



*The Local Authorities  
(Contracting out of Anti-  
Social Behaviour Order  
Functions) (England)  
Order 2007*

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Final Regulatory Impact Assessment





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(Contracting out of  
Anti-Social Behaviour  
Order Functions)  
(England) Order 2007*

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On 5th May 2006 the responsibilities of the Office of the Deputy Prime Minister (ODPM) transferred to the Department for Communities and Local Government (DCLG)

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# Contents

Proposal	6
Purpose and intended effect of measure	6
Rationale for government intervention	7
Consultation	8
Implementation and delivery plan	9
Options	9
Alternative options considered	11
Costs and benefits	11
Breakdown of costs and benefits	12
Small Firms' Impact Test (SFIT)	17
Competition assessment	18
Enforcement, sanctions and monitoring	18
Post-implementation review	20
Summary and recommendation	20
Declaration and publication	20
Contact point for enquiries and comments	20

## Proposal

1. Proposal to use the powers in section 1F of the Crime and Disorder Act 1998, as introduced by the Serious Organised Crime and Police Act 2005, to enable local authorities to delegate their power to seek Anti-Social Behaviour Orders (ASBOs) to organisations to which they have delegated responsibilities for managing their housing stock.

## Purpose and intended effect of measure

### Objective

2. Our intention is to enable those best placed to tackle anti-social behaviour to do so efficiently and effectively. This could reduce some operational inefficiencies caused by the current need for local authority officers to become involved in cases handled on their behalf by housing managers employed by another organisation.

### Background

3. The focus of housing management is increasingly shifting to become more closely linked with wider neighbourhood management objectives, such as tackling crime and anti-social behaviour, in addition to the more traditional tenancy and property management role.
4. In addition to changes in the role that housing management plays in meeting the needs of communities, there have also been a number of developments in the way in which local authority housing management services are delivered. Many local authorities do not carry out the day to day management of their housing stock; instead they focus on strategic functions and delegate operational functions to other organisations who manage housing stock on their behalf. These organisations include:
  - Arms Length Management Organisations (ALMOs)
  - Tenant Management Organisations (TMOs)
  - Bodies managing housing as part of PFI schemes
  - Registered Social Landlords (RSLs)
5. The means by which local authorities delegate their housing management functions is governed by section 27 of the Housing Act 1985. This legislation contains an enabling power for local authorities to delegate their housing management responsibilities to other organisations. The relationship between a local authority and the organisation to which it delegates is governed and monitored by a management agreement between the two parties, which specifies both partners' respective roles and responsibilities.
6. Where an authority delegates its housing management functions, it may also make sense to delegate responsibility for taking action to tackle ASB as part of the

management function. The government also believes that those managing housing stock are often best placed to tackle anti-social behaviour. The Government believes it is essential that local authorities are in a position to ensure those organisations are properly equipped to do the job, subject to proper controls and accountability.

7. A range of tools are already available to local authorities to tackle anti-social behaviour in the context of housing. Many of these tools may also be used directly by organisations managing housing on local authorities' behalf. However, those organisations are not currently able to seek Anti-social behaviour Orders (ASBOs) on behalf of local authorities. Instead, where an ASBO appears to be the most appropriate intervention, the housing management organisation must, in every case, ask the local authority to seek an ASBO through the courts to support them in tackling anti-social behaviour.
8. While some ALMOs and TMOs have developed ways of working with their parent authorities, a number have suggested that there are administrative difficulties and operational inefficiencies with the current arrangements. They have suggested that the process could be more effectively and efficiently delivered if they were able to seek ASBOs without having to request that their parent authorities pursue applications. For example, it may prevent unnecessary delays caused by liaison between the local authority and the housing management organisation in preparing cases to bring to court.
9. The Government has amended section 1F of the Crime and Disorder Act 1998 to enable local authorities to delegate – or contract out – all or some of their ASBO functions to organisations or types of organisations defined by Order by the Secretary of State. This power was introduced by the Serious Organised Crime and Police Act 2005. The proposal seeks to use this order making power to enable local authorities to contract some or all of their ASBO functions to organisations managing their housing stock.

## **Rationale for government intervention**

10. ALMOs and other types of management organisation have generally worked successfully with their partner local authorities to ensure that ASBOs are deployed where required. However, enabling authorities to contract some or all of their ASBO functions to organisations managing their housing stock should improve operational efficiency. The contracting out of ASBO functions, where it is considered appropriate, may also have a positive impact on the effectiveness of ASBOs and wider efforts to tackle ASB by passing operational responsibilities to front line service providers.
11. Under the proposal, local authorities will be free to choose whether or not they wish to contract out their powers to housing management organisations stipulated by the Secretary of State. If they, and those delivering services on their behalf, feel it is best for the authority to continue to make ASBO applications where requested, then they may continue to do so.

12. We are trying to ensure that local authorities have the flexibility they require to ensure that the functions they are responsible for are carried out as effectively and as efficiently as possible. Local authorities may decide that they can offer better services to the community by contracting out the power to seek ASBOs to those delivering frontline housing management services on their behalf – for example, where those organisations are already taking the lead on gathering evidence and preparing cases.

## **Consultation**

### **Within government**

13. The Ministerial Committee on Domestic Affairs cleared a public consultation document on the proposal. Through DA clearance the Department for Constitutional Affairs (DCA) raised concerns over whether the proposal would increase burdens on the Courts- this issue is addressed within this Assessment.
14. The Regulations produced following the consultation are in line with our original proposals. We have also consulted the appropriate Welsh Government Ministers who have indicated that they do not consider it appropriate for the proposal to apply to Wales.

### **Public consultation**

15. A full public consultation exercise was carried out between November 2005 and February 2006.
16. The majority (80%) of the responses we received were supportive of our proposal to enable local authorities to delegate some or all of their ASBO functions to organisations that managed their housing stock under s27 agreements.
17. Consultation responses showed a majority support (61%) for our proposal that the SoS should not attach any conditions to the exercise of this power. The main reason for this support was that it was thought that national conditions would fetter local authority flexibility in the use of this power.
18. We did receive a few responses expressing reservations with regard to how the carrying out of these powers would be financed and whether it was appropriate to allow TMOs to have this power given tenants involved in running housing may sometimes live in close proximity to anti social behaviour perpetrators.
19. Our responses to these concerns are that it is a “power” that we are enacting and not a “duty”. Therefore, there is no compulsion on the part of local authorities to contract out their ASBO functions. Only if they feel it would be beneficial in their local context for them to do so, should they consider using these Regulations.
20. With regard to the concerns over TMOs also being able to use this power, it is important to note that before TMOs are set up, they have to go through a rigorous process to ensure competency. They are professional organisations which may often employ dedicated staff. We acknowledge that it may not be appropriate for

smaller TMOs to take on responsibility for carrying out ASB functions, including ASBO applications (for example where only a few units of housing are subject to management by tenants). We expect (and will affirm through Guidance) that local authorities will carry out rigorous risk assessments in deciding whether it is appropriate to contract their functions.

## Changes resulting from the consultation

21. A number of consultation responses suggested we include a compulsory condition to consult within regulations. This is a condition that local authorities are already subject to under the enabling primary legislation when seeking ASBOs. Prior to making an application to the court the local authority must consult the police (albeit that the police do not have a power of veto).
22. We believe it therefore prudent to specify that housing management organisations to which the local authority delegates ASBO functions should be under a duty to consult that authority and the police before pursuing an application through the courts.
23. Once Regulations are enacted and Guidance has been published local authorities will not have to seek any further consent from Government before being able to contract out some or all of the ASBO functions to their housing management organisations.

## Implementation and delivery plan

24. Regulations were laid before parliament on January 9th 2007. They are subject to affirmative procedures and will therefore be subject to debate in both Houses at a time to be specified in line with Parliamentary business. Subject to the views of Parliament we currently expect regulations will be enacted and guidance published by the end of April 2007.

## Options

25. Three options have been identified:

### DO NOTHING

26. A decision to maintain the current position whereby housing management organisations must approach local authorities in order for them to take forward ASBO applications would not reflect the fact that tackling ASB has become a core housing management function that in many cases is best undertaken by those responsible for managing the housing. It would continue to generate inefficiencies and may also risk damaging the credibility of housing management organisations in respect of their important role in taking a pro-active approach to tackling ASB by using the full range of tools at their disposal.

#### a) Open contracting power linked to section 27 delegations

27. This option provides that a local authority would be able to ask an organisation to which it had also delegated housing management functions (under s.27 of the Housing Act 1985) to carry out some or all of its ASBO functions, also by delegation.
28. The local authority and management organisation would enter into a contract or agreement detailing how the arrangement would work. This option would leave local authorities free to consider how best to delegate some or all of their ASBO functions in line with their particular local circumstances. For example they would need to consider the suitability of those organisations carrying out housing management on their behalf for the purposes of responsibility for ASBO functions.
29. Authorities would be free to consider the scope of any decision to contract. For example they may wish to specify that the housing management organisation may only pursue ASBO applications in connection with its management function or only in relation to ASB that impacts on the estates it manages. Alternatively they may decide that the housing management organisation/s is best placed to carry out their responsibilities for tackling ASB (including ASBOs) across the local authority area.
30. This option is attractive in that it maximises the flexibility of local authorities in considering the best ways to ensure the functions they are responsible for are carried out as effectively and as efficiently as possible. The key risk in pursuing this option is that local authorities will not take proper account of the issues before reaching a decision on whether to contract their ASBO functions. Where they fail to do so then there is a risk that they will contract to unsuitable organisations and/or on an inappropriate basis. In order to address this we are committed to issuing guidance by the Secretary of State which will outline issues which it would be appropriate for authorities to consider.

#### **b) Attach conditions to a contracting power linked to section 27 delegations**

31. Option B provides that a local authority would be able to ask an organisation to which it had already delegated housing management functions to carry out some or all of its ASBO functions. However rather than providing an 'open' power enabling the local authority to operate its own discretion (within the bounds described under Option A), Option B would prescribe conditions limiting the scope of authorities' discretion.
32. Section 1F (of the Crime and Disorder Act 1998) allows the Secretary of State to attach conditions to the contracting arrangements. This means that the Order could limit the circumstances in which a local authority could ask an organisation to carry out these functions on its behalf, or could define how the arrangements should operate. For example, an Order could state that an organisation could only carry out ASBO functions where the instance of anti social behaviour was related to housing or a secure tenant of the local authority. An order could also set different conditions by type of housing management organisation. For example, it might enable an authority to exercise 'open' discretion in relation to one type of organisation but limit that discretion in respect of others.
33. This option would effectively limit the degree of flexibility of local authorities in considering the best ways to ensure the functions they are responsible for are carried out as effectively and as efficiently as possible. The limits placed on that flexibility would of course be dependent on the scale and type of any conditions specified in an

order. The key risk would be that any conditions specified by the Secretary of State would impose 'blanket' restrictions on authorities' discretion that might hamper their ability to act in response to their particular local circumstances.

## **Alternative options considered**

34. We have also considered making organisations who undertake housing management functions on behalf of local authorities relevant authorities in their own right for the purposes of seeking ASBOs under Part 1 of the Crime & Disorder Act 1998. This would mean that those organisations hold the power to seek an ASBO in their own right rather than as 'contractors' to the local authority.
35. We have ruled this option out as it would not be compatible with the means by which local authorities delegate their housing management functions (section 27 of the Housing Act 1985). This process means that the status and role of housing management organisations are clearly defined in the law as agents of the local authority. Therefore everything they do must be subject to a contracting out agreement between them and the local authority. Giving these organisations the power to seek ASBOs in their own right, irrespective of the wishes of the local authority, would therefore fundamentally alter their status. Critically, it would remove the flexibility to enable local authorities to decide whether or not to contract out their ASBO functions to that particular organisation.

## **Costs and benefits**

### **Sectors and groups affected**

36. The proposals will impact upon local authorities and housing management organisations. There will be no or extremely limited impacts on other sectors and groups.

Impacts on 'consumers' – the wider community (ie social tenants and others upon whom anti-social behaviour impacts) should be positive in that the proposal will help landlords and housing managers in delivering effective services.

### **Race equality assessment**

37. Findings of the British Crime Survey indicate that those living in 'hard-pressed' areas had odds of perceiving high levels of ASB that were four times higher than those in 'wealthy achiever' areas. We know that around 70 per cent of ethnic minorities live in the 88 most deprived local authority areas.
38. It is likely that ASB measures are more extensively used where there are heavier concentrations of BME groups. Therefore the significant contribution landlords and housing managers make to tackling ASB should bring benefits to BME communities. By seeking to maximise efficiency the proposal will contribute to delivery of effective services to all communities.

39. It is important to note that in contracting their ASBO functions, local authorities remain fully accountable for how those functions are exercised. Therefore contracting of those functions is covered within local authorities' duty under the Race Relations Act to assess relevant functions or policies in respect of their race equality duties. In taking a decision to contract local authorities should undertake an assessment of whether options might potentially affect different racial groups or lead to any discriminatory practices. It is also beholden upon local authorities to carefully monitor any contracting of their ASBO functions in respect of race equality.

## **Health impact assessment**

40. Impacts are unlikely to be significant. The proposal may impact positively on health where it contributes to landlords and housing managers' efforts to tackle ASB effectively. ASB has a disproportionate effect on vulnerable groups living in deprived areas and can contribute heavily to levels of stress and social exclusion.

## **Rural considerations**

41. We have considered rural impacts following guidance issued by the Countryside Agency and are satisfied that the proposal is unlikely to have any impacts.

## **Breakdown of costs and benefits**

### **DO NOTHING**

#### **Economic**

##### **Benefits**

42. The benefits of maintaining the current position would be that it would not require any change from the current arrangements, thus allowing everyone to continue with established processes.

##### **Costs**

43. The costs of maintaining the current position will depend on the efficacy of local arrangements (ie the relationship between the authority and housing management organisation). We believe that by enabling local authorities to contract ASBO functions they may be able to deliver efficiencies. For example enabling housing managers to pursue cases without recourse to the authority will minimise the costs associated by the need for regular liaison where the local authority pursues a case at the request of the manager.

#### **Environmental**

44. There are unlikely to be any environmental costs or benefits.

## Social

### Benefits

45. The benefits of the 'Do Nothing' option would primarily focus on maintaining working arrangements between local authorities and housing management organisations where they have proved to be effective. These 'protocols' where they have been developed over time in line with local circumstances have the advantage of being tried and tested thus providing stability in delivery of services.

### Costs

46. The costs of maintaining the current position will in part depend on the efficacy of current local arrangements (ie the relationship between the authority and housing management organisation). We believe that enabling local authorities to contract their ASBO functions may lead to operational efficiencies that the Do Nothing option would not permit.

The 'Do Nothing' option may also impact negatively on the credibility of housing officers in the eyes of the community due to perceptions that they are not appropriately equipped to tackle anti-social conduct and are overly dependent on the intervention of the local authority.

## **Option A: Open contracting power linked to section 27 delegations**

### **ECONOMIC**

#### **Benefits**

47. Delegating responsibilities for carrying out particular functions should not necessarily increase overall costs and is likely to reduce them. Indeed, one of the purposes of the proposal is to avoid duplication of effort by the local authority and housing manager in cases where the latter is best placed to undertake ASBO functions. Cost savings may be generated by reductions in the time spent on liaison between authorities and housing management organisations when considering and pursuing applications for ASBOs.

#### **Costs**

48. Should the proposal be adopted then local authorities will need to consider whether or not they wish to contract some or all of their ASBO functions and how they wish to pursue this (ie to which organisations and on what terms/ conditions). This review will require resourcing and where an authority does decide to contract its ASBO functions then the process of doing so will incur costs (ie time spent on negotiation with the housing management organisation and preparing contracting arrangements). However it is likely that these costs will be offset by efficiency savings once operational arrangements are in place. Since local authorities already monitor many aspects of the performance of their housing managers, adding their performance on ASBO functions should not significantly affect the total work involved.

49. Where an authority does decide to contract its ASBO functions then they may need to consider in partnership with the housing management organisation/s whether the later require any training in performing these functions -where this is the case this will incur costs. However, as many front line managers are already leading in tackling ASB and preparing cases, this is unlikely to be a significant additional burden.

#### **Cost implications for the courts system**

50. We do not believe that allowing local authorities to contract their ASBO functions will lead to an increase in the number of applications to the courts (and thus incur additional costs to the court service). This position is shared by the National Federation of ALMOs and National Federation of TMOs.

51. As the proposal is discretionary we cannot establish as yet how many local authorities will decide to contract their ASBO functions. Drawing on consultation responses it is fair to assume that it is likely many will decide to contract all or part of their ASBO functions to ALMOs. The situation with TMOs is less clear- though feedback would indicate that in the main only larger organisations are likely to have an interest in leading on applications.

52. ALMOs have lobbied for the proposal for some time on the basis that it is they who currently commit much of the resource in taking forward cases (evidence gathering etc) required in the lead up to pursuing an ASBO – therefore it makes sense in the interests of efficiency for the ALMO to pursue proceedings to their conclusion rather than requesting the local authority process the final stages of a case through the courts. There is little evidence to suggest that there are significant numbers of cases managed by ALMOs that require ASBO applications but are not currently being processed through the local authority. Rather the issues relate to unnecessary impediments in terms of the time it takes to progress applications where a rapid & visible response is often of necessity.
53. Where an organisation does not currently undertake ASB functions (a number of TMOs for example), but agreement is reached that they should, new contract & financial arrangements will need to be agreed between the parties. Once arrangements are operational the housing management organisation will be responsible for committing resources and meeting costs. Through exercising this control organisations will need to satisfy themselves of the cost benefits of pursuing ASBO applications – they are unlikely to pursue additional applications (as compared to the rate before contracting) unless there is an increase in levels of ASB which necessitates this type of response.
54. Where an ALMO or a TMO is made responsible for delivering extensive neighbourhood wide services (for example delivering ASB functions across a local authority area) then this would replace existing services provided by the local authority rather than duplicating them.
55. In summary we do not believe a contracting power will generate a substantial shift in housing management organisations policies and procedures for tackling ASB (for example a policy to increase use of enforcement tools). They will continue to do so where the community is best served by use of this form of action.

## **ENVIRONMENTAL**

There are unlikely to be any environmental costs or benefits.

## **SOCIAL**

### **Benefits**

56. The primary driver for the proposal is potential gains in efficiency in the way services to tackle ASB are delivered and is not predicated on evidence that current operational arrangements are leading to failures in providing an effective service. However, gains in efficiency may also help to stimulate improvements in the way services to tackle ASB are delivered – for example helping to boost the credibility of housing managers as pro-active professionals fully equipped to undertake their duties. The experience gained by housing managers in leading on ASBO applications may also impact positively on the level of service they provide.

## Costs

57. There are unlikely to be any substantial costs relative to the Do Nothing option. However, were contracting arrangements to lead to difficulties if an organisation to which an authority contracts uses those functions inappropriately then there would be short term costs in terms of the level of service provided to tenants and the wider community. We would expect authorities to intervene swiftly were this to occur in order to remedy the situation.

## **Option B: Attach conditions to a contracting power linked to Section 27 delegations**

### **ECONOMIC**

#### **Benefits**

58. As with Option A delegating responsibilities for carrying out particular functions should not necessarily increase overall costs and is likely to reduce them. Any differences between the economic benefits generated by Option B relative to Option A would be dependent on the nature of any conditions specified in an Order made by the Secretary of State and the impact of these conditions in respect of local circumstances.

#### **Costs**

59. As above any differences between the economic benefits generated by Option B relative to Option A would be dependent on the nature of any conditions specified in an Order made by the Secretary of State and the impact of these conditions in respect of local circumstances. Potential costs could be incurred if an Order precluded the housing management organisation from pursuing ASBO applications in cases which do not directly relate to its management function. This might result in the local authority needing to retain operational functions in order to tackle ASB that falls outside the management organisation's remit. This could lead to duplication and resultant extra costs, where two separate teams are required to tackle ASB in the locality.

### **ENVIRONMENTAL**

60. There are unlikely to be any environmental costs or benefits.

### **SOCIAL**

61. Adoption of Option B is unlikely to create any significant change in social costs and benefits relative to those under Option A.

## **Small Firms' Impact Test (SFIT)**

62. The proposal (option A) would mean that a local authority would be able to ask any organisation to which it had also delegated housing management functions (under s.27 of the Housing Act 1985) to carry out some or all of its ASBO functions, also by delegation. Option B would work in a similar way, only certain condition might be listed in the Order, determining the scope of the authorities' discretion. Under both options organisations to whom an authority could contract its functions could include RSLs and bodies managing housing as part of a PFI scheme (where these are not an ALMO, TMO or RSL) which are private bodies. These bodies would be treated equally as other housing management bodies. The only costs would be administration costs which we would expect to be covered within the management agreement with the local authority. These bodies, like any housing manager operating within the proposal,

would need to comply with any monitoring arrangements set out by the Secretary of State or local authority. However, these would be in line with similar arrangements already in place to cover housing management functions and would not create undue additional burden.

## **Competition assessment**

63. After consideration, we believe that none of the proposed options would have an impact on competition.

## **Enforcement, sanctions and monitoring**

### **ENFORCEMENT**

64. Local authorities will be free to choose whether or not they wish to contract out some or all of their ASBO functions. Therefore enforcement in terms of seeking to ensure that authorities use any enabling power provided to them is not appropriate. If authorities and those delivering housing management services on their behalf feel it is best for the authority to continue to make ASBO applications, some of which may be at the suggestion of the housing manager, then they may continue to do so.
65. We are committed to using powers under s.1F of the Crime and Disorder Act 1998 to issue guidance on how local authorities should use the power. Local authorities and management organisations would be required to have regard to this guidance as they enter into a contract or agreement governing their local arrangements, and as they operate under those arrangements.
66. Where an authority does decide to contract its ASBO functions then the contract between the local authority and the housing management body will need to set out in detail the terms of that arrangement. This should include its duration, the process for reviewing it, and standards of performance which the contractor must achieve and the approach to enforcement if these standards are not met.

### **SANCTIONS**

67. As noted above our emphasis on providing local authorities with the flexibility to reach their own decisions on how best to serve their communities precludes the use of sanctions where they decide not to opt for contracting of their ASBO functions.
68. Local authorities will retain their statutory responsibilities under the Crime & Disorder Act 1998 when contracting their ASBO functions for tackling anti-social behaviour, and will remain accountable for how those responsibilities are exercised. Therefore they are fully responsible under the law for how the housing management organisations to which they contract deliver ASBO functions on their behalf.
69. Ultimately, if significant problems arise with application of the enabling power then the Secretary of State would reserve the right to revoke some or all of the terms or any Order.

## **MONITORING AND REVIEW**

70. Local authorities will be responsible for undertaking monitoring of the service housing management organisations provide, including any ASBO functions which the authority has contracted to them.
71. Guidance to be issued by the Secretary Of State to which local authorities and management organisations will be required to have regard will include guidelines on ensuring appropriate monitoring arrangements are in place.

## **MONITORING THE IMPACT ON NUMBERS OF APPLICATIONS AND THE COURTS**

72. The proposal necessarily only concerns those local authorities who retain ownership of their housing stock. Nearly 450 000 units have been transferred to RSLs since 2001. The balance between social stock owned by local authorities and RSLs is now broadly 50/50.
73. Throughout the country 56 ALMOs are managing more than 828,000 homes (approximately 20% of total social housing stock).The National Federation of TMOs are currently developing a database of organisations which will provide improved data on their number and scale of operations. They can take different forms and sizes with some small scale managing a few properties and others undertaking management of large estates.
74. Data collection on uptake of ASBOs does not allow for a breakdown of which department/function within a local authority is responsible for making an application so we cannot pinpoint how many current applications are led by housing teams. Nor do we have data that enables us to establish the type of court housing management organisations apply to for ASBOs (they are available in the magistrates court and the civil courts). It is reasonable to assume that the majority of civil applications will be led by housing teams alongside other applications (as tenancy related action is conducted in the civil system- possession action).
75. In summary it is not possible to apply a simple ‘multiplier’ to existing housing led applications to inform a range of costed scenarios in terms of the impact of contracting on the number of applications. We will work with the Home Office and the Department for Constitutional Affairs to develop data capture that will enable us to establish how many applications are being led by housing management organisations to whom the local authority has contracted.
76. On this basis we are committed to a review of impacts on the courts a year after sufficient data is available. This would help inform any transfer of funds to support the court system should it be established that contracting has incurred additional case loads.

## Post-implementation review

77. In addition to monitoring take up in order to assess implications for the court system we plan to review operation of LA delegation of ASBO functions 2 years after commencement of these Regulations.

## Summary and recommendation

78. We hold the costs of enacting the proposal to be minimal compared to the benefits of ensuring that frontline practitioners are provided with the tools they need to deliver effective and efficient solutions to anti-social behaviour.

## Declaration and publication

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

Signed .....

Baroness Andrews, Parliamentary Under Secretary of State,  
Office of the Deputy Prime Minister

## Contact point for enquiries and comments

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