

*Draft Order in Council laid before Parliament under paragraph 2(1)(a) of the Schedule to the
Northern Ireland Act 2000, for approval by resolution of each House of Parliament*

DRAFT STATUTORY INSTRUMENTS

2004 No. (N.I.)

NORTHERN IRELAND

The Anti-social Behaviour (Northern Ireland) Order 2004

Made - - - - 2004

Coming into operation in accordance with Article 1(2)

At the Court at Buckingham Palace, the ** day of ** 2004

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order in Council has been approved by resolution of each House of Parliament:

Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1(1) of the Schedule to the Northern Ireland Act 2000 (c. 1) and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

Introductory

Title and commencement

1.—(1) This Order may be cited as the Anti-social Behaviour (Northern Ireland) Order 2004.

(2) Articles 3 to 8 shall come into operation on such day as the Secretary of State may by order appoint.

(3) An order under paragraph (2) may contain such transitional provisions as the Secretary of State thinks necessary or expedient.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954 (c. 33) applies to this Order as it applies to an Act of the Assembly.

(2) In this Order—

“anti-social behaviour order” means an order under Article 3, 4 or 6;

“the commencement date” means the date on which Article 3 comes into operation.

(3) In this Order “a relevant authority” means—

- (a) a district council;
- (b) the Chief Constable; or
- (c) the Northern Ireland Housing Executive.

(4) In this Order “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 Northern Ireland Housing Executive—
 - (i) persons who are residing in or who are otherwise on or likely to be on premises provided or managed by the Executive; or
 - (ii) persons who are in the vicinity of or likely to be in the vicinity of such premises.

(5) In this Order, in relation to an anti-social behaviour order—

- (a) references to “the relevant authority” are references to the relevant authority on whose application the order is made; and
- (b) references to “the defendant” are references to the person in respect of whom the order is made.

(6) The Chief Constable may direct in writing that such of his functions under this Order as are specified in the direction may be exercised by such police officers as are specified in the direction.

Anti-social behaviour orders on application by relevant authority

Anti-social behaviour orders on application to magistrates' court

3.—(1) An application for an order under this Article 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 relevant persons from further anti-social acts by him.

(2) Such an application shall be made by complaint to a magistrates' court for the county court division in which it is alleged that the harassment, alarm or distress was caused or was likely to be caused.

(3) If, on such an application, it is proved that the conditions mentioned in paragraph (1) are fulfilled, the magistrates' court may make an order which prohibits the defendant from doing anything described in the order.

(4) For the purpose of determining whether the condition mentioned in paragraph (1)(a) is fulfilled with respect to any person, the court shall disregard any act of that person which he shows was reasonable in the circumstances.

(5) The prohibitions that may be imposed by an order under this Article are those necessary for the purpose of protecting persons (whether relevant persons or not) from further anti-social acts by the defendant.

(6) An order under this Article shall have effect for a period (not less than two years) specified in the order or until further order.

(7) Subject to paragraph (8), the relevant authority or the defendant may apply by complaint to the court which made an order under this Article for it to be varied or discharged by a further order.

(8) Except with the consent of the relevant authority and the defendant, no order under this Article shall be discharged before the end of the period of two years beginning with the date of service of the order.

(9) An appeal shall lie to the county court against the making by a magistrates' court of an order under this Article.

(10) On such an appeal the county court—

(a) may make such orders as may be necessary to give effect to its determination of the appeal; and

(b) may also make such incidental or consequential orders as appear to it to be just.

(11) Any order of the county court made on such an appeal (other than one directing that an application be re-heard by a magistrates' court) shall, for the purposes of paragraph (7), be treated as if it were an order of the magistrates' court from which the appeal was brought and not an order of the county court.

Interim anti-social behaviour orders on applications under Article 3

4.—(1) If, before determining an application for an order under Article 3, the court considers that it is just to make an order under this Article pending the determination of that application (“the main application”), it may make such an order.

(2) An order under this Article is an order which prohibits the defendant from doing anything described in the order.

(3) An order under this Article—

(a) shall be for a fixed period;

(b) may be varied, renewed or discharged;

(c) shall, if it has not previously ceased to have effect, cease to have effect on the determination of the main application.

(4) The prohibitions that may be imposed by an order under this Article are those necessary for the purpose of protecting persons (whether relevant persons or not) from further anti-social acts by the defendant.

(5) The relevant authority or the defendant may apply by complaint to the court which made an order under this Article for it to be varied or discharged by a further order.

(6) An appeal shall lie to the county court against the making by a magistrates' court of an order under this Article.

(7) On such an appeal the county court—

(a) may make such orders as may be necessary to give effect to its determination of the appeal; and

(b) may also make such incidental or consequential orders as appear to it to be just.

(8) Any order of the county court made on an appeal under this Article (other than one directing that an application be re-heard by a magistrates' court) shall, for the purposes of paragraph (5), be treated as if it were an order of the magistrates' court from which the appeal was brought and not an order of the county court.

Proceedings under Articles 3 and 4: consultation and legal aid

5.—(1) Before making an application for an order under Article 3, a district council shall consult—

- (a) the Chief Constable; and
- (b) if the person in relation to whom the application is to be made resides or appears to reside on premises provided or managed by the Northern Ireland Housing Executive, the Executive.

(2) Before making such an application, the Chief Constable shall consult—

- (a) the council for the district in which the person in relation to whom the application is to be made resides or appears to reside; and
- (b) if that person resides or appears to reside on premises provided or managed by the Northern Ireland Housing Executive, the Executive.

(3) Before making such an application, the Northern Ireland Housing Executive shall consult—

- (a) the council for the district in which the person in relation to whom the application is to be made resides or appears to reside; and
- (b) the Chief Constable.

(4) In the [Legal Aid, Advice and Assistance \(Northern Ireland\) Order 1981 \(1981 NI 8\)](#) in Part I of Schedule 1 (proceedings for which legal aid may be given) in paragraph 3 at the end add—

- “(k) proceedings for, or relating to, an anti-social behaviour order under Article 3 or 4 of the Anti-social Behaviour (Northern Ireland) Order 2004;”.

Anti-social behaviour orders on conviction in criminal proceedings

Anti-social behaviour orders on conviction in criminal proceedings

6.—(1) This Article applies where a person (the “offender”) is convicted of a relevant offence.

(2) If the court considers—

- (a) that the offender has acted, at any time 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 an order under this Article is necessary to protect persons within Northern Ireland from further anti-social acts by him,

it may make an order which prohibits the offender from doing anything described in the order.

(3) The court may make an order under this Article—

- (a) if the prosecution asks it to do so; or
- (b) if the court thinks it is appropriate to do so.

(4) For the purpose of deciding whether to make an order under this Article the court may consider evidence led by the prosecution and the defence.

(5) It is immaterial whether evidence led in pursuance of paragraph (4) would have been admissible in the proceedings in which the offender was convicted.

(6) An order under this Article shall not be made except—

- (a) in addition to a sentence imposed in respect of the relevant offence; or
- (b) in addition to an order discharging the offender conditionally.

(7) An order under this Article takes effect on the day on which it is made, but the court may provide in any such order that such requirements of the order as it may specify shall, during any period when the offender is detained in legal custody, be suspended until his release from that custody.

(8) An order under this Article shall have effect for a period (not less than two years) specified in the order or until further order.

(9) An offender subject to an order under this Article may apply to the court which made it for it to be varied or discharged.

(10) In the case of an order under this Article made by a magistrates' court, the reference in paragraph (9) to the court by which the order was made includes a reference to any magistrates' court acting for the same county court division as that court.

(11) No application may be made under paragraph (9) for the discharge of an order before the end of the period of two years beginning with the day on which the order takes effect.

(12) The functions of—

- (a) the Director of Public Prosecutions under Article 5 of the [Prosecution of Offences \(Northern Ireland\) Order 1972 \(NI 1\)](#), and
- (b) the Director of Public Prosecutions under section 31 of the Justice (Northern Ireland) Act 2002 (c. 26),

include having the conduct of applications for orders under this Article.

(13) In this Article—

“the court” in relation to an offender means the court by or before which he is convicted of the relevant offence;

“relevant offence” means an offence committed after the coming into operation of this Article.

Breach of anti social-behaviour orders

Breach of anti-social behaviour orders

7.—(1) If without reasonable excuse a person does anything which he is prohibited from doing by an anti-social behaviour order, he shall be guilty of an offence and 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.

(2) Proceedings for an offence under paragraph (1) may be brought by a district council if the order in question was made on the application of that council.

(3) Proceedings for an offence under paragraph (1) may be brought by the Northern Ireland Housing Executive if the order in question was made on the application of the Executive.

(4) Where a person is convicted of an offence under paragraph (1), it shall not be open to the court by or before which he is so convicted to make an order under paragraph (1)(b) (conditional discharge) of Article 4 of the [Criminal Justice \(Northern Ireland\) Order 1996 \(NI 24\)](#) in respect of the offence.

Restrictions on reporting proceedings for orders against children

Restrictions on reporting proceedings for orders against children

8.—(1) In any proceedings for, or in relation to, an anti-social behaviour order against a child, the court may direct that—

- (a) no report shall be published which reveals the name, address or school of the child or includes any particulars likely to lead to the identification of the child; and
- (b) no picture shall be published as being or including a picture of the child.

(2) If a report or picture is published in contravention of a direction under paragraph (1), the following persons—

- (a) in the case of publication of a written report or a picture as part of a newspaper, any proprietor, editor or publisher of the newspaper;
- (b) in the case of the inclusion of a report or picture in a programme service, any body corporate which provides the service and any person having functions in relation to the programme corresponding to those of an editor of a newspaper,

shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(3) Paragraph (4) applies in relation to proceedings in which an order is made under Article 6 in respect of a child.

(4) In so far as the proceedings relate to the making of the order, Article 22 of the [Criminal Justice \(Children\) \(Northern Ireland\) Order 1998 \(NI 9\)](#) (restrictions on reporting criminal proceedings concerning child) does not apply in respect of the child.

(5) As from the coming into force of the repeal of Article 22 of the Criminal Justice (Children) (Northern Ireland) Order 1998 by Schedule 6 to the Youth Justice and Criminal Evidence Act 1999 (c. 23), paragraph (4) has effect with the substitution for the reference to that Article of a reference to section 49 of the Children and Young Persons Act 1933 (c. 12).

(6) In this Article—

“child” means a person who is under the age of 17;

“picture” means a picture in a newspaper and a picture included in a programme service;

“programme service” has the same meaning as in the Broadcasting Act 1990 (c. 42);

“publish” includes—

- (a) include in a programme service;
- (b) cause to be published;

“report” means a report in a newspaper and a report included in a programme service.

Clerk of the Privy Council

EXPLANATORY NOTE

(This note is not part of the Order)

This Order provides for the making of an anti-social behaviour order against a person by a magistrates' court on application by a relevant authority or by the court by or before which the person is convicted of a criminal offence. Breach of such an order is a criminal offence under Article 7. Article 8 provides for restrictions on reporting proceedings for such orders against children.