

# **CRIMINAL JUSTICE (NORTHERN IRELAND) ORDER 2005**

**S.I. 2005 1965**

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## **EXPLANATORY MEMORANDUM**

**1.**

### **INTRODUCTION**

- 1.1. The above Order was made on the 19 July 2005 under the Northern Ireland Act 2000.
- 1.2. This Explanatory Memorandum has been prepared by the Northern Ireland Office to assist the reader in understanding the Order. It does not form part of the Order.

**2.**

### **BACKGROUND AND POLICY OBJECTIVES**

- 2.1. The Order provides for a series of improvements to the criminal justice system in Northern Ireland in terms of its powers and procedures in the field of law and order. The main provisions of the Order relate to anti-social behaviour legislation; adjustments to prisons law; new powers in respect of proceeds of crime investigation and road traffic (drink-driving) offences; and the creation of a new Probation-led victim information scheme. It makes provision for a number of miscellaneous matters including bail, youth courts and legal aid.

**3.**

### **CONSULTATION**

- 3.1. A Draft Proposed Order was issued for public consultation between March and June 2005. 15 responses were received which, given the varied content of the draft Order, focused on differing aspects. Several respondents welcomed the Government's plans to build on current Anti-social Behaviour (ASBO) legislation. Support was given to the tackling of anti-social behaviour, to the support this gives to communities and victims, and to the ability to make ASBO provisions available to other authorities. Some suggested technical improvements; and some made suggestions for future legislation.
- 3.2. Some concerns were expressed about the legislative proposals relating to ASBOs. Certain reservations were expressed about extending the number of organisations that can apply for ASBOs particularly at a time when existing provisions were still being tested. Some opposition was expressed to ASBO legislation overall in the belief that such provision has an adverse impact on children and young people.
- 3.3. In response the Government believes that ASBOs remain a necessary component of the overall response to tackling growing incidences of anti-social behaviour across Northern Ireland and will continue to help safeguard the rights of ordinary citizens to live peaceful and law abiding lives without fear of harm or intimidation in their own community. ASBOs will only impact on children and young people to the extent which they, like anyone else, choose to engage in anti-social or criminal behaviour.

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3.4. The suggestions for further legislation will be considered separately and in due course.

4.

**EXTENT**

4.1. This Order extends to Northern Ireland only.

5.

**MAIN ELEMENTS OF THE ORDER**

5.1. The Order includes provisions on Anti-social Behaviour Orders; changes to prison and proceeds of crime law; provisions in anticipation of the Youth Court extending its jurisdiction to include 17 year-olds; road traffic law; and a series of miscellaneous matters. In the following slightly more detailed commentary on individual provisions where the wording is self-explanatory no commentary is given.

6.

**COMMENTARY ON PROVISIONS**

*Anti-social Behaviour Orders*

6.1. **Articles 2 to 8** provide powers and procedures in relation to the making of Anti-social Behaviour Orders. These include providing an order making power enabling the Secretary of State to designate additional relevant authorities or persons who may apply for an ASBO; a power for the court to grant an interim ASBO on conviction either of its own motion or where a request for an ASBO on conviction has been made by the prosecution; powers and procedures for variation or discharge of ASBOs and interim ASBOs on conviction; the extension of special measures for the protection of vulnerable or intimidated witnesses giving evidence in criminal proceedings to ASBO proceedings; and additional miscellaneous matters relating to powers of adjournment and the issue of warrants of arrest; self-certification of ASBOs for evidential purposes; and legal aid provision.

*Prisons, etc*

6.2. **Articles 9 to 13** provide for amendments to existing prisons legislation. In summary they provide for a technical amendment to affirm that the risk test applied prior to the release of life prisoners and to recalled life licensees being considered for re-release is the same; the renaming of Prison Boards of Visitors and Visiting Committees as Independent Monitoring Boards (in line with changes in England and Wales) along with the removal of obsolete roles for the Boards in medical tests and prison transfers; and the future availability of legal aid for representation at separated prisoner disciplinary hearings at which loss of remission may be awarded.

*Proceeds of Crime*

6.3. **Articles 14 and 15** amend Proceeds of Crime legislation to provide a power to require financial institutions to disclose information concerning the existence of a safe deposit box held by any person under investigation (Article 15). Article 16 extends powers currently only available in criminal confiscation investigations to civil recovery investigations to identify whether a solicitor has acted for the person under investigation and to require the solicitor to furnish details of his client.

*Youth justice*

6.4. **Article 16** makes changes to current legislation in anticipation of the extension of the Youth Court to include 17 year-olds. The Youth Court remit extends only to those under

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17 years of age but this is planned to increase later in 2005 to include those under 18. The effect of Article 16 will be to provide revised arrangements for remands into custody for 17 year-olds from the expanded Youth Court. With some exceptions those aged 17 being remanded into custody will continue to be committed to a young offenders centre; most children under 17 will be committed to a juvenile justice centre. Article 16 also extends to 17 year-olds the age at which a pre-sentence report can be given to a parent/guardian or child. It extends reporting restrictions on ASBO proceedings to also include 17 year-olds.

- 6.5. **Article 17** provides that reparation, community supervision and youth conference orders must be provided to the court 'as soon as is practicable'. This is aimed at removing unnecessary adjournment and disruption to proceedings allowing the court more flexibility in the production and provision of such orders.

**Road traffic**

- 6.6. **Articles 18 and 19** create two new road traffic powers relating to the taking of specimens of blood for analysis in suspected drink-driving cases. Article 18 provides powers for registered healthcare professionals to take specimens of blood for drink-drive analysis from persons detained in a police station. Previous legislation provided that only medical practitioners may take such specimens. Article 19 provides that a specimen may be taken in circumstances where the accused is incapable of giving consent, eg an unconscious driver, but that it will not be analysed without subsequent consent being given.
- 6.7. **Article 20** provides the power for the Secretary of State to make provision for the use, for police purposes, of funding derived from fixed penalty notices issued under the safety camera scheme. This provision renews the existing authority, under the Appropriation Act 2003, which lapses in 2005. It allows fine revenue to be reinvested into the safety camera scheme at each level of its operation, therefore allowing the police, courts and departments to recover costs associated with running the scheme.

**Miscellaneous**

- 6.8. **Articles 21 to 26** make provision for a number of miscellaneous criminal justice matters. These include providing that, where a person on police bail is required to appear before a magistrates' court, he and any surety of his are subject to certain appropriate provisions of the Magistrates' Courts (Northern Ireland) Order 1981 (Article 21). The effect of this change will be to avoid unnecessary additional court hearings in relation to maintaining continuity in bail arrangements. Other provisions include facilitating the future availability of legal aid for representation at proceedings under Parts I and 2 of the Extradition Act 2003 when the Access to Justice (NI) Order 2003 is commenced (Article 22); providing that certain sexual offences are arrestable offences without the need for a police officer to apply for a warrant (Article 23); the ability to give evidence by "live video link" from outside the Northern Ireland jurisdiction does not extend to the accused and that such evidence can be given before a resident magistrate as well as a judge (Article 24); and providing that the Secretary of State shall make a scheme requiring the Probation Board to provide an information service to the victims of offenders who are subject to probation supervision (Article 25). Article 26 is a technical amendment to correct a mistake in the Justice (Northern Ireland) Act 2002 (Commencement No 9 and Transitional Provisions) Order 2005.

7.

**COMMENCEMENT**

- 7.1. **Articles 2 to 8, 13, 20, 22, 24, 25** (and **schedule 2** as it relates to the Extradition Act 2003 and Anti-social Behaviour (Northern Ireland) Order 2004) come into operation on such day or days as the Secretary of State may appoint.

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- 7.2. **Article 16** comes into operation on the day appointed for the coming into force of Section 63 of the Justice (Northern Ireland) Act 2002.
- 7.3. **Article 26 came** into force on the day on which the Order was made.
- 7.4. **All other Articles come** into operation one month after the day on which the Order was made.