

# PARTIAL REGULATORY IMPACT ASSESSMENT (PRIA)

## Title of Proposal

1. Amendments to:
  - Section 91 of the Anti Social Behaviour Act 2003 (s91) - power of arrest attached to section 222 injunctions available under the Local Government Act 1972
  - Section 153A of the Housing Act 1996 - housing injunctions commonly known as 'ASBIs'.

## Purpose and Intended Effect of Measure

### Objective

2. **Section 91:** To ensure that those arrested for suspected breaches of a condition of an injunction with a power of arrest attached to it are brought before the courts within 24 hours and where necessary detained for the period between arrest and the initial court hearing.
3. **Section 153A:** To ensure that judges fully understand that these injunctions were created with the intention of providing protection to victims who do not wish to be named on the face of an injunction for fear of reprisal and where necessary to protect whole communities that may have also been directly or indirectly affected by the behaviour of perpetrators.

### Background

4. **Section 91:** At the moment injunctions issued pursuant to section 222 of the Local Government Act 1972 can have powers of arrest attached to all or some of the conditions contained in the injunction where required.
5. However, at the moment there is no legal requirement for suspected violators of these conditions to be brought before the courts within 24 hours (as is the case with breaches of injunctions issued pursuant to s153A of the Housing Act 1996). We therefore want suspected violators of both sets of injunctions to be brought before the courts within 24 hours of their arrest.
6. **Section 153A:** The extension of powers in the Anti Social Behaviour Act 2003 which provided s.153 powers sought to ensure that housing injunctions could be used to protect a wide range of people and a wide range of circumstances.
7. This was reflected in the change in the test that needed to be satisfied in order to obtain the injunction, which was altered from a requirement that conduct that was "likely to cause nuisance or annoyance" to conduct which was "capable of causing nuisance or annoyance". The purpose of this change was to obviate the need to identify a particular individual who would be affected by such conduct and so remove the need to either require a complaint from a specific individual or more importantly to identify such an individual.
8. Where no complainant is prepared to come forward to give evidence the court can take a view as to whether the conduct would have been capable of causing

nuisance of annoyance to an individual within the classes of person described in section 153A(4) namely:

(a) a person with the right (of whatever description) to reside in or occupy housing accommodation owned by the relevant landlord:

(b) a person with a right (of whatever description) to reside in or occupy other housing accommodation in the neighbourhood of housing accommodation mentioned in paragraph(a);

(c) a person engaged in lawful activity in or in the neighbourhood of housing accommodation mentioned in paragraph (a).

(d) a person employed (whether or not by the relevant landlord) in connection with the exercise of the relevant landlord's housing management functions"

9. We have been informed by anti social behaviour practitioners that the courts are giving a very narrow interpretation to the term "a person" in 153A (4). On occasions this has resulted in the courts requiring individuals to be named on the face of the injunction.
10. This was not the intention of Parliament when these injunctions were promulgated. These injunctions were intended to be able to offer protection to the community as a whole and to individuals who did not want to be named on the face of an injunction in case it was rightly or wrongly construed that they made the complaints that led to the injunction being issued and therefore putting them at risk of reprisals.
11. We wish to correct any misunderstanding on the part of the courts that the term "a person" in the list of categories in s153A(4) (above) should be interpreted as meaning a community as a whole including those that do not want to be named on the face of the injunction
12. It is important to note that both of these injunctive powers are not aimed at protecting businesses, but they could be used to protect premises (for example excluding someone from entering a shopping precinct). These injunctions could also be used to protect the people that work in businesses.

#### Rationale for government intervention

13. The Government's drive to tackle anti-social behaviour has been reaffirmed by the development of the 'Respect' agenda. Respect is about ensuring greater mutual respect between individuals, within communities and between public services and the public through adherence to decent standards of behaviour, a greater sense of responsibility to oneself and others - with the effect of countering a growing feeling of indifference to the welfare of others. The most striking manifestation of a breakdown in respect is where anti-social behaviour is tolerated and not tackled.
14. The programme for action will deliver a number of things for our communities over the next few months and years. This will include a renewed, broadened and revitalised drive on tackling anti-social behaviour.
15. We wish to see practitioners use injunctive action to protect communities as a means of stopping anti-social behaviour swiftly, sending positive messages to the

community and precluding the need, in many instances, for further actions including, for example, use of eviction in the social rented sector.

16. Injunctions are quick to obtain. The civil rather than criminal rules of evidence apply. This means injunctions require a lesser burden of proof which may lead to a more certain outcome. Injunctions are generally used for less serious types of anti-social behaviour than ASBOs (though could in many instances be used instead of them).
17. In order to investigate the use of injunctions, the Home Office, ODPM and the Housing Corporation have conducted a snapshot review of injunctions which has focused on seeking the views of practitioners. The findings of this review suggest a substantial overhaul of injunctions is not necessary. Injunctions are already an effective tool for tackling anti-social behaviour and are widely used by practitioners. However, legislative adjustments as covered by these proposals, could improve effectiveness further.

## Consultation

### Within government

- **Department of Constitutional Affairs** – Gave a nil return to these amendments, which were outlined in our letter to the Domestic Affairs Committee. We have been in contact with DCA officials who have said that because the broad injunctive powers already exist, our amendments will have “no real direct DCA interest”.
- **Home Office** – The Home Office is very supportive of these proposals because of the fit with they the Respect agenda focus tackling ASB.
- **Housing Corporation** – The Housing Corporation are supportive of the proposed amendment to s153A on the basis that it will improve the effectiveness of injunctive powers available to Registered Social Landlords (RSLs)
- **Cabinet Office** – This Regulatory Impact Assessment was submitted to the Cabinet Office for consideration and approval.

### Public consultation

18. We have recently revamped housing injunctions (by way of the ASB Act 2003) to make them as flexible as possible, which resulted in commencement of s.153 injunctions last summer. By way of the same act we added a power of arrest (by way of s.91) to section 222 injunctions.
19. Public consultation on what became the housing elements of the ASB Act 2003 was undertaken through an extensive exercise in 2002 (Tackling Anti-social Tenants- DTLR). Given that the proposals do not focus on substantive amendments in terms of our policy intentions but rather focus on improving operational effectiveness we do not consider a public consultation exercise is necessary.

## Options

### Do nothing

20. **s91** - To do nothing would mean that injunctions issued pursuant to s222 of the Local Government Act 1972, may be considered not be as effective as injunctions issued pursuant to s153 of the Housing Act 1996. This may therefore result in practitioners not having as much confidence in what is a potentially a very effective tool.
21. Naturally communities want to know that these measures have 'teeth', and that a suspected breach will result in immediate action. Where an arrest is made and the subject is not brought before the courts as soon as possible, this could give rise to a sense that the power of arrest is inadequate as a result of failure to ensure breaches are dealt with quickly and visibly.
22. **s.153** - We are aware of instances where injunctions have been requested on the basis that they would protect a class of person such as the staff at a particular local authority's housing office or persons visiting a particular property and these have been refused with the judge only granting the injunction in terms which would protect a named person.
23. This gives rise to the two major difficulties. The first is that by identifying a named individual, that individual or their family, is likely to be singled out whether correctly or not, as the person(s) who lodged the complaint and therefore puts them at risk of retributive action from the associates of the person against whom the injunction is obtained. Second limiting the protective effects of injunctions to named individuals in cases and prevents landlords from protecting neighbourhoods from anti-social conduct. Clearly, where anti-social behaviour is capable or indeed has impacted on a large number of people it is simply not practicable that all these should be named in any order.
24. Doing nothing would run the risk of this situation leading to disillusionment of practitioners seeking to utilise this power to protect members of the community. Where practitioners are not confident that pursuing an injunction will lead to adequate protection then they are likely to be disinclined to utilise this injunctive tool.

### Do something

#### Legislative amendment -

25. Make the proposals outlined above. This would ensure that both sets of powers will be further strengthened in tackling anti social behaviour. The proposals would ensure that the right messages are being sent to victims and the wider community that the Government is determined to offer the protection and respite that they need and deserve. Doing so will also send a clear message to practitioners that Government listens to advice from the professional who are at the sharp edge of delivery and will act to address any perceived problems with the effectiveness of the 'ASB toolkit' once identified.

#### Alternative options considered

26. In relation to s91 we could ask the Home Office to issue guidance to the police on ensuring that suspected violators of injunctions with powers of arrest attached to

them should be brought before the courts within 24 hours. However, this would be “guidance” and the police would not be legally obliged to bring suspects before the courts within 24 hours. Therefore we decided not to pursue this option as it does not offer enough certainty or send out a strong enough message about the Government’s intentions.

27. In relation to the s153A amendment, we could hope that higher courts consider Parliament’s intention and issue guidance to the lower courts which ensures that the term “a person” is not interpreted as narrowly as it currently is. However, it could be quite a while before social landlords decide to appeal the decisions of the lower courts and even if they did, it would be at considerable cost to the landlord. There is also no guarantee that the higher courts would issue the requisite guidance.

## Costs and Benefits

### Sectors and groups affected

28. These proposals will impact upon the effectiveness of local authorities and in the case of s153, Registered Social Landlords in dealing with anti social behaviour. They may also have minor implications for the Police and the Courts (the County Courts).
29. We have discussed these proposals with both the Home Office and the DCA. and they have both confirmed that they do not collect figures for costs associated with individual activities such as arresting suspects, processing their detention, processing their bail applications, listing cases for hearing before a judge, etc However, they have both confirmed that if any at all, the cost implications of these amendments given that the actual procedures are already being carried out, will have very little effects on police and court costs.
30. There will be no impacts on other sectors and groups.
31. Impacts on 'consumers' - the wider community (i.e. social tenants and all the other people in the community upon whom anti-social behaviour impacts, but not “businesses” *per se*) should be positive in that these proposals will help practitioners deal effectively with anti social behaviour.

### *Race equality assessment*

32. Findings of the British Crime Survey indicate that those living in 'hard-pressed' areas had odds of perceiving high levels of ASB that were four times higher than those in 'wealthy achiever' areas. We know that around 70% of ethnic minorities live in the 88 most deprived local authority areas. The survey however, did not address the issue of whether BMEs were more likely to be the subject or the victims of anti social behaviour. The survey concluded that where a person lives is a much stronger indication of their perception of ASB rather than their ethnicity.
33. It is likely that ASB measures are more extensively used where there are heavier concentrations of BME groups due to the spatial distribution of those communities in areas which experience high levels of crime. But as said above there is no evidence one way or another to conclude whether BMEs are more likely to be the violators or victims of these injunctions. We do feel that these injunctions will bring benefits to BMEs because they can be used to tackle behaviour targeted specifically at BMEs (for example racially motivated harassment or racist graffiti).

34. Both sets of injunctions are already being used. Though we have not specifically asked, to date we have not received any feedback about any of these injunctions having any sort of impact on specific ethnic groups. This is an issue we will be seeking to address when collecting data on uptake in future through the Housing Strategy Statistical Returns for 2006/07.

#### *Health impact assessment*

35. Impacts are unlikely to be significant. The proposal may impact positively on health where it contributes to social landlords' efforts to tackle anti-social behaviour effectively. Anti-social behaviour has a disproportionate effect on vulnerable groups living in deprived areas and could potentially contribute heavily to levels of stress and social exclusion in these areas. We do not have access to research which would enable us to assess this in more depth.

#### *Rural considerations*

36. We have considered whether these amendments will have any rural impacts in line with the guidance issued by the Countryside Agency. We are of the opinion that these amendments will not have any negative effects on rural businesses or the communities associated with them. We have consulted with the Countryside Agency and it has confirmed they accept our assessment.

#### Breakdown of costs and benefits

##### Legislative amendment

##### *Benefits*

37. The benefit of these amendments will be that they will make the relevant anti social behaviour tools more effective in their ability to give respite to victims and communities.
38. Under s222, where an injunction term with a power of arrest attached to it is breached, at the moment the suspect could be arrested and immediately released on bail pending a future court hearing. With this legislative amendment, the police will be obliged to arraign the suspects before the courts within 24 hours of the arrest, thereby allowing the court to decide how best to deal with the suspected breach and within good time.
39. Under s153, at the moment it appears as if the courts are requiring injunction applicants to name specific victims on the face of their orders before they will grant them. This is contrary to Parliament's intention when these injunctions were introduced. Parliament wanted these injunctions to be able to be taken out to offer protection to whole communities, where the behaviour in question impacted on the community as a whole. Where the behaviour only affected specific individuals, who for whatever reason did not want to give evidence in court, it was Parliament's intention that they too could be afforded protection with these injunctions and without the need for their names to be put on the face of court orders. This legislative amendment is aimed at reaffirming Parliament's original intention.
40. As a result of the imminent Respect campaign, there will be a push for practitioners to use more injunctions to tackle ASB. Therefore, it is expected that there will be an increase in the number of injunctions applied for. This increase however, will not necessarily be as a direct result of the amendments proposed here. A comparison

can be drawn here with the uptake of ASBOs, whose numbers have dramatically increased year on year since their inception in 1999 and as practitioners have gained more and more experience of their applicability.

### *Costs*

41. As these injunctions already exist and are already being used, we do not foresee any additional financial costs for the agencies that will execute them
42. The Home office has confirmed it only anticipates a very negligible level of breaches each year. It feels therefore that this will only have a minimal cost on police services. The Home Office also said that the cost in relation to arresting a suspect and any follow-up action is subject to the nature of the offence. The procedures post arrest for processing the suspect, bail consideration and file preparation for passing to the CPS for consideration of prosecution will follow existing and established processes and practices. No specific costs are available in view of the individual nature of each investigation process but any additional costs arising from these particular amendments are expected to be absorbed within existing resources.
43. The DCA also confirmed that the 24 hour requirement to bring suspects before the courts already exists for dealing with people suspected of breaching Housing Act Injunctions (s153A Housing Act 1996. This being the case, the courts will not need to make any “new” special arrangements for dealing with the revision to s91 of the Anti Social Behaviour Act 2003.
44. With regard to individual costs for listing suspected breached of injunction cases, the DCA says that according to a research report written in 2002, it costs £307.50 for listing a “general” county court case (not specifically an injunction breach case). The DCA doubts whether this figure has significantly changed since.
45. Even though there is the slight possibility that because of their improved effectiveness, practitioners may decide to make more use of S153A and s222 injunctions, thereby increasing police and court time spent dealing with suspected breaches of injunctions, based on the above we are not expecting such costs to be of significance.
46. There may be a need for the DCA to provide some training to county court judges on these amendments. But again we do not expect this cost to be significant. Officials in the DCA have confirmed to us that these proposals should not require specific new training for judges (other than maybe an updated guidance note from the Judicial Studies Board).
47. The DCA confirmed that the judiciary has already received training in respect of similar provisions currently available under s153A of the Housing Act 1996. Therefore, all that would be needed would be an update issued to judges informing them that the s222 LGA 1972 injunctions have been brought into line with HA 1996 injunctions. The DCA says this would be done through the normal/routine JSB communication channels and as such would involve any significant extra costs.

### *Environmental*

48. These amendments are unlikely to have any significant environmental costs or benefits. The behaviour, against which these already existing injunctions can be taken out, may have a positive environmental impact, such as noise nuisance. But

the legislative amendments we are proposing will not in themselves have a significant impact upon the environment.

### *Social*

#### **Benefit –**

49. The implementation of these amendments will have the social benefit of providing a more effective tool with which to tackle anti social behaviour, thereby giving respite and protection to victims and communities that have suffered as a result of that behaviour.
50. These amendments will also be in line with the new policy drive contained in the new “Respect” agenda, which among other things seeks to address the breakdown in community-wide respect, which potentially precipitates anti social behaviour being tolerated rather than tackled.

#### **Costs –**

51. People who are suspected of breaching a condition of an injunction that has a power of arrest attached to it, may temporarily have their “liberty” curtailed as a result of being incarcerated pending a court hearing (s91). As discussed above however, these proposals will not result in significant operational costs to either the Home Office or the DCA.

#### **Small Firms’ Impact Test (SFIT)**

52. We do not envisage that these proposed amendments will have any impact on small firms as these injunctions will be utilised by “social” landlords to protect people who live in their communities. The injunctions are not aimed at protecting “businesses” *per se*. They could however, be used to protect the people that work in these businesses.

#### **Competition Assessment**

53. After consideration, we believe that none of the proposed options would have an impact on competition.

#### **Enforcement, Sanctions and Monitoring**

##### Enforcement

54. The amendments being proposed will be enforced by the police (s91) and the courts (s91 and s153A). As our proposals are not introducing “new” provisions and the legislation which we seek to amend is already being “enforced” and having liaised with officials in the both the Home Office and the DCA, we envisage no significant change to current operations.

##### Sanctions

55. Breach of any of these “civil” injunctions will be a contempt of court and the sanctions for their breach will be determined by the courts, which have the discretionary power to fine and/or imprison for a maximum of 2 years. Our proposals do not change this situation.

Monitoring and review

56. Data on uptake of injunctions will be collected as part of local housing authority data returns from 2006/07. No additional burden will be placed on authorities due to the proposals as we have already committed to collecting this data earlier in 2005.