



NORTHERN  
IRELAND  
HUMAN  
RIGHTS  
COMMISSION

## Proposed Criminal Justice Order (Northern Ireland) 2005

1. The Northern Ireland Human Rights Commission (the Commission) is a statutory body created by the Northern Ireland Act 1998. It has a range of functions including reviewing the adequacy and effectiveness of Northern Ireland law and practice relating to the protection of human rights,<sup>1</sup> advising on legislative and other measures which ought to be taken to protect human rights,<sup>2</sup> advising on whether a Bill is compatible with human rights<sup>3</sup> and promoting understanding and awareness of the importance of human rights in Northern Ireland.<sup>4</sup> In all of that work the Commission bases its positions on the full range of internationally accepted human rights standards, including the European Convention on Human Rights (ECHR), other treaty obligations in the Council of Europe and United Nations systems, and the non-binding 'soft law' standards developed by the human rights bodies.
2. The Commission welcomes the opportunity to comment on the proposals included in the Criminal Justice (Northern Ireland) Order 2005. We would welcome feedback from the Northern Ireland Office (the NIO) on this response. Where it is decided not to take account of some of the comments made, the Commission would be grateful for an indication of the reasons for not doing so.

### **Anti-social behaviour orders (Articles 2-8)**

3. The Commission would again stress its concern at the prospect of routine recourse to anti-social behaviour orders (ASBOs) as a response to inconvenient, non-criminal behaviour. Our position presented in the response to the consultation on "Measures to

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<sup>1</sup> Northern Ireland Act 1998, s.69(1).

<sup>2</sup> *Ibid.*, s.69(3).

<sup>3</sup> *Ibid.*, s.69(4).

<sup>4</sup> *Ibid.*, s.69(6).

Tackle Anti-Social Behaviour in Northern Ireland”<sup>5</sup> remains unchanged, and it is disappointing that the draft legislation proposes to extend the scope for new bodies to initiate such orders, and to introduce new circumstances in which an ASBO can be imposed (interim ASBO on conviction for criminal offence).

4. The Commission reiterates the point made in a letter to the NIO’s Criminal Law Branch (16 June 2005) that it is surprising that proposals to extend use of ASBOs are being considered at a time when the NIO has been found by the Equality Commission (ECNI) to be in breach of its duties under section 75 of the Northern Ireland Act 1998 in relation to the introduction of the original provisions.<sup>6</sup> The ECNI recommended that the Northern Ireland Office “undertake an Equality Impact Assessment of the anti-social behaviour order policy and legislation to its potential impact on children and young people”.<sup>7</sup> There is no indication so far that the NIO has undertaken such an exercise, the outcome of which could influence the decision to introduce new measures in this regard. We provide a more detailed comment on this aspect of the legislation below.
5. The draft Order would empower the Secretary of State to add new bodies to the list of “relevant authorities” designated for the purposes of applying for an ASBO.
6. We would draw attention to the recent report by the Council of Europe’s High Commissioner for Human Rights, Mr Álvaro Gil-Robles, in which he expressed concern that a wide range of authorities are allowed to bring ASBO proceedings in Great Britain.<sup>8</sup> As part of a wider criticism of the orders, he stated:

The police, Local Authorities and other empowered actors are (...) placed under considerable pressure to apply for ASBOs, both from central government and from inconvenienced members of the local community.<sup>9</sup>

With respect to the possible extension of the power to apply for ASBOs to a greater number of authorities – and even individuals – he went on to say:

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<sup>5</sup> Northern Ireland Human Rights Commission ‘*Measures to Tackle Anti-Social Behaviour in Northern Ireland*’. *The Response of the Northern Ireland Human Rights Commission*, 1 April 2004.

<sup>6</sup> Equality Commission for Northern Ireland *Final Report of Commission Investigation Under Paragraph 10 of Schedule 9 of the Northern Ireland Act 1998*, ECNI, 27 April 2005.

<sup>7</sup> *Ibid.*

<sup>8</sup> *Report by Mr Alvaro Gil-Robles, Commissioner for Human Rights, on his visit to the United Kingdom, 4<sup>th</sup>-12<sup>th</sup> November 2004*, The Office of the Commissioner for Human Rights, Council of Europe, 8 June 2005.

<sup>9</sup> *Ibid.*, p.35, at 113.

Part of the drive to promote ASBOs has involved making them as easy as possible to obtain and open to as many actors as possible to request. I understand that consideration is currently being given to allowing individuals, or groups of individuals, to apply for ASBOs directly. This development should be strongly discouraged (...). Some form of responsible screening of ASBO applications by a responsible authority seems (...) to be at least a minimum guarantee against excessive use.<sup>10</sup>

7. Although the use of ASBOs in Northern Ireland to date has been limited, the extension of the powers to a wider range of “relevant authorities” would inevitably lead to a growth of the numbers of ASBOs requested and granted. It would be more difficult to ensure “responsible screening” of applications should many more agencies gain the right to bring the proceedings.
8. The Commission is also concerned about the extension of special measures for witnesses in ASBO proceedings. While we understand that intimidation of witnesses could occur in such proceedings, we do not support introduction of measures that are generally considered exceptional even in the domain of criminal procedure into the area of civil orders. The Commission is concerned that the availability of special measures for witnesses would lead to a significant rise in applications for both the orders and the use of protective measures. This not only undermines the principle of openness in court proceedings, but could in itself lead to more frequent use of ASBOs.
9. The use of measures that are generally applicable only in quite serious criminal proceedings will further blur the boundaries between the civil and criminal justice systems,<sup>11</sup> and their use should be discouraged or – as a minimum – subject to very stringent conditions.

### **Information for victims of crime**

10. The Commission welcomes the proposal for an establishment of an information system for victims who wish to be informed about persons subject to probation supervision. The Commission supports the right of victims to information at any stage of the criminal justice process, in accordance with applicable international

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<sup>10</sup> *Ibid*, p.35, at 114.

<sup>11</sup> See comments *ibid*, p.36 at 116.

standards in this area.<sup>12</sup>

11. We would, however, stress that when agreeing circumstances when the Probation Board will not be required to make information available, care should be taken to address cases where the release of information could have serious adverse effects on *the offender*. The Commission would wish to be consulted on further proposals in this area.

### **Independent monitoring boards (Schedule 1)**

12. While updating the 1953 Prison Act (Northern Ireland) in respect of independent monitors, the new provisions should be designed in such a way as to provide for greater involvement of women in monitoring women in prisons in Northern Ireland.
13. The relevant provision (new section 10 of the 1953 Act) might therefore provide that "a majority... shall be women", rather than "at least two... women".

### **Part IV of the Explanatory memorandum – Equality statement**

14. In Part IV of the Explanatory Memorandum accompanying the proposed Order, it is stated that:

Certain provisions of the draft proposed Order have a direct effect on those convicted of offences under the criminal law. Although these offenders might be expected to disproportionately comprise young males, the policy will bear on them *solely by virtue of the fact that they will have committed criminal offences*. [emphasis ours]

The provisions contained within the draft proposed Order have been subject to an equality screening assessment during which *no significant adverse impact* was detected in relation to any of the nine categories. [emphasis ours]

15. Despite the expectation that one particular group, identified here by age and gender (although other differentials might arise), will be affected more than others, there is no evidence that a full Equality Impact Assessment has been conducted. This has particularly negative resonance in relation to the extension of powers under new ASBO provisions, since this very point was raised during the Equality Commission's investigation.

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<sup>12</sup> Northern Ireland Human Rights Commission *Human Rights and Victims of Violence*, NIHRC, 2003 (see in particular: Chapter 5 'International Standards Concerning Victims' and Chapter 7 'The Right to Justice and Information').

16. In its report of 27 April 2005, the Equality Commission commented:

The Commission did not accept that the Northern Ireland Office's stated reasons for not undertaking an Equality Impact Assessment, which focused on the reasons for the adverse impact and the fact that such impact was not intentional, rather than the potential for adverse impact, represented a proper consideration of whether the policy was "likely to have significant impact on equality of opportunity".<sup>13</sup>

It further went on to say:

[It is not] adequate to deny significant differential impact on the basis that those likely to be affected are "of the nature of the self-selecting group that behaves in an anti-social manner".<sup>14</sup>

17. The Human Rights Commission understands that the proposed legislation was drafted before the ECNI report was published. Nevertheless, in view of the outcomes of the ECNI investigation, and due to the fact that there is no assurance in the consultation documents that a full Equality Impact Assessment has been conducted, this Commission would urge the NIO to conduct a full EQIA before the introduction of the proposed Order, and addressing all its aspects.

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<sup>13</sup> Equality Commission for Northern Ireland *Final Report of Commission Investigation Under Paragraph 10 of Schedule 9 of the Northern Ireland Act 1998*, ECNI, 27 April 2005.

<sup>14</sup> *Ibid.*