

Report on the Anti Social Behaviour, Crime and Policing Bill 2013-14

This report has been produced at the time and is based on the proposals of the Bill during its passage through Parliament. Please note that amendments/changes can be made to the Bill at both the House of Commons and the House of Lords stages of passing the Bill so this document, although accurate at the time of writing, may not be an accurate reflection of the contents of the Bill when it becomes Law following Royal Assent in 2013/14.

At present the Bill has progressed through the House of Commons and is now at the Committee Stage in the House of Lords with a 4th sitting on 25/11/13. Committee stage continues on 02/12/13 when further amendments will be discussed.

1. Changes to the Definition of ASB

- 1.1 The main impact and the biggest operational change for the ASB Team will be moving from dealing with ASBO's to the new power of the Injunction to Prevent Nuisance and Annoyance (IPNA).

The IPNA brings with it a change in the definition of ASB creating a wider definition and lowering the threshold of proof to lower than we had for the ASBO.

The definition of ASB for the current ASBO is acting in a manner that caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household. For an ASBO application we had to show that the defendant had behaved in an anti-social manner and that an order was necessary for the protection of persons from further acts of ASB by the defendant.

The definition proposed for the IPNA is conduct capable of causing nuisance or annoyance to any person. For the IPNA application we will have to show that on the balance of probabilities the defendant has engaged or threatens to engage in ASB and the Court must consider it just and convenient to grant the injunction to prevent the defendant from engaging in ASB. The orders should in effect be easier to obtain as there is no longer a requirement for us to show that the order is necessary, the Court will impose the injunction if it is just and convenient

The standard of proof has changed from the criminal standard of beyond reasonable doubt required for the ASBO to the civil standard of proof relying on the balance of probabilities for the new injunction.

- 1.2 The changes detailed above will require operational and procedural changes to be made within the ASB Team and in various other agencies and departments involved in the process.

The intention was to enable practitioners to respond quickly and effectively to ASB by making the procedure/process simpler and powers easier to use. There are positive changes for the service with no requirement for proving necessity, the addition of requirements as well as prohibitions and with the lower standard of proof and wider definition it should in theory be much quicker and easier to obtain the injunction when compared with the ASBO process (potential to obtain within hours rather than months). However there are possible pitfalls to the changes and with a wider definition and lower evidence standards there is the likelihood of an increase in cases requiring applications to Court so we need to consider the limiting factors of practitioner resource and the cost implications of the changes such as the

introduction of positive requirements that will need supervising and prosecution for breach being the responsibility of the applicant Authority and not the CPS that will be issues we encounter using the new power.

In order to reduce any negative impact these changes could have on the provision of ASB Services we may need to look at adopting a local policy for the cases we will consider for IPNA applications given the lower threshold set by the new definition and consider whether we will need to set limits for or regularly review the amount of injunctions we will have in place in order to balance the need to protect the community within the interests of public spending.

- 1.3 There are arguments both in favour of and against a change in the definition. Those in favour would argue that the new definition allows for earlier intervention to stop or prevent individuals engaging in ASB quickly as opposed to the lengthy ASBO process that we have at present. Those opposed to the change in definition argue that the test of caused or was likely to cause harassment, alarm or distress which is currently applied for ASBO's should continue to be applied for the proposed injunctions to ensure that minor problems are not brought before the Courts. Whilst nuisance and annoyance may be considered the appropriate test in housing related disputes (the current ASBI's) tackling people living in close proximity and affecting each other's enjoyment of their private lives and property rights, it is not the appropriate test for wide ranging ASB.

Of note The House of Lords are currently discussing amendments to the Bill and these discussions have included debate over the new IPNA's. The new definition of causing nuisance or annoyance has been debated as to whether the threshold will be too low and the definition considered too weak. The Lords have suggested amendments to change the definition back to caused or was likely to cause harassment, alarm and distress or to take out the word annoyance leaving just nuisance in the definition. There is also debate over amending the standard of proof from on the balance of probabilities to beyond reasonable doubt and amending the test that the Court considers in just and convenient to the Court considers it necessary and proportionate.

It is still not clear at this stage if any amendments will be made as a result of the discussions in the Lords so progress of the Bill at each stage of the parliamentary process is being closely monitored to ensure we are prepared for the operational changes that will be required as a result of the new legislation.