

# CRIMINAL JUSTICE AND IMMIGRATION ACT 2008

---

## EXPLANATORY NOTES

### THE ACT

#### *Commentary on Sections*

#### **Part 7: Violent offender orders**

#### ***Section 98: Violent offender orders***

593. This section provides for a new civil order, a violent offender order (VOO), which is designed to protect the public from the current risk of serious violent harm posed by a qualifying offender (as defined in section 99).
594. *Subsection (1)(a)* establishes that VOOs may contain such prohibitions, restrictions or conditions authorised by section 102 that the court making the order considers necessary to protect the public from the risk of serious violent harm caused by the offender. *Subsection (1)(b)* provides that the minimum period of the order is two years and that the maximum period is 5 years (unless the order is renewed or discharged using the powers under section 103).
595. *Subsection (2)* defines the public as either the general public or any particular member of the public in the United Kingdom. Serious violent harm is defined as being serious physical or psychological harm caused by the offender committing one or more specified offences, as defined in *subsection (3)*.

#### ***Section 99: Qualifying offenders***

596. This section specifies the criteria which must be met before a person can be eligible for a violent offender order. A person can be a qualifying offender if he is 18 or over and comes within *subsection (2)* or *(4)*.
597. *Subsection (2)* provides that to be a “qualifying offender” one of the following conditions must have been met. The offender must have (a) been convicted of a specified offence and either given a custodial sentence of at least 12 months or a hospital order; (b) been found not guilty of a specified offence by reason of insanity; or (c) been found by a court to have a disability and to have done the act charged in respect of a specified offence. In respect of a person within (b) or (c), the court must also have made an order within *subsection (3)* for him to be a qualifying offender. The offence or act may have been committed before or after the commencement of this Part of the Act.
598. *Subsection (4)* relates to offences committed outside England and Wales, and in effect provides that the criteria listed in *subsection (2)(a)* apply in respect of relevant offences committed in other jurisdictions, and that those listed in *subsection (b)* and *(c)* apply in respect of equivalent findings of courts. Similarly, there must have been an order made equivalent to one mentioned in *subsection (3)*.

599. *Subsection (5)* defines a relevant offence for the purposes of subsection (4) as one that was both a criminal offence in the country where it was committed, and would have constituted a specified offence if it had been committed in England and Wales. *Subsection (6)* provides that an act punishable under the law of a country outside England and Wales constitutes an offence under that law however it is described in that law.
600. *Subsection (7)* sets out that an act committed in a foreign jurisdiction, and that is an offence under that law, will be taken to be an act that would have constituted a specified offence if committed in England and Wales, unless the offender serves notice on the person applying for the order denying that this is the case, giving reasons for this and requiring the applicant to prove the condition is met. *Subsection (8)* allows the court to permit the offender to require the applicant to prove the condition is met without having served such a notice.

### ***Section 100: Applications for violent offender orders***

601. This section sets out who may apply for a VOO to be made, and in what circumstances.
602. *Subsection (1)* provides that a chief officer of police may apply for a VOO to be made in respect of a person who lives in his police area, or who he believes is in or is intending to come to that area, providing that certain conditions are met.
603. *Subsection (2)* sets out these conditions as being that the person is a qualifying offender (as defined in section 99), and has since the “appropriate date” (as defined in *subsection (5)*) demonstrated behaviour giving reasonable cause to believe that a VOO is necessary.
604. *Subsection (3)* provides that an application for a VOO may be made to any magistrates’ court whose commission area includes any part of the applicant’s police area or any place where it is alleged that the person acted in such a way as to demonstrate the behaviour referred to in subsection (2).
605. *Subsection (4)* contains a reserve order-making power (subject to the negative resolution procedure) to enable other persons or bodies to apply for a VOO.

### ***Section 101: Making of violent offender orders***

606. This section sets out the conditions which must be met before a court can make a violent offender order.
607. Under *subsection (2)* a court can only make a VOO where it is satisfied that the person has been heard if he wishes to be and that the conditions in subsection (3) are met.
608. *Subsection (3)* specifies that before a VOO can be made the court must be satisfied that the person is a “qualifying offender” as defined in section 99 and that the person has, since the appropriate date, acted in such a way as to make it necessary to make a violent offender order for the purpose of protecting the public from the current risk of serious harm caused by the person.
609. *Subsection (4)* specifies that before a VOO can be awarded the court must also have regard to whether the person would, at any time when such an order would be in force, be subject to any other legislative measures that would operate to protect the public from the risk of such harm.
610. *Subsection (5)* ensures that a VOO cannot come into force at any time when the offender is subject to a custodial sentence, is on licence or is subject to a hospital order or a supervision order made in respect of any offence.
611. *Subsection (6)* enables an order to be applied for or made at such a time as described in subsection (4).

***Section 102: Provisions that orders may contain***

- 612. This section provides an exhaustive list of the conditions, prohibitions and restrictions that the court may impose as part of a VOO. These are set out in *subsection (1)* and can prevent an individual from going to a specified place or event or from having contact with a specified individual.
- 613. *Subsection (2)* enables conditions to be imposed in relation to conduct in Scotland and Northern Ireland as well as in England or Wales.
- 614. *Subsection (3)* contains an order-making power (subject to the affirmative resolution procedure) to enable the list of conditions to be amended.

***Section 103: Variation, renewal or discharge of violent offender orders***

- 615. This section provides for the offender subject to an order or the various chief officers of police listed in *subsection (2)* to apply for an order to be varied, renewed or discharged (subject to the five year maximum limit).
- 616. The offender might, for example, seek to vary an order if he finds the prohibitions are operating on him unduly harshly. He might apply for a discharge if he intended to emigrate. A chief officer of police who believes the offender is moving to his or her area might apply for a variation if, for example, the order was made when the offender was living in another part of the country and only restricted the offender's behaviour in that original area.
- 617. *Subsection (7)* provides that the order 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 offender and one of the chief officers of police listed in *subsection (7)*.

***Section 104: Interim violent offender orders***

- 618. This section enables the court to make an interim order when an application for a VOO is made (or has been made) under section 100.
- 619. The purpose of an interim VOO is to enable prohibitions to be placed on the offender's behaviour pending the application for the full order being determined. *Subsection (3)* ensures that an interim order can only be made when the court is satisfied that the individual is a qualifying offender; that if the court were determining the main application it would be likely to make a VOO in respect of that person; 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 individual.
- 620. *Subsection (4)* provides that an interim VOO may only contain conditions from the exhaustive list set out in section 102.
- 621. *Subsection (6)* specifies that interim VOOs can be imposed for a fixed period as defined in each order and cannot be renewed after this time. Interim VOOs cease to have effect at the end of this fixed period or (if before) when a decision is taken on the main application.

***Section 105: Notice of applications***

- 622. This section applies to any application in relation to a VOO or interim VOO and ensures that the court may not begin hearing an application unless it is satisfied that the person has been given reasonable notice of the application and the time and date of the hearing.

**Section 106: Appeals**

623. This section provides for appeals to the Crown Court against the making of a VOO or an interim order, or against a decision to make or refuse an order varying or discharging a VOO or an interim order.
624. *Subsection (3)* provides that on an appeal the Crown Court may make such orders as may be necessary and may also make such incidental or consequential orders as appear to it to be just. *Subsection (4)* provides that an order of the Crown Court made on an appeal shall be treated for the purposes of the provisions relating to variation and discharge of orders (section 103) as an order of the magistrates' court from which the appeal was brought.

**Section 107: Offenders subject to notification requirements**

625. This section provides that all offenders subject to full or interim VOOs will also be subject to notification requirements.

**Section 108: Notification requirements: initial notification**

626. This section sets out the information the offender needs to supply to the police when he or she first makes a notification and the timescales within which he or she is required to provide that information.
627. *Subsection (1)* requires the offender to notify the required information to the police within 3 days of the full or interim VOO coming into force. *Subsection (4)* provides that when determining the period of 3 days, any time in which the offender is remanded in or committed to custody or kept in service detention, serving a sentence of imprisonment or a term of service detention, detained in a hospital or outside the United Kingdom should be disregarded.
628. The details in *subsection (2)* include the offender's home address. The term "home address" is defined in *subsection (5)*. This provides that where an offender is homeless or has no fixed abode his "home address" means an address or location where he can be regularly found. This might, for example, be a shelter, a friend's house, a caravan or a park bench. Under *subsection (2)(h)* and (3), further additions can be made to the list of required information as prescribed by the Secretary of State in regulations (subject to the affirmative resolution procedure).

**Section 109: Notification requirements: changes**

629. This section sets out the requirements on a relevant offender to notify the police when there are changes to his notified details. This includes changes to any new requirements as provided for in section 108(2)(h) and (3). As a result of *subsection (2)(c)* an offender must notify the police, within 3 days, of the address of any premises in the UK at which he has stayed for a "qualifying period" and, which he has not already notified to the police. This place might be a friend or relative's house or a hotel where he has stayed. A "qualifying period" is defined at *subsection (9)* and is a period of 7 days, or two or more periods, in any twelve months, which taken together amount to 7 days.
630. *Subsection (4)* allows an offender to notify the police before a notifiable event occurs. The advance notification must give a date when the event is expected to occur.

**Section 110: Notification requirements: periodic notification**

631. This section provides (*subsection (1)*) that an offender must re-notify the police of the details set out in section 108(2) within a defined period of each notification date, unless during this period he re-notifies, because of a change of circumstances, under section 109.

632. This means that where a person becomes subject to the notification requirements and there is no “notifiable event” under section 109, he will have to re-notify within a year of his initial notification and annually thereafter. The only exception to this is if the last home address notified by the offender was such as mentioned in section 108(5)(b) i.e. when an individual does not have a sole or main residence in the United Kingdom. In this instance, the individual may be subject to a different frequency of notification requirements as prescribed by regulations made by the Secretary of State (subject to the affirmative resolution procedure). Where a person does notify his having stayed away from home for 7 days, for example, he will have to re-notify the police of the information set out in section 108(2) within a year of giving the notification of having stayed away from home. If within that year he notifies another period spent away from home, or a change of name or address, the need to re-notify the details set out in section 108(2) will be put back to a year after that latter notification.
633. *Subsection (7)* provides that nothing in this section applies to an offender who is subject to an interim VOO.

### ***Section 111: Notification requirements: travel outside United Kingdom***

634. *Subsection (1)* provides a power for the Secretary of State to make regulations (subject to the affirmative resolution procedure) setting out notification requirements for relevant offenders who travel outside the UK. The regulations would oblige such persons to notify certain details concerning their travel plans to the police. The regulations made under this section would be similar to those made under section 86 of the Sexual Offences Act 2003 (see the [Sexual Offences 2003 \(Travel Notification Requirements\) Regulations 2004 \(SI 2004/1220\)](#)).

### ***Section 112: Method of notification and related matters***

635. This section describes how and where an offender is required to notify information to the police under the sections relating to initial notification, change of details and periodic notification. Under *subsection (1)* the offender must notify the police of the relevant information by attending any police station in the offender’s local police area and giving an oral notification to any police officer or other authorised person at that station. The term “local police area” is defined in *subsection (5)*.

### ***Section 113: Offences***

636. *Subsection (1)* establishes that failure, without reasonable excuse, to comply with any prohibition, restriction or condition of a full or interim VOO is a criminal offence. Under *subsection (2)*, a failure to comply with a notification requirement, without reasonable excuse, is also an offence. Offences apply throughout the UK even though VOOs can be imposed only by courts in England and Wales.
637. Where the offender has failed to comply with a notification requirement *subsection (4)* provides that 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.
638. An offence will not be committed where the person has a “reasonable excuse” for failure to comply with a term of an order, or a notification requirement. This might be, for example, where an offender does not provide the information in the required time scale because he is in hospital following an accident.

### ***Section 114: Supply of information to the Secretary of State etc.***

639. [Sections 114](#) and [115](#) provide a power for the police to verify that an offender has notified the correct details in compliance with sections 108 to 111, and that he or she is not omitting any details (such as another name or address he or she uses). This will be

done by comparing the details provided at notification against information the offenders will have provided to certain bodies performing Government functions.

640. Under *subsection (2)* a chief officer of police can share such information, for the purposes of the prevention, detection, investigation or prosecution of offences under this Part, with the Secretary of State or a person providing services to the Secretary of State in connection with a relevant function. *Subsection (7)* defines “relevant function” such that this section includes those bodies which perform social security, child support, employment and training functions on behalf of the Secretary of State for Work and Pensions, those who perform functions in relation to passports on behalf of the Home Secretary, and those who perform functions under Part 3 of the Road Traffic Act 1988 on behalf of the Secretary of State for Transport (i.e. the Driver and Vehicle Licensing Agency).
641. By virtue of *subsection (1)*, the details the police may provide to these bodies are an offender’s date of birth, national insurance number, any names he or she has notified, and his or her home address and any other addresses notified. This information may have been supplied by an offender at his initial notification, when notifying a change, or at his periodic notification.
642. Under *subsection (3)* this information may only be shared for the purpose of checking that the information supplied to the police by the offender is accurate and for the purpose of compiling a report of the comparison. It could not, for example, be used by DWP to pursue someone for a child support payment.
643. *Subsection (5)* provides that any transfer of data must comply with the Data Protection Act 1998.

#### ***Section 115: Supply of information by Secretary of State etc.***

644. This section provides that the report compiled under subsection (3)(b) of section 114 may be provided to the police. The police may retain the information and use it in the prevention, detection, investigation or prosecution of offences but for no other purpose. This would include an offence under section 113 of failing to comply with the notification requirements or by providing false information at notification (see *subsection (3)* of that section). In addition, the information may be used to prevent, detect, investigate or prosecute other offences: for example, information that identified the possible whereabouts of an offender who was wanted for robbery could be used by the police in investigating that offence.

#### ***Section 116: Information about release or transfer***

645. This section allows the Secretary of State to make regulations (subject to the negative resolution procedure) requiring those who are responsible for an offender while he is being detained in any of the ways mentioned in *subsection (1)* to notify other relevant authorities of the fact that they have become so responsible, of his release or transfer to another institution. The regulations may specify the person responsible for the offender (for example, the Chief Executive of a hospital) and the person who must be notified. An example might be the governor of a prison being required to inform the local chief officer of police when a relevant offender is about to be released from his prison.

#### ***Section 117: Interpretation of Part 7***

646. This section sets out definitions for the purposes of Part 7.