EXPLANATORY MEMORANDUM TO

THE CRIME AND DISORDER ACT 1998 (RELEVANT AUTHORITIES AND RELEVANT PERSONS) ORDER 2006

2006 No.2137

1. This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 This Order enables the Environment Agency of England and Wales and Transport for London to apply for anti-social behaviour orders. In the case of the former this is to protect people from behaviour which is anti-social on or across land for which the Environment Agency have responsibility to protect, while in the case of the latter this is to protect people (their staff and passengers) from behaviour which is anti-social associated with the transport network

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Background

4.1 Anti-social behaviour orders (ASBOs) were introduced by the Crime and Disorder Act 1998 in England and Wales and have been available since April 1999. The powers to impose ASBOs were strengthened and extended by the Police Reform Act 2002, which, amongst other things, introduced orders made as an adjunct to county court proceedings. The Anti-Social Behaviour Act 2003 together with the Serious Organised Crime and Police Act 2005 strengthened and clarified the law further. The Home Office has published guidance to help practitioners make best use of ASBOs as a tool for tackling ASB in their area, and the "Together" website supplements this with case studies, guidance updates, templates etc.

4.2 Local authorities (including county councils), the police, housing action trusts, British Transport Police and registered social landlords have the power to apply for ASBOs. Under section 1A(2) of the Crime and Disorder Act 1998 ,as inserted by section 139 of the Serious Organised Crime and Police Act 2005, the list of organisations who can apply for ASBOs can be extended. The Home Office proposes to add the Environment Agency and Transport for London to this list.

4.3 This Order adds the Environment Agency and Transport for London to the list of 'relevant authorities' who can apply for ASBOs under section 1, 1B, 1CA and 1E of the Crime and Disorder Act 1998.

5. Extent

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The Environment Agency has a responsibility for investigating and taking enforcement action against a wide range of environmental crimes and anti-social behaviour, including offences from illegal waste disposal and the pollution of watercourses – such as fly tipping, burning of waste, dumping rubbish and waste in streams and rivers.

7.2 The Environment Agency currently prosecutes criminal offences against the environment. A significant number of these prosecutions are for waste offences that damage the environment and cause harassment, alarm or distress to members of the public wishing to enjoy an unspoilt environment. A magistrate has already imposed an ASBO following the conviction of the operator of a plant hire company for burning waste illegally in a skip, following a request during the hearing by the Environment Agency. Allowing the Environment Agency to apply for ASBOs in their own right, gives them access to another tool of a preventative nature which can effectively prevent such behaviour.

7.3 The Environment Agency is a Non-Departmental Public Body of the Department for Environment, Food and Rural Affairs and an Assembly Sponsored Public Body of the National Assembly for Wales.

7.3 The Environment Agency's principal aim is to protect and enhance the environment for people's enjoyment today and in the future and in doing so to make a contribution towards the objective of achieving sustainable development.

7.4 TfL is legally established under section 154 of the Greater London Authority Act 1999. The organisation's primary role, as a functional body of the Greater London Authority, is to implement the Mayor of London's Transport Strategy and manage transport services across the Capital.

7.5 TfL has a Crime and Disorder Partnership Team, which is a partnership of TfL and the British Transport Police (BTP). Since BTP became an applicant authority for ASBOs (in December 2002), they have successfully obtained 160 ASBOs, all of which have been orders on conviction. Many of

these orders have been obtained using evidence gathered by TfL staff (invariably London Underground employees), with specially trained staff carrying out intelligence and evidence gathering to support the BTP's applications.

7.6 Whilst the partnership approach adopted by the joint TfL/BTP Crime and Disorder Partnership team has proven to be very effective at obtaining ASBOs, it has highlighted some gaps. In particular, behaviour such as low level nuisance in ticket halls, and abuse (frequently racist) of tube staff and bus drivers. TfL's operational is that the behaviour they are targeting is the sort of sub/pre-criminal activity, or low level disorder, that will not readily lend itself to resolution, if taken in isolation and at an early stage, through the criminal courts. However, where offenders are persistently engaging in this type of anti-social behaviour, and as part of an overarching ASB strategy, TfL are aiming to inhibit the offender's progression towards the criminal courts. This is precisely the sort of scenario in which a preventative tool such as an anti-social behaviour order is the ideal solution. TfL anticipate that if these types of behaviour go unchecked at this early stage then the perpetrators actions are likely to escalate resulting in criminal prosecution. The size of TfL's operations means that this is a significant opportunity to improve the lives of passengers and staff.

8. Impact

8.1 Two initial public sector Regulatory Impact Assessment for both the Environment Agency and Transport for London is attached to this memorandum at Annexes A and B.

9. Contact

Andy Kerrigan at the Home Office, Tel: 020 7035 0061 or e-mail: andrew.kerrigan@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.

Annex A

Initial Public Sector Regulatory Impact Assessment: Giving the Environment Agency the power to apply for ASBOs

1.0 Title of Proposal

1. Enabling the Environment Agency to apply for Anti-Social Behaviour Orders.

2.0 Purpose and intended effect

2.1 Objective

2. The Environment Agency is a Non-Departmental Public Body funded by the Department for Environment, Food and Rural Affairs and an Assembly Sponsored Public Body of the National Assembly for Wales. The Environment Agency's principal aim is to protect and enhance the environment for people's enjoyment today and in the future and in doing so to make a contribution towards the objective of achieving sustainable development.

3. Local authorities (including county councils), the police, housing action trusts, British Transport Police and registered social landlords have the power to apply for ASBOs. Under section 1A of the Crime and Disorder Act 1998, as inserted by section139 of the Serious Organised Crime and Police Act 2005, the list of organisations who can apply for ASBOs can be extended. The Home Office proposes to extend the power to apply for ASBOs to the Environment Agency.

4. Allowing the Environment Agency to apply for ASBOs in their own right, gives them access to another tool of a preventative nature which can effectively tackle the crime and prevent a repeat of the behaviour that led to the crime.

2.2 Background

5. The Environment Agency has a responsibility for investigating and taking enforcement action against a wide range of environmental crimes and anti-social behaviour, including offences from illegal waste disposal and the pollution of watercourses – such as fly tipping, burning of waste, dumping rubbish and waste in streams and rivers.

6. Anti-social behaviour orders (ASBOs) were introduced by the Crime and Disorder Act 1998[1] in England and Wales and have been available since April 1999. The powers to impose ASBOs were extended by the Police Reform Act 2002, which, amongst other things, introduced orders as an adjunct to county court proceedings. The Anti-

[1] *Crime and Disorder Act 1998, Section 1:*

1. - (1) An application for an order under this section 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;

(7) An anti-social behaviour order shall have effect for a period (not less than two years) specified in the order or until further order.

(8) Subject to subsection (9) below, the applicant or the defendant may apply by complaint to the court which made an anti-social behaviour order for it to be varied or discharged by a further order.

(9) Except with the consent of both parties, no anti-social behaviour order shall be discharged before the end of the period of two years beginning with the date of service of the order.

(http://www.opsi.gov.uk/acts/acts1998/98037--b.htm#1)

Social Behaviour Act 2003 together with the Serious Organised Crime and Police Act 2005 strengthened and clarified the law further. The Home Office has published guidance to help practitioners make best use of ASBOs as a tool for tackling ASB in their area, and the "Together" website supplements this with case studies, guidance updates, templates etc.

2.3 Rationale for Government intervention

7. The Environment Agency currently prosecutes criminal offences against the environment. A significant number of these prosecutions are for waste offences that damage the environment and cause harassment, alarm or distress to members of the public wishing to enjoy an unspoilt environment. A magistrates' court has already imposed an ASBO following the conviction of the operator of a plant hire company for burning waste illegally in a skip.

3.0 Consultation

8. The Home Office has worked closely with the Environment Agency and the Department for Constitutional Affairs to assess the anticipated regulatory impact of this measure for the Courts, Legal Aid and the Environment Agency themselves. The Home Office has also consulted the Department for Environment, Food and Rural Affairs and the Crown Prosecution Service who are in agreement with the proposals for the Environment Agency to be given this power.

4.0 Options

9. **Option 1: Enable the Environment Agency to apply for ASBOs**. This would put the Environment Agency on a similar footing to Registered Social Landlords in terms of tackling environmental anti-social behaviour across areas for which they have a direct responsibility.

10. Benefits: Providing the Environment Agency with a new range of appropriate interventions to tackle environmental ASB.

11. **Option 2: Do nothing.** The current system would remain and the Environment Agency would be unable to apply for ASBOs in their own right.

5.0 Costs and Benefits

12. The estimated costs and savings to the Environment Agency, Her Majesty's Court Service and Legal Aid are given below and information upon which these are based are given at Annex A.

13. The projected costs and savings given by the calculations below have been produced using estimates supplied by the Environment Agency and data supplied by the Department of Constitutional Affairs. The assumptions are based on existing ASBO cases and have been produced by the Home Office, the Environment Agency and the Department of Constitutional Affairs following discussions about the anticipated use of the power.

14. The Environment Agency arrived at their estimates following discussions between their Waste Policy colleagues. The Environment Agency prosecute on average around 850 criminal cases a year of which around 450 are expected to involve waste offences – the remaining cases tend to be for licence breaches for example fishing and water abstraction.

15. From those 450 offences, it is expected that on average 25% will be solely corporate based. This means that although the behaviour of the company as a whole may have caused harassment, alarm or distress one particular individual cannot be identified as

solely responsible for the offence. In circumstances such as these an ASBO would not be appropriate. This leaves approximately 340 potential[2] cases.

16. The 340 relevant offences will comprise a range of offences for which the Environment Agency is responsible. The particular aspects of these offences would likely be when an individual caused or repeatedly caused or was likely to continuing causing a nuisance through:

    a. Failure to control a site for vermin/smell
    b. Failure to control noise/fumes from their activities
    c. failure to control a nuisance caused by the activities of waste container lorries
    d. fly-tipping

17. Out of the 340 relevant offences, the Environment Agency estimate that they would annually apply for approximately 50 stand alone ASBOs and 50 ASBOs on conviction. In addition to applying for these ASBOs and based on the current breach rate, it is expected that 40% of ASBOs will be breached (40 cases). Also, a small number of ASBOs hearings (5%) could be appealed (6 cases[3]).

18. The following table sets out a comparison of the costs/benefits of Option 1 – applying for 100 ASBOs (stand alone & orders on conviction) and Option 2 – effectively the same100 offences prosecuted through the courts. Included in the analysis is the additional cost of breaches and appeals for both options.

Cost/Benefits: Give the Environment Agency the power to apply for ASBOS

Option 1		**Giving the Environment Agency the power to apply for ASBOs**		
Total ASBO Costs	**£330,553**	based on:	**100**	ASBO cases (50 stand alone & 50 orders on conviction and the associated court costs)
ASBO Costs to HMCS and Legal Aid	**£174,553**		**40**	ASBO/Crasbo Breach cases
	£505,106		**6**	ASBO appeal cases
Option 2		**Do nothing**		
Total Court Costs	**£378,298**	based on:	**100**	court cases
Court Costs to HMCS and Legal Aid	**£272,298**		**6**	appeal cases
	£650,596			

Table 1: Costs of Option 1and Option 2

Cost comparison between applying for 100 ASBOs and the 100 prosecution cases

Total Benefit:

19. To indicate a like-for-like comparison, the 100 ASBO cases (Option 1) have been compared with 100 Criminal prosecution cases (Option 2). The figures used to calculate these costs can be found in Annex A. It is estimated that Option 1 (to give the Environment Agency the power to apply for ASBOs) where the Environment Agency apply for 50 ASBOs & 50 orders on conviction a year will produce more savings than a Do Nothing option.

[2] Potential cases are where an ASBOs could be applied for in place of a criminal trial.
[3] This figure includes one extra appeal relating to an ASBO breach.

20. The total cost of criminal prosecutions are £47,745 more than the costs associated with ASBO applications.

    £378,298 - £330,553 = £47,745[4]

21. Furthermore, examining the difference in cost for Her Majesty's Court Service and Legal Aid shows that Option 1could produce £97,745 of savings than Do Nothing by:

    £272,298 - £174,553 = £97,745[4]

Additional benefits of Option 1

22. The use of ASBOs as opposed to existing sentencing available following prosecutions has added benefits. The use of this new power can lead to faster action against the perpetrators. And given that the prohibitions of the order will stop a particular behaviour (such as transporting or burning waste) it will help to stop persistent offenders from performing activities that cause harassment, alarm or distress to the community. It will also prevent continued repeat offending.

23. The Home Office will work with the Department for Constitutional Affairs to monitor the Environment Agency's use of ASBOs and the associated cost and undertake to review the current arrangements should it be necessary.

6.0 Impacts

6.1 Impact on public sector

24. There would be a small impact on the public sector. There are currently six types of applicant authority, but the majority of the volume of ASBO applications falls to the police and local authorities. When an application for an ASBO is made, the applicant authority must have consulted both the police and the local authority. This does not have to be a lengthy or costly exercise, rather it ensures that another applicant authority is not already currently seeking an ASBO for the perpetrator. In the majority of cases this will simply take the form of written confirmation, however should the perpetrator be subject to similar proceedings by the another applicant authority, more detailed consultations may be necessary. However, in many cases, the organisations involved are often in regular discussion through wider partnerships such as Crime and Disorder Reduction Partnerships and it is unlikely that any additional cost will be disproportionate.

25. Prosecutors from the Environment Agency have already been given specific ASBO training by the Home Office and they have a extensive range of guidance available to them.

26. There will not be any significant cost to local authorities, however there should be benefits from fewer clean ups resulting from the perpetrators change of behaviour.

27. There will not be any significant cost to the police.

6.2 Impact on business

28. Better management of interventions to combat anti-social behaviour will have no direct impact on businesses but will, by improving an areas' amenity, benefit them indirectly. There would be a deterrent effect on individuals who may be inclined to cause or likely to cause harassment, alarm or distress through their business operations.

[4] It should be noted that there may be further cost from additional court hearings to vary prohibitions or discharge orders after review.

6.2.1 Small firms Impact Test

29. Some small businesses may provide waste/environmental services. These businesses already have obligations to the Environment Agency with respect to waste handling and other applicable requirements. Where these obligations are not met, the Environmental Agency or Local Authority may prosecute. This proposed change may affect a small business if they do not meet their existing obligations, but this change will not impact on, or change those obligations. Therefore this measure will not adversely impact small businesses.

6.3 Impact on charities

30. None.

6.4 Rural Impacts

31. Environmental offences can often be more acute in rural areas, than urban areas because there is greater opportunity to commit offences unseen. Therefore any impact may be more beneficial than in urban areas, because this provision may allow quicker intervention.

6.5 Race Equality Impacts

32. Findings of the British Crime Survey indicate that those living in 'hard-pressed' areas had odds of perceiving high levels of anti-social behaviour (ASB) that were four times higher than those in 'wealthy achiever' areas. We know that around 70% of ethnic minorities live in the 88 most deprived local authority areas..

33. It is likely that ASB measures are more extensively used where there are heavier concentrations of BME groups due to the spatial distribution of those communities in areas which experience high levels of crime. However, there is no evidence one way or another to conclude whether BMEs are more likely to be the violators or victims of ASB.

6.6 Health Impacts

34. There are no health impacts associated with this provision.

6.7 Sustainable Development Impacts

35. There are no sustainable development impacts associated with this provision.

7.0 Enforcement sanctions and monitoring

36. There are already statutory requirements for a range of public bodies and the usual performance management mechanisms will ensure compliance. At the level of individual cases, non-compliance could cause applicant agencies additional expense through lost appeals. Should evidence emerge from that source and/or from our evaluation that agencies were routinely ignoring the policy then we would consider further training and support and to rectify the problem.

37. The Environment Agency will monitor the ASBOs that they apply for and provide the Home Office and the Department of Constitutional Affairs with information on operations.

38. The Home Office will work closely with the Environment Agency during the implementation of this provision to ensure that the quality of ASBO applications is consistent with those brought forward by other applicant authorities

8.0 Declaration

39. I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs.

Signed by the Minister on 28 July 2006

Rt Hon Tony McNulty MP
Minister for policing, security and community safety

28 July 2006

9.0 Contact

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Annex A

1. The overall costs and savings are based on:

   - The applicant on average applying for 50 stand alone ASBOs a year
   - The applicant on average applying for 50 Orders of Conviction a year

2. It is assumed that:

   - 75% of all ASBOs (standalones & orders on conviction appeals) and breaches will need Legal Aid;
   - 5% of all ASBOs will be appealed and 75% of those could be eligible for Legal Aid;
   - 75% of criminal prosecutions (including 5% of appeals) could be eligible for Legal Aid; and,
   - 40% of ASBOs are breached.

3. It is assumed that:

   - The average cost of applying for an ASBO to the applicant is £1,200[5] per case;
   - The average cost of applying for an ASBO to HMCS is £340 per case;
   - The average cost of Legal Aid for ASBOs is £1,100 per case;
   - The average cost of Legal Aid for an ASBO appeal is £312 per case; and,
   - The average cost of an ASBO appeal to HMCS is £700 per case.

   Stand Alone ASBOs

4. It is assumed that:

   - It does not cost the applicant authority anything to apply for an order of conviction;
   - The average cost to HMCS for orders on convictions is £0 per case;
   - It does not cost Legal Aid anything for orders on conviction as this cost will be included in full criminal trial;
   - The average cost to HMCS of appeals for orders on conviction is £700 per case; and,
   - The average cost to Legal Aid for orders on conviction appeals is £344 per case.

   Orders on Conviction

5. It is assumed that:

   - The average cost of prosecuting a breach for the applicant is £1,000[5] per case
   - The average cost of Legal Aid for prosecuting breach is £344 per case
   - The average cost of prosecuting a breach to HMCS is £340 per case

   Breaches

[5] This represents the additional variable costs, on top of a fixed cost of investigation and case preparation etc

6. It is assumed that:

- The average cost of a criminal prosecution to the applicant is £1,000[5] per case;
- The average cost of Legal Aid for a criminal prosecution in a Magistrates' Court is £344 per case and in a Crown Court is £14,870 per case; and,
- The average cost of Legal Aid for an appealed criminal prosecution in a Magistrates' Court is £344 per case and in a Crown Court is £14,870 per case.

Criminal Prosecutions

7. It is assumed that:

- The average criminal trial takes half a day and costs £2,073 per day, which means the average criminal prosecution cost to HMCS is £1,037 per case
- The average cost of a criminal appeal in the Magistrates' Court is £700 per case

Magistrates' Court

8. It is assumed that:

- The average criminal trial takes 2 days and costs £4,601 per day, which means the average criminal prosecution cost to HMCS is £9,202 per case; and,
- The average cost of a criminal appeal in the Crown Court is £700 per case.

Crown Court

Annex B

Initial Public Sector Regulatory Impact Assessment: Giving Transport for London the power to apply for ASBOs

1.0 Title of Proposal

1. Enabling Transport for London (TfL) to apply for Anti-Social Behaviour Orders.

2.0 Purpose and intended effect

2.1 Objective

2. Local authorities (including county councils), the police, housing action trusts, British Transport Police and registered social landlords have the power to apply for ASBOs. Under section 1A of the Crime and Disorder Act 1998,as inserted by section139 of the Serious Organised Crime and Police Act 2005, the list of organisations who can apply for ASBOs can be extended. The Home Office proposes to extend the power to apply for ASBOs to TfL.

3. Allowing TfL to apply for ASBOs in their own right, gives them access to a preventative tool which can effectively tackle offensive behaviour which affects their staff and passengers.

2.2 Background

4. TfL is legally established under section 154 of the Greater London Authority Act 1999. The organisations primary role, as a functional body of the Greater London Authority, is to implement the Mayor of London's Transport Strategy and manage transport services across the Capital.

5. Anti-social behaviour orders (ASBOs) were introduced by the Crime and Disorder Act 1998[6] in England and Wales and have been available since April 1999. The powers to impose ASBOs were extended by the Police Reform Act 2002, which, amongst other things, introduced orders as an adjunct to county court proceedings. The Anti-Social Behaviour Act 2003 together with the Serious Organised Crime and Police Act 2005 strengthened and clarified the law further. The Home Office has published guidance to help practitioners make best use of ASBOs as a tool for tackling ASB in their area, and the "Together" website supplements this with case studies, guidance updates, templates etc.

2.3 Rationale for Government intervention

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[6] *Crime and Disorder Act 1998, Section 1:*

1. - (1) An application for an order under this section 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;

(7) An anti-social behaviour order shall have effect for a period (not less than two years) specified in the order or until further order.

(8) Subject to subsection (9) below, the applicant or the defendant may apply by complaint to the court which made an anti-social behaviour order for it to be varied or discharged by a further order.

(9) Except with the consent of both parties, no anti-social behaviour order shall be discharged before the end of the period of two years beginning with the date of service of the order.

(http://www.opsi.gov.uk/acts/acts1998/98037--b.htm#1)

6. TfL has a Crime and Disorder Partnership Team, which is a partnership of TfL and the British Transport Police (BTP). Since BTP became able to apply for ASBOs (in December 2002), they have successfully obtained 160 ASBOs, all of which have been orders on conviction. Many of these orders have been obtained using evidence gathered by TfL staff (in most cases London Underground employees), with specially trained staff carrying out intelligence and evidence gathering to support the BTP's applications.

7. Whilst the partnership approach adopted by the joint TfL/BTP Crime and Disorder Partnership team has proven to be very effective at obtaining ASBOs, it has highlighted some gaps. The individuals on whom ASBO have been applied for were identified through the application of the National Intelligence Model (NIM) by BTP. Whilst the NIM is a necessity for BTP, it can overlook ASB that does not match their criteria, including behaviour such as low level nuisance in ticket halls, and abuse (frequently racist) of tube staff and bus drivers. TfL's operational is that the behaviour they are targeting is the sort of sub/pre-criminal activity, or low level disorder, that will not readily lend itself to resolution, if taken in isolation and at an early stage, through the criminal courts. However, where offenders are persistently engaging in this type of anti-social behaviour, and as part of an overarching ASB strategy, TfL are aiming to inhibit the offender's progression towards the criminal courts. This is precisely the sort of scenario in which a preventative tool such as an anti-social behaviour order is the ideal solution. TfL anticipate that if these types of behaviour go unchecked at this early stage then the perpetrators actions are likely to escalate resulting in criminal prosecution. The size of TfL's operations means that this is a significant opportunity to improve the lives of passengers and staff.

8. Whilst TfL enjoy a good working relationship with local authorities, the ASB perpetrated around transport hubs is not obviously visible to them. In most cases, LAs do not necessarily see crime and disorder on public transport as a community issue. Indeed in many cases the disorder in question is taking place along transport networks, irrespective of borough boundaries. Very few CDRPs have included transport related crime and disorder in their current crime and disorder reduction strategies. However, a person that regularly causes alarm, harassment and distress to others on the transport system is a real problem for the passengers and staff alike and needs to be addressed.

9. TfL's own surveys show that:
    - 54% of Londoners mention ASB as a concern when using the transport system;
    - 63% of Londoners have either experienced or witnessed ASB on the bus/tube within the last 2 years;
    - 20% of bus drivers give fears about ASB as a reason for feeling unsafe at work.

3.0 Consultation

10. This proposal was originally included in TfL's Private Bill, which they deposited in Parliament on 25 November 2005. TfL had not realised that the Home Secretary already has the power to add to the list of 'relevant authorities'.

11. As part of work undertaken for the Private Bill, TfL have carried out extensive consultation with stakeholders (including all London boroughs). Responses to this consultation process are positive in respect of the ASBO proposal, with London boroughs supportive.

12. TfL have also discussed the proposal with BTP and the Metropolitan Police Service (MPS). Both are supportive and the BTP, who are their primary partners in ASBO work, have endorsed the proposal at Chief Constable level.

13. The Home Office has held discussions with BTP and the MPS, and with colleagues in the Department for Constitutional Affairs and the Crown Prosecution Service. They are satisfied that the TfL case is a valid one, that it has support from the key agencies and other government departments, and that granting TfL the power would enable a key player in safeguarding safer transport in London by having the right tools to do an important and necessary job.

4.0 Options

14. **Option 1: Enable TfL to apply for ASBOs**. This would put TfL on a similar footing to BTP with respect to tackling anti-social behaviour across their network.

15. Benefits: Providing TfL with a further intervention to tackle ASB and protect their staff and customers.

16. **Option 2: Do nothing.** The current system would remain and TfL would be unable to apply for ASBOs in their own right.

5.0 Costs and Benefits

17. TfL will continue to work with BTP to tackle crime and disorder on their transport network, therefore it is estimated that TfL will only apply for a very small numbers of ASBOs that this partnership will not take into account.

18. The projected costs and savings given by the calculations below have been produced using estimates supplied by TfL and data supplied by the Department of Constitutional Affairs. The assumptions are based on existing ASBO cases and have been produced by the Home Office.

19. TfL estimate that they will only apply on average for 1 stand alone ASBO per month. Other ASBOs including orders on convictions will continue to be brought forward through their partnership work with BTP as is currently the case.

20. The following table sets out a comparison of the costs/benefits of Option 1 – applying for 1 stand alone ASBO per month and Option 2 – effectively the same12 offences prosecuted through the courts. Included in the analysis is the additional cost of breaches and appeals for both options.

Cost/Benefits: Give TfL the power to apply for ASBOS

Option 1		**Giving TfL the power to apply for ASBOs**		
Total ASBO Costs	**£41,775**	based on:	**12**	ASBO stand alone cases
ASBO Costs to HMCS and Legal Aid	**£21,575**		**5**	ASBO Breach cases
	£63,350		**1**	ASBO appeal cases
Option 2		**Do nothing**		
Total Court Costs	**£30,610**	based on:	**12**	court cases
Court Costs to HMCS and Legal Aid	**£17,610**		**1**	appeal cases
	£48,220			

Table 1: Costs of Option 1and Option 2

Cost comparison between applying for 12 ASBOs and the 12 prosecution cases

Total Benefit:

21. To indicate a like-for-like comparison, the 12 ASBO cases (Option 1) have been compared with 12 Criminal prosecution cases (Option 2). The figures used to calculate these costs can be found in Annex A.

22. The model suggests that because of the small number of ASBOs applied for, overall it is slightly more expensive to apply for ASBOs than to bring forward regular prosecutions. The total cost of ASBOs are £11,165 more than the costs associated with court hearings.

    £41,775 - £30,610 = £11,165[7]

23. Furthermore, examining the difference in cost for Her Majesty's Court Service and Legal Aid shows that Option 1 could produce £3,965 further costs than Do Nothing by:

    £21,575- £17,610 = £3, 965[4]

Additional benefits of Option 1

24. However, we know that using ASBOs as opposed to existing sentencing available has added benefits. The use of this new power can lead to faster action against the perpetrators. And given that the prohibitions of the order will stop a particular behaviour it will help to stop persistent offenders from performing activities that cause harassment, alarm or distress. It will also prevent continued repeat offending.

25. It will also supplement and strengthen, and not undermine, existing collaboration with the Metropolitan Police Service, BTP and the London Boroughs.

26. Given the potential small additional costs identified by this model, the Home Office will work with the Department for Constitutional Affairs to monitor TfLs use of ASBOs and the associated costs.

27. There are no costs to the private and voluntary sectors.

6.0 Impacts

6.1 Impact on public sector

28. There would be a small impact on the public sector. There are currently six types of applicant authority, but the majority of the volume of ASBO applications falls to the police and local authorities. When an application for an ASBO is made, the applicant authority must have consulted both the police and the local authority. This does not have to be a lengthy or costly exercise, rather it ensures that another applicant authority is not already currently seeking an ASBO for the perpetrator. In the majority of cases this will simply take the form of written confirmation, however should the perpetrator be subject to similar proceedings by the another applicant authority, more detailed consultations may be necessary. However, in many cases, the organisations involved will already be in regular discussion through wider partnerships such as Crime and Disorder Reduction Partnerships and it is unlikely that any additional cost will be disproportionate.

[7] It should be noted that there may be further cost from additional court hearings to vary prohibitions or discharge orders after review.

29. Officials from TfL are already familiar with the process through their partnership work with BTP and they have an extensive range of guidance available to them that is produced by the Home Office.

30. There will not be any significant cost to local authorities or the police, however there should be benefits from the knock-on effects of ASB occurring on TfLs network no longer spilling onto the street from the perpetrators' change of behaviour.

6.2 Impact on business

31. There will be no impact on business.

6.2.1 Small firms Impact Test

32. There are not any small business associated with this provision. Therefore this measure will not adversely impact small businesses.

6.3 Impact on Charities

33. There are no impacts on charities.

6.4 Rural Impacts

34. There are no rural impacts.

6.5 Race Equality Impacts

35. Findings of the British Crime Survey indicate that those living in 'hard-pressed' areas had odds of perceiving high levels of anti-social behaviour (ASB) that were four times higher than those in 'wealthy achiever' areas. We know that around 70% of ethnic minorities live in the 88 most deprived local authority areas.

36. It is likely that ASB measures are more extensively used where there are heavier concentrations of BME groups due to the spatial distribution of those communities in areas which experience high levels of crime. However, there is no evidence one way or another to conclude whether BMEs are more likely to be the violators or victims of ASB.

6.6 Health Impacts

37. There are no health impacts associated with this provision.

6.7 Sustainable Development Impacts

38. There are no sustainable development impacts associated with this provision.

7.0 Enforcement sanctions and monitoring

39. Should TfL not follow the guidance and incorrectly apply for ASBOs and evidence emerges that they were routinely ignoring the policy then we would consider further training and support and to rectify the problem.

40. TfL will monitor the ASBOs that they apply for and provide the Home Office and the Department of Constitutional Affairs with information on operations.

41. The Home Office will monitor TfLs activities during the implementation of this provision to ensure that the quality of ASBO applications is consistent with those brought forward by other applicant authorities.

8.0 Declaration

42. I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs

Signed by the Minister on 28 July 2006

Rt Hon Tony McNulty MP
Minister for policing, security and community safety

28 July 2006

9.0 Contact

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ASBU
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Annex A

1. The overall costs and savings are based on:

   - The applicant on average applying for 12 stand alone ASBOs a year

2. It is assumed that:

   - 75% of all ASBOs and breaches will need Legal Aid;
   - 5% of all ASBOs will be appealed and 75% of those could be eligible for Legal Aid;
   - 75% of criminal prosecutions (including 5% of appeals) could be eligible for Legal Aid; and,
   - 40% of ASBOs are breached.

3. It is assumed that:

   - The average cost of applying for an ASBO to the applicant is £1,200[5] per case;
   - The average cost of applying for an ASBO to HMCS is £340 per case;
   - The average cost of Legal Aid for ASBOs is £1,100 per case;
   - The average cost of Legal Aid for an ASBO appeal is £312 per case; and,
   - The average cost of an ASBO appeal to HMCS is £700 per case.

   Stand Alone ASBOs

4. It is assumed that:

   - It does not cost the applicant authority anything to apply for an order of conviction;
   - The average cost to HMCS for orders on convictions is £0 per case;
   - It does not cost Legal Aid anything for orders on conviction as this cost will be included in full criminal trial;
   - The average cost to HMCS of appeals for orders on conviction is £700 per case; and,
   - The average cost to Legal Aid for orders on conviction appeals is £344 per case.

   Orders on Conviction

5. It is assumed that:

   - The average cost of prosecuting a breach for the applicant is £1,000[5] per case
   - The average cost of Legal Aid for prosecuting breach is £344 per case
   - The average cost of prosecuting a breach to HMCS is £340 per case

   Breaches

6. It is assumed that:

   - The average cost of a criminal prosecution to the applicant is £1,000[5] per case;
   - The average cost of Legal Aid for a criminal prosecution in a Magistrates' Court is £344 per case and in a Crown Court is £14,870 per case; and,
   - The average cost of Legal Aid for an appealed criminal prosecution in a Magistrates' Court is £344 per case and in a Crown Court is £14,870 per case.

   Criminal Prosecutions

[8] This represents the additional variable costs, on top of a fixed cost of investigation and case preparation etc

7. It is assumed that:

- The average criminal trial takes half a day and costs £2,073 per day, which means the average criminal prosecution cost to HMCS is £1,037 per case
- The average cost of a criminal appeal in the Magistrates' Court is £700 per case

Magistrates' Court

8. It is assumed that:

- The average criminal trial takes 2 days and costs £4,601 per day, which means the average criminal prosecution cost to HMCS is £9,202 per case; and,
- The average cost of a criminal appeal in the Crown Court is £700 per case.

Crown Court