



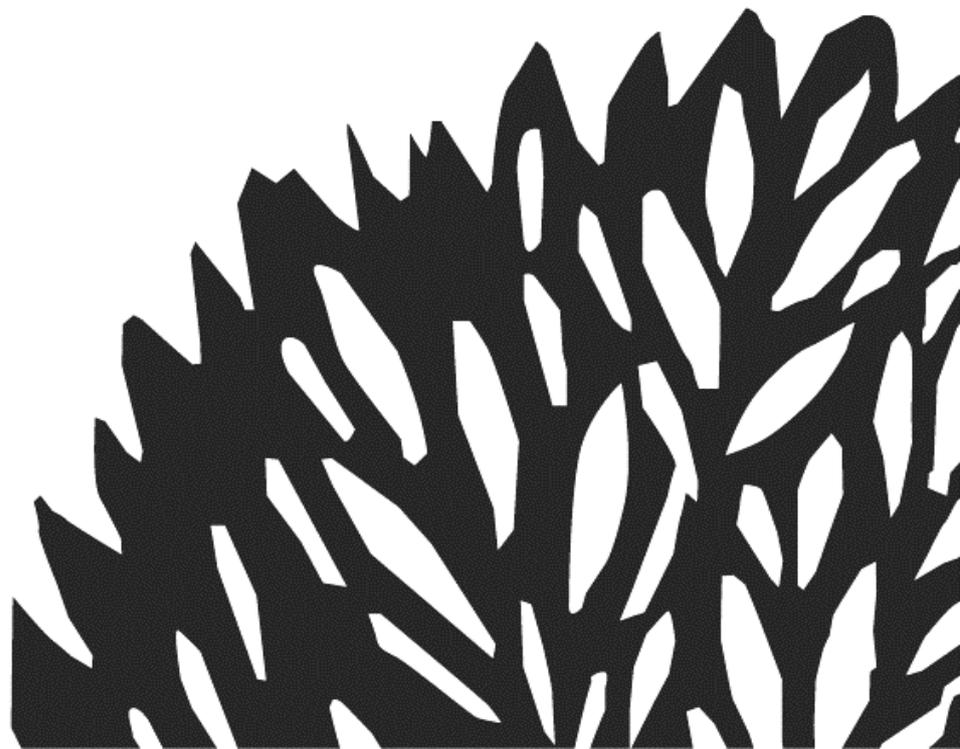
HLPA Anti-Social Behaviour Update

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HLPA ANTI-SOCIAL BEHAVIOUR UPDATE

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Civil injunctions

1.1 The relevant statute is now Part 1 of the Anti-social Behaviour, Crime and Policing Act 2014, sections 1 to 12 (see Appendix). Guidance is provided by- *Anti-Social Behaviour, Crime and Policing Act 2014: Reform of anti-social behaviour powers Statutory Guidance for frontline professionals* (July 2014). The Court may grant an injunction against a person aged 10 or over if two conditions are met. The first condition is that the Court is satisfied, on the balance of probabilities, that the respondent has engaged or threatens to engage in “anti-social behaviour”. Then section 1(3).

The second condition is that the Court considers it just and convenient to grant the injunction for the purpose of preventing the respondent from engaging in anti-social behaviour.

1.2 The wide ranging list of bodies that can apply for an injunction is contained in Section 5: including local authorities, housing providers, chief officers of the police, chief constable of the British Transport Police. Housing providers are widely defined under the Act and will include all manner of social landlords.

- 1.3 There is a wide definition of “anti-social behaviour” under section 2(1):
- (a) *conduct that has caused, or is likely to cause, harassment, alarm or distress to any person,*
 - (b) *conduct capable of causing nuisance or annoyance to a person in relation to that person’s occupation of residential premises, or*
 - (c) *conduct capable of causing housing-related nuisance or annoyance to any person.*
- 1.4 Section 2(1) (b) applies only where the injunction under section 1 is applied for by a housing provider, a local authority or a chief officer of the police.
- 1.5 The guidance states that there are two different tests for an injunction pursuant to Part I of the 2014 Act. It states that it is necessary to determine whether the application is for an order in housing related or non-housing related contexts. If the latter then the test is said to be whether the conduct has caused, or is likely to cause, harassment, alarm or distress to any person. If, however, the behaviour is housing related then the test is conduct which is capable of causing nuisance or annoyance to a person in relation to that person’s occupation of residential premises.
- 1.6 By section 2(3) in sub-section (1) (c) “housing-related” means directly or indirectly relating to housing management functions of –
- (a) a housing provider, or
 - (b) a local authority.

- 1.7. Section 21(7) of the Act provides that the Court may take into account conduct occurring up to 6 months before the commencement day (23rd March 2015) of the Act. It may be argued that behaviour prior to this ought to be allowed in support of the need for an injunction.
- 1.8 If the victim of the anti-social behaviour is a resident of premises and the behaviour affects their enjoyment of the premises then the three relevant authorised authorities will only have to establish that it meets the lesser test in order to be entitled to an injunction. Generally such fine distinctions will not be required as there is likely to be a history of actual anti-social behaviour affecting persons in the area.

Terms of injunction

- 1.9 By section 1(4) an injunction may not only prohibit the respondent from doing anything described in the injunction but by s.1(4)(b)
require the respondent to do anything described in the injunction.
- 1.10 The terms of the injunction must as far as practicable avoid interference with the times that the respondent worked or attended school/education or conflict with other court order requirements (s.1 (5)). There are no limits set as to the terms of the injunction; however the terms should be practicable, reasonable and proportionate. The Courts may follow the

guidance given in cases involving ASBOs such as *R v Boness* [2005] EWCA Crim 2395. The terms should cover the range of anti-social acts committed by the defendant. Be reasonable and proportionate realistic and practical. The order should be clear, concise and easy to understand. It should be specific to matters referred to. It should be specific in relation to any particular exclusion. The terms should be formulated in a way that is easy to determine when prosecuting for breach. On civil injunctions one could have orders that include:

- exclusion zones
- non-association
- curfew
- prohibition on clothing such as hoods.

1.11 Where the injunction includes positive requirements section 3(1) provides that the order must specify the person who is to be responsible for supervising compliance with the requirement. The person may be an individual or organisation. By section 3(2) before including a requirement the Court must receive evidence about its suitability and enforceability from the individual specified. The person specified will then have a duty to make necessary arrangements in connection with the requirements and to promote the respondent's compliance with the requirements. They have a duty to inform the person who applied for the injunction if there has been a failure to comply with a relevant requirement (s.3 (4)).

Power of arrest

- 1.12 A power of arrest can be attached to any term of the injunction which imposes a prohibition or requirement (s.4 (1)). The guidance says that a power of arrest cannot be attached to any positive requirement; however the Act specifically states that it can be attached to either prohibition or requirement. It is only the requirements which require participation in particular activities which are excluded under the Act.
- 1.13 By section 7(2) the Court can make an injunction that lasts until the final hearing of the application or further order if considered just to do so. An application to vary or discharge may be made either by the applicant or the defendant.

Remand for medical examination

- 1.14 If a person is arrested after issue of a warrant the County Court has a discretionary power to remand the person in custody or bail. The maximum period of remand, save where there has been an order for mental examination, is eight clear days, unless it is a remand on bail and both parties consent to a longer period (Schedule 1, paragraph 4(1)).
- 1.15 Where the Court has reason to think that a medical report would be needed and remand a person to enable a medical examination to take place and a report is made, the person may be remanded in custody for no more than three weeks at a time (if 18 or over) and the person may be remanded and on bail, for no more than four weeks (Schedule 1, paragraph 5). If the

Court is satisfied on the written or oral evidence of a registered medical practitioner that there is reason to suspect the person is suffering from mental disorder and that it would be impractical for a report on the person's mental condition to be made if they were remanded on bail the Court may remand the person to a hospital or registered establishment for a report to be done (Schedule 1, paragraph 6(1)). There is reference in the Act to a remand on bail or in custody (Schedule 1, paragraph 2(1)), although the Bail Act does not apply and there is no mention of bail in the CPR itself. In the practice direction there is reference to an application for bail being made orally or in an application on notice (see CPR 65.47(2)).

Defence to injunction application

1.16 There is no substantive defence to an injunction application other than challenge the evidence on which is brought forward to support the application. One of the main arguments that could be deployed in relation to whether or not the Court should grant an injunction will come under s.1(3) in terms of arguing that it is not “**just and convenient**” to grant the injunction. If there has been an improvement in the situation and no allegations for some time then this would present a good argument to say that an injunction is not needed. Likewise if there have been no allegations for some time and the respondent has offered undertakings to the Court then again it can be said that it is not “just and convenient” to grant the injunction.

- 1.17 If the Claimant has failed to follow their own policies and failed to provide support to a vulnerable tenant then it may be that the injunction is not justified at that point. It could be argued that alternative remedies better suited to the case should have been deployed.

Committal proceedings

- 2.1 Now to be dealt with under Criminal legal Aid exceptional funding.
- 2.2 The Court of Appeal have expressly found that on a Civil Committal guidelines of the Sentencing Council for breach of anti-social behaviour orders issued in December 2008 are relevant (*Amicus Horizon v Thorley* [2012] HLR 43). Where there has been a breach it is not a case that imprisonment is the automatic consequence of a first breach and it is common practice from the first breach to take another course often by way of a suspended sentence (see *Birmingham City Council v Flatt* [2009] HLR 5). A helpful case on sentencing is *Solihull MBC v Willoughby* [2013] HLR 36 where Court of Appeal guidance included:

In my view, of particular relevance in the present case were the following principles. (1) There are three objectives to be considered: the first is punishment for the breach of an order of the Court; the second is to secure future compliance with the Court's orders if possible; the third is rehabilitation, which is a natural companion to the second objective. (2) The committal order should reflect the aggravating and mitigating features of the breaches. Aggravating features will include deliberate flouting of the Court's order on repeated occasions and in

breach of a suspended order from imprisonment. Mitigating features may comprise personal inadequacy, admissions of breach, a low level of anti-social behaviour and efforts to reform.”

- 2.3 In *Willoughby* a sentence of ten months was halved to five months in *Barnett LBC v Hurst* [2003] HLR 19 the Court of Appeal held a sentence of nine months was too long where the breaches were restricted to loud noises disturbing neighbours' sleep. A sentence of three months was substituted.
- 2.4 There is of course the possibility of an application which is fairly rarely used to purge contempt that can be made pursuant to CPR 81.34(1). The Judge on such an application has a complete discretion as to whether to grant the application.

Issues as to capacity

3. The approach in *Wookey v Wookey* [1991] 3 All ER 365 is still to be applied. The Court will not grant an injunction that is idle and ineffectual. It must serve a useful purpose. The question was whether the respondent understood the nature and requirements of the order sought, and ought not to be granted if the respondent was incapable of understanding what he was doing or that it was wrong. Since he would not be capable of complying with the order.
- 3.1 In *P v P* (contempt of Court: mental capacity) [1999] 2 SLR 897 the Court of Appeal found that a husband who suffered from Ushers Syndrome and was described as deaf and dumb did not

need to understand the nature and extent of the jurisdiction of the Court to deal with the obedience of its order. A potential contemnor needs only to understand that an order has been made, that it forbids certain acts and that if such an act were to be carried out then the potential contemnor would be punished. The fact that someone is likely to breach the order because they suffer from a personality disorder was not of itself a good reason for not making the order (*Fairweather v Commissioner of Police for the Metropolis* [2008] EWHC 3073).

Lack of capacity in Possession proceedings

4. CPR 21.2(1) provides: “A *protected party must have a litigation friend to conduct proceedings on his behalf*”. A “protected party” means a party or intended party, who lacks capacity to conduct the proceedings: CPR 21.1(2) (d). CPR 21.3(4) provides:

“Any step taken before a child or patient has a litigation friend shall be of no effect unless the court orders otherwise”.

- 4.1 CPR 21.6(1) empowers the Court to make an order appointing a litigation friend. Such an application must be supported by evidence. In any case where the issue of capacity is raised it is important to have appropriate expert psychiatric evidence. This can also apply where in proceedings an issue is raised as to whether or not the person is disabled within the meaning of section 6 of the Equality Act 2010¹. In many cases where expert evidence is obtained and a certificate of capacity has been completed

¹ *Swan Housing Association v Gill* [2014] HLR 18.

specifying that there is a lack of capacity then the claimant will accept this and agree to the appointment of a litigation friend.

- 4.1 There is a presumption in favour of capacity by section 1(2) Mental Capacity Act 2005. If there is a dispute as to capacity then the Court will have to resolve this. This could entail a preliminary hearing in the case where a Judge considers all the medical evidence available and carries out an assessment. Ultimately it is for the Court to determine whether or not this particular defendant lacks capacity and to rule accordingly when an application has been made for the appointment of a litigation friend².
- 4.2 In anti-social behaviour cases where one has a defendant who lacks capacity and a litigation friend has been appointed then there will be decisions to be made as to the extent to which the claimant's case is challenged and further decisions will have to be made as to whether or not it is proper to have the defendant give evidence in the case. In *Croydon BC v Moody* [1998] 31 HLR it was held that psychiatric evidence is relevant if there is a prospect of the defendant being treated so his behaviour improves and so that the anti-social behaviour ceases subject to timescales involved. In such cases consideration will have to be given as to whether or not further support could be put in place so that perhaps through support from community

² As per LJ Kennedy in *Masterman-Lister v Brutton and Co (Nos.1 and 2)* [2003] 1 WLR 1511 – “the final issue as to capacity, it is agreed rests with the Court but, in almost every case, the Court will need medical evidence to guide it”; see also *Evesham and Pershore Housing Association Ltd v Timothy Werrett* [2015] EWHC 1060.

psychiatric services or support workers, to address any ongoing behavioural problems. On the other hand if the situation is one where the psychiatric evidence points to the fact that the Defendant is not fit at the time for independent living then one may be looking for a managed move from the property, in some cases the Official Solicitor will not resist the making of the possession order provided safeguards are put in place to ensure that such a managed transfer takes place. This may involve extending the period for the possession order to take effect with the housing association to allow for pressure to be brought on the local authority community mental health team and adult social services to assess and identify suitable accommodation. On this reliance can be placed on the approach taken in *Manchester City Council v Pinnock* [2011] 2 AC 104 the Supreme Court recognised that in the light of the European jurisdiction Article 8 requires a person at risk of being evicted from his home by a public authority an opportunity to challenge the proportionality of the eviction before an independent tribunal. In particular at paragraph 64 of the Judgment Lord Neuberger highlighted the type of cases where this right is likely to have an impact where he said:

“The suggestions put forward on behalf of the Equality and Human Rights Commission, the proportionality is more likely to be a relevant issue “in respect of occupants who are vulnerable as a result of mental illness, physical or learning disability, poor health or frailty”, and that “the issue may also require the local authority to explain why they are not securing alternative accommodation in such cases” seem to us well made”.

- 4.3 Considerations will also have to be given as to the way in which the landlord has discharged the responsibilities under the Equality Act 2010. On this the arguments often centre on the legitimate aim of protecting neighbour under section 15(1)(b).

Discretionary grounds for possession

5. The principles to be applied in considering discretionary grounds for possession and allied with whether it is reasonable to make a possession order and whether or not in the circumstances it could be suspended are now well established and helpfully summarised in the headnotes to cases such as *Birmingham City Council v Ashton* [2013] HLR 8. Consideration has to be given to all the circumstances that exist at the date of the hearing and the question of whether or not to suspend the possession order is very much a question for the future [30]. In *Manchester City Council v Higgins* [2006] HLR 14 where a full review of previous case law was carried out it was found that there must always be a : a *sound basis for hope that the anti-social behaviour will cease*. In *Sandwell MBC v Hemsley* [2008] HLR 22 Lord Justice Gage sets out that where a criminal offence has been committed the more serious the offence the more serious the breach. Convictions of several offences will obviously be more serious. There is an indication from Lady Justice Arden that this may be only in exceptional cases.

- 5.1 In the review in *Birmingham City Council v Ashton* Lord Justice Treacy [42] provides that the onus on the party who seeks to

have the benefit of suspension to provide cogent evidence to show that what can be generally categorised as anti-social behaviour will not occur, or will be unlikely to do so. Having approved of the approach in *Manchester City Council v Higgins* this is arguably a tougher approach.

- 5.2 In *Greenwich RLBC v Tuitt* [2015] HLR 10 the Court of Appeal again endorsed the approach in the cases of *Manchester City Council v Higgins* and *Birmingham City Council v Ashton*. There the anti-social behaviour was that of the Defendant's son and in relation to an argument to say that the trial Judge had not taken into account improved behaviour Vos LJ found [21]:

“Had the defendant said to the Judge, for example, that she accepted that the situation was serious and that she would require Anton Tuitt to leave if there had been any repetition of his behaviour, the situation might have been different, that was not the defendant's approach, despite the somewhat pusillanimous contents of her witness statement. The defendant was affectively in denial. That was something on which the Judge rightly placed considerable reliance both in relation to reasonableness and in relation to the suspension of the possession order ...”

- 5.3 A realistic approach in relation to previous behaviour on the part of a defendant or the defendant's children is important when it comes to the consideration of suspension.
- 5.4 The extent to which the Court in making a possession order should take into account what will happen to a defendant if evicted is often a bone of contention. Claimants will argue that the Court should not speculate as to the outcome of any homelessness application citing *Shrewsbury and Atcham v Evans* (1998) 30 HLR 123, however if an application will

manifestly fail then it is a factor that can be considered :
Lewisham BC v Akinsola [2000] 32 HLR 414.

Hearsay evidence

6. It has become more common for cases to be proved through anonymised complaints without witness statements witness statements in support with most of the case based on hearsay evidence contained in the witness statement of the anti-social behaviour officer. It is often the case that claimants do not bother to serve hearsay notices are required under section 2 Civil Evidence Act 1995 and CPR 33.2. This generally is on the basis that failure to comply with the notice requirements will not affect the actual admissibility of the hearsay evidence: s.2 (4) CEA 1995. It must be remembered that in assessing the weight to be attached to the evidence the Court has to have regard to section 4(2) CEA 1995, in particular to:
- (a) whether it would have been reasonable and practical for the party by whom the evidence was adduced to have produced the maker of the original statement as a witness;
 - (b) whether the original statement was made contemporaneously with the occurrence or existence of the matters stated;
 - (c) where the evidence involves multiple hearsay;
 - (d) whether any person involved had any motive to conceal or misrepresent matters;

- (e) whether the original statement was an edited account, or was made in collaboration with another or for a particular purpose; and
- (f) where the circumstances which the evidence is adduced as hearsay or such as to suggest an attempt to prevent proper evaluation of its weight.

6.1 It is worth referring to the judgment in *Moat Housing Group – South Ltd v Harrison Hartless* [2005] HLR 33 where at [140] Brook LJ said:

“Whilst nobody would wish to return to the days before the Civil Evidence Act 1995 came into force, when efforts to admit hearsay evidence were beset by complicated procedural rules, the experience of this case should provide a salutary warning for the future that more attention should be paid by claimants in this type of case to the need to state by convincing direct evidence why it was not reasonable and practicable to produce the original maker of the statement as a witness. ... it would be desirable for Judges to remind themselves in their judgments that they are taking into account the section 4(2) criteria ... so far as they are relevant”.

This approach was endorsed in the case of *Boyd v In Communities Ltd* [2013] HLR 44.

6.2 The extent to which anonymised witness statements or records and hearsay evidence of this kind can be used introduced will depend primarily on the history and the seriousness of the anti-social behaviour. Justified in cases where there has been violent incidents or serious threats of violence, but perhaps not in cases of low level noise nuisance.

Last minute evidence

- 7 Given where one is dealing with discretionary grounds for possession the approach has to be to take into account all relevant circumstances as they exist at the date of the hearing³. If there has been a significant event in terms of anti-social behaviour that takes place after the date for exchange of witness statements if a proper application is made then the expectation would have to be that the evidence would be admitted. In some cases the Judges will take this as read and in other cases Judges will want to deal with formal application in accordance with the principles and guidance in *Denton v T.H. White Ltd* [2014] 1 WLR 3296. Certainly the introduction of further evidence should not be allowed to raise complaints that predate the exchange of witness statements; except in special circumstances where a witness has come forward at the last minute. The Court will obviously have to consider whether there is any prejudice to the defendant but in relation to a recent incident prior to trial it may be that instructions can be taken satisfactorily at Court. Obviously if there was some further incident that is disputed and witnesses may be available to the Defendant; then the Court will have to consider whether or not it is the interests of justice to adjourn the trial or whether allow the trial to proceed without the introduction of this fresh evidence.

³ Per Lord Greene MR in *Cumming v Danson* [1942] 2 All ER 653 CA at 655.

Pre-action protocol for possession claims by social landlords

- 8 An important first step in any case is considering the whether or not the claimant has complied with the protocol (introduced in July 2015). The protocol can be very helpful in cases involving vulnerable clients and/or clients suffering from a disability. The protocol also contains specific requirements under Part 3 where mandatory grounds for possession have been brought.

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APPENDIX

Anti-social Behaviour, Crime and Policing Act 2014 c. 12

Part 1 Injunctions

Injunctions

This version in force from: **March 23, 2015 to present**

1. Power to grant injunctions

(1) A court may grant an injunction under this section against a person aged 10 or over (“the respondent”) if two conditions are met.

(2) The first condition is that the court is satisfied, on the balance of probabilities, that the respondent has engaged or threatens to engage in anti-social behaviour.

(3) The second condition is that the court considers it just and convenient to grant the injunction for the purpose of preventing the respondent from engaging in anti-social behaviour.

(4) An injunction under this section may for the purpose of preventing the respondent from engaging in anti-social behaviour—

- (a) prohibit the respondent from doing anything described in the injunction;
- (b) require the respondent to do anything described in the injunction.

(5) Prohibitions and requirements in an injunction under this section must, so far as practicable, be such as to avoid—

- (a) any interference with the times, if any, at which the respondent normally works or attends school or any other educational establishment;
- (b) any conflict with the requirements of any other court order or injunction to which the respondent may be subject.

(6) An injunction under this section must—

- (a) specify the period for which it has effect, or
- (b) state that it has effect until further order.

In the case of an injunction granted before the respondent has reached the age of

18, a period must be specified and it must be no more than 12 months.

(7) An injunction under this section may specify periods for which particular prohibitions or requirements have effect.

(8) An application for an injunction under this section must be made to—

- (a) a youth court, in the case of a respondent aged under 18;
- (b) the High Court or the county court, in any other case.

Paragraph (b) is subject to any rules of court made under [section 18\(2\)](#).

2. Meaning of “anti-social behaviour”

(1) In this Part “*anti-social behaviour*” means—

- (a) conduct that has caused, or is likely to cause, harassment, alarm or distress to any person,
- (b) conduct capable of causing nuisance or annoyance to a person in relation to that person's occupation of residential premises, or
- (c) conduct capable of causing housing-related nuisance or annoyance to any person.

(2) Subsection (1)(b) applies only where the injunction under section 1 is applied for by—

- (a) a housing provider,
- (b) a local authority, or
- (c) a chief officer of police.

(3) In subsection (1)(c) “*housing-related*” means directly or indirectly relating to the housing management functions of—

- (a) a housing provider, or
- (b) a local authority.

(4) For the purposes of subsection (3) the housing management functions of a housing provider or a local authority include—

- (a) functions conferred by or under an enactment;
- (b) the powers and duties of the housing provider or local authority as the holder of an estate or interest in housing accommodation.

3. Requirements included in injunctions

(1) An injunction under section 1 that includes a requirement must specify the person who is to be responsible for supervising compliance with the requirement.

The person may be an individual or an organisation.

(2) Before including a requirement, the court must receive evidence about its suitability and enforceability from—

- (a) the individual to be specified under subsection (1), if an individual is to be specified;
- (b) an individual representing the organisation to be specified under subsection (1), if an organisation is to be specified.

(3) Before including two or more requirements, the court must consider their compatibility with each other.

(4) It is the duty of a person specified under subsection (1)—

- (a) to make any necessary arrangements in connection with the requirements for which the person has responsibility (the “relevant requirements”);
- (b) to promote the respondent’s compliance with the relevant requirements;
- (c) if the person considers that the respondent—
 - (i) has complied with all the relevant requirements, or
 - (ii) has failed to comply with a relevant requirement,

to inform the person who applied for the injunction and the appropriate chief officer of police.

(5) In subsection (4)(c) “*the appropriate chief officer of police*” means—

- (a) the chief officer of police for the police area in which it appears to the person specified under subsection (1) that the respondent lives, or
- (b) if it appears to that person that the respondent lives in more than one police area, whichever of the relevant chief officers of police that person thinks it most appropriate to inform.

(6) A respondent subject to a requirement included in an injunction under section 1 must—

- (a) keep in touch with the person specified under subsection (1) in relation to that requirement, in accordance with any instructions given by that person from time to time;
- (b) notify the person of any change of address.

These obligations have effect as requirements of the injunction.

4. Power of arrest

(1) A court granting an injunction under [section 1](#) may attach a power of arrest to a prohibition or requirement of the injunction if the court thinks that—

- (a) the anti-social behaviour in which the respondent has engaged or threatens to engage consists of or includes the use or threatened use of violence against other persons, or
- (b) there is a significant risk of harm to other persons from the respondent.

“*Requirement*” here does not include one that has the effect of requiring the respondent to participate in particular activities.

(2) If the court attaches a power of arrest, the injunction may specify a period for which the power is to have effect which is shorter than that of the prohibition or requirement to which it relates.

5. Applications for injunctions

(1) An injunction under [section 1](#) may be granted only on the application of—

- (a) a local authority,
- (b) a housing provider,
- (c) the chief officer of police for a police area,
- (d) the chief constable of the British Transport Police Force,
- (e) Transport for London,
- (f) the Environment Agency,
- (g) the Natural Resources Body for Wales,
- (h) the Secretary of State exercising security management functions, or a Special Health Authority exercising security management functions on the direction of the Secretary of State, or
- (i) the Welsh Ministers exercising security management functions, or a person or body exercising security management functions on the direction of the Welsh Ministers or under arrangements made between the Welsh Ministers and that person or body.

(2) In subsection (1) “*security management functions*” means—

- (a) the Secretary of State's security management functions within the meaning given by [section 195\(3\)](#) of the [National Health Service Act 2006](#);
- (b) the functions of the Welsh Ministers corresponding to those functions.

(3) A housing provider may make an application only if the application concerns anti-social behaviour that directly or indirectly relates to or affects its housing management functions.

(4) For the purposes of subsection (3) the housing management functions of a housing provider include—

- (a) functions conferred by or under an enactment;
- (b) the powers and duties of the housing provider as the holder of an estate or interest in housing accommodation.

(5) The Secretary of State may by order—

- (a) amend this section;
- (b) amend [section 20](#) in relation to expressions used in this section.

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6. Applications without notice

- (1) An application for an injunction under [section 1](#) may be made without notice being given to the respondent.
- (2) If an application is made without notice the court must either—
 - (a) adjourn the proceedings and grant an interim injunction (see [section 7](#)), or
 - (b) adjourn the proceedings without granting an interim injunction, or
 - (c) dismiss the application.

7. Interim injunctions

- (1) This section applies where the court adjourns the hearing of an application (whether made with notice or without) for an injunction under [section 1](#).
- (2) The court may grant an injunction under that section lasting until the final hearing of the application or until further order (an “interim injunction”) if the court thinks it just to do so.
- (3) An interim injunction made at a hearing of which the respondent was not given notice may not have the effect of requiring the respondent to participate in particular activities.
- (4) Subject to that, the court has the same powers (including powers under [section 4](#)) whether or not the injunction is an interim injunction.

8. Variation or discharge of injunctions

- (1) The court may vary or discharge an injunction under [section 1](#) on the application of—
 - (a) the person who applied for the injunction, or
 - (b) the respondent.
- (2) In subsection (1) “*the court*” means—
 - (a) the court that granted the injunction, except where paragraph (b) applies;
 - (b) the county court, where the injunction was granted by a youth court but the respondent is aged 18 or over.
- (3) The power to vary an injunction includes power—
 - (a) to include an additional prohibition or requirement in the injunction, or to extend the period for which a prohibition or requirement has effect;

(b) to attach a power of arrest, or to extend the period for which a power of arrest has effect.

(4) If an application under this section is dismissed, the party by which the dismissed application was made may make no further application under this section without—

- (a) the consent of the court, or
- (b) the agreement of the other party.

(5) [Section 3](#) applies to additional requirements included under subsection (3)(a) above as it applies to requirements included in a new injunction.

9. Arrest without warrant

(1) Where a power of arrest is attached to a provision of an injunction under [section 1](#), a constable may arrest the respondent without warrant if he or she has reasonable cause to suspect that the respondent is in breach of the provision.

(2) A constable who arrests a person under subsection (1) must inform the person who applied for the injunction.

(3) A person arrested under subsection (1) must, within the period of 24 hours beginning with the time of the arrest, be brought before—

- (a) a judge of the High Court or a judge of the county court, if the injunction was granted by the High Court;
- (b) a judge of the county court, if—
 - (i) the injunction was granted by the county court, or
 - (ii) the injunction was granted by a youth court but the respondent is aged 18 or over;
- (c) a justice of the peace, if neither paragraph (a) nor paragraph (b) applies.

(4) In calculating when the period of 24 hours ends, Christmas Day, Good Friday and any Sunday are to be disregarded.

(5) The judge before whom a person is brought under subsection (3)(a) or (b) may remand the person if the matter is not disposed of straight away.

(6) The justice of the peace before whom a person is brought under subsection (3)(c) must remand the person to appear before the youth court that granted the injunction.

10. Issue of arrest warrant

(1) If the person who applied for an injunction under [section 1](#) thinks that the respondent is in breach of any of its provisions, the person may apply for the issue of a warrant for the respondent's arrest.

(2) The application must be made to—

(a) a judge of the High Court, if the injunction was granted by the High Court;

(b) a judge of the county court, if—

(i) the injunction was granted by the county court, or

(ii) the injunction was granted by a youth court but the respondent is aged 18 or over;

(c) a justice of the peace, if neither paragraph (a) nor paragraph (b) applies.

(3) A judge or justice may issue a warrant under this section only if the judge or justice has reasonable grounds for believing that the respondent is in breach of a provision of the injunction.

(4) A warrant issued by a judge of the High Court must require the respondent to be brought before that court.

(5) A warrant issued by a judge of the county court must require the respondent to be brought before that court.

(6) A warrant issued by a justice of the peace must require the respondent to be brought before—

(a) the youth court that granted the injunction, if the person is aged under 18;

(b) the county court, if the person is aged 18 or over.

(7) A constable who arrests a person under a warrant issued under this section must inform the person who applied for the injunction.

(8) If the respondent is brought before a court by virtue of a warrant under this section but the matter is not disposed of straight away, the court may remand the respondent.

11. Remands

[Schedule 1](#) (remands under sections 9 and 10) has effect.

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Subject: Criminal procedure **Other related subjects:** Penology and criminology

Keywords: Anti-social behaviour; Bail; Breach of injunction; Injunctions; Remand

12. Powers in respect of under-18s

[Schedule 2](#) (breach of injunctions: powers of court in respect of under-18s) has effect.

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