

Section 27 Directions

The “Temporary ASBO” – What do they do and how you can challenge them?

Overview

1. When the Violent Crime Reduction Act 2006 came into force on 22nd August 2007, it gave the power to police officers under s.27 to ban a person from a specified public place if they thought that person would commit alcohol related crime. The ban is effective for up to 48 hours. This is a ‘summary only’ matter and breaches are punishable with a fine limited to level 4.¹ There are no sentencing guidelines on this area, but it seems likely that a band A or band B fine will be appropriate. It is important to note that the making of a direction against a person does not amount to the commission of an offence but breaching a direction is a criminal conviction.
2. This power was seen by the government at the time as important weapon in fighting low level anti-social behaviour. Though it has created a much used weapon against alcohol related crime, it has also become an unregulated weapon, which can restrict people’s movement, whilst being difficult to challenge or appeal.
3. Originally aimed at city centre drunken behaviour, many police forces have used it in a wider context. Recently section 27 directions have been used to disperse travelling football fans, English Defence League marchers, and deal with the homeless community.
4. An interesting problem is that the low threshold test needed to impose a direction can lead to significant restrictive effects whilst the ways to challenge such a direction are severely limited. There is currently no reported case law in this area, despite the fact that the concepts in section 27 directions entail the potential to engage a number of important human rights issues.

¹ Section 27 (6)

5. The aim of this article is to present clearly how section 27 directions operate and how they can be challenged. I will first go through the provisions of the act and highlight the formalities which need to be completed by an officer issuing a direction. Secondly, I will give a summary of the ways in which directions can be challenged, both when they have been breached and when they have been followed.

How They Operate

6. An officer must be satisfied that the following two limb test applies in order to issue a direction:

“(a) that the presence of the individual in that locality is likely, in all the circumstances, to cause or to contribute to the occurrence of alcohol related crime or disorder in that locality, or to cause or to contribute to a repetition or continuance there of such crime or disorder; and

“(b) that the giving of a direction under this section to that individual is necessary for the purpose of removing or reducing the likelihood of there being such crime or disorder in that locality during the period for which the direction has effect or of there being a repetition or continuance in that locality during that period of such crime or disorder.”

7. If this test is satisfied, a uniformed officer can issue a direction requiring an individual to leave a specified place and further prohibiting that individual from returning to that place for a specified time, up to 48 hours after the direction is issued.
8. In order to fulfil the requirements of section 27(3), when issuing a direction an officer must make a record of the following factors: the location the direction relates to; the individual to whom it is given; the time at which it was given; and the length of time the direction will last.²
9. The direction must not be given in the following four circumstances³: First, where the direction stops the person from entering where they reside. Second, where it stops the person from attending their work. Third, where the direction stops a person from

² Section 27(5)

³ Section 27 (4).

attending for educational or medical purposes. Fourth, where a person is required to attend a location by order of the court.

10. The definition of a public place is defined in section 27(8) to include a highway or any other place to which the public have access, including a means of transport.

Possible Responses

11. There are two ways in which section 27 directions can be challenged. Firstly, the imposition of a direction can be judicially reviewed: this will only be done in exceptional cases, but is especially appropriate in cases where a large number of directions have been issued to a particular group. Secondly, after a breach of a direction it can be argued that the imposition of the direction was unlawful. Below I will highlight briefly the ways in which both types of challenge can be pursued.

At Trial

12. One way to defend an alleged breach is to show that the imposition of the direction was illegal. This might be because it fails to comply with the requirements of section 27, or due to the fact that the direction is not proportional in some way to the situation in which it was issued.
13. With any breach the first issue is whether the issuing officer has complied with the obligatory requirements (these requirements have been set out above). Whether these areas have been complied with should be a straightforward factual issue. It is important to remember that these directions can only be implemented by officers in uniform and not by plain-clothes officers.
14. What happens when a person is required to be in the restricted area for one of the reasons set out under section 27(4) (as set out above), but has not told the officer, or where the officer has not asked? My opinion is that if there is a valid reason under section 27(4) for the person to enter the designated area that will invalidate the direction: this is an area ripe for a case stated appeal to the High Court.
15. The more common ground for submitting that a direction is improperly issued and is therefore invalid is to argue that a part of the direction is not necessary in the

circumstances under section 27(2)(b). There are two areas in which this argument can be made.

16. First, the length of time that the direction was made for in the circumstances in which the direction was given. Officers will often issue a direction for 48 hours without considering further whether this is appropriate to the behaviour they are aiming to prevent. For example, if it is to stop a drunk from continuing with disorderly behaviour, a 12 hour order should be sufficient to ensure that he has sobered up and a 48 hour direction would seem to be unnecessary.
17. Second, the location in which the person is banned from entering. This is a much more general point and will vary due to the peculiarities of the location and the aim of the direction. But it is an important point to keep in mind. It is also open to argument whether a direction will be invalid completely if it covers an unnecessarily large area, even though the 'unnecessary area' was not encroached upon.
18. In my view all of these points can be argued in the Magistrates' Court and should be considered as possible grounds for appeal to the High Court by way of case stated.

Judicial Review

19. In comparison with the day to day arguments I have set out above, judicial review will be an avenue only rarely pursued to challenge directions, but it does have its place and should always be considered. One of the reasons for the lack of case law in this area is the fact that it usually only following a breach of the direction that it is brought before the Court albeit that a judicial review against the constabulary issuing the direction is one possible avenue of challenge. The argument is likely to focus on the grounds that the direction was unnecessary either as a whole or in some particularity of terms.
20. It is likely that it will only be appropriate to carry out a judicial review where a group or type of people or activities is being targeted with directions as an active policy of the police.
21. An example of this is the use by the police of directions against travelling football fans. The police have used the directions to ban groups of football fans from entering

a city, and the football ground, to which they were travelling. In at least one case the fans judicially reviewed this policy.

22. Judicial review may be appropriate to challenge the policy and to show that such action is illegal; though before initiating a judicial review an applicant should get specific legal advice based on the relevant situation.

Conclusion

23. This is an area to see an expansion in the coming years. As the police look for more cost efficient ways to carry out their role they are likely to rely on cheap options such as section 27 directions. With the lack of guidance on these directions it will be important that their use is monitored and challenged when necessary: it will be interesting to follow the ensuing guidance from the higher Courts.

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