

# Child Curfews and Dispersal Zones

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## **i) About this document**

This document gives an outline of the law relating to Child Curfews and Dispersal Zones. Child Curfews apply exclusively to children. Dispersal Zones are used to a great extent to control teenagers in public spaces though much of the legislation applies to adults as well. The focus of this paper is on their effect on young people.



## **ii) Child Curfews and Dispersal Zones: 2 different pieces of legislation**

These two separate pieces of legislation are often confused, including by campaigners. The reason for this is that Dispersal Zones do in fact include a curfew provision on Under 16s. However; the legislation is different; for example a child curfew order is an area-wide curfew for all children and, for a child under 10, this can result in specific penalties. A Dispersal Zone is not an automatic curfew; rather it allows the police the power to take under 16s home and to disperse groups at will within the designated area. With a Dispersal Zone there are no penalties for breach but there are penalties for refusing an order to disperse.

Details of the main aspects of the legislation follow:

### **a) Child Curfews**

The relevant legislation is contained in the Crime and Disorder Act 1998 (especially sections 14 and 15) and Sections 48 and 49 of the Criminal Justice and Police Act 2001.

The 1998 act enabled local authorities to make Child Curfew schemes. The schemes can be made for 90 days - though they can be renewed so in effect they can be imposed indefinitely - and ban children under 10 being in a designated area during specified hours (the legislation specifies 9pm to 6am) other than in the control of a parent or responsible adult. The orders have to be confirmed by the Secretary of State.

The adjustments in the 2001 Act were: to increase the applicable age to up to 16, and to allow the police to apply for these orders.

The 1998 act allows a police constable to take home a child found outside during the curfew hours, in a curfew area.

The 2003 Anti Social Behaviour Act (Section 33) extended the power to take children home under this legislation to Community Support Officers.

The original legislation specified that a child aged under 10 found in breach of a child curfew can be made subject of a child safety order - in family proceedings in a magistrates court (see below). The police have a duty to report to the local authority any instance of taking a child home under this legislation and this is a possible outcome of the local authority's investigation.

There is no penalty for a child aged 11-15 being out under a child curfew other than the legislation allows the police or a CSO to take them home.



## Child Safety Order

These were introduced in the 1998 Crime and Disorder Act. They can last for 3 months, 'exceptionally' for 12. They allow a child to be supervised by either a social worker or another officer from the youth offending team. The orders include any requirements deemed necessary by the court to "securing that the child receives appropriate care, protection and support and is subject to proper control; or preventing any repetition of the kind of behaviour which led to the child safety order being made."

The 1998 Crime and Disorder Act (Section 8) also allows a Parenting Order to be made when a Child Safety Order is made.

The 1998 Crime and Disorder Act (Section 12) allowed for a Care Order (taking a child into care) to be made in case of a child breaching a Child Safety Order. This represented a major shift in the law; towards using care orders as a punitive measure. There was a debate on this matter in the House of Lords standing committee B on 12 May 1998. Mr Clappison and Mr Nick Hawkins queried Alun Michael Home Office Minister about precisely this extension of the power to take children into care. (See Section vi) of this paper for a discussion of this matter). In the 2004 Children Act (Section 60) this provision was removed and a provision was made that a Parenting Order could be made in case of a child breaching a Child Safety Order. (Though, of course a Parenting Order could have been made when the Child Safety Order was first imposed).

## **b) Dispersal Zones**

The relevant legislation is in the 2003 Anti Social Behaviour Act Sections 30-36.

A police force can set up a Dispersal Zone in a designated area in their police area. They are obliged to consult with any local authority whose area is inside the proposed designated area and the local authorities must give their consent. The requirement is that "anti-social behaviour is a significant and persistent problem in the relevant locality." The order must be publicised; though a single notice is all that is required in the legislation.

Dispersal zones can be established for periods of up to 6 months, but can be renewed, so in effect, could be permanent.

Once a dispersal zone is established the police have the following two powers:

a) They can order individuals who make up a 'group' of two or more to disperse. In addition they can order people to disperse in specific ways. In practice this would mean "you go that way and he goes that way".



b) Where a person being dispersed lives outside of the dispersal zone area the police may additionally warn them not to return within a 24 hour period.

The above two provisions may be applied if "a constable in uniform has reasonable grounds for believing that the presence or behaviour of a group of two or more persons in any public place in the relevant locality [the designated area] has resulted, or is likely to result, in any members of the public being intimidated, harassed, alarmed or distressed." (Section 30 part 3).

That is there must be at least the potential for some one to feel distressed, or harassed. The standard definition of anti-social behaviour is in play here

c) Between the hours of 9pm and 6am the police can take home under 16s, who are not accompanied by a responsible adult. The under 16s do not have to be in a 'group' or acting 'anti-socially'.

Under the 2003 Anti-social Behaviour Act the power to order a 'group' to disperse as well as to take children home is extended to Community Support Officers. (Section 33). Additionally Community Support Officers can detain people for an offence under this act.

The offence under this act is contravening an order to disperse, (which contravention would also include returning within 24 hours if that was part of the order or not dispersing in the manner directed).

The penalty for this offence is 3 months in prison or a penalty fine not exceeding level 4 on the standard scale. A level 4 fine could be as much as £2,500.00.

### **c) High Court Judgment relating to power to take children home**

In July 2005 Liberty supported a young man in Richmond, London in a successful challenge to the powers of the police to take children home under Section 30 part 6 of the 2003 Anti-social behaviour act.

Lord Justice Brooke said in his judgment:

“After all, all of us have the right to walk the streets without interference from police constables or CSOs unless they possess common law or statutory powers to stop us. There is no relevant common law power, and section 30(6) of the 2003 Act does not create an express power to use force.”

The judgment was that the legislation did not authorise the police to use force to take children home. In addition the judgment stated that there was no power to require a child to give his name and address thus presenting a practical difficulty.

In essence then this aspect of the legislation was ill thought out. The government simply assumed that the police could be given the power to pop



children in the squad car and 'take them home' regardless of the human rights of the child. The judgment also stated:

“If Parliament were to be taken to have regarded all children found in such areas between the relevant hours as potential sources of anti-social behaviour, a coercive power to remove them might be a natural corollary. However, to attribute such an intention to Parliament would be to assume that it ignored this country’s international obligations to treat each child as an autonomous human being.”

As concerns the dispersal zone legislation the powers to disperse have not been challenged.

The judgment related to dispersal zones and not to child curfews. I do not know whether this would have the same impact on the power to take children home under the child curfew legislation. Some of the court's criticisms of the power to take children home under the dispersal zone legislation may not apply to the similar powers under the child curfew legislation. On the other hand some of the comments seem to call into question the whole basis of the child curfew legislation. In practice the child curfew legislation has not been applied [R} . I do not know whether this judgment automatically extends to the similar powers under the child curfew legislation. [R asked Liberty online form on 17 dec 2 weeks response time requested]

The judgment disallows the police from forcibly taking a child home. However they can in the words of the Home Office 'request' a young person to allow themselves to be taken home. Given the way in which the police tend to exploit young people's respect for authority and lack of knowledge of their rights it is quite possible (probable?) that some police forces may continue to take young people home on a 'request' basis. I do not know if the Home Office has issued any specific guidance to police forces on this matter. The Home Office is appealing the judgement and if they lose it will of course be quite possible that the government will attempt to re-frame the legislation to meet the legal challenges and still allow the power.

#### **d) Additional note about power to require name and address**

In administering orders to disperse under the 2003 legislation the police may require individuals being dispersed to give their name and address. This power was established in the 2002 Police Reform Act, section 50.

"If a constable in uniform has reason to believe that a person has been acting, or is acting, in an anti-social manner (within the meaning of section 1 of the Crime and Disorder Act 1998 (c. 37) (anti-social behaviour orders)), he may require that person to give his name and address to the constable."

The penalty for non compliance is a Level 3 fine. Up to £1,000.00.



### **iii) Child Curfews implementation**

As at January 2006 not a single child curfew order has been made. It is clear that local authorities and the police (since 2001) have not regarded these as a desirable 'tool'.

However this legislation remains on the statute book.

The judgment against the police being able to forcibly take young people home without arresting them described above ii) c) would seem to be further discouragement for this piece of legislation. It will be interesting to see if the government re-legislates for the power to take home under the Dispersal Zone legislation whether they update the Child Curfew legislation at the same time.

In effect if the power to take home under 16s in the Dispersal Zone legislation is confirmed on appeal or if new legislation is introduced to enforce this power then this legislation has the same effects as the child curfew legislation.



## iv) Dispersal Zones implementation

### a) Figures

All the following figures are obtained from a Home Office document available on the Together web site.

The period for the research was 1 January 2004 to 30 June 2005.

During this period 809 dispersal zones were introduced. (Not all police forces responded to the surveys - there were two survey periods - so this is a minimum figure).

The following table shows the types of area which became Dispersal Zones.

Type of area	Percentage of Designated areas
Residential area (including surrounding area e.g. shops, schools and parks)	52%
Shopping area/parade/precinct (including transport links and car parks)	13%
Town/city centre	14%
Park/sports ground/leisure complex	8%
Village	6%
Beach/beauty spot	2%
Car park/bus/train station/transport	2%
Other	3%
Total	100%
<b>Number of designated areas*</b>	<b>809</b>

The average period was 20 weeks. (There are no details in this research of repeat orders).





The following table shows the types of behaviour, which the police cited as reasons for imposing an order:

<b>Problem behaviours that provided the grounds for designation</b>	<b>Percentage of designated areas that included the behaviour in their grounds for designation*</b>
Intimidation/harassment	53%
Criminal damage including vandalism and graffiti	47%
Street drinking/under age drinking	35%
General anti-social behaviour caused by groups	30%
Rowdy behaviour such as drunken behaviour and fighting	25%
General (unspecified) ASB	21%
Noise nuisance	18%
Assault	14%
Drug/substance misuse	11%
Inappropriate vehicle use such as joyriding, motorcycle nuisance	8%
Nuisance behaviour such as setting fires, throwing missiles, other nuisance to the public	6%
Hate crime (including racial abuse)	5%
Litter/rubbish	3%
Crime (including burglary, prostitution, robbery, theft and vehicle crime)	2%
Begging and vagrancy	2%
<b>Number of designated areas**</b>	<b>809</b>

The research provides as estimate for the number of people dispersed throughout this period as being: 14,375 , 49 from each area on average.

The research provides an estimate for the number of under 16s taken home throughout this period as being 520, on average two from each area.

Of course - an order to disperse can also be given to under 16s so the figure for 14,375 will have included a significant percentage of children.

## **b) Use and implementation**

From the figures above it is clear that fairly significant use has been made of this power.

Dispersal zones are an implementation of 'Anti-social behaviour' legislation and depend on the same definition of 'Anti-social behaviour'. A group can be dispersed if " ! the presence or behaviour of the group! is likely to result, in any members of the public being intimidated, harassed, alarmed or distressed."

A group is defined as two or more people. A typical use of a dispersal power might be to disperse a group of youths hanging around outside a shop.

### **c) Taking Home of Under 16s by CSOs and Police Officers**

Section 30 (6) of the Anti Social Behaviour Act 2003 allows Police officers to take home under 16s between the hours of 9pm and 6am in a dispersal zone.

Section 33 of the Anti Social Behaviour Act 2003 specifically amends Part 1 of Schedule 4 to the Police Reform Act 2002 to allow Community Support Officers the power to disperse groups and the power to take young people home both under the dispersal legislation and under the child curfew legalisation.

We see from the Home Office figures that 520 were taken home during the year of the research period cited in a) above.

We have noted the High Court judgement relating to this power above ii) c). Since being taken home is not the same as being arrested police cannot use force and therefore a young person can (if they are informed about their rights) simply refuse to get in the police car.

One concern the author would have is that this legislation and the child curfew legislation allows CSOs to take home children in their vehicles. CSOs have two weeks training. Any sensible child would refuse to get in car with a stranger.

### **d) Order to disperse**

The legalisation frames the order to disperse in such a way as to give the police maximum flexibility.

Police may give an order to disperse to the group to disperse 'in such way as he may specify'. People who do not live in the dispersal zone area can be ordered to leave it and keep out of it for 24 hours.

The penalty for breaching such an order is a fine not exceeding level 4 on the standard scale, or imprisonment for a term not exceeding 3 months or both. A level 4 fine is £2,500.00.

The Home Office figures above do not break down dispersals by age; anecdotally though the author's impression is that it is groups of young people predominantly who are subject to orders to disperse. Indeed it is precisely young people who do not have anywhere where else to go - too young for pubs / clubs - and who like socialising in groups, a natural part of growing up, who are likely to congregate in groups in public places.

Refusal of an order to disperse is an arrest able offence. CSOs can detain. A CSO may not arrest someone but someone detained by a CSO can 'elect' to go with him or her to the police station. Police reform Act 2002 Schedule 4.



## **v) Government case studies: lessons to be learned**

The Together web site, which is aimed at 'Anti-social behaviour professionals' produces a number of Case Studies of 'Anti-social behaviour' legalisation. Lets look at two of them:

### a) Dispersal leads to youth involvement in Northampton

<http://www.together.gov.uk/article.asp?aid=3453&c=185>

This case study describes a situation on an estate in Northampton where young people were 'roaming' about an estate. There was some drinking and urinating in alleyways and some throwing stones at cars and houses apparently. Some residents felt intimidated.

The police and the council acted together. One boy was victimised with an ABC - Anti-social behaviour contract; another was convicted of failing to follow an order to disperse.

Without any hint of the irony the case study states:

Through consultation with the youths, it was identified that one of the main problems was lack of facilities on the estate as the youth club had closed. Funding was obtained for two youth shelters and part of the Community House was given over to a new youth club with volunteers from the estate and a nearby church assisting.

To the author It would seem blindingly obvious that young people behaving in the ways described are bored and looking for something to do.

The case study title claims this as a success for a dispersal order when in fact a child of five could see that the problem was solved by the provision of the missing youth facilities.

The case study states that the 15 year old who was prosecuted for not obey an order to disperse did not re-offend and seems to claim this as a success. Of course; if there had been no dispersal order in the first place then this young man would not have been prosecuted at all and would not have suffered the indignities etc of his supervision order.

A further case study of 'Anti-social behaviour' by children being resolved by provision of a youth club is available here:

<http://www.together.gov.uk/article.asp?aid=2098&c=321>

There are some rather sinister uses of a database here where the 'information is kept confidential unless requested by an authority', which would seem to mean in fact that it isn't confidential at all. And the point to note is that even a 'club' which seems to be run as a surveillance centre is still enough to keep young people from misbehaving.

b) Using dispersal powers to tackle anti-social behaviour by groups of youths - Staffordshire

<http://www.together.gov.uk/article.asp?c=321&aid=3272>

The problem is described as:

Analysis of calls made to the local police identified regular and persistent anti-social behaviour by groups of youths aged 11-16. This behaviour, which included offences of damage, assault and harassment, took place particularly during the evenings and was often fuelled by alcohol use. Involved were a number of identifiable offenders and a large number of 'hangers on'

Note the use of the word 'offenders'. 'Both Anti-social behaviour' documents and the day to day speech of professionals in this field routinely use the vocabulary of crime to refer to anti-social behaviour.

An order was made and the local school co-operated in publicising it. The case study states that:

Experience showed that many of the local youth, when told what to do would do it, and it was clear from the outset that many would simply adhere to the order without need for police intervention.

This finding does not seem to support the picture of out of control youth, which one is led to believe justifies the need for these powers.

Both these case studies suggest even on a casual reading that 'anti-social behaviour' amongst young people is down to lack of something to do and adult direction. (Though we note that much supposed 'anti-social behaviour' is not even that: simply hanging out meeting friends can be seen as anti-social if someone somewhere feels intimidated or harassed).



## **vi) Comments: An attitude problem, and Conclusion**

In the use of dispersal zones against young people there is a massive act of blindness going on by the policy makers in New Labour and the Home Office and by the police and Local Authorities who implement this stuff. The blindness is so massive that it must be done consciously.

Groups of young people outside shops, in car parks or stations etc are as a general rule meeting to socialise with their peers. Certainly situations can spiral out of control and young people can behave recklessly. The problem though is one, which even the government eventually admits, is solved by provision of proper youth facilities. I would not argue that provision of youth clubs will stop all youth 'crime' - but then the 'Anti-social behaviour' legislation is not about crime; it is about precisely the kind of behaviour which ceases with the provision of youth facilities.

The government has created a whole administrative and legal system, which penalises and punishes young people with all the consequences that entails - of which the most severe is suicide among young people. There is a certain industry around this.

At the end of the punishing and preying on young people the government turns round and admits that what is lacking is proper youth facilities. A few pounds are then found to buy a 'shelter', a brick hut usually, and if we are lucky a proper youth facility.

Ironically, children and young people are being punished for natural social behaviours under the banner of targeting 'Anti-social behaviour'. The adults who should be providing the youth facilities, which even they admit stop the problem they are concerned about, are busy creating a myth of out-of-control youths, a myth out of which they profit in terms of both power and money. After all the fuss and hoo-ha, all the dispersal orders and prosecutions of 'ring-leaders' and all that expenditure of public money the problem actually has to go away so they end up providing the youth clubs which would have solved it in the first place.

One part of this wave of legislation seems to have some sense; of course children especially young children, should not be out on the streets at night. There is a genuine problem here concerning their well-being. It is also the case that we have lost touch with the kind of community spirit where most adults would find it reasonable to challenge a child out on the streets at night. I suspect most wouldn't; most likely through fear of getting an earful from the child. This is a problem. But to try to fill this gap with authoritarian solutions and 'professional' interventions is not going to re-grow a sense of community where it has been lost.

