EXPLANATORY MEMORANDUM TO

THE MAGISTRATES' COURTS (DRINKING BANNING ORDERS) RULES 2009

2009 No. 2937 (L.28)

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

2. Purpose of the instrument

2.1 The instrument sets out how applications for Drinking Banning Orders are to be made. It prescribes the form to be used when applying for a Drinking Banning Order, or an interim Drinking Banning Order. A Drinking Banning Order is a civil order designed to protect persons from further criminal or disorderly conduct by an individual while under the influence of alcohol. Recipients of a DBO may be referred by the court to an approved course provider to attend a course which will educate the recipient about the social and health implications of heavy alcohol consumption.

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

3.1 None

4. Legislative Context

4.1 The instrument is made under the powers in section 144 of the Magistrates' Courts Act 1980 and section 13(6) of the Violent Crime Reduction Act 2006.

4.2 DBOs can be made either on application to the courts by the police or a local authority, or following conviction for an alcohol-related offence. The Home Office is currently only commencing the provisions allowing DBOs to be made on application. This will mean that the police and local authorities will be able to apply to the magistrates' court (and the county court in certain circumstances) for the imposition of a DBO on an individual. These Rules set out the procedural rules in relation to such applications.

4.3 A related instrument is the Violent Crime Reduction Act 2006 (Drinking Banning Orders) (Approved Courses) Regulations 2009 which is subject to the negative resolution procedure and for which a separate explanatory memorandum has been prepared.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

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

7. Policy background

7.1 DBOs are civil orders that can be made against an individual aged at least 16 if s/he has engaged in criminal or disorderly conduct while under the influence of alcohol and a DBO is necessary to protect other persons from further conduct of that kind. The order may impose any prohibition on the individual that the court considers necessary to protect others from alcohol-related crime or disorderly conduct. The prohibitions must include such prohibitions on the individual from entering premises that sell alcohol as the court thinks necessary for that purpose (e.g. the court may prohibit the person from entering pubs/clubs selling alcohol in a given vicinity).

7.2 DBOs are seeking to change behaviour and therefore reduce alcohol-related crime and disorder. It has been estimated that alcohol-related crime and disorder costs between £8 billion and £13 billion per year.

7.3 A DBO may include provision for the recipient to have the opportunity to attend an approved course, which if completed satisfactorily, will lead to the length of the order being reduced. Approved courses are undertaken on a voluntary basis as a means of addressing alcohol-related behaviour. These courses focus on educating individuals about the serious social and health impact of heavy alcohol consumption.

7.4 These Rules set out the procedural rules relating to applications for Drinking Banning Orders. They prescribe the application form to be used when applying for a Drinking Banning Order or interim Drinking Banning Order. They also make provision for the service of interim orders and set out the procedural rules for applying for the variation or discharge of an order.

8. Consultation outcome

8.1 Consultation on DBOs was first carried out in January/February 2005 in 'Drinking Responsibly, The Government's Proposals', which covered all alcohol-related aspects of the Violent Crime Reduction Bill. The public along with the police, local authorities and the alcohol industry were consulted on proposals and over 150 responses were received. These included responses for example from:

- Association of Chief Police Officers (ACPO)
- Alcohol Concern
- Local Government Association (LGA)
- Local Authorities Co-ordinating Office on Regulatory Services (LACORS)
- Police Federation
- Various responses from the alcohol industry

8.2 There was general support for the principle of DBOs from the enforcement authorities, the alcohol industry and other organisations. A number of responses questioned why the Government were proposing to introduce DBOs when authorities were already using Anti-Social Behaviour Orders (ASBOs). However, ASBOs last for a minimum of two years and they generally contain more prohibitions than just prohibitions relating to alcohol consumption. What was needed was a tool with a more flexible, shorter time span that could be used specifically to tackle alcohol misuse. Broad proposals for DBOs have been discussed with ACPO, LGA, LACORS

and other stakeholders, including the alcohol industry, since the 2005 General Election and they were broadly supportive.

8.3 Further consultation was carried out from August-December 2006 with various external organisations, the judiciary, the alcohol industry and within the Home Office on guidance for drinking banning orders. This included a number of meetings and email circulation groups collecting comments and feedback from different stakeholders. These included ACPO, LACORS, the Crown Prosecution Service, other Government Departments, 7 members of the judiciary, the Wine and Spirit Trade Association and the British Beer and Pubs Association.

8.4 A steering group has been set up to advise the Home Secretary in his role of approving course providers. The steering group has also discussed DBOs in general, course providers and their relationship with the courts, course content and provision throughout the country. The steering group includes advisers from ACPO, Magistrates' Association, Department of Health, National Treatment Agency, National Offender Management Service, Home Office Alcohol Strategy and Drug Strategy Units, as well as practitioners with expert knowledge of alcohol misuse and rehabilitation of alcohol-related offenders.

8.5 The Home Office has not carried out a public consultation on this specific instrument. It has however engaged with the key stakeholders on an ongoing basis through the Drinking Banning Order Steering Group mentioned above. The rule committee has also been consulted on these rules and changes have been made to take account of their comments.

9. Guidance

9.1 The Home Office issued a Home Office circular on Drinking Banning Orders (013/2009) on 28 August 2009. Comprehensive guidance was also published by the Home Office and made available on the Crime Reduction website.

9.2 The Home Office has run a number of workshops from October 2008 to April 2009 aimed at promoting the use of alcohol tools and powers. Information on DBOs has been included so that enforcement officers and the judiciary are aware that the powers are shortly due to be commenced. Workshops have given stakeholders the chance to share their feedback on how DBOs should be implemented, while having direct contact with Home Office officials in question and answer sessions. Building on the success of the 2008/09 seminars aimed at enforcement officers, in 2009/10 the Home Office is running a series of at least forty 2-day alcohol-enforcement training seminars aimed at magistrates, courts officials, elected members who sit on licensing committees and operational police officers which will again include information and discussion on DBOs. The first pilot event took place in Islington in June, and further seminars have since been held in Southampton and Portsmouth. The following seminars will all be held in our priority areas over the course of the year.

10. Impact

10.1 No impact on business, charities or voluntary bodies is foreseen.

10.2 The impact on the public sector is negligible.

10.3 An Impact Assessment has not been prepared for this instrument. This is because no impact on business, charities or voluntary bodies is foreseen and the impact on the public sector is negligible.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The introduction of DBOs on application will be closely monitored and reviewed by the Home Office to enable a decision to be made on the introduction of DBOs on conviction.

12.2 The Home Office will monitor the providers of approved courses through quarterly and annual reports which will be received from the approved course providers.

13. Contact

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