

CRIMINAL JUSTICE AND IMMIGRATION ACT 2008

EXPLANATORY NOTES

THE ACT

Commentary on Sections

Part 8: Anti-social behaviour

Section 123: Review of anti-social behaviour orders etc.

689. *Subsection (1)* inserts two new sections, 1J and 1K, into Part 1 of the Crime and Disorder Act 1998. ASBOs are civil orders to protect the public from behaviour that causes or is likely to cause harassment, alarm or distress. ASBOs are issued for a minimum period of two years.
690. Section 1J creates the obligation to carry out a one year review of ASBOs issued to persons under 17 and sets out how it should be carried out.

New Section 1J of the 1998 Act

691. New section 1J(1) makes ASBOs subject to review regardless of how they were obtained (on complaint, or on conviction, or in the county court), provided that the subject was aged under 17 on the day that the order was made.
692. New section 1J(2) ensures that a review will be carried out only if the subject is still aged under 18 and requires the order to be reviewed before the end of each “review period” (see below).
693. New section 1J(3) specifies the review periods. There are two types. The first review (new section 1J(3)(a)) is to be carried out for the period covering the first year of the ASBO, but if there has been a supplemental order (see below) within that first year, that further order has the effect of re-setting the clock on the review period. The second and subsequent reviews (new section 1J(3)(b)) are to be carried out on a one yearly cycle starting from the day after the first review period. However, again, the clock can be re-set if a supplemental order is made within that second (or subsequent) review period. This will avoid a review having to be carried out when a similar process – the case review leading up to an application to vary an order or to obtain an Individual Support Order (ISO) – has already achieved the same end.
694. New section 1J(4) defines supplemental orders for the purposes of new section 1J(3). The result is that varying the ASBO, or making an ISO in relation to it, has the effect of re-setting the clock for the review period.
695. New section 1J(5) makes it clear that a review is not carried out on an ASBO if the order is discharged before the end of the review period.

These notes refer to the Criminal Justice and Immigration Act 2008 (c.4) which received Royal Assent on 8 May 2008

696. New section 1J(6) sets out what the case review team must consider when conducting the review, including further support to the subject and possible further action to vary or discharge the ASBO.
697. New section 1J(7) requires the case review team to have regard to Home Office guidance when carrying out the review.

New Section 1K of the 1998 Act

698. New section 1K sets out which agencies are responsible for carrying out and participating in the review.
699. New section 1K(1) requires the applicant agency to carry out the review of any ASBO that it applied for.
700. New section 1K(2) requires that for ASBOs obtained on conviction (where the applicant may be the CPS, or the order may be made by the Court itself), the police are to carry out the review, unless the ASBO specifies otherwise.
701. New section 1K(3) and (4) require the police and the local authority to co-operate with each other's reviews. New section 1K(5) obliges other applicant agencies (eg. registered social landlords) to co-operate with the police and local authority, and similarly both the police and the local authority are duty bound to co-operate with, for example, a registered social landlord's review.
702. New section 1K(6) enables the agency carrying out the review to invite another person or body (eg. the local youth offending team) to participate in the review, distinct from those already obliged to do so.
703. New section 1K(7) gives the definition of police and local authority for the purposes of this section, ie. the police or local authority where the subject resides or appears to reside.
704. *Subsection (2)* amends section 1(1A) of the 1998 Act, which sets out the definition of a relevant authority, to extend that definition to cover these provisions.
705. *Subsection (3)* enables an agency other than the police (the default option set out in new section 1K(2)) to be specified as the agency responsible for carrying out the yearly review of an order obtained on conviction. The means for doing so is through a designation by the Court, either at the time the ASBO is made or subsequently when it is varied by a further Court order.
706. *Paragraph 23* of Schedule 27 to the Act (transitional etc. provisions) sets the timing criteria for ASBOs to be subject to the new review requirement. In addition to all the requirements set out above, to qualify for a review, an ASBO must:
- be less than nine months old when these provisions come into force; or
 - have been varied nine months (or less) before the requirement comes into force.