

EXPLANATORY MEMORANDUM TO

The Magistrates' Courts (Violent Offences Prevention Orders) Rules (Northern Ireland) 2016

S.R. No. 2016 No. 94

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Department of Justice to accompany the Statutory Rule (detailed above) which is laid before the Northern Ireland Assembly.

1.2 The Statutory Rule is made in exercise of the powers conferred by Article 13 of the Magistrates' Courts (Northern Ireland) Order 1981 and is subject to the negative resolution procedure.

2. Purpose

2.1 These Rules prescribe the procedure to be followed by the courts in relation to: an application for a violent offences prevention order and an interim violent offences prevention order; the variation, renewal or discharge of an order or interim order; and the manner in which a summons or an order required to be served, may be served.

3. Background

3.1 Part 8 of the Justice Act (Northern Ireland) 2015 ("the 2015 Act") makes provision for a Violent Offences Prevention Order (VOPO).

3.2 The VOPO provision of the 2015 Act allows the court, when dealing with an offender in relation to a specified offence, or on application by the police at a later stage, to make a VOPO or interim VOPO in order to protect the public, from the risk of serious violent harm from the offender. The VOPO provisions also allow the court to vary, renew or discharge a VOPO and to vary or discharge an interim VOPO.

3.3 A VOPO (whether a main or interim order) allows the court to place specified requirements or prohibitions on the offender, and the duration of a main order can range from a period of two to five years, as would be specified by the court.

3.4 Those subject to a VOPO or interim VOPO are also required to notify personal information to police and to update this periodically, including any changes to information given.

3.5 Failure to comply with the requirements or prohibitions of a VOPO, or its notification requirements, without reasonable excuse, is punishable on conviction, to imprisonment of up to five years.

4. Detail

4.1 This Statutory Rule sets out the procedure for the courts in dealing with applications for a VOPO. Its Schedule provides four template forms to be used by the courts.

4.2 Rule 1 provides that the Rules will come into operation on 1 June 2016.

4.3 Rule 2 provides that a summons issued on foot of a complaint for a VOPO under section 57 and an interim VOPO under section 61 of the 2015 Act, should be made by the court using Form 1 of the Schedule. It also provides that where a defendant wishes to dispute that an offence referred to in the summons is a specified offence (as set out in section 55(1) (3) and (4) of the 2015 Act), then they should, not less than 3 days before the date of hearing, serve notice under section 58(6) of the 2015 Act on the Chief Constable and, at the same time, serve a copy on the clerk of petty sessions. It also provides that a VOPO should be made by the court using Form 2 of the Schedule, and that an interim VOPO should be made by the court using Form 3 of the Schedule.

4.4 Rule 3 provides that a summons issued on foot of a complaint for the variation, renewal or discharge of a VOPO under section 60 of the 2015 Act and for a variation or discharge of an interim VOPO under sections 60 and 61(7), should be made using Form 4 of the Schedule and that the proceedings for same are to be held in a court of summary jurisdiction.

4.5 Rule 4 prescribes the manner in which a summons or an order required to be served under these Rules may be served.

4.6 Specifically, it provides that a summons should be served by a member of the Police Service of Northern Ireland in person, or by ordinary post to the person's last known address. A summons on foot of a complaint for a variation, renewal or discharge of an order is to be issued in accordance with paragraphs (2), (6) and (7) of Rule 11 of the Magistrates' Courts Rules (Northern Ireland) 1984 (S.R.1984 No 225), by delivering it to any police station within the petty sessions district in which proceedings are to take place, to the officer in charge of that station.

4.7 Where a VOPO or interim VOPO has been made by the court, a copy shall be served by the clerk of petty sessions on the defendant: in person if practicable, where the defendant is present; or by sending it by ordinary post to their last known address, or any address which may have been notified under Part 8 of the 2015 Act. Where an order varying, renewing or discharging an order is made by the court, a

copy of the order will be served on the defendant: in person if practicable, where the defendant is present; or by sending it by ordinary post to their last known address or any address which may have been notified under Part 8 of the 2015 Act.

5. Consultation

5.1 A full public policy consultation was carried out by the Department on VOPO policy more generally during July to October 2011, with further, more targeted consultations carried out with relevant stakeholders regarding their impact on young offenders and separately, the inclusion of additional notification requirements for those subject to a VOPO.

5.2 The Rules were made by the Magistrates' Courts Rules Committee, an advisory board comprising members of the judiciary and legal profession.

6. Equality Impact

6.1 There are no issues of equality to be considered. The Rules do not amend VOPO policy in any way, rather they relate purely to operational and procedural requirements.

6.2 Any issues relating to the VOPO policy would have been addressed fully at the primary legislation stage.

7. Regulatory Impact

7.1 A Regulatory Impact Assessment was not considered necessary.

8. Financial Implications

8.1 There are no financial implications in respect of this policy.

9. Section 24 of the Northern Ireland Act 1998

9.1 The legislation is considered compatible with section 24 of the Northern Ireland Act 1998.

10. EU Implications

10.1 There are no EU implications arising from the Regulations.

11. Parity or Replicatory Measure

11.1 The VOPO is unique to Northern Ireland. An order broadly similar to its aim and underlying principles – the Violent Offender Order (VOO) - was introduced in England and Wales by Part 7 of the Criminal Justice and Immigration Act 2008. Relevant court rules have been made in England and Wales to provide the court procedures relevant to the VOO.

12. Additional Information

12.1 Not Applicable