

# ANTI-SOCIAL BEHAVIOUR (NORTHERN IRELAND) ORDER 2004

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

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## EXPLANATORY MEMORANDUM

### COMMENTARY ON ARTICLES

#### *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.