

*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

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.