

POLICING AND CRIME ACT 2009

EXPLANATORY NOTES

TERRITORIAL EXTENT AND APPLICATION

Part 4 – Injunctions: Gang-Related Violence

Power to grant injunctions

Section 34 Injunctions to prevent gang-related violence

222. This section sets out the conditions that must be met in order for a court to have the power to grant an injunction under this Part. It also sets out the purposes of the injunction.
223. Subsection (2) provides that before granting an injunction the court must first be satisfied to the civil standard of proof that the respondent has engaged in, encouraged or assisted gang-related violence.
224. Subsection (3) requires the court to think it necessary for an injunction to be granted to prevent the respondent from engaging in, encouraging or assisting gang-related violence and/or to protect the respondent from gang-related violence. Either or both of these conditions must be met in addition to the condition set out in subsection (2) before an injunction can be granted.
225. Subsection (5) defines gang-related violence.

Contents of injunctions

Section 35 Contents of injunctions

226. This section serves the purpose of listing possible effects that prohibitions or requirements could have on the respondent.
227. Subsection (2) lists possible effects of prohibitions, including an exclusion zone ((2)(a)), non-association with other individuals ((2)(b)), preventing the respondent from being in charge of certain animals ((2)(c)), preventing the respondent from wearing specific clothing ((2)(d)) or preventing the respondent from using the internet to facilitate or encourage violence ((2)(e)).
228. Subsection (3) lists possible effects of requirements, including notification of a change of address ((3)(a)), a curfew ((3)(b)), presenting oneself as required during the curfew ((3)(c)) and participation in activities ((3)(d)).
229. Subsection (4) provides that a requirement which has the effect of a curfew as in subsection (3)(b) may not last for more than eight hours in any day.
230. Subsection (5) provides that prohibitions or requirements should avoid conflict with the religious beliefs of the respondent and their work or educational commitments.

231. Subsection (6) makes it clear that the list of prohibitive or restrictive effects contained within subsections (2) and (3) is non-exhaustive.

Section 36 Contents of injunctions: supplemental

232. This section makes additional provisions in respect of an injunction that is granted under section 34.
233. Subsection (2) has the effect of limiting injunctions to a maximum period of two years.
234. Subsection (3) enables the court to set review hearings which the applicant and respondent must attend. The purpose of review hearings is set out in subsection (5), namely to consider whether the injunction should be varied or discharged
235. Subsection (4) requires the court to set a review hearing if any prohibition or requirement of an injunction lasts for more than one year from the original injunction date. The review hearing must be held within the last four weeks of the one year period.
236. Subsection (6) creates a power for the court to attach a power of arrest to any prohibition in the injunction, or to any requirement, other than a requirement for the respondent to participate in specified activities. The court may choose to attach the power of arrest to none, some or all of the prohibitions or requirements of an injunction.

Applications

Section 37 Applications for injunctions under section 34

237. Subsection (1) provides that applications can be made by the police, including the British Transport Police, or a local authority. Local authority is defined in subsection (2).

Section 38 Consultation by applicants for injunctions

238. This section creates a requirement for the applicant authority to consult with any local authority, any chief officer of police and any other body or individual that the applicant thinks it appropriate to consult before applying for an injunction.

Section 39 Applications without notice

239. This section allows the applicant to make an application for an injunction without giving notice to the respondent.
240. The applicant is not required to comply with the consultation requirement in section 38 before making such an application.
241. However, subsection (5) requires the applicant to have met the consultation requirement of section 38 before the first full hearing, of which the respondent will have been notified.

Interim injunctions

Section 40 Interim injunctions: adjournment of on notice hearing

242. This section deals with the powers of the court to grant an interim injunction where the court adjourns a hearing of which notice has been given to the respondent.
243. It allows the court to grant an interim injunction if it is just and convenient to do so. The court is not required to be satisfied of the conditions set out in section 34(2) and (3).
244. Subsection (3) provides that an interim injunction granted as the result of an adjournment of an on notice hearing may include any provision that the court has the power to include in an injunction granted under section 34, including a power of arrest.

Section 41: Interim injunctions: adjournment of without notice hearing

- 245. This section deals with the court's powers to grant an injunction where it adjourns the hearing of an application which has been made without notice. This would usually occur where a without notice hearing has been sought to prevent imminent violence. An adjournment may be necessary to enable further information to be gathered ahead of a full hearing and will be necessary to enable the respondent to attend a full hearing. This section ensures that the court can only grant an interim injunction in this situation when the court considers it necessary to do so.
- 246. Subsection (3) sets out that an interim without notice injunction must not have the effect of requiring the respondent to participate in particular activities.
- 247. Subsection (4) sets out that an interim without notice injunction may include any provision, other than that set out in subsection (3), that the court has the power to include in an injunction granted under section 34, including a power of arrest.

Variation and discharge

Section 42 Variation or discharge of injunctions

- 248. This section sets out how an injunction can be varied or discharged.
- 249. Subsection (1) states that the court can vary or discharge an injunction if a review hearing is held or if an application to vary or discharge is made.
- 250. Subsection (2) sets out who is able to make an application to vary or discharge an injunction: the applicant and the respondent.
- 251. Subsection (3) makes clear that variation can include additional prohibitions or requirements or the extension of existing prohibitions or requirements.
- 252. Subsection (4) provides that a mandatory review is not required if an injunction is varied within the four week mandatory review period in a case which would otherwise fall within section 36(4).
- 253. Subsection (5) provides that where the applicant applies to vary or discharge the application, the applicant must notify the persons it consulted under section 38 when the injunction was first sought.

Arrest and remand

Section 43 Arrest without warrant

- 254. This section provides that if a power of arrest has been attached to any of the prohibitions or requirements contained in an injunction then a police officer may arrest without warrant a respondent who is reasonably suspected to be in breach of that prohibition or requirement.
- 255. Subsection (3) requires the officer to inform the original injunction applicant of the arrest.
- 256. A person who is arrested under this section must be brought before a relevant judge within 24 hours of being arrested. If the matter is not dealt with then the court is permitted to remand the person.
- 257. Subsection (7) defines a "relevant judge".

Section 44 Issue of warrant of arrest

258. This section allows a court to grant a warrant for arrest if it believes that the respondent is in breach of any provision of the injunction. The warrant must be applied for by the original injunction applicant.
259. The court has the power of remand if the matter is not disposed of.

Section 45 Remand for medical examination and report

260. If a person has been arrested, with or without a warrant, this section allows a court to remand a person for the purpose of medical examination and report if they have reason to consider that such a report will be required.
261. Subsection (3) sets out that, where that remand is in custody, the adjournment must not be for more than three weeks at a time.
262. Subsection (4) provides that, where such remand is on bail, the adjournment must not be for more than four weeks at a time.
263. Subsection (5) gives the court the power to make an order under section 35 of the Mental Health Act 1983 (“MHA”) if it suspects that the arrested individual is suffering from a mental disorder. Section 35 of the MHA enables a court to remand an individual to a hospital specified by the court for a report on his mental condition. The court can exercise this power if it is satisfied on the written or oral evidence of a registered medical practitioner that there is reason to suspect that the person is suffering from a mental disorder and the court is of the opinion that it would be impracticable for a report on the person's mental condition to be made if he or she were remanded on bail.

Section 46 Further provision about remands and Schedule 5 Injunctions: powers to remand

264. **Section 46** introduces Schedule 5 to the Act, which makes further provision about the powers to remand under sections 43 and 44.
265. **Paragraph 2** of Schedule 5 provides that the court may either remand the individual in custody or on bail. If the remand is on bail, this paragraph ensures that the court can take a recognizance from the individual or fix the amount of a recognizance to be taken subsequently.
266. **Paragraph 4** sets out that the maximum time for a remand in custody is eight clear days, unless both the individual and the applicant consent to a longer period.
267. **Paragraph 5** provides that the court may further remand an individual in his absence, if the individual does not appear in court due to accident or illness and that the court may, for an individual remanded on bail, enlarge the individual's recognizance.
268. **Paragraph 6** enables the court to postpone the taking of a recognizance for it to be taken in accordance with the rules of court.
269. **Paragraph 7** ensures that the court may impose conditions on an individual remanded on bail.

Miscellaneous

Section 47 Guidance

270. This section requires the Secretary of State to issue and publish guidance in relation to injunctions under Part 4. Such guidance may be revised, but any revisions must also be published. The Secretary of State is obliged to lay any guidance issued or revised under this section before Parliament.

*These notes refer to the Policing and Crime Act 2009
(c.26) which received Royal Assent on 12 November 2009*

- 271. Subsection (3) requires the Secretary of State to consult the Lord Chief Justice and any other appropriate persons before issuing or revising guidance.
- 272. Subsection (6) requires all applicant authorities to have regard to published guidance.

Section 48 Supplemental

- 273. **Section 48** enables rules of court (civil procedure rules which are made by statutory instrument) to provide that powers conferred on county courts are exercisable by judges of the county court and district judges. The section also stipulates that the rules of court may allow for appeals to be made without giving notice of the appeal to the respondent.

Section 49 Interpretation

- 274. This section defines certain terms used within Part 4.
- 275. Subsection (2) sets out that where the term “injunction under this Part” is used in Part 4, it includes an interim injunction.

Section 50 Review of operation of Part 4

- 276. **Section 50** places a requirement on the Secretary of State to review the operation of Part 4 and prepare and publish a report of that review.
- 277. Subsection (2) makes clear that the report must be published within three years of the commencement of the provisions.
- 278. Subsection (3) requires that the report is laid before Parliament