

## 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, which 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.