Memorandum to Northern Ireland Affairs Committee

Post-legislative Scrutiny
The Criminal Justice (Northern Ireland) Order 2005
The District Policing Partnerships (Northern Ireland) Order 2005
The Firearms (Amendment) (Northern Ireland) Order 2005
The Public Processions (Amendment) (Northern Ireland) Order 2005

Presented to The House of Commons by the Secretary of State for Northern Ireland by Command of Her Majesty

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MEMORANDUM TO NORTHERN IRELAND AFFAIRS COMMITTEE

Post legislative scrutiny

The Criminal Justice (Northern Ireland) Order 2005
The District Policing Partnerships (Northern Ireland) Order 2005
The Firearms (Amendment) (Northern Ireland) Order 2005
The Public Processions (Amendment) (Northern Ireland) Order 2005

Introduction

This Memorandum has been prepared by the Northern Ireland Office for submission to the Northern Ireland Affairs Committee ("the Committee") and is published as part of the post-legislative scrutiny process set out in Cm 7320. It sets out the Department's post-legislative assessment of four Northern Ireland Orders enacted in 2005:

1. The Criminal Justice (Northern Ireland) Order;
2. The District Policing Partnerships (Northern Ireland) Order;
3. The Firearms (Amendment) (Northern Ireland) Order; and
4. The Public Processions (Amendment) (Northern Ireland) Order.

Detail

1. The Criminal Justice (Northern Ireland) Order 2005: Post-Legislative Assessment

Introduction

The Criminal Justice (Northern Ireland) Order 2005 ("the Order") was made on 19 July 2005. The Draft Order was laid before Parliament on 28 June 2005 and the first powers came into operation on 19 August 2005.

Objectives

The Order was a "miscellaneous provisions" Order designed to improve the Northern Ireland criminal justice system across a number of areas. The Order was designed to deliver:

- improved arrangements in relation to anti-social behaviour legislation (ASBOs);
- increased powers for the Assets Recovery Agency to access financial information;
- changes to allow the Youth Court to operate more effectively and for its proceedings to be more efficient;
- road traffic law improvements; and
- an information service to victims of offenders subject to probation supervision.

It also delivered a series of miscellaneous provisions relating to bail, legal aid in extradition, and arrestable offences, many of which were technical or procedural amendments designed to bring Northern Ireland legislation into line with England and Wales.

As such, some of the provisions were of limited policy or practical significance, making an assessment of their effectiveness difficult to determine. This Memorandum, while referring to these powers in summary, therefore seeks to concentrate on those powers that were of more significance and whose impact can more readily be determined.

Implementation

The 2005 Order was laid before Parliament on 28 June 2005, debated on 4 July (House of Lords) and 6 July (House of Commons) and received Privy Council approval on 19th July 2005. An Explanatory Memorandum to the Order was laid with the draft to assist passage through the Houses. Following a number of Commencement Orders, the Order has been fully commenced.

Powers in relation to certain prison law, proceeds of crime law, youth justice, road traffic and sexual offence amendments commenced one month after the order was made. These powers came into force on 19 August 2005, along with the probation victim information scheme and the extension of the youth justice system to 17 year olds.

Three distinct Commencement Orders were made. 19 August 2005 commenced two legal aid provisions and a road traffic power for the funding of speed cameras; 13 September 2006 commenced ASBO powers, live court links powers and legal aid. The final commencement order, Order No 3, was made on 28th January 2007 and brought the final provision, continuous bail powers, into force on 12th March 2007.

Secondary Legislation

Magistrates' Courts (Anti-social Behaviour Orders) (Amendment) Rules (Northern Ireland) 2006 were issued to amend the existing ASBO Rules in light of the 2005 Order and to allow the new powers to have effect.

Guidance on anti-social behaviour orders in their entirety – including the provisions contained in the Order – was published in February 2006.

Statutory Rule 2005 No 432 – The Probation Board for Northern Ireland Victim Information Scheme 2005 – was laid before Parliament on the 4th October 2005, made on the 24th September 2005 and came into force on the 25th October 2005. The Rule created a scheme to allow victims of offenders who receive statutory supervision by the Probation Board for Northern Ireland to have information about the supervision of the offender.

Legal Issues

The ASBO powers created in the 2005 Order were not subject to any legal challenges or issues. During 2004/05, however, the NIO received several criticisms regarding the underpinning powers to provide ASBO's in Northern Ireland (a 2004 piece of legislation) including a complaint by the Children's Law Centre about failures to comply with the screening and consultation process.

The complaint was initially examined within the NIO and the Department was confident that the process followed complied with the Equality Scheme. However, the Equality Commission disagreed and upheld the Children's Law Centre complaint that the NIO failed to conduct the screening exercise in accordance with its approved Equality Scheme and also failed to consult on the screening decision.

On the basis of the Equality Commission's report, Peter Neill, the subject of an application for an ASBO, sought a judicial review of the validity of the ASBO legislation. Lord Justice Girvan's judgment in the review held that the Commission's report did not invalidate the ASBO legislation, and the NIO had not breached its equality scheme.

An investigation by the Equality Commissioner into a complaint from the Northern Ireland Commissioner for Children and Young People, concerning the length of time allowed for consultation, found that in this regard there was no breach of the Equality Scheme

Other Reviews

Although the Order as a whole has not been subject to any kind of formal review, ASBO powers as a piece were independently examined by the Criminal Justice Inspectorate of Northern Ireland (CJINI). The key finding of the report, published on 16th October 2008, was that they were being used sensibly and proportionately as one of a number of tools to curb anti-social behaviour. The Report also made a number of recommendations on aspects of operational delivery but these did not impact on the supporting legislation.

Preliminary Assessment of the Order

Taking each of the main headings of the Order in turn, this section seeks to provide an assessment of how successfully the main powers have been introduced and used.

The Order made a number of improvements to *anti-social behaviour legislation* around public authorities obtaining and managing ASBOs, particularly ASBOs on conviction, with a view to the public being better protected from behaviour causing harassment, alarm or distress. The powers were to bring legislation onto a par with England and Wales; were primarily anticipatory in nature; and were to improve procedural aspects of the existing law.

Practitioners indicate that the amendments in the Order have improved court processes to allow the provision of protection more quickly and allow orders to be managed more effectively. Since the additional powers were commenced, the total number of ASBOs has increased from 25 to 87 – the ASBO remains very much an order of last resort in Northern Ireland with a range of interventions available before an ASBO is considered.

Together with the findings of the CJINI Inspection this indicates that the powers were successfully and appropriately introduced.

The *Prisons* provisions were all amendments to existing prisons legislation and included an amendment that affirmed the risk test applied to the release and re-release of life prisoners; Prison Boards of Visitors and Visiting Committees were re-named Independent Monitoring Boards (in line with changes in England and Wales); and obsolete functions for the Boards in relation to medical tests and prison transfers were removed. Following a lacuna in Prison Rules, legal aid was also made available for any loss of remission hearings in the separated prisoner regime.

Although these changes were largely technical in nature, the re-naming of Boards of Visitors merits particular mention as it was warmly welcomed by BoV members as their independence from prison authorities was affirmed and enhanced.

The Order contained minor amendments to *Proceeds of Crime* law to assist the then Assets Recovery Agency (ARA), now the Serious Organised Crime Agency (SOCA). The law was clarified to ensure access to information held in safety deposit boxes and new powers were created to request client information from a solicitor in civil recovery procedures. These provisions enhanced SOCA powers in a volume work area and prosecutors report these powers as important additional tools in the tackling of organised crime.

Youth Justice provisions were created to facilitate court procedures in youth conferencing and to extend the jurisdiction of the Youth Court to include 17 year olds. Unlike the position in England and Wales the maximum age in Northern Ireland was 16 years of age until the 2005 Order. Raising the age allowed 17 year-olds to benefit from a Youth Court as opposed to an adult court regime and was a recommendation of the Criminal Justice Review arising out of the Good Friday Agreement.

The extension of the youth justice system to include 17 year olds has been both successful and widely welcomed. A wider range of sentencing options previously only available up to 16 are available to 17 year olds who now have pre-court diversionary and court-ordered youth conferencing available.

17 year old boys and girls can also be admitted to the Juvenile Justice Centre (JJC) with flexibility to cater for those who are particularly vulnerable and for whom the Young Offender's Centre (YOC) is not appropriate. Numbers of 17 year-olds in the Centre have risen slightly due to increased numbers of 17 year old girls being accommodated. Practitioners in the Centre and across the system report the legislation as extremely successful in achieving its aims.

The Order carried three provisions relating to *road traffic powers*; two related to drink driving and the taking of specimens of blood for analysis – creating powers similar to those already in law in England and Wales; and one relating to a technical adjustment to ensure the hypothecation of funding for speed detection safety cameras by the revenue raised.

The police report that the drink-driving related powers are working well with a number of health care professionals beyond doctors now able to take samples, which has increased flexibility. The powers to take a sample from an unconscious person are particularly vital as these allow the investigation of offences where a driver has been rendered unconscious or faked an unconscious state in an attempt to evade the requirement to provide a blood sample.

The hypothecation powers allowed the increased revenue (from £610,200 in 2005; £582, 480 in 2006 and £719,220 in 2007) to expand the safety camera scheme to include 5 red light running cameras in locations around Belfast and to introduce a new SPECs system on the main Belfast to Bangor road that measures average speed of motorists between two fixed points; leading to a 41% reduction in fatal and serious collisions at camera sites.

The Order contained a number of *miscellaneous powers*, many of which were minor technical amendments to correct defects or errors that had been discovered in existing legislation. Two provisions are worth reporting on.

A number of changes were made to sexual offences law to allow certain offences to be arrestable without warrant – again bringing Northern Ireland into line with England and Wales. Police report that these provisions are operating well with increased prosecutions and clearances in a number of specific offences.

Finally, a power was also created for the Secretary of State to make a victim information scheme for victims of offenders who were subject to probation supervision. The Probation Board of Northern Ireland Victim Information Scheme (PBNI VIS) was launched by David Hanson, the then Northern Ireland Criminal Justice Minister, on 25 October 2005 and became operational on that date.

Almost 400 victims have contacted the Probation Board Victim Information Scheme since commencement with uptake numbers increasing year on year. Those participating in the scheme have been very positive about the service with 92% being either very satisfied or satisfied with the information/contact they had from PBNI VIS and the Scheme continues to develop and identify ways in which victims can be even better facilitated by the information scheme.

Conclusion

Although "miscellaneous" in nature the Order has collectively delivered improvements and operational efficiency across Northern Ireland's criminal justice system. It has been commenced in full; has brought Northern Ireland law onto a par with England and Wales in many areas; and delivered a range of new criminal justice powers and services.

ASBO provisions have been assessed and are working appropriately and well; prison law has been modernised; Youth Court provisions improved; drink driving powers have been enhanced and road safety has increased; and victim services have been expanded.

The Committee is invited to consider this assessment of the Criminal Justice (Northern Ireland) Order 2005.

2. Post-Legislative Assessment of the District Policing Partnerships (Northern Ireland) Order 2005

Introduction

The District Policing Partnerships (Northern Ireland) Order 2005 received Royal Assent on 22 March 2005 and came into operation on 1 April 2005.

Detail

The Police (Northern Ireland) Act 2000 (as amended by the Police (Northern Ireland) Act 2003) makes provision for each district council to establish, for its district, a District Policing Partnership (DPP) which is representative of the community. A DPP is a consultative body, comprising both political and independent members, set up to express the views of the public on policing to the police and monitor police performance.

The District Policing Partnership (Northern Ireland) Order 2005 consists of five articles. In addition to the first two introductory provisions in the Order, it has three substantive provisions which amend the 2000 Act. These are as follows:

Article 3 – Impact of local government election on membership of DPP

This Article provides that DPPs existing at the date of a local government election shall no longer cease to operate from that date but shall be temporarily extended until the new DPPs are established with a new membership *i.e.* reconstituted. This eliminated the possibility of an extended period of time without a functioning DPP. Independent members shall continue to hold office until the day before the reconstitution date. The reconstitution date is the date published by the Northern Ireland Policing Board, as they see appropriate, once they have a list of independent members.

This Article also provides that should any vacancies arise during the transitional period, they will not be filled. It temporarily waives the need for the DPP to be of a certain size and composition, and representative of the community, during the transitional period.

Article 4 – Removal of members of DPP from office

The 2000 Act originally made the provision for members to be removed if convicted of a criminal offence committed after appointment. However, the Policing Board had had reason to remove a member after conviction for an offence which was committed prior to appointment. (This removal was done on the alternative grounds that the individual concerned was no longer fit to discharge the functions of a DPP member.) This provision reflects the Policing Board's policy in these circumstances and provides clarity on the reason for removal.

Article 5 – Vice-Chairman of DPP

This Article provides that, commencing with the first reconstitution date of DPPs, the position of vice-Chair will be appointed by independent members from among independent members. The Article also provides that the person holding the position of Chair and vice-Chair can only do so for a period up to 12 months outside any transitional period. This can be extended to no longer than 18 months, or up to the reconstitution date, during any transitional period.

Initially, both the Chair and vice-Chair had to be political members. However one of the key issues emerging from consultation on the Order was that this did not appear to reflect the important role independent members have in the work of the DPP. Having considered responses on this, the provision was made for the role of vice-Chair to rotate in accordance with the same provision as that for Chair. It would be left to the independent members to nominate their vice-Chair based on this rotation.

Amendments to initial guidance

On the basis of initial legal advice, it was stated that both political and independent members of District Policing Partnerships shall continue to hold office following local government elections, and until a new DPP is constituted, regardless of whether or not they are re-elected. This was challenged at both the Lords Debate on 4 March 2005 and the Commons Debate on 10 March 2005. Further legal advice was sought which clarified that only independent members could remain on the DPPs during the transition period. Members were notified of this error and informed that a Code of Practice on Appointments of Independent Members to DPPs[1] would be published clarifying the position. The Northern Ireland Policing Board also issued guidance in this area to DPPs and officials.

Assessment of effect

The District Policing Partnership (Northern Ireland) Order 2005 was commenced in full and its merits have been evident since its introduction.

- Having legislation that allowed the temporary extension of the lifespan of existing DPPs proved beneficial following the local government elections in May 2005. The DPPs were formally reconstituted in December 2005; therefore this provision avoided having a period of seven months without functioning DPPs.
- Amending the power to remove a member from office to include removal in light of a conviction for a criminal offence after appointment, whether the offence was committed before or after appointment gave clarification in this area. To date, no members have been removed using this legislation.
- The provision that the vice-Chair of a DPP must be appointed by the independent members from among the independent members has been successfully implemented across the DPPs with all vice-Chairs now being independent members.

Conclusion

The District Policing Partnership (Northern Ireland) Order 2005 was brought in to fulfil a specific purpose; to ensure the continued work of the DPPs following local government elections. To that end, it has been very successful, as without this Act, a period of seven months would have elapsed following the May 2005 elections without effective DPPs in operation.

It addressed issues that hindered the successful running of the DPPs and that are believed to enhance the public's confidence in the effectiveness of the DPPs, specifically having an independent member as vice-Chair, and the Policing Board having the ability to remove a member convicted of a criminal offence committed before appointment.

The District Policing Partnership (Northern Ireland) Order 2005 attained clarification of functions and enhanced the smooth running of the DPPs.

3. The Firearms (Amendment) (Northern Ireland) Order 2005

The Firearms (Amendment) (Northern Ireland) Order 2005 ("the Order") was made on 19 July 2005. The Draft Order was laid before Parliament on 21 February 2005 and came into operation on 19 September 2005.

Detail

The Order replicated sections 37 and 39 of the Anti-Social Behaviour Act 2003 and fulfilled an undertaking given by the Government at the time of the passing of that Act. The measures were introduced in Great Britain to counter problems of misuse of air guns and imitation firearms.

[1] The Policing Board issued a draft Code of Practice on the exercise of functions and responsibilities of DPPs in January 2006.

The principal provisions of the Order are –

Article 3 added to the list of prohibited weapons at Article 45(1) of the Firearms (Northern Ireland) Order 2004 (the 2004 Order) any air gun that uses or is adapted for use with a self-contained gas cartridge system. These firearms are prohibited because they can be easily adapted to fire live ammunition and are, therefore, attractive to criminals.

Article 4 amended Article 45 of the 2004 Order to allow the Secretary of State to make any necessary consequential amendments to the 2004 Order, or to any other statutory provision, arising from any addition to the list of prohibited weapons that he might make by virtue of the order making power contained in Article 45(10).

Article 5 added unloaded air guns and imitation firearms to the list of firearms covered by the offence, in Article 61 of the 2004 Order, of "carrying a firearm in a public place without lawful authority or reasonable excuse".

There were already controls in relation to the misuse of air guns and imitation firearms but the police had to catch a person in the act of committing a crime before they could act.

Assessment of Effect

These measures were introduced in Great Britain to counter problems of misuse of air guns and imitation firearms which were very much greater there than they were in Northern Ireland. The Police Service of Northern Ireland, however, has no doubt of their value, particularly in dealing with instances of imitation firearms being used in incidents of intimidation and during robberies.

The PSNI has advised that, since the prohibiting of gas cartridge air guns did not result in the creation of a new offence, it cannot say whether any related offences have been committed. However, it can say that, to date, 6 offences of possession of an imitation firearm or an unloaded air gun have been committed which resulted in persons being charged or summoned.

Statistics show that generally there has been a steady fall in the number crimes involving firearms from 1135 in 2003/2004 to 544 in 2007/08 and these provisions, which are part of a range of firearms controls, are likely to have contributed to that fall.

4. The Public Processions (Amendment) (Northern Ireland) Order 2005

Introduction

The Public Processions (Amendment) (Northern Ireland) Order 2005 received Royal Assent on 22 March 2005 and came into operation on 14 May 2005.

The Public Processions (Northern Ireland) Act 1998 implemented the recommendations of the Independent Review of Parades and Marches Report 1997 (the North Report).

Detail

The Act established the Parades Commission as a body corporate and gave to Commission the power to impose conditions, including re-routing of contested parades. It also allows the Commission to take decisions on a broader basis than previously was the case thus allowing the rights of marchers and residents to be more effectively balanced. The Act also established the mechanisms which the Parades Commission must use when making decisions and under subordinate legislation provided for guidelines and codes of conduct to be produced by the Parades Commission. The Act also places a requirement on the Parades Commission to promote and facilitate mediation as a means of resolving disputes. Whilst the police retained their common law powers during parades the Act gave the Secretary of State the power to ban individual parades, parades of a specified class or to impose a blanket ban of up to 28 days.

The Public Processions (Amendment) (Northern Ireland) Order 2005 consists of seven articles. In addition to the first two introductory provisions in the Order, it has five substantive provisions which amend the 1998 Act. These are as follows:

Article 3 – Power to impose conditions on supporters of public Procession

This Article confirms that the Parades Commission may impose conditions on those supporting a parade as well as those taking part in it. It provides that the Commission's Code of Conduct should include reference to those organising, taking part in or supporting a public procession; or organising or taking part in a protest meeting. The Article defines support for the purposes of the 1998 Act as a person being in a public place in close proximity to the procession and in all the circumstances (including his conduct) his presence in that place may reasonably be taken as expressing support for the holding of the procession.

Article 4 – Powers to impose conditions on protest meetings;

This Article makes similar provisions to those in section 8 of the 1998 Act in relation to protests. It allows the Commission to issue determinations imposing on the protest such conditions as the Commission considers necessary. The Commission must have regard to its statutory guidelines when considering making a determination. This Article also makes it an offence to knowingly fail to comply with a condition imposed under this section. It also makes similar provisions to those in section 9 of the 1998 Act. The effect of this is to require the Secretary of State on an application made by the Chief Constable to review a determination made about a related protest meeting. He may revoke, amend or confirm the determination.

Article 5 – Powers to prohibit protest meetings:

This Article gives the Secretary of State the power to prohibit a related protest meeting. Again, this mirrors arrangements for processions in section 11 of the 1998 Act. An individual protest meeting can be prohibited, or a protest meeting held in that area for a period not exceeding 28 days. It is an offence for a person to organise or take part in a protest meeting the holding of which he knows is prohibited.

Article 6 – Breaking up protest meetings:

This Article adds protest meetings to section 14 of the 1998 Act. This section created offences of preventing the hindering a lawful procession or annoying those taking part in such a procession. These offences also apply to protest meetings or those taking part in them.

Article 7 – Procedure for the first revision of Code of Conduct, procedural rules and guidelines:

This Article disapplies the requirements to consult on revisions of the Commission's statutory documents set out in paragraphs 5 and 6 of Schedule 2 to the 1998 Act.

Assessment of Effect

The Public Processions (Amendment) (Northern Ireland) Order 2005 was commenced in full and has achieved its purpose in providing much needed clarity in relation to the position with regard to followers and supporters of public processions. The provision has been used by the Parades Commission, although it has been less necessary to do so in more recent times. The Commission has also amended its Codes of Practice to reflect the provisions contained in the Order.

The provisions in relation to protest meetings have also been used by the Commission and have proved effective in terms of providing clarity for those organising protest meetings and for the Commission in terms of including conditions when delivering determinations. The Secretary of State has not been invited by the Chief Constable to review a determination made about a

protest meeting and therefore it has not been necessary to use this provision. Regarding the power to prohibit a protest meeting, again it has not proved necessary for this power to be used. The provision covering the breaking up of protest meetings has proved to be a useful deterrent.

Conclusion:

The Public Processions (Amendment) (Northern Ireland) Order 2005 was introduced to fulfil a specific purpose in terms of bringing clarity to the provisions of the 1998 Act and ensuring a consistency of approach in terms of dealing with public processions and protest meetings. To that end it has been successful; the provisions have either been used or have served as an effective deterrent. The Parades Commission has amended its Codes of Practice to reflect the changes contained in the Order.

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