by their chief constable).
Test	<ul style="list-style-type: none"> • Contributing or likely to contribute to members of the public in the locality being harassed, alarmed or distressed (or the occurrence of crime and disorder); and • Direction necessary to remove or reduce the likelihood of the anti-social behaviour, crime or disorder.
Details	<ul style="list-style-type: none"> • Must specify the area to which it relates and can determine the time and the route to leave by. • Can confiscate any item that could be used to commit anti-social behaviour, crime or disorder. • Use in a specified locality must be authorised by a police inspector and can last for up to 48 hours. • A direction can be given to anyone who is, or appears to be, over the age of 10. • A person who is under 16 and given a direction can be taken home or to a place of safety.
Penalty on Breach	<ul style="list-style-type: none"> • Breach is a criminal offence. • Failure to comply with a direction to leave: up to a level 4 fine and/or up to three months in prison although under 18s cannot be imprisoned • Failure to hand over items: up to a level 2 fine.
Appeals	<ul style="list-style-type: none"> • A person who is given a direction and feels they have been incorrectly dealt with should speak to the duty inspector at the local police station. Details should be given to the person on the written notice.
Important changes / differences	<ul style="list-style-type: none"> • It is a more flexible power; it can be used to provide immediate respite to a community from anti-social behaviour, crime or disorder. • An area does not need to be designated as a dispersal zone in advance. • Although there is no requirement to consult the local council, the authorising officer may consider doing so in some circumstances before authorising use of the dispersal. • Police Community Support Officers may use all elements of the dispersal power (if designated the 10 power by their chief constable).

Community Protection Notice (CPN)

Purpose	To stop a person aged 16 or over, business or organisation committing anti-social behaviour which spoils the community's quality of life.
Applicants	<ul style="list-style-type: none"> • Council officers; • Police officers; • Police community support officers (PCSOs) if designated; and • Social landlords (if designated by the council).
Test	<p>Behaviour has to:</p> <ul style="list-style-type: none"> • have a detrimental effect on the quality of life of those in the locality; • be of a persistent or continuing nature; and • be unreasonable.
Details	<ul style="list-style-type: none"> • Written warning issued informing the perpetrator of problem behaviour, requesting them to stop, and the consequences of continuing. • Community protection notice (CPN) issued including requirement to stop things, do things or take reasonable steps to avoid further anti-social behaviour. • Can allow council to carry out works in default on behalf of a perpetrator.
Penalty on Breach	<ul style="list-style-type: none"> • Breach is a criminal offence. • A fixed penalty notice can be issued of up to £100 if appropriate. An early repayment discount can be applied. • A fine of up to £2,000 (for individuals), or £20,000 for businesses.
Appeals	<ul style="list-style-type: none"> • Terms of a CPN can be appealed by the perpetrator within 21 days of issue. • The cost of works undertaken on behalf of the perpetrator by the council can be challenged by the perpetrator if they think they are disproportionate.
Important changes / differences	<ul style="list-style-type: none"> • The CPN can deal with a wider range of behaviours for instance, it can deal with noise nuisance and litter on private land not open to the air. • The CPN can be used against a wider range of perpetrators. • The CPN can include requirements to ensure that problems are rectified and that steps are taken to prevent the anti-social behaviour occurring again.

Public Spaces Protection Order (PSPO)

Purpose	Designed to stop individuals or groups committing antisocial behaviour in a public space
Applicants	<ul style="list-style-type: none">• Councils issue a public spaces protection order (PSPO) after consultation with the police, Police and Crime Commissioner and other relevant bodies.
Test	Behaviour being restricted has to: <ul style="list-style-type: none">• be having, or be likely to have, a detrimental effect on the quality of life of those in the locality;• be persistent or continuing nature; and• be unreasonable.
Details	Behaviour being restricted has to: <ul style="list-style-type: none">• be having, or be likely to have, a detrimental effect on the quality of life of those in the locality;• be persistent or continuing nature; and• be unreasonable.
Penalty on Breach	Breach is a criminal offence. <ul style="list-style-type: none">• Enforcement officers can issue a fixed penalty notice of up to £100 if appropriate. An early repayment discount can be applied.• A fine of up to level 3 on prosecution.
Appeals	<ul style="list-style-type: none">• Anyone who lives in, or regularly works in or visits the area can appeal a PSPO in the High Court within six weeks of issue.• Further appeal is available each time the PSPO is varied by the council.
Important changes / differences	<ul style="list-style-type: none">• More than one restriction can be added to the same PSPO, meaning that a single PSPO can deal with.



Closure Power

Purpose	To allow the police or council to quickly close premises which are being used, or likely to be used, to commit nuisance or disorder.
Applicants	<ul style="list-style-type: none"> • Local council • Police
Test	<p>The following has occurred, or will occur, if the closure power is not used:</p> <p>Closure notice (up to 48 hours):</p> <ul style="list-style-type: none"> • Nuisance to the public; or • Disorder near those premises. <p>Closure order (up to six months):</p> <ul style="list-style-type: none"> • Disorderly, offensive or criminal behaviour; • Serious nuisance to the public; or • Disorder near the premises.
Details	<p>A closure notice is issued out of court in the first instance. Flowing from this the closure order can be applied for through the courts.</p> <ul style="list-style-type: none"> • Notice: can close a premises for up to 48 hrs out of court but cannot stop owner or those who habitually live there accessing the premises. • Order: can close premises for up to six months and can restrict all access. • Both the notice and the order can cover any land or any other place, whether enclosed or not including residential, business, non-business and licensed premises.
Penalty on Breach	<p>Breach is a criminal offence.</p> <ul style="list-style-type: none"> • Notice: Up to three months in prison; • Order: Up to six months in prison; • Both: Up to an unlimited fine for residential and nonresidential premises.
Appeals	<ul style="list-style-type: none"> • Any person who the closure notice was served on; • Any person who had not been served the closure notice but has an interest in the premises; • The council (where closure order was not made and they issued the notice); • The police (where closure order was not made and they issued the notice).
Important changes / differences	<ul style="list-style-type: none"> • A single closure power covering a wider range of behaviour. Quick, flexible and can be used for up to 48 hours out of court.



New Absolute Ground for Possession

Purpose	The Act introduces a new absolute ground for possession of secure and assured tenancies where anti-social behaviour or criminality has already been proven by another court.
Applicants	To expedite the eviction of landlords' most anti-social tenants to bring faster relief to victims.
Test	<p>The tenant, a member of the tenant's household, or a person visiting the property has met one of the following conditions:</p> <ul style="list-style-type: none"> • convicted of a serious offence (specified in Schedule 2A to the Housing Act 1985); • found by a court to have breached a civil injunction; • convicted for breaching a criminal behaviour order (CBO); • convicted for breaching a noise abatement notice; <p>or</p> <ul style="list-style-type: none"> • the tenant's property has been closed for more than 48 hours under a closure order for antisocial behaviour.
Details	<ul style="list-style-type: none"> • Offence/breach needs to have occurred in the locality of the property or affected a person with a right to live in the locality or affected the landlord or his or her staff/contractors; • Secure tenants of local housing authorities will have a statutory right to request a review of the landlord's decision to seek possession. Private and registered providers are encouraged to adopt a similar practice.
Penalty on Breach	<p>Breach is a criminal offence.</p> <ul style="list-style-type: none"> • Notice: Up to three months in prison; • Order: Up to six months in prison; • Both: Up to an unlimited fine for residential and nonresidential premises.
Appeals	<ul style="list-style-type: none"> • If the above test is met, the court must grant a possession order (subject to any available human rights defence raised by the tenant, including proportionality) where the correct procedure has been followed.

Important
Changes /
differences

- Unlike the existing discretionary grounds for possession, the landlord will not be required to prove to the court that it is reasonable to grant possession. This means the court will be more likely to determine cases in a single, short hearing;
- This will offer better protection and faster relief for victims and witnesses of anti-social behaviour, save landlords costs, and free up court resources and time;
- It will provide new flexibility for landlords to obtain possession through this faster route for persistently anti-social tenants;
- The court will not be able to postpone possession to a date later than 14 days after the making of the order except in exceptional circumstances, and will not be able to postpone for later than six weeks in any event.



Community Empowerment

Amongst the anti-social behaviour provisions in the Act there are two important new measures to help focus the response to such behaviour on the needs of victims:

- The 'Community Trigger' to give victims and communities the right to require agencies to deal with persistent anti-social behaviour that has previously been ignored. The trigger could be activated by a member of the public, a community or a business if repeated complaints about antisocial behaviour have been ignored.

The threshold for the Community Trigger across the Kent Police area has been adopted by all the local authorities and is set at:

- Three incidents of ASB or hate crime in a six month period reported by one person
- Five reported incidents of ASB or hate crime in a six month period involving a linked location reported by more than one person

Maidstone's citizens can access the Community Trigger via:

- the Council's website:

<http://www.maidstone.gov.uk/residents/community-safety/community-trigger>

- by writing to 'Community Trigger', Community Safety Team, Maidstone House, King Street, Maidstone, Kent, ME15 6JQ
- via our online web form at: <https://maidstone.firmstep.com/default.aspx/RenderForm/?F.Name=Vbyogq6X3R7&HideToolbar=1>
- by calling 01622 602658
- via their Social Landlord
- Kent Police.

The 'Community Remedy' is a menu of sanctions for low-level crime and ASB which has been drawn up following consultation with the local community and agreed between the Police and Crime Commissioner (PCC) and the Chief Constable. Police officers will work from the menu of sanctions when using two types of out of court disposal – informal community resolutions and conditional cautions. These require the offender to accept that they have committed a criminal offence or engaged in ASB, and to accept some form of sanction out of court, as an alternative to formal criminal proceedings, should an offence have been committed.

Further Information

Councillors should contact:

Environmental Enforcement- 01622 602202 or email enforcementoperations@maidstone.gov.uk to discuss any environmental issue including noise, smoke, dogs etc.

Or

Community Safety- 01622 602658, or email communitysafety@maidstone.gov.uk to discuss anti-social behaviour, domestic violence, drug abuse or alcohol abuse etc.

Members can also find further information on measures to tackle anti-social behaviour online at:

<http://www.maidstone.gov.uk/residents/community-safety/advice-and-information>

<https://www.gov.uk/government/publications/anti-social-behaviour-crime-and-policing-bill-anti-social-behaviour>

http://www.kent.police.uk/advice/anti-social_behaviour/asb.html

