EXPLANATORY MEMORANDUM TO

THE LOCAL AUTHORITIES (CONTRACTING OUT OF ANTI-SOCIAL BEHAVIOUR ORDER FUNCTIONS) (ENGLAND) ORDER 2007

2007 No.

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1.1 This explanatory memorandum has been prepared by the Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 This Order permits a local authority to enter into arrangements with a person to whom it has already contracted out housing management functions under section 27 of the Housing Act 1985 so as to permit that person to exercise some or all of the local authority's Anti Social Behaviour Order functions ("ASBO functions") under sections 1 to 1E of the Crime and Disorder Act 1998 ("the 1998 Act").

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

3.1 None.

4. Legislative Background

4.1 Section 1F of the 1998 Act, which was inserted by section 142 of the Serious Organised Crime and Police Act 2005, gives the Secretary of State power to make an order permitting a local authority to make arrangements with another person so that that person can exercise some or all of the local authority's functions relating to anti-social behaviour orders under sections 1 to 1E of the 1998 Act.

4.2 This Order outlines the procedure under which local authorities can enter into such arrangements, but only with a person with whom they have already entered into an agreement under section 27 of the Housing Act 1985 to carry out housing management functions in relation to the local authority's housing stock

4.3 Section 1F(6) of the 1998 Act provides that the local authority will retain the ability to exercise the ASBO functions while the arrangements are in place.

5. Extent

5.1 This instrument will only apply to local authorities in England.

6. European Convention on Human Rights

6.1 The Baroness Andrews, Parliamentary Under Secretary of State in the DCLG, has made the following statement regarding Human Rights:

"In my view the provisions of the Local Authorities (Contracting out of Anti-social Behaviour Order Functions) (England) Order 2007 are compatible with the Convention rights.

7. Policy background

7.1 A range of tools are already available to local authorities to tackle anti-social behaviour in their capacity as providers of social housing. These include injunctions, demotion orders and possession actions. These tools can be utilised directly by organisations managing housing on behalf of local authorities.

7.2 At the moment housing management organisations are unable to seek Anti-social Behaviour Orders (ASBOs) on behalf of local authorities. Instead, where an ASBO is assessed to be the most appropriate form of intervention, the housing management organisation must in every case ask the local authority to seek the ASBO..

7.3 We believe that it would be sensible, where both parties agree, for local authorities to be able to ask those carrying out housing management functions on their behalf, to also carry out some or all of their ASBO functions. This would assist in delivering more effective and efficient working practices and would further equip those on the front line to better be able to tackle anti social behaviour.

7.4 To this end we published a consultation document titled "Enabling local authorities to contract their anti social behaviour order functions to organisations managing their housing stock" in November 2005. We asked the following questions:

- Do you support the proposal to make it possible for local authorities to be able to ask any organisation managing their housing under s.27 of the Housing Act 1985 to also carry out all or some of their ASBO functions on their behalf?

- Do you agree that the Secretary of State should not attach any conditions to an Order made as part of this proposal, and do you agree that local authorities should be able set their own conditions when making local arrangements? If not, what national conditions should be set?

- Do you have any other comments about the proposal, including any practical implications you think it might have?

7.5 We received 66 responses that spread across local authorities, arms length management organisations – ALMOs (organisations set up by a local authority to manage and improve all or part of its housing stock. Their Boards consist of council nominees, tenants and independent members), national trade bodies and other interested stakeholders.

7.6 The vast majority (80%) of the responses we received were in firm support of our proposal to enable local authorities to delegate some or all of their ASBO making powers to organisations that managed their housing stock under s27 agreements.

7.7 There was also a majority support (61%) for our proposal that the SoS should not attach any conditions to the contracting out of this power. The main reason for this was that it was thought that national conditions would fetter local authority flexibility in the use of the power. The majority of the responses also felt that local authorities should be allowed to set their own conditions when making local arrangements.

7.8 However, on reflection it was considered appropriate to impose a condition requiring the housing manager to consult the local authority before exercising any delegated functions. It will be for the local housing authority to determine the form that such consultation takes.

7.9 The power to delegate ASBO functions is restricted to bodies who manage local authority housing stock. In line with our proposals put to consultation we wish to give local authorities discretion in establishing how ASBO functions should be utilised by the bodies with whom they contract. For example some local authorities may wish to put in place conditions stipulating that the powers should only be used where there is a demonstrable link to the housing management function, whereas in other local contexts it may be more efficient for the relevant housing management body to deliver broader functions

8. Impact

8.1 The cost of this provision will fall solely on local housing authorities, who will absorb any additional costs from within their existing budgets. We do not hold these costs to be significant (see the Regulatory Impact Assessment for details).

9. Contact

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