

*These notes refer to the Justice Act (Northern Ireland)
2015 (c.9) which received Royal Assent on 24 July 2015*

Justice Act (Northern Ireland) 2015

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 8

: Violent Offences Prevention Orders

Part 8 of the Act creates a new tool – the Violent Offences Prevention Order (VOPO) - to assist relevant criminal justice agencies in the management of risk from violent offending.

The VOPO, as a preventative measure, will benefit offenders in terms of helping to prevent the committal of further offences and will also benefit those affected by crime, by reducing the risk of, and the fear of, crime, which could lead to a potential decrease in the number of victims of crime and potential victims of crime.

Violent offences prevention orders

Section 55

: Violent offences prevention orders

This section defines a VOPO. It establishes that the order may contain such prohibitions or requirements as the court making the order considers necessary, in order to protect the public from the risk of serious violent harm caused by the offender.

It provides that an order can be made for a minimum period of two years, up to a maximum term of five years, unless the order is renewed or discharged by the court.

It defines the term ‘serious violent harm’ as ‘serious physical or psychological harm caused by a person committing one or more specified offences’. A ‘specified offence’ is defined as an offence listed in Part 1 of Schedule 2 to the Criminal Justice (Northern Ireland) Order 2008 (violent offences) .

It also provides a more restricted specification for the offence of assault occasioning actual bodily harm as a specified offence. The public is defined as being, either the general public, or any particular member of the public.

Section 56

: Violent offences prevention order made on conviction, etc

This section allows the court to make a VOPO at the point it is dealing with the offender in respect of a specified offence; or where the person is found not guilty of a specified offence by reason of insanity; or is unfit to be tried and has done the act charged in respect of a specified offence.

The court may make a VOPO where it is satisfied that it is necessary for the purpose of protecting the public from the risk of serious violent harm. A VOPO can be made in respect of specified offences committed (or alleged to have been committed) before, or after, commencement of this provision.

Section 57

: Violent offences prevention order made on application of Chief Constable

This section allows the Chief Constable to apply to the court for a VOPO in respect of a qualifying person who has, since the ‘appropriate date’, acted in such a way as to give him reasonable cause to believe that it is necessary for an order to be made.

It defines ‘appropriate date’ as the date the person was convicted of a specified offence, found not guilty of a specified offence by reason of insanity, or where he or she was found to be unfit to be tried and to have done the act charged in respect of a specified offence.

The application may be made in respect of those who reside in Northern Ireland, or who the Chief Constable believes is in, or is intending to come to, Northern Ireland.

In determining the necessity for a VOPO, the court must take into account whether the person is subject to any other statutory measures that would operate to protect the public from the risk of serious violent harm. The court must also be satisfied that the person qualifies for an order, and that the order is necessary for the purpose of protecting the public from the risk of serious violent harm from the person concerned.

Section 58

: Qualifying offenders

This section sets out what is meant by the term ‘qualifying offender’ in relation to applications made by the Chief Constable for a VOPO. A person can qualify if he or she has been: convicted of a specified offence or; found not guilty of a specified offence by reason of insanity or; found unfit to be tried and to have done the act charged in respect of a specified offence. This includes those offences or acts committed before, or after, commencement of this provision.

It also provides for offences committed outside Northern Ireland, in those cases where an act constituted a criminal offence in the country where it was committed and would have constituted a specified offence if it had have been committed in Northern Ireland. It stipulates that an act punishable under the

law of a country outside Northern Ireland constitutes an offence under that law; however it is described in that law. This includes those offences or acts committed before, or after, commencement of this provision.

It sets out that in those cases where an application for a VOPO is made by the Chief Constable, an act committed in a foreign jurisdiction which is an offence under that law, will be taken to be an act that would have constituted a specified offence if committed in Northern Ireland, unless the person (to whom the application relates) serves notice on the Chief Constable applying for the order denying that this is the case.

The person must give reasons for this and require the Chief Constable to prove the condition is met. It also allows the court to permit the person to require the Chief Constable to prove the condition is met, without having served such a notice.

Section 59

: Provisions that violent offences prevention orders may contain

This section specifies the prohibitions or requirements (or both) that the court may impose as part of the VOPO.

It stipulates that the order may only include those prohibitions or requirements that are necessary for the purpose of protecting the public from the risk of serious violent harm from the person to whom the order relates.

Section 60

: Variation, renewal or discharge of violent offences prevention orders

This section allows a person who is the subject of a VOPO, or the Chief Constable, to apply to the court for the VOPO to be varied, discharged, or renewed.

A VOPO may not be discharged before the end of the period of two years, beginning with the date on which it comes into force, unless consent to its discharge is given by the person to whom it relates, and the Chief Constable. A renewal order would be subject to a five year maximum limit. The variation of an order can impose additional prohibitions or requirements on the person.

A renewal or variation of an order can only be made if the court considers that it is necessary to do so for the purpose of protecting the public from the risk of serious violent harm caused by the person, and can only contain such prohibitions or requirements, as the court considers is necessary.

Section 61

: Interim violent offences prevention orders

This section allows the court to make an interim VOPO, where an application for a main VOPO is, or has been, made. The interim order will enable prohibitions or requirements to be placed on the person's behaviour pending determination of the main order. It specifies that the interim order can be imposed for a fixed

period, as defined in each order and that an interim order will cease to have effect at the end of this fixed period or (if before), when a decision is taken on the main application.

It ensures that an interim order can only be made when the court is satisfied that the individual qualifies for an order; that the court would be likely to make a main order; and that it is considered desirable to act before the determination of the main application to secure immediate public protection from the risk of serious violent harm caused by the person concerned.

An interim order cannot come into force whilst a person is subject to a custodial sentence or is detained in hospital. An interim order can be varied or discharged in the same way as a main order.

Section 62

: Notice of applications

This section provides that a court may not begin to hear an application for a main or an interim VOPO, or an application to vary, discharge or renew a VOPO, unless it is satisfied that the person to whom it will be subject has been given reasonable notice of the application, and the time and place of the hearing.

Section 63

: Appeals

This section provides for appeals to be made to the appropriate court against the making of a main or interim VOPO, or the making, or refusal to make a renewal, variation or discharge of a VOPO.

It provides that where an appeal is made against the making of a VOPO on conviction, the court will deal with the matter as if the order were a sentence passed on the person for a specified offence. Those appeals brought against the making of a VOPO as a consequence of an application by the Chief Constable, are to be made to the county court.

A person may also appeal the making of an order to vary, discharge or renew an order, or the refusal to make such an order. Where the original VOPO application was made to the Crown Court, the appeal must be brought to the Court of Appeal. In any other case, it would be brought to the county court.

It also provides that, the county court may make such orders as may be necessary to give effect to its determination of the appeal and that it may also make such incidental or consequential orders, as appear to it to be just.

Notification requirements

Section 64

: Offenders subject to notification requirements

This section provides that those subject to a VOPO, or an interim VOPO, will also be subject to notification requirements.

Section 65

: Notification requirements: initial notification

This section sets out the information which a person must provide to police when he or she first makes a notification, and the timescales within which he or she is required to provide that information. The required information includes (but is not restricted to): the person's name; date of birth; home address; and national insurance number. Where the person is homeless, or has no fixed abode, they must notify an address, or location, where they can be regularly found.

Information must be provided to the police within three days of the main or interim VOPO coming into force. When determining the three day period, any time when a person is: remanded in, or is committed to, custody by an order of a court; serving a custodial sentence; detained in a hospital; or is outside the United Kingdom, is to be disregarded.

It also allows for the inclusion of additional information to be provided to the list of required information. This would be prescribed by regulations made by the Department (subject to the affirmative resolution procedure).

Section 66

: Notification requirements: changes

This section stipulates that the person must notify police of any changes made to the information initially provided.. This must be done within a three day period from the date when the change occurs. It also allows the person to notify the police before a change to the information occurs. This advance notification must include the date when the change is expected to occur.

Changes to information includes: the use of a name not previously notified; a new home address; any premises in the United Kingdom where they have stayed for a qualifying period (and which has not already notified to the police); any change relating to the address of any other premises in the United Kingdom at which they regularly reside or stay; a change to any other details prescribed by regulations made by the Department; and when they have been released from custody, or discharged from hospital detention.

A qualifying period is defined as a period of seven days, or two or more periods, in any twelve months, which taken together amount to seven days.

Section 67

: Notification requirements: periodic notification

This section requires the person to re-notify information provided to police at initial notification, within a defined period.

Where no changes have been made by the person since their initial notification, they would be required to re-notify the required information annually effective from the date of their initial notification. However, where changes have been

made to the information subsequently, the annual re-notification date would, instead, be effective from the date they notified information changes to police.

Where the effective date ends whilst the offender is: remanded in or committed to custody by an order of a court; serving a custodial sentence; detained in a hospital; or is outside the United Kingdom, they would be required to re-notify three days from their release, discharge, or return.

It also provides that those who do not have a sole or main residence in the United Kingdom may be subject to a different frequency of notification requirements. This would be prescribed by regulations made by the Department (subject to the affirmative resolution procedure).

This provision does not apply to those subject to an interim order.

Section 68

: Notification requirements: absence from notified residence

This section requires the person to notify the police in advance, if they intend to leave their registered home address for more than three days to travel elsewhere in the United Kingdom, but where they are not intending to reside at another address which has been, or must be, notified under these provisions.

Section 64

: Notification requirements: travel outside the United Kingdom

This section provides the Department with the ability to make regulations (subject to the affirmative resolution procedure), setting out notification requirements for those who wish to travel outside the United Kingdom. The regulations would oblige such persons to notify certain details concerning their travel plans to the police.

Section 70

: Method of notification and related matters

This section establishes how notification is to be made. It stipulates that the person must notify the police of the required information by attending a police station prescribed in regulations made by the Department under section 87(1) (a) of the Sexual Offences Act 2003. The information should be given orally and must be acknowledged by police in writing. It also allows police to take the person's fingerprints and photograph for verification purposes, as may be required.

It also provides that where the relevant fingerprints taken provide a complete and up to date set of fingerprints and are of better quality than those held for the offender under the Police and Criminal Evidence (Northern Ireland) Order 1989, those taken for the purpose of notification can be retained by police for the individual. The fingerprints of poorer quality must be destroyed.

It stipulates that photographs taken for notification purposes are destroyed once the offender ceases to be subject to notification requirements, but allows the

Chief Constable to apply to the court for an extension of photograph retention for a period of two years, following the end of the notification period. The Chief Constable and the offender can appeal against a court order given to extend the period of retention, or a refusal by the court to make an order.

Supplementary

Section 71

: Offences

This section sets out the penalties for failing to comply with the conditions of a VOPO or notification requirements. It stipulates that failure, without reasonable excuse, to comply with any prohibition or requirement of a full or interim VOPO, or any failure to comply with a notification requirement, without reasonable excuse, is an offence. It provides that those who knowingly provide false information on notification would also be committing an offence.

Where the person fails to comply with a notification requirement, the offence of failing to give a notification continues throughout the period during which the required notification is not given. An offender cannot be prosecuted more than once for the same failure.

The penalty for non-compliance is, on summary conviction, imprisonment for a period of up to six months, or a fine not exceeding the statutory maximum, or both. On conviction on indictment, the penalty is imprisonment for a period of up to five years, or a fine, or both.

Section 72

: Supply of information to relevant Northern Ireland departments or Secretary of State

This section allows the Chief Constable to verify information provided by the individual in compliance with their notification requirements, to ensure that the information notified is correct and that no detail has been omitted. This will be done by comparing the details provided at notification against information provided by the person to certain bodies performing Government functions: a relevant Northern Ireland department, the Secretary of State, or a person providing services to a relevant Northern Ireland Government department or the Secretary of State.

It allows the Chief Constable to share the information for the purposes of the prevention, detection, investigation or prosecution of offences under this Part. The information may only be shared for the purpose of checking that the information supplied to the police is accurate and for the purpose of compiling a report of the comparison. This must be carried out in compliance with the Data Protection Act 1998.

Section 73

: Supply of information by relevant Northern Ireland departments or Secretary of State

This section stipulates that a compiled information report may be provided to the police and that the police may retain and use the information solely for the purpose of prevention, detection, investigation or prosecution of offences.

It provides that the information provided to police by other Government Departments must be destroyed once the offender ceases to be subject to notification requirements, but allows the Chief Constable to apply for an order to extend the period of retention for a further two years from when the notification period ends.

The application to extend must be made within three months preceding the end of the notification requirement period. The Chief Constable and the offender can appeal against a court order to extend the period of retention, or a refusal by the court to make an order.

Section 74

: Information about release or transfer

This section allows the Department to make regulations (subject to the negative resolution procedure), requiring those who are responsible for the individual while he is serving a custodial sentence or detained in a hospital, to notify other specified persons of the fact that they have become responsible for that individual, and of the time they are released from custody, or transferred to another institution. The regulations would specify the person responsible and the person who must be notified.

Section 75

: Power of entry and search of offender's home address

This section provides the police with a power of entry and search of a person's home address. The application must be made to the court by a police officer of the rank of superintendent or above. The court may issue a warrant authorising police to enter the premises for the purpose of risk assessment and to search the premises, if it is satisfied that the specified requirements are met.

The requirements are: that the address specified in the application is an address which was last notified to the police as their home address, or there are reasonable grounds to believe that the person lives there or may regularly be found there; that it is necessary for police to enter and search the premises for the purpose of risk assessing the individual; and that the police have, on at least two occasions, sought to enter the premises and had been unable to do so.

It also provides that police may use reasonable force, to enter and search the premises, if necessary. The warrant may authorise the police to enter and search the premises on more than one occasion, if the court is satisfied that it is necessary to do so. It also provides that the court, when considering the need for a search warrant, must be satisfied that it is proportionate in all circumstances

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for police to enter and search the premises in the case where the premises is
resided in by a third party.

Section 76

: Interpretation of this Part

This section sets out definitions for the purposes of Part 8.