

ANTI-SOCIAL BEHAVIOUR (NORTHERN IRELAND) ORDER 2004

S.I. 2004 No. 1988 (N.I. 12)

EXPLANATORY MEMORANDUM

INTRODUCTION

The above Order is being made under the Northern Ireland Act 2000 and is subject to affirmative resolution.

This Explanatory Memorandum has been prepared by the Northern Ireland Office in order to assist the reader in understanding the Order. It does not form part of the Order.

BACKGROUND AND POLICY OBJECTIVES

In England and Wales the Crime and Disorder Act 1998 introduced the concept of Anti-social Behaviour Orders (ASBOs). This Act (as originally enacted) provided that a relevant authority in England and Wales, that is a local authority or the police, could apply by complaint to a magistrates' court for an order (an ASBO) which prohibited a person from doing anything described in that order. An ASBO lasts for two years generally and can be imposed on anyone aged 10 or over. The penalties for breach of the order on summary conviction are 6 months or a fine of the statutory maximum or both, or on indictment 5 years or an unlimited fine or both. These provisions were expanded by the Police Reform Act 2002 to, amongst other things, give criminal courts the power to issue an ASBO on conviction of a criminal offence. Most recently the Anti-social Behaviour Act 2003 added further amendments to the provisions.

When the 1998 Act was being prepared, consideration was given to extending the provisions relating to anti-social behaviour orders to Northern Ireland. However, in Northern Ireland there was no direct equivalent to the local authorities in England and Wales, which have not only a representative function, but which are also responsible for education, housing and social services. It was therefore decided to monitor the development of ASBOs in England and Wales and consider the Northern Ireland position in light of experience gained.

In April 2002 the then Secretary of State published a consultation paper on community safety in Northern Ireland which used recorded crime data, research findings on victimisation and fear of crime, and involved consultation with key people working in community safety to identify specific issues which needed to be addressed. These included street violence, low level neighbourhood disorder and anti-social behaviour. The community safety strategy published in March 2003 identified that the legislation in England and Wales on anti-social behaviour needed to be examined to see if it was appropriate for Northern Ireland and suggested that initiatives might include anti-social behaviour orders. The Government has concluded that such measures are needed.

CONSULTATION

Whilst some concerns were expressed, most respondents registered support for the development of ASBOs, both linked to a criminal conviction and by application to a civil court. This was both on consultation on the policy proposals and on the legislation. Many respondents welcomed ASBOs as an important, long over-due, mechanism which could enhance public safety and help people in Northern Ireland to live free from fear.

Whilst it was widely acknowledged that ASBOs would not in themselves constitute the entire solution to anti-social behaviour in Northern Ireland, they would, nonetheless make a valuable

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contribution to the wider community safety strategy. Several respondents elaborated on this and believed that ASBOs should generally be used as a last resort and in conjunction with a package of services including rehabilitative and preventative services. An issue which was raised was in relation to protection of the identity of the child. The Order gives courts the discretionary power to impose reporting restrictions when making an ASBO against a child. The legislation clarifies that the whole proceedings be covered.

FINANCIAL EFFECTS OF THE ORDER

Any costs incurred in obtaining ASBOs will be off-set by savings as a result of curbing anti-social behaviour. A further cost will be that of Legal Aid.

HUMAN RIGHTS ISSUES

It is the Government's view that the provisions in the Order are compatible with the European Convention on Human Rights.

EQUALITY IMPACT ASSESSMENT

Section 75 of the Northern Ireland Act 1998 requires public authorities, in carrying out their functions, to have due regard to the promotion of equality of opportunity in the 9 categories set out in the statute. An initial equality screening on the proposals confirmed that the proposals in themselves were not likely to have an adverse differential impact on any of the Section 75 groups.

SUMMARY OF THE REGULATORY APPRAISAL

A Regulatory Appraisal has not been prepared because no impact on the business, charity or voluntary sectors is foreseen.

MAIN ELEMENTS OF THE ORDER

- Anti-social Behaviour Orders on conviction;
- Anti-social Behaviour Orders without conviction;
- Interim Anti-social Behaviour Orders, in circumstances where the main application has not been determined and there is a need to obtain immediate relief from the behaviour;
- Reporting restrictions where the court can direct that no details of the child being dealt with could be published.

COMMENTARY ON ARTICLES

Title and commencement

Article 1 provides the title of the Order and deals with its commencement.

Interpretation

Article 2 attracts to the Order the provisions of the Interpretation Act (Northern Ireland) 1954 and defines certain terms used within the Order.

Anti-social behaviour orders on application to magistrates' court

Article 3 sets out provisions in respect of anti-social behaviour orders made on application to a magistrates' court.

The effect of paragraph (1) is to enable a relevant authority, that is a district council, the Chief Constable of the Police Service of Northern Ireland or the Northern Ireland Housing Executive ("the NIHE"), to apply for an anti-social behaviour order to be made in respect of any person aged 10 or over, provided that certain conditions are fulfilled. These conditions are that the person has acted in a manner that caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household as himself; and that such an order is necessary to protect relevant persons from further anti-social acts by him. "Relevant persons" means

- (a) in relation to a district council, persons within the district of the council;
- (b) in relation to the Chief Constable, persons within Northern Ireland;
- (c) in relation to the NIHE persons residing in premises provided or managed by the NIHE or persons in the vicinity of such premises.

As these orders will be civil orders, hearsay or professional evidence will be admissible, therefore it will not be necessary for those who have been directly affected by the behaviour to give

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evidence of the effect of the behaviour on themselves. It will be sufficient for a witness with appropriate expertise to observe events and produce evidence of the events which would illustrate that the behaviour would be likely to cause, for example, harassment to anyone subject to it. This is an important safeguard because often those directly affected by anti-social behaviour are reluctant to give evidence, because of fear that they may be targeted in the future.

Under paragraph (3) a magistrates' court is enabled to make an order which prohibits the defendant from doing anything in the order. Prohibitions should be reasonable, proportionate, realistic and practical. It is intended that conditions should be specific, for example in matters of time, if someone is being prohibited from an area at certain times, or when referring to exclusion from an area, boundaries should be made clear by use of street names. Prohibitions should also cover acts which are pre-cursors to criminal acts, such as entering a shopping centre, and situations where the defendant may incite others to engage in anti-social behaviour.

Paragraph (5) ensures that the prohibitions imposed by an order should be those which are necessary for the purpose of protecting persons in a defined area, or indeed the whole of, Northern Ireland from anti-social acts by the defendant. It is intended that the court will decide the duration of an order, although, under paragraph (6) the minimum duration is set at two years. The duration of the order should not be a reflection of the nature of the conduct of the defendant, but rather the period of time deemed necessary to protect the community.

Paragraphs (7) and (8) provide that application for early discharge of the order within two years of the date of service of the order will only be possible with the agreement of the relevant authority and the defendant. Under paragraph (7) applications may also be made by either party to vary the ASBO.

Paragraphs (9) to (11) make provision for appeals to the county court against the making of an ASBO.

Interim anti-social behaviour orders on applications under Article 3

Article 4 provides that interim orders may be made by a magistrates' court in circumstances where the main application has not been determined. An order under this Article can prohibit a defendant from doing anything described in the order and shall be for a fixed period. Such an order may be varied, renewed or discharged and, if it has not already ceased to have effect, it ceases to have effect on the determination of the main application for an ASBO. A person can appeal to the county court against the making of an interim order under this Article.

Applications under Article 3: consultation and legal aid

Article 5 contains a statutory requirement for the body making the application to consult with its counterparts about whether the application should be made and about the proposed content of the application. This is necessary in order to avoid the possible risk of parallel proceedings being taken in respect of the same behaviour, for example, the anti-social behaviour may be such that it leads to a criminal charge. It is not intended that one of the relevant authorities should bring an application for an ASBO at the same time as criminal proceedings for the same behaviour are underway. Para 5 (4) provides for legal aid.

Anti-social behaviour orders on conviction in criminal proceedings

Article 6 makes provision for ASBOs to be made on conviction in criminal proceedings where the court is satisfied that the convicted person has acted in an anti-social manner, namely in a manner that caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household as himself and that an ASBO is necessary to protect people within Northern Ireland from further anti-social acts by him. No application from any of the relevant authorities under Article 2 would be necessary. An ASBO can be made by the court either if asked for by the prosecution or of its own motion.

Paragraph (5) provides that it is immaterial whether evidence produced for the purpose of deciding whether to make such an order would have been admissible in the proceedings in which the offender was convicted. This means that hearsay evidence is admissible.

Under paragraph (6) an order made under these circumstances would be made in addition to any sentence or conditional discharge which the court might impose and is not part of the sentence. Paragraph (7) empowers the court to provide for the suspension of certain requirements of an ASBO during a period of detention in legal custody until release from that custody.

The minimum duration of an ASBO under Article 6 is two years, during which period the offender to whom the order applies is unable to make an application to have the order varied or discharged.

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Breach of anti-social behaviour orders

Article 7 provides that breach of an ASBO will be a criminal offence for which the normal procedures for prosecution of criminal offences should apply. It is intended that cases should be heard summarily in a magistrates' court and on indictment in the Crown Court.

Under paragraph (1) the maximum penalty available on summary conviction would be six months' imprisonment or a fine of up to the statutory maximum, or both. The maximum penalty on conviction on indictment would be five years imprisonment, or a fine or both.

Restrictions on reporting

Article 8 makes provision whereby a court, when dealing with proceedings for an ASBO against a child, may direct that no report shall be published in a newspaper or any broadcast which reveals the name, address or school of the child or includes any particulars likely to lead to the identification of the child and that no picture is to be published as being or including a picture of the child. If someone breaches a prohibition by the court under this Article he shall be guilty of an offence and be liable on summary conviction to a fine not exceeding level 5 on the standard scale, that is £5000.

COMMENCEMENT

The Order will be commenced on a day or days specified by the Secretary of State.