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# BRIEFING

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## ANTI-SOCIAL BEHAVIOUR ACT 2003

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### A. INTRODUCTION

In March 2003 the Government published a White Paper outlining its proposals for tackling anti-social behaviour - "Respect and Responsibility - taking a stand against anti-social behaviour." The Act follows on from this White Paper. The Act is split into ten parts. Mainly it provides more powers either to the police or to local authorities.

With regard to **the police**, the Act is designed to ensure that they have the appropriate powers to deal with serious anti-social behaviour. It introduces new powers for tackling the problem of premises used for drug dealing and for dispersing intimidating groups. It enables the police to tackle the nuisance that can be caused by young people with air weapons, and supports action against gun crime by banning the possession of imitation guns and air guns in public without good reason. It also tackles the danger of air weapons that can be easily converted to be used with conventional ammunition.

With regard to powers for **local authorities** and those working with them to tackle anti-social behaviour in local communities, it extends the landlords' powers to deal with anti-social behaviour in social housing, including developing the use of injunctions and demoting tenancies.

It contains provisions with regard to high hedges.

It also includes provisions aimed at dealing with noise nuisance. It develops the sanctions that are available for use against those who engage in anti-social behaviour and extends the range of agencies that can use them. It provides a means for schools, local authorities and Youth Offending Teams to work with the parents of children who are behaving anti-socially and creates the mechanisms for enforcing this work.

The Act extends local authorities' powers in relation to cleaning land. It extends the measures that can be taken to remove graffiti, and restricts the sale of aerosol paint to children. It also amends existing police powers to place conditions on public assemblies and to deal with unauthorised encampment.

Theoretically, the Act should extend powers, although some argue that the Act's proposals with regard to injunctions seem to be particularly contentious and some have argued that in fact what is proposed in the Act is actually narrower than exists at present.

### B. THE ACT

The Act is in ten parts. Part 1 creates new powers to close premises that are being used for

drug dealing or use. Part 2 extends powers for tackling anti-social behaviour in social housing. Part 3 devotes mechanisms for enforcing parental responsibility for children who behave in an anti-social way in the school or in the community. Part 4 creates a new power for the police to designate areas where they can disperse groups causing intimidation. Part 5 deals with the misuse of air weapons. Part 6 extends powers for local authorities to clean the environment. Part 7 amends police powers for dealing with public assemblies and trespassers. Part 8 deals with high hedges. Part 9 contains miscellaneous powers and Part 10 general sections.

Part 1 and Part 2 of the Act have particular relevance to tackling anti-social behaviour:

#### **C. PART 1: PREMISES WHERE DRUGS ARE USED UNLAWFULLY**

This part grants the police the power to close down premises being used for the supply, use or production of Class A drugs where there is associated nuisance or disorder. Service of a Closure Notice will close the premises to the public until a Magistrates' Court can decide whether to make a Closure Order.

The Court must consider the Notice within 48 hours. If it is satisfied the relevant conditions are met, the Court can make a Closure Order which closes the premises altogether for a period of up to three months, with possible extension to a maximum of six months.

Section 1 deals with the Closure Notice, Section 2 with the Closure Order, Section 3 with enforcement of the Closure Order, Section 4 with offences committed after the premises have been closed, Section 5 with the extension and discharge of Closure Order, Section 6 with appeals, Section 7 with access to

other premises - this Section ensures that a Court may make an Order concerning access to any part of a building or structure in which the closed premises are situated, but where they are not affected by the Closure Order. Section 8 deals with reimbursement of costs, Section 9 with exemption from liability for certain damages and Section 10 with compensation. These Sections came into force on 20 January 2004.

#### **D. PART 2 - HOUSING**

Section 12 - this Clause introduces a new section 218A into the Housing Act 1996. This requires certain social landlords to prepare and publish policies and procedures on anti-social behaviour, and to make them available to the public. Sub-section (3) to (6) give details relating to times at which a statement of policies and procedures must be published and reviewed.

The duty comes into effect within six months of the date of commencement of the Section. A new section 218A (7) requires social landlords to have regard to relevant guidance when preparing or reviewing their policies and procedures. Guidance may be issued to Local Housing Authorities or Housing Action Trusts in England by the Secretary of State. Guidance to registered social landlords may be issued by the Housing Corporation.

Section 13 deals with injunctions against anti-social behaviour on application of certain social landlords. This Section repeals sections 152 and 153 of the Housing Act 1996 and introduces new provisions allowing certain social landlords to apply for injunctions to prohibit anti-social behaviour which relates to or affects their management of their housing stock. Sub-section (3) introduces new sections 153A, 153B, 153C, 153D and 153E into the Housing Act 1996.

New section 153A(1) provides that the conduct to which that provision applies is conduct which is capable of causing nuisance or annoyance (even if no complaint has been received) and which directly or indirectly relates to or affects the landlord's management of its housing stock.

New section 153A(2) to (5) sets out the conditions that have to be met before an injunction against anti-social behaviour can be granted. An injunction may be granted against any person whose behaviour could cause nuisance or annoyance to:

- residents of the landlord (this includes, for example, tenants, licensees, and long-lease holders);
- visitors or anyone else carrying out a lawful activity in, or in the locality of, the landlord's housing accommodation. This could include anyone visiting family or friends, using local facilities or passing through, working in or residing in the locality (including residents of other landlords); or
- staff employed in connection with the management of the landlord stock.

The conduct need not cause any such nuisance or annoyance to any specific individual. It is sufficient that it is capable of having that effect.

New section 153A(5) provides that the anti-social behaviour need not occur in the vicinity of the landlord's housing accommodation. However, the behaviour will still need to be related, at least indirectly, to the landlord's management of its accommodation. For example, a landlord should be able to apply for an injunction to protect a tenant who has been regularly harassed by other residents of an estate even if the incident itself which gave rise to the

injunction application happened elsewhere.

The anti-social behaviour in this example is clearly connected to the tenant's occupation of a home owned or managed by the landlord. It is intended that the term "Housing Management" should be interpreted broadly and could include activities such as regeneration, mediation, tenant training and participation, Welfare Rights advice to tenants and supported housing.

New section 153B allows specified landlords to apply for injunctions where someone has used or threatened to use their housing for an illegal purpose. This could cover, for example, drug dealing or use of the premises as a brothel.

New section 153C allows the Court granting an injunction under new sections 153A or 153B to attach a Power of Arrest or to exclude a person from specified premises or a specified area where there is the use or threat of violence or a significant risk of harm to any person mentioned in the new section 153A(4) above. Consequently, a Power of Arrest will be available in cases where there is a significant risk of harm even if there has been no actual or threatened violence.

Significant risk of harm is defined in new section 153E(12). It could include emotional or psychological harm. For example, cases of racial or sexual harassment. This is different to the existing provisions which are being repealed, which only allow a Power of Arrest when there is either violence or threatened violence together with a significant risk of harm.

New section 153D applies in relation to injunctions sought by a Local Authority, Housing Action Trust, RSL, or charitable Housing Trust on the grounds of a breach or anticipated breach of a tenancy agreement by a

tenant. If the behaviour is prohibited by the terms of the tenancy agreement and satisfied the criteria as mentioned in paragraphs (a) and (b) of the new section 153D(1) (below), the Court may exclude a person from specified premises or a specified area and attach a Power of Arrest to any provision of the injunction.

The breach (or anticipated breach) of the tenancy agreement must relate to conduct by the tenant that amounts to (or is capable of amounting to) nuisance or annoyance to any person; or to behaviour by the tenant which amounts to the allowing or encouragement of such conduct of another person. In addition the conduct must include violence or threat of violence or a significant risk of harm to any person.

There are also some additional provisions particularly useful, under new section 153A, 153B or 153D an injunction may exclude someone from his own place of residence. New section 153E(4) allows an injunction under sections 153A, 153B or 153D to be made without notice having been given to the Respondent, although the Respondent must subsequently be given the chance to make representations.

The Act follows the Court of Appeal cases in Enfield -v- "B" 2000 and Nottingham -v- Thames 2002. In these cases the Court of Appeal took away the use of the Orders to protect owner-occupiers and others. Further, it defined a requirement that the landlord must show a connection between themselves (the landlord) and those to be protected (this connection was referred to as a "nexus").

Section 14 - Security of Tenure: Anti-Social Behaviour, Section 14(1) amends Section 82 of the Housing Act 1985 to allow a secure tenancy

to be brought to an end by a Demotion Order. This Section inserts a new Section 82A of the Housing Act 1985 and provides that a Local Authority, a Housing Action Trust or a RSL can apply for a Demotion Order.

A Demotion Order will end the secure tenancy on a specified date. If the tenant remains in occupation, a new demoted tenancy will begin on the same date. The Court may only make such an Order if the tenant, another resident of or visitor to the tenant's home has behaved in a way which is capable of causing nuisance or annoyance or if such a person has used the premises for illegal purposes. Further the Court must be satisfied that it is reasonable to make the Order.

Any rent owed or overpaid on the tenant's rent account will also be transferred across to the demoted tenancy. Sub-section (5) sets out certain basic terms of the demoted tenancy at the point at which it is created.

There are also provisions with regard to demotion of assured tenants and assured shorthold tenants which would affect tenancies granted by registered social landlords.

Section 16 introduces new provisions relating to the Court's exercise of discretion in possession proceedings. The effect of these changes is that when a Court is considering whether it is reasonable to grant a Possession Order under one of the nuisance grounds for possession, the Court must give particular consideration to the actual or likely effect which the anti-social behaviour has had or could have on others. Sections 12 to 17 take effect from 30 June 2004.

Section 18 deals with parenting orders under the Crime and Disorder Act 1998 by removing a restriction that guidance and counselling sessions cannot be provided more

than once in any week. This comes into force on 27 February 2004.

**E. IMPLICATIONS FOR  
BIRMINGHAM CITY  
COUNCIL**

The Act identifies the law relating to injunctions to stop anti-social behaviour and creates a new type of tenancy, namely the Demoted Tenancy. It provides wider powers with regard to the type of anti-social behaviour that injunctions can be used to stop. It also makes clear that injunctions can be used to exclude persons from the area where they live. In conjunction with the Birmingham Anti-Social Behaviour Unit, the Police and other agencies, the powers will be used to improve the lives of the citizens of Birmingham.

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