

Appendix 1

LEGISLATION

Section 1 of the Crime and Disorder Act 1998 has been reproduced in full:

PREVENTION OF CRIME AND DISORDER

Anti-Social Behaviour Orders

- (1) An application for an order under this section may be made by a relevant authority if it appears to the authority that the following conditions are fulfilled with respect to any person aged 10 or over, namely:-
 - (a) that the person has acted, since the commencement date, in an anti-social manner, that is to say, 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
 - (b) that such an order is necessary to protect persons in the local government area in which the harassment, alarm or distress was caused or was likely to be caused from further anti-social acts by him;and in this section “relevant authority” means the council for the local government area or any chief officer of police any part of whose police areas lies within that area.
- (2) A relevant authority shall not make such an application without consulting each other relevant authority.
- (3) Such an application shall be made by complaint to the magistrates’ court whose commission area includes the place where it is alleged that the harassment, alarm or distress was caused or was likely to be caused.
- (4) If, on such an application, it is proved that the conditions mentioned in subsection (1) above are fulfilled, the magistrates’ court may make an order under this section (an “anti-social behaviour order”) which prohibits the defendant from doing anything described in the order.
- (5) For the purpose of determining whether the condition mentioned in subsection (1)(a) above is fulfilled, the court shall disregard any act of the defendant which he shows was reasonable in the circumstances.
- (6) The prohibitions that may be imposed by an anti-social behaviour order are those necessary for the purpose of protecting from further anti-social acts by the defendant:-
 - (a) persons in the local government area; and
 - (b) persons in any adjoining local government area specified in the application for the order;and a relevant authority shall not specify an adjoining local government area in the application without consulting the council for that area and each chief officer of police any part of whose police area lies within that area.
- (7) An anti-social behaviour order shall have effect for a period (not less than two years) specified in the order or until further order.

- (8) Subject to subsection (9) below, the applicant or the defendant may apply by complaint to the court that made an anti-social behaviour order for it to be varied or discharged by a further order.
- (9) Except with the consent of both parties, no anti-social behaviour order shall be discharged before the end of the period of two years beginning with the date of service of the order.
- (10) If without reasonable excuse a person does anything that he is prohibited from doing by an anti-social behaviour order, he shall be liable:-
- (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both; or
 - (b) on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine, or to both.
- (11) Where a person is convicted of an offence under subsection (10) above, it shall not be open to the court by or before which he is so convicted to make an order under subsection (1)(b) (conditional discharge) of section 1A of the Powers of Criminal Courts Act 1973 ("the 1973 Act") in respect of the offence.
- (12) In this section:-
- "the commencement date" means the date of the commencement of this section;
 - "local government area" means:-
- (a) in relation to England, a district or London borough, the City of London, the Isle of Wight and the Isles of Scilly;
 - (b) in relation to Wales, a county or county borough.

INTERPRETATION OF LEGISLATION

The term 'anti-social manner' is defined in Section 1(1)(a) as, "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".

Harassment

Section 1 does not define 'harassment' and each case will have to be assessed carefully, taking into consideration degree and circumstances of behaviour, with all relevant facts.

Alarm

A magistrates' court will have to decide whether the conduct caused, or was likely to cause alarm. Again, it is a matter of fact. The alarm or likelihood of alarm will have to be judged on the facts of each case.

Distress

There is no requirement that the person knew or ought to have known, that his/her conduct was likely to cause distress. Again all the facts have to be taken into consideration.

Reasonableness

Section 1(5) states 'for the purpose of determining whether the condition mentioned in Section 1(a) is fulfilled, the court shall disregard any act of the defendant that he shows was reasonable in the circumstances'. This 'reasonableness' provision is intended to allow a court to make a judgement as to the acceptability of the conduct of the defendant.

This Section also requires a court to disregard certain conduct in determining whether one of the pre-conditions for the making of a Section 1 order is satisfied, once it has been established that the act or acts caused harassment, alarm or distress. It will be the 'reasonableness' of the act or acts that have to be judged, **not** the reasonableness of the reaction, or likely reaction, of persons in the locality.

Section 1(5) places clearly the burden of establishing 'reasonableness' on the defendant. Given the wide scope of the definition, the application of this 'reasonableness' test will be crucial, as will the exercise of discretion by the relevant agencies and the court.

Scope of behaviour

The scope of the behaviour covered by Section 1 is extremely broad. Unlike the Public Order Act 1986, the behaviour does not have to be directed towards another person, nor does the conduct have to be in the presence of a person likely to be caused harassment, alarm or distress.

Given the sheer breadth of the Section 1 power, it is suggested that the seriousness of such harassment, alarm or distress will clearly be a relevant factor when deciding whether or not to make an application. Such seriousness will also be taken into account when a magistrates' court decides whether or not an order should be made.

Appendix 4

Statistical information on Anti-Social Behaviour Orders

The information below has been gathered by a structured phone survey to MPS borough commands (BOCUs) on 25th and 26th April 2001. The information is as accurate as that process allows. The MPS has never corporately measured information on ASBOs due to the fact that the majority are led by local authorities.

Total number of BOCUs using ASBOs ¹	12
Total number of BOCUs with written ASBO protocols	20
Total number of ASBOs in MPS area ²	32
Total number of ASBO applications	39
Total number of ASBO applications pending	29
Total number of breaches of ASBOs ³	17
Total number of BOCUs using ABCs ⁴	18
Total number of ABC contracts	124

¹ many boroughs without ASBOs have applications impending or failed applications.

² includes 2 led by MPS and 30 by local authorities

³ Examples of sentences for breaches include £50 fine, community service and 3 months detention centre.

⁴ Acceptable Behaviour contracts (ABCs) were invented by Sgt Paul Dunn at Islington as a formal, voluntary written contract to be of good behaviour.

Appendix 5

Example costs for ASBOs

Example One

Bexleyheath obtained an ASBO against two brothers in July 2000. Officers estimated that the cost of obtaining the order was about £100,000.

The figure represents opportunity cost for the many staff involved in gathering evidence, preparing the case for the application, completing the application, monitoring the ASBO and dealing with the breaches.

Staff involved in the process over a nine month period included:

Assistant Management Secretary of Bexleyheath Council
Barrister briefed for case
Chief Inspector, Borough Liaison Officer, Bexleyheath police
1 Inspector, 1 DS and a number of other officers on the enquiry
Representatives from:
Housing department
Education Welfare department,
Community safety office
Solicitors department of both Metropolitan police and Bexleyheath council
Environmental services
Probation Service
Youth Offending Team
Secretarial support for the many meetings.

The ASBO was breached by one youth who received 3 months youth detention.

Example Two

Haringey local authority and police used a much smaller team to apply for ASBOs. Staff involved in gathering evidence, preparing the case for the application, completing the application, monitoring the ASBO and dealing with the breaches included:

MPS Solicitors
Police Inspector
Several Constables

Four successful applications were made over seventeen months. Two of the ASBOs were breached. There were five breaches by one youth leading to him being sentenced to six months in a detention centre. The estimated cost to police alone over all four ASBOs was approximately £15,000 over 17 months.