



DoJ

Department
of Justice

www.justice-ni.gov.uk

Anti-social Behaviour Legislation in Northern Ireland

**Consultation to review the current criminal legislation framework
to tackle anti-social behaviour (including on-street drinking)**

17 April 2018

| <u>Contents</u> | <u>Page</u> |
|---|--------------------|
| Section 1 – About this consultation | 2 |
| Section 2 – How to respond | 3 |
| Section 3 – Introduction | 4 |
| Section 4 – The Executive’s draft Programme for Government and current legislation | 7 |
| Section 5 – GB legislation to tackle anti-social behaviour | 9 |
| • Criminal Behaviour Orders | 10 |
| • Public Space Protection Orders | 12 |
| • Closure Powers | 14 |
| • Noise Nuisance Powers | 15 |
| Section 6 – Impact Assessments | 16 |
| Section 7 – Next Steps | 17 |
| Section 8 – Freedom of Information | 18 |

Annexes

- A Response Questionnaire**
- B Freedom of Information**

Section 1 – About this consultation

1.1 Within the (draft) Programme for Government there is a commitment to review Northern Ireland’s legislative framework for helping to tackle anti-social behaviour. As a result, there has been ongoing examination of the developments in anti-social behaviour legislation and powers within other jurisdictions, to determine whether replicating such powers in a Northern Ireland context would be appropriate. This consultation seeks views in this regard.

1.2 With the assistance of a small working group of key partners/stakeholders¹ the Department of Justice (the Department) has reviewed the legislative powers available in other jurisdictions and consider that only the ones included in this consultation should be reviewed for their appropriateness to be replicated in Northern Ireland.

1.3 This consultation seeks the views from our main stakeholders, including the police, Policing and Community Safety Partnerships, the Probation Board, the Department for Communities, the Public Prosecution Service, all District Councils, Northern Ireland Housing Executive, Housing Associations, the business community, organisations within the voluntary and community sector, and members of the public.

1.4 Consideration of any new or revised powers will be in the context of seeking to address anti-social behaviour and its effects, based on what is effective, proportionate and appropriate.

¹ The group included the Department of Justice, PSNI and Belfast City Council.

Section 2 – How to respond

Duration and closing date

2.1 The consultation will be open for 8 weeks. The closing date is Tuesday 12 June 2018. (Please note that it is unlikely that we will be able to accept consultation responses after this date.)

Questions

2.2 There are a number of questions posed throughout the document to assist you in considering the legislative options available. A consultation questionnaire is provided at Annex A, to help in framing your response. As far as possible, it would be helpful for this to be used, for analysis purposes.

Enquiries and Responses

2.3 Please address any enquiries you may have and responses to:

By phone: 028 9052 3788

By e-mail: DOJSMSupportingSafer.Communities@justice-ni.x.gsi.gov.uk

In writing: Community Safety Division
Room A4.03
Castle Buildings
Stormont Estate
BELFAST
BT4 3SG

2.4 The Department intends to publish responses to the consultation and a summary response report on our website. Any contact details or information that will identify a respondent as a private individual will be removed prior to publication. All information will be handled in accordance with the Data Protection Act 1998 (DPA).

2.5 Respondents should also be aware that the Department's obligations under the Freedom of Information Act 2000 (FOIA) may require that any responses not subject to specific exemptions under the Act be communicated to third parties on request.

Alternative Formats

2.6 An electronic version of this document is available in the consultation section of the Department of Justice website (www.justice-ni.gov.uk/consultations). Hard copies of this consultation document, and copies in other formats (including Braille, large print etc.), can be made available on request. If it would assist you to access the document in an alternative format or language other than English, please let us know and we will do our best to assist you.

Complaints

2.7 If you have any concerns about the way this consultation process has been handled, you should send them to the following address:

Standards Unit
Department of Justice
Knockview Buildings
Stormont Estate
Belfast
BT4 3SL
Email: Standardsunit@justice-ni.x.gsi.gov.uk

Section 3 - Introduction

3.1 The term 'anti-social behaviour' is used by authorities in Northern Ireland to describe a broad range of inconsiderate and nuisance behaviours covering many types of activity that can blight the quality of life of a particular individual or family, a local group or a community; from rowdy or inconsiderate behaviour and excessive noise; to graffiti and littering; to abandoned vehicles. Such behaviour can effect individuals personally, cause a nuisance locally or have an adverse impact on the surrounding environment.

3.2 Often this type of behaviour does not, of itself, fall within the scope of criminal law. However, it can have an adverse effect on the quality of life of individuals, families and local communities either over a prolonged period or at particular times and some behaviours which people consider to be 'anti-social' may involve criminal activity and require the involvement of the Police Service of Northern Ireland (PSNI).

3.3 Statistically, Northern Ireland can be considered to be one of the safest places to live in Europe, with levels of crime and anti-social behaviour being generally lower than other comparable regions. Official police statistics have shown a general downwards trend in the number of recorded anti-social behaviour incidents since 2006/07 (when current processes for recording such incidents began). The police figures record the number of 'calls for service' relating to anti-social behaviour incidents made to the PSNI, but there are likely to be further instances reported to other agencies, such as local councils and through the NI Housing Executive, which may not be included in police figures.

3.4 Nevertheless, despite this overall downward trend in anti-social behaviour and crime since 2007, consultations have consistently highlighted anti-social behaviour, including the link with alcohol and on-street drinking, and drug activity, as a particular problem in some areas.

3.5 The most recent crime figures for anti-social behaviour compiled by the PSNI show that, over the past 12 months, there has been a marginal increase in the number of incidents reported, continuing a trend that was seen during 2016/17.

3.6 It is also estimated that fewer than half of all such crimes are reported – there remains more to be done to continue to build on the general positive trend.

3.7 Public events such as those around St. Patrick's Day, 12th of July celebrations, and Fresher's Week regularly attract high profile media interest as a result of incidents of anti-social behaviour, often linked to on-street drinking. These occasions result in costly large-scale multi-agency operations planned over significant periods of time.

3.8 The Department continues to acknowledge that the fear anti-social behaviour creates can have a damaging impact on victims, their families, local communities and wider society.

3.9 There is a range of options to deal with anti-social behaviour, however, there has been a decline in the use of certain legal remedies, such as Anti-social Behaviour Orders (ASBO's), in comparison to when they were first introduced, with a growing emphasis on early intervention and diversion.

3.10 While this focus on early intervention and diversion is a welcome one, it is also important to ensure that the legislative remedies remain appropriate. Commentary coming from stakeholders indicates that there are limited instant solutions when all other current advice, guidance and diversion strategies have been exhausted.

3.11 Given the pattern that certain anti-social behaviours are more prevalent in different areas or at different times of the year, the Department is keen to examine the flexibility that can be built in to tackling such behaviour, with appropriate powers being available to address local problems.

Section 4 – The Executive’s draft Programme for Government and current legislation

4.1. Outcome 7 of the (draft) Programme for Government seeks to reflect the importance of creating safe environments. The Executive aimed to make people feel safe and to encounter no barriers to engaging with society by building sustainable and resilient communities free from crime and anti-social behaviour (page 92).

4.2. In seeking to make communities safer, and feel safer, a number of crucial factors impacting on offending could influence the actions taken by the Government, including evidence that anti-social behaviour is often a precursor to more serious offending behaviour among young people. The importance of steering young people away from anti-social behaviour and offending behaviour is, therefore, a priority.

4.3. The draft Delivery Plan for Indicator 1 of the Northern Ireland Executive’s draft Programme for Government includes a commitment to *‘develop an agreed Executive framework for addressing crime and community safety issues which ... will include an assessment of legislation for dealing with ... anti-social behaviour to ensure its effectiveness.’*

4.4. Currently, the main powers applying in Northern Ireland to tackle anti-social behaviour lie within the following legislation:

- ❖ The [Anti-social Behaviour \(NI\) Order 2004](#) which introduced the Anti-social Behaviour Order (ASBO) and the Interim ASBO into Northern Ireland law.
- ❖ Under the [Confiscation of Alcohol \(Young Persons\) Act 1997](#), a police officer has the power to ask any person under the age of 18, believed to be in possession of intoxicating liquor in a public place, to surrender it, and for that officer to dispose of it.

- ❖ Within the [Public Processions \(NI\) Act 1998](#) lie powers allowing the police to control alcohol consumption by those participating in a public procession.

Q1. *What are your views on the current legislative framework to help tackle anti-social behaviour in Northern Ireland?*

4.5 In addition to this, Part 5 of the Criminal Justice (NI) Order 2008, sections 68 to 72 provides powers designed to tackle alcohol fuelled anti-social behaviour. While this legislation has been enacted, sections 68 to 72 have not yet been commenced (which means they cannot be enforced) due to challenges around the practical implementation of them on the ground. While some of these challenges still remain, it would be remiss not to include this legislation as part of this consultation.

4.6 Within these sections lie powers designed to allow police officers (only) to intervene when public disquiet or anti-social behaviour has been reported within specially designated public areas (current on-street drinking bye-laws can be enforced by both police and council officers). Where that behaviour appears to be fuelled by alcohol, police officers can ask those involved to stop drinking, can request that any associated containers be handed over and can ultimately impose a fixed penalty/fine on those who do not co-operate with these requests.

4.7 These powers would only apply to an area the council has designated and would override the council's current drinking in public bye-laws. Details of this legislation can be found [here](#).

Q2. *What are your views on the Part 5 of the Criminal Justice (NI) Order 2008, sections 68 to 72 and whether they ought to be commenced in Northern Ireland?*

Section 5 - GB legislation to tackle anti-social behaviour

5.1 In England and Wales, the main legislation for tackling anti-social behaviour lies in the Anti-social Behaviour, Crime and Policing Act 2014. In Scotland, the Department is looking at powers relating to noise control within the Civic Government (Scotland) Act 1982.

5.2 The respective powers are deliberately local in nature with those who work within and for local communities best placed to determine the most appropriate response. They were designed to allow the police, and other agencies, to deal quickly with issues as they arise, and with local agencies working together where appropriate to ensure the best results for victims.

5.3 With the assistance of a small working group of key partners/stakeholders² the Department have reviewed the full legislative powers available within the Anti-social Behaviour, Crime and Policing Act 2014, and consider that only the ones detailed below should be reviewed for their appropriateness to be replicated in Northern Ireland.

5.4 The additional powers we are currently considering include:

- ❖ Criminal Behaviour Orders
- ❖ Public Spaces Protection Orders
- ❖ Closure Powers
- ❖ powers of seizure linked to excessive noise

² The group included the Department of Justice, PSNI and Belfast City Council.

Criminal Behaviour Orders (CBO)

5.5 In England and Wales, Criminal Behaviour Order (CBO) replaced ASBOs on conviction and are intended to be used to tackle the most serious and persistent offenders where their behaviour has brought them before a criminal court.

5.6 The power to issue a CBO is available to courts when convicting a person for any criminal offence. The prosecution on its own initiative or following a request from the police or council can apply for a criminal behaviour order.

5.7 One of the main differences between an ASBO on conviction and a CBO is that CBOs can include prohibitions or requirements or both. Requirements should aim to tackle the underlying causes of the offender's anti-social behaviour and be tailored to the specific need of each offender. They could include:

- ❖ attendance at an anger management course where an offender finds it difficult to respond without violence;
- ❖ youth mentoring;
- ❖ a substance misuse awareness session where an offender's anti-social behaviour occurs when they have been drinking or using drugs; or
- ❖ a job readiness course to help an offender get employment and move them away from the circumstances that cause them to commit anti-social behaviour.

5.8 When deciding whether to publicise a CBO, public authorities (including the courts) must consider that it is necessary and proportionate to interfere with the young person's right to privacy, and the likely impact on a young person's behaviour.

5.9 Where an offender is under the age of 18, the prosecution must find out the views of the local youth offending team before applying for a CBO.

5.10 The legislation currently enacted in England and Wales for 'Criminal Behaviour Orders' can be found [here](#).

5.11 Supporting statutory guidance on 'Criminal Behaviour Orders' can be found [here](#) at page 28.

Q3. What are your views on Criminal Behaviour Orders?

Q4. What would your views be if Criminal Behaviour Orders were introduced in Northern Ireland?

Public Space Protection Orders

5.12 A Public Space Protection Orders (PSPO) is designed to stop individuals or groups committing anti-social behaviour in a public space³. Following consultation with the local police and other relevant bodies, the local council can issue a PSPO, which will place restrictions or requirements on any public space identified within that council's area, and on those using that space. More than one restriction can be included in the same PSPO, meaning that a single PSPO can deal with a wide range of behaviours.

5.13 The behaviour being restricted has to:

- ❖ be having or be likely to have, a detrimental effect on the quality of life of those in the locality;
- ❖ be persistent or continuing in nature; and
- ❖ be unreasonable.

5.14 A PSPO can be used to restrict the consumption of alcohol in a public space where the test has been met. However, a PSPO cannot be used to restrict the consumption of alcohol where the premises or its curtilage (a beer garden or pavement seating area) is licensed for the supply of alcohol. This is because the licensing system already includes safeguards against premises becoming centres for anti-social behaviour. The maximum duration of a PSPO is three years.

5.15 Breach of a PSPO is a criminal offence and enforcement officers (police or council staff) can issue fixed penalty notices or a fine.

5.16 The legislation currently enacted in England and Wales for 'Public Space Protection Orders' can be found [here](#).

³ In this regard, the definition of a public space is wide and includes any place to which the public or any section of the public has access.

5.17 Supporting statutory guidance on 'Public Space Protection Orders' can be found [here](#) at page 47.

Q5. What are your views on Public Space Protection Orders?

Q6. What would your views be if Public Space Protection Orders were introduced in Northern Ireland?

Closure Powers

5.18 A Closure Power is a fast and flexible power designed to allow the police or council to close quickly premises⁴ being used (or likely to be used) to cause disorder or nuisance. In England and Wales, the initial Closure Notice can be for up to 48 hours but cannot stop the owner or those who habitually live there accessing the premises. Whereas a Closure Order can close a premise for up to six months and can restrict all access.

5.19 To breach the Notice or Order is a criminal offence and can lead to a prison sentence of up to 3 months for breaching the original Notice, or up to 6 months for breaching the court Order.

5.20 A Closure Notice cannot be appealed whereas a Closure Order can.

5.21 The legislation currently enacted in England and Wales for 'Closure of Premises Associated with Nuisance or Disorder' can be found [here](#).

5.22 Supporting statutory guidance on 'Public Space Protection Orders' can be found [here](#) at page 57.

Q7. What are your views on Closure Powers?

Q8. What would your views be if Closure Powers were introduced in Northern Ireland?

⁴ Premise includes (a) any land or other place (whether enclosed or not); (b) any outbuildings that are, or are used as, part of premises.

Noise Nuisance Powers

5.23 In Scotland, under the Civic Government (Scotland) Act 1982, any person who sounds or plays any musical instrument, sings or performs, or operates any radio or television, or other sound producing device so as to give another person reasonable cause for annoyance and fails to desist on being asked to do so by police will be guilty of an offence.

5.24 In addition to this, police also have the power to enter the property where the noise annoyance has occurred for the purpose of seizing any such device capable of causing an annoyance.

5.25 This legislation currently enacted in Scotland can be found [here](#).

Q9. What are your views on the noise nuisance powers that are currently available in Scotland under the Civic Government (Scotland) Act 1982?

Q10. What would your views be should these powers under the Civic Government (Scotland) Act 1982 be introduced in Northern Ireland?

Section 6 - Impact Assessments

6.1 The Department of Justice will conduct equality, rural needs, regulatory, human rights and privacy impact screening exercises on any proposed revised measures to ascertain if there is any potential adverse impact on any of the groups.

Section 7 – Next Steps

7.1 Although reported anti-social behaviour has generally reduced in recent years, in the past two years' records are indicating that such behaviour has risen slightly. The Department of Justice will review legislation covering anti-social behaviour and, in conjunction with this review, assess reasonable additional measures that may be worthy of consideration.

7.2 If you have had experience of anti-social behaviour, or wish to comment on the current position and would like to help with this review, we would welcome hearing from you. The Department will consider all responses received before the closing date before deciding what practical measures should be taken forward with our partners in the PSNI, PCSPs, Department for Communities, local councils and the NI Housing Executive.

7.3 In due course, if changes to legislation are reckoned to be desirable draft legislation will be prepared for consideration by a Minister. If measures that might be helpful in addressing those who persistently behave in an anti-social fashion fall to others to take forward the Department of Justice will pass the information to those concerned for their consideration.

Section 8 - Freedom of Information

8.1 Please note that responses to this consultation will be subject to the Freedom of Information Act 2000, which gives the right of access to the much of the information held by public authorities. Before you submit your response, please read the advice in Annex B about the effect of the Freedom of Information Act 2000 on the confidentiality of responses to public consultation exercises.

Response Questionnaire

| |
|--|
| Q1. <i>What are your views on the current legislative framework to help tackle anti-social behaviour in Northern Ireland?</i> |
| Response: |
| Q2. <i>What are your views on the Part 5 of the Criminal Justice (NI) Order 2008, sections 68 to 72 and whether they ought to be commenced in Northern Ireland?</i> |
| Response: |
| Q3. What are you views on Criminal Behaviour Orders? |
| Response: |
| Q4. What would your views be if Criminal Behaviour Orders were introduced in Northern Ireland? |
| Response: |
| Q5. What are you views on Public Space Protection Orders? |
| Response: |
| Q6. What would your views be if Public Space Protection Orders were introduced in Northern Ireland? |
| Response: |

Q7. What are your views on Closure Powers?

Response:

Q8. What would your views be if Closure Powers were introduced in Northern Ireland?

Response:

Q9. What are your views on the noise nuisance powers that are currently available in Scotland under the Civic Government (Scotland) Act 1982?

Response:

Q10. What would your views be should these powers under the Civic Government (Scotland) Act 1982 be introduced in Northern Ireland?

Response:

FREEDOM OF INFORMATION ACT 2000 – CONFIDENTIALITY OF CONSULTATIONS

The Department intends to publish a summary of responses following completion of the consultation process.

Your response, and all other responses to the consultation, may also be disclosed on request. The Department can only refuse to disclose information in exceptional circumstances. Before you submit your response, please read the paragraphs below on the confidentiality of consultations and they will give you guidance on the legal position about any information given by you in response to this public consultation.

Subject to certain limited provisos, the Freedom of Information Act gives members of the public a right of access to any information held by a public authority, in this case, the Department. This right of access to information includes information provided in response to a consultation.

The Department cannot automatically consider as confidential information supplied to it in response to a consultation. However, it does have the responsibility to decide whether any information provided by you in response to this consultation, including information about your identity should be made public or be treated as confidential.

This means that information provided by you in response to the consultation is unlikely to be treated as confidential, except in very particular circumstances. The Lord Chancellor's Code of Practice on the Freedom of Information Act provides that:

- ❖ the Department should only accept information from third parties “in confidence” if it is necessary to obtain that information in connection with the exercise of any of the Department's functions and it would not otherwise be provided;
- ❖ the Department should not agree to hold information received from third parties “in confidence” which is not confidential in nature;
- ❖ acceptance by the Department of confidentiality provisions must be for good reasons, capable of being justified to the Information Commissioner.

Further information about confidentiality of responses is available by contacting the Information Commissioner's Office (or at www.informationcommissioner.gov.uk).