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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

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IN THE MATTER OF AN APPLICATION BY THOMAS PEARCE FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

-v-

DEPARTMENT OF JUSTICE

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Before: McCloskey LJ, Huddleston J and His Honour Judge McFarland, Recorder of Belfast

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McCLOSKEY LJ (delivering the judgment of the court)

Criminal cause or matter?

[1] The question of whether these proceedings attract the "*criminal cause or matter*" provisions of the Judicature (NI) Act 1978 (the "*1978 Act*") was raised proactively by the court at an early stage. The applicable provisions of the 1978 Act are section 41(1), section 120 and Schedule 2. This elicited competing contentions on behalf of the parties.

[2] This question arose in two recent decisions of the High Court, namely *Re McGuinness' Application (No 1)* [2019] NIQB 10 and *Re McGuinness' Application (No 2)* [2019] NIQB 76. In the first of these cases the decision impugned was that of the Secretary of State for Northern Ireland (the "*Secretary of State*") referring a prisoner's case to the Parole Commissioners for Northern Ireland for consideration, pursuant to Article 6(4)(a) of the Life Sentences (NI) Order 2001. In the second of these cases, involving the same challenging party and the same prisoner, the High Court determined that the criminal cause or matter provisions of the 1978 Act did not apply to decisions made by the Parole Commissioners under a different statutory regime, namely the Northern Ireland (Sentences) Act 1998, notwithstanding the recognition of "*multiple criminal justice trappings*": see [38] – [40] and [45].

[3] In *McGuinness No 1*, following certification by the High Court under section 41 of and Schedule 2 to the 1978 Act and the ensuing grant of leave to appeal by the Supreme Court, the criminal cause or matter characterisation of those proceedings became an issue in consequence of an intervention by the Attorney General for Northern Ireland ("*AGNI*"). A matter of choreography arose, given that the Supreme Court heard the appeal in *McGuinness No 1* on 16 October 2019 and the hearing of the present case occurred on 04 November 2019. This court determined to complete the hearing, while ruling that it would not promulgate its substantive decision until that of the Supreme Court had been made available.

[4] The Supreme Court promulgated its decision in *Re McGuinness No 1* on 19 February 2020: see [2020] UKSC 6. The effect of that decision is that the instant case is not a criminal cause or matter.

The Challenge

[5] In its initial incarnation, the substance of this judicial review challenge, which is proceeding via the so-called "*rolled-up*" mechanism, entailed firstly the contention that the Violent Offences Prevention Order (Notification Requirements) Regulations (NI) 2016 (the "*Violent Offences Regulations*") are unlawful. The second challenge is that the Violent Offences Prevention Order ("*VOPO*") made in respect of the Applicant is unlawful. The species of illegality asserted is an infringement of his rights under Articles 7 and 8 of the European Convention on Human Rights ("*ECHR*"), contrary to section 6 of the Human Rights Act 1998 ("*HRA 1998*").

[6] Given the first of the challenges noted above, among the formal documents generated by these proceedings are a HRA 1998 Act Notice pursuant to Order 121, Rule 2 of the Rules of the Court of Judicature of Northern Ireland 1980 ("the Rules") and a Notice specifying a Devolution Issue pursuant to Order 120, Rule 2. This stimulated the response of AGNI noted in [3] above. In the event, at the hearing the court was informed by Mr Ronan Lavery QC (with Mr Conan Fegan, of counsel) representing the Applicant that, following consideration, it had been decided not to maintain the first challenge. The issue of Respondent parties was also clarified and resolved. As a result the case proceeded against the following two agencies:

(a) The first, the Department of Justice ("*DOJ*"), is the authority which devised the Violent Offences Regulations.
(b) The second is the County Court Judge who affirmed the impugned VOPO on appeal.

The judge elected not to be represented.

The Applicant and the Impugned VOPO

[7] The Applicant has not sworn any affidavit. The following averments in the first of three affidavits sworn by his solicitor, Mr Ciaran O'Hare, set the scene:

> "*An application by the PSNI has been made for a Violent Offences Prevention Order (VOPO) against the Applicant following his release from custody on 25 April 2017. He has served a full term extended custodial sentence of six years in relation to violent offending against his ex-girlfriend. This is only the third VOPO to be issued in Northern Ireland …*
>
> *His prison history was such that he was not admitted to parole on his first application and it took a few attempts before he was eventually released. His release was short-lived because he almost immediately dis-engaged with probation and left his notified address to return to Banbridge where he was excluded …. that his ex-girlfriend, the injured party, still resided there. When police came to arrest him he evaded them by jumping from a balcony. These events meant his licence was revoked and since then he remained in custody until his release on 25 April 2017.*"

This precipitated a police application, on notice to the Applicant, for an interim VOPO, giving rise to two successive interim VOPOs, dated 24 April 2017 and 11 May 2017 respectively: see [8] *infra.*

[8] At this juncture it is convenient to insert the following chronology:

(i) **03 July 2008:** convictions of the Applicant for the first series of offences identified in the PSNI application to the court for an interim VOPO.

(ii) **15 December 2008**: further convictions of the Applicant, including a Crown Court conviction for the offence of wounding, punished by imprisonment for 18 months.

(iii) **26 March 2009**: further convictions of the Applicant.

(iv) **16 November 2009:** further convictions of the Applicant.

(v) **30 November 2010**: further convictions of the Applicant including two offences of possessing an offensive weapon in a public place attracting imprisonment of eight months each, concurrent.

(vi) **15 November 2011**: further convictions of the Applicant for sundry offences, including breaches of suspended sentence orders.

(vii) **17 April 2012**: further convictions of the Applicant including threats to kill, false imprisonment, possession of an offensive weapon with intent and wounding, punished by (commensurately) an extended custodial sentence of three years and six months imprisonment (as identified in the PSNI application for the interim VOPO).

(viii) **12 April 2017**: PSNI application to the Magistrates' Court for an interim VOPO.

(ix) **24 April 2017**: First Interim VOPO, made by Newry Magistrates' Court.

(x) **11 May 2017**: Second Interim VOPO made by the same court.

(xi) **25 September 2017 – 13 April 2018**: remand custody in respect of sundry offences.

(xii) **20 December 2017**: final VOPO.

(xiii) **06 June – 27 June 2018**: remand custody in respect of further offences (on bail 20 – 22 June).

(xiv) **22 July 2018**: Further offences – threats to kill *et al*. Remanded in custody thereafter.

(xv) **12 December 2018**: sentenced to 11 months imprisonment.

(xvi) **17 December 2018**: County Court Order dismissing appeal against final VOPO.

(xvii) **13 February 2019**: further remand custody and sentence custody, with an earliest release date of 16 April 2019.

(xviii) **10 July – 09 August 2019**: remand custody in respect of further offences allegedly committed on 07 June 2019.

(xix) **09 August 2019**: granted bail.

(xx) **23 September – 10 October 2019**: recommitted to remand custody.

(xxi) **10 August 2019**: granted bail.

(xxii) **12 and 13 October 2019**: further alleged offences of assault, threats to kill and breach of VOPO.

(xxiii) **15 October 2019**: further remand custody.

All of the VOPOs detailed above were couched in the same terms: see [11] *infra*.

[9] The police application for the VOPO was made on notice to the Applicant, then in custody following the revocation of his release licence and his solicitors. The application rehearses a series of instances of violent conduct on the part of the Applicant, dating from February 2008 and generating convictions for *inter alia* criminal damage, assaulting the police, wounding with intent, possession of an offensive weapon, assault occasioning actual bodily harm, threats to kill, false imprisonment and breach of probation order. The offences perpetrated against the Applicant's former girlfriend occurred on various dates in 2010 and 2011 (see above). They entailed the infliction of injuries to the head and face consisting of lacerations, contusions and bruising. The index offences were carried out on 24 May 2011. They entailed breaking into the former girlfriend's house, criminal damage, lacerating her upper leg twice with a Samurai sword, false imprisonment and threatening to kill her. The Applicant was convicted of this cluster of offences on 17 April 2012 (*supra).* He was sentenced to 3 ½ years' imprisonment to be followed by 2 years licenced release. He was released on licence on 23 April 2015, his licence was revoked on 25 May 2015 and he was ultimately released on 25 April 2017. The first interim VOPO was made the previous day (*supra*).

[10] The second affidavit of the Applicant's solicitor discloses that the police application for the substantive VOPO was listed at Newry Magistrate's Court on 20 December 2017. The order was granted. On 17 October 2018 the County Court dismissed the Applicant's appeal. The judicial review proceedings had been commenced on 11 July 2017 and were inert during the intervening period. They were ultimately revived following proactive intervention by the court in mid-2019, giving rise to a total of eight case management orders spanning the period April to October 2019. At the stage when this court conducted its hearing (04 November 2019) the Applicant remained in custody and the impugned VOPO, having a specified duration of two years, had a lifespan balance of less than two months, being scheduled to expire on 19 December 2019. The third affidavit sworn by the Applicant's solicitor is formal and perfunctory in nature.

[11] The operative part of the impugned VOPO is in the following terms:

> *"IT IS ORDERED THAT the Defendant is subject to the following conditions:*
>
> *The defendant is prohibited from: Any form of communication, contact or approach with [the IP].*
>
> *From residing at an address without prior approval from your DRM or staying overnight at any other address or place without prior approval of your DRM and or Social Services.*

From entering into any personal relationship with any female without verifiable disclosure as to the nature of your offending being made to that person by your DRM and or Social Services.

Having any unsupervised contact either directly or indirectly with children under the age of 18 or vulnerable adults without prior approval of your DRM and or Social Services.

From being in a state of intoxication, by whatever means, in a public place.

The defendant must receive visits from and keep in touch with your DRM.

The defendant must engage in courses designed to reduce your risk as recommended and offered by your DRM, Probation or other agencies to assist you with your Addictions, Anger Management and Relationship problems.

Duration: for 2 years.

And while this order (as renewed from time to time) has effect, the defendant shall be subject to the notifications requirements of Part 8 of the Justice Act (Northern Ireland) 2015 and the 'relevant date' within the meaning of that Part is the date of service of this order."

(The injured party has been anonymised by this court and is described by the cipher *"IP".)*

[12] To summarise, the impugned VOPO prohibited the Applicant from engaging in any of the following forms of contact:

(i) Any form of communication, contact or approach with the IP.

(ii) Residing at an address without prior approval from his designated risk manager ("DRM") or staying overnight at any place without prior approval of the DRM and/or Social Services.

(iii) Entering into any personal relationship with any female person in the absence of prior DRM/Social Services disclosure to such person of the nature of his offending.

(iv) Having any unsupervised contact with children aged under 18 or vulnerable adults without prior DRM/Social Services approval.

(v) Being intoxicated in a public place.

Finally, the order obliged the Applicant to engage in appropriate addictions, anger management and relationship courses as recommended and offered by his DRM, probation or other agencies.

Legal Framework

[12] The VOPO was devised, and is regulated, by Part 8 of the Justice (NI) Act 2015 ("*the 2015 Act*"). The first swathe of material provisions in the 2015 Act consists of the following:

Section 55 (1) – (3)

> *"A violent offences prevention order is an order made under section 56 or 57 in respect of a person ("D") which –*
>
> *(a) contains such prohibitions or requirements authorised by section 59 as the court making the order considers necessary for the purpose of protecting the public from the risk of serious violent harm caused by D, and*
>
> *(b) has effect for such period of not less than 2, nor more than 5, years as is specified in the order (unless renewed or discharged under section 60).*
>
> *(2) For the purposes of this Part any reference to protecting the public from the risk of serious violent harm caused by a person is a reference to protecting –*
>
> *(a) the public, or*
>
> *(b) any particular members of the public,*
>
> *from a current risk of serious physical or psychological harm caused by that person committing one or more specified offences.*
>
> *(3) In this Part "specified offence" means an offence for the time being listed in Part 1 of Schedule 2 to the Criminal Justice (Northern Ireland) Order 2008 (violent offences)."*

Section 56

> *"A court may make a violent offences prevention order in respect of D where subsection (2) or (3) applies to D and the court is satisfied that it is necessary to make such an order for the purpose of protecting the public from the risk of serious violent harm caused by D.*
>
> *(2) This subsection applies to D where the court deals with D in respect of a specified offence.*
>
> *(3) This subsection applies to D where the court deals with D in respect of a finding –*
>
> *(a) that D is not guilty of a specified offence by reason of insanity, or*
>
> *(b) that D is unfit to plead and has done the act charged against D in respect of such an offence.*
>
> *(4) Subsections (2) and (3) apply whether the specified offence was committed (or alleged to have been committed) before or after commencement."*

[13] Thus the first situation in which a VOPO may be imposed is in a sentencing scenario. There is a second possibility by reason of section 57. The overarching statutory criterion is the same in both situations.

Section 57

> *"(1) A court of summary jurisdiction may make a violent offences prevention order in respect of D where subsection (2) applies to D and the court is satisfied that D's behaviour since the appropriate date makes it necessary to make such an order for the purpose of protecting the public from the risk of serious violent harm caused by D.*
>
> *(2) This subsection applies to D where –*
>
> *(a) an application under subsection (3) has been made to the court in respect of D, and*
>
> *(b) on the application, it is proved that D is a qualifying offender.*
>
> *(3) The Chief Constable may by complaint apply for a violent offences prevention order to be made in respect of a person who resides in Northern Ireland or who the Chief*

Constable believes is in, or is intending to come to, Northern Ireland if it appears to the Chief Constable that –

(a) the person is a qualifying offender, and

(b) the person has, since the appropriate date, acted in such a way as to give reasonable cause to believe that it is necessary for a violent offences prevention order to be made in respect of the person.

(4) In this section "the appropriate date" means the date (or, as the case may be, the first date) on which the person became a person within any of paragraphs (a) to (c) of section 58(2) or (3).

(5) On an application under subsection (3) in respect of D the court must –

(a) afford D an opportunity of making representations; and

(b) in deciding whether it is necessary to make a violent offences prevention order for the purpose of protecting the public from the risk of serious violent harm caused by D, have regard to whether D would, at any time when such an order would be in force, be subject under any other statutory provision to any measures that would operate to protect the public from the risk of such harm."

[14] This is followed by section 58, which contains definitions of "*qualifying offender*" and "*relevant offence*".

Section 58

"(1) In this Part "qualifying offender" means a person who is within subsection (2) or (3).

(2) A person is within this subsection if (whether before or after commencement) –

(a) the person has been convicted of a specified offence;

(b) the person has been found not guilty of a specified offence by reason of insanity, or

(c) the person has been found to be unfit to be tried and to have done the act charged in respect of a specified offence.

(3) A person is within this subsection if, under the law in force in a country outside Northern Ireland (and whether before or after commencement) –

(a) the person has been convicted of a relevant offence,

(b) a court exercising jurisdiction under that law has made in respect of a relevant offence a finding equivalent to a finding that the person was not guilty by reason of insanity, or

(c) the court has, in respect of a relevant offence, made a finding equivalent to a finding that the person was unfit to be tried and did the act charged in respect of the offence.

(4) In subsection (3) "relevant offence" means an act which –

(a) constituted an offence under the law in force in the country concerned, and

(b) would have constituted a specified offence if it had been done in Northern Ireland.

(5) An act punishable under the law in force in a country outside Northern Ireland constitutes an offence under that law for the purposes of subsection (4) however it is described in that law.

(6) Subject to subsection (7), on an application under section 57, the condition in subsection (4)(b) (where relevant) is to be taken as met in relation to the person to whom the application relates unless, not later than magistrates' court rules may provide, that person serves on the Chief Constable a notice –

(a) denying that, on the facts as alleged with respect to the act in question, the condition is met,

(b) giving the reasons for denying that it is met, and

(c) requiring the Chief Constable to prove that it is met.

(7) If the court thinks fit, it may permit that person to require the Chief Constable to prove that the condition is met even though no notice has been served under subsection (6)."

The final provision in this discrete cohort is section 59, which regulates the provisions which may permissibly be incorporated in a VOPO.

Section 59

> *"(1) A violent offences prevention order may contain provisions prohibiting D from doing anything described in the order or requiring D to do anything described in the order (or both).*
>
> *(2) The only prohibitions or requirements that may be included in the order are those necessary for the purpose of protecting the public from the risk of serious violent harm caused by D."*

[15] It suffices to summarise, without reproducing, the next ensuing suite of provisions in Part 8 of the 2015 Act:

(i) **Section 60** enables either the subject of a VOPO or the Chief Constable to apply to the appropriate court for an order varying or discharging the VOPO or renewing same for a maximum period of five years. The criterion for either such order replicates that specified in section 55(1)(a) (*supra*). The discharge of a VOPO before the end of the period of two years beginning with the date upon which it came into force is not possible unless both the subject and the Chief Constable consent.

(ii) **Section 61** makes provision for an interim VOPO in circumstances where the substantive application has not been determined. The threefold conditions are that the subject is a qualifying offender, the application for a substantive order is likely to succeed and the test replicating that in section 55(1)(a), with the additional requirement of immediacy, is satisfied.

(iii) **Section 62** provides that the subject must be given appropriate notice of every application for a VOPO, whether interim or final.

(iv) **Section 63** makes provision for an appeal to the appropriate court against all of the various types of VOPO, including refusals to vary or discharge, devised by sections 56, 57 and 60.

[16] Part 8 of the 2015 Act continues with a collection of provisions, sections 64 – 73, under the rubric "*Notification Requirements*". These provisions apply in their totality to every person who is the subject of a VOPO or an interim VOPO, per section 64(1). As they form part of the legal matrix to which the Applicant's challenge to the impugned VOPO belongs, they fall to be considered. In view of their bulk they have been separately assembled in the Appendix to this judgment.

[17] The next discrete segment of the statutory framework is constituted by the Violent Offences Regulations. These are a measure of subordinate legislation

contained in SR (NI) 2016. The enabling primary legislation powers are contained to be sections 65(2)(h), 66(2)(d) and (3)(d), 67(5)(a) and 69 of the 2015 Act. The accompanying Explanatory Note indicates that this measure prescribes "*additional notification requirements*" for any person subject to a VOPO or interim VOPO under Part 8 of the 2015 Act. It continues:

> "*Notification requirements involve the provision of personal information to the police, both at the outset and periodically thereafter and require them to also notify certain changes in circumstances.*"

The Violent Offences Regulations may be summarised thus:

(i) Every VOPO subject proposing to depart the United Kingdom (except to travel to the Republic of Ireland) must provide advance notification in accordance with the requirements of Regulations 10 and 11. The information to be provided includes particulars of the proposed accommodation and the dates of the envisaged sojourn.

(ii) Similar information must be provided by every VOPO subject within three days of returning to the United Kingdom.

(iii) Every proposed stay at "*a relevant household*" must be preceded by advance notification of prescribed information.

(iv) Relevant changes of circumstances must also be notified in the prescribed form.

(v) Notification of information about bank accounts and credit cards is required in accordance with the detailed regime established by Regulation 18.

(vi) *Ditto* information about a subject's passport or other form of identification (Regulations 20 and 21).

The requisite notifications must be given to the appropriate specified agency.

The Human Rights Dimension

[18] The statutory framework is completed by HRA 1998. By section 6 thereof it is unlawful for a public authority to act incompatibly with any of the protected Convention rights. In passing, each of the proposed Respondents in these proceedings is a public authority within the embrace of the section 6 duty. The Applicant invokes two Convention rights:

Article 7

> *"1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.*
>
> *2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilized nations."*

Article 8

> *"1. Everyone has the right to respect for his private and family life, his home and his correspondence.*
>
> *2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."*

The Respondents' Evidence

[21] Evidence has been filed on behalf of both DOJ and the Chief Constable of the Police Service of Northern Ireland ("PSNI"). The provision of evidence by the latter agency is explained by the fact that until a very late stage of these proceedings the Chief Constable/PSNI was one of the public authorities to which the Applicant's challenge was directed. (See [6] above).

[22] The evidence includes the consultation paper published by DOJ in July 2011 which signalled the beginning of a process culminating in the adoption of the statutory regime considered above. The subject upon which DOJ was consulting was described as –

> *"… a number of proposed changes to the law on notification requirements for sex offenders ('the sex offenders register') and on measures to better protect the public from the risk posed by violent offenders."*

DOJ had in contemplation *inter alia* new statutory measures which would include "*orders to more effectively manage risk from violent offenders*". One of the specified

proposals was a statutory measure which would entitle the police to apply to the court for an order –

> "*… to place conditions on the behaviour of a violent offender in the community to help manage any risk that the person poses to the public it would be very like a sexual offences prevention order. The person would then be subject to similar notification requirements as many sex offenders. In other words he would have to tell the police where he was living, his identity details and tell them if he was intending to travel outside the UK ….* [so that] *… the police and other agencies would be better able to manage the risk from certain serious violent offenders.*"

[23] The consultation paper devoted some attention to the statutory regime in England and Wales, contained in the Criminal Justice and Immigration Act 2008, relating to violent offender orders ("*VOOs*"), described as "*… a preventive measure designed to help mitigate the risk of violent re-offending and to provide the public with reassurance that they are safer in their communities*". Such orders (per paragraph 12.3) –

> "*… are used to place restrictions on those offenders who continue to pose a risk of serious violent harm to the public even after their release from prison and when their licence period has expired.*"

Any breach of a VOO entails the risk of prosecution for a discrete criminal offence with a maximum punishment of five years imprisonment. The paper further noted that the permissible restrictions on the conduct/lifestyle of the subject of a VOO are "*… only on access to places, premises, events, people.*"

[24] The consultation paper proposed that the comparable measure to be introduced in the jurisdiction of Northern Ireland (the VOPO) should be available for a considerably broader range of qualifying offences, via a more expansive regime than the English and Welsh analogue. The paper also summarised the known views of certain of the "*key stakeholders*", which included:

> "*SOPOs can be applied for at the point of sentencing to come into effect when the offender leaves prison. This should be the same for a VOO.*
>
> *The sentencing criteria for a VOO ….* [should be broadened] *….*
> *Criteria for a VOO should be offence based rather than sentence based. Further the minimum qualifying offence should be set at AOABH. This view is informed by considering the potential of VOOs in tackling domestic violence. In such cases, a custodial sentence of less than 12 months is not uncommon; further many of the offences are of an AOABH nature. Setting the criteria at*

> *12 months custodial, and for serious assaults only, would exclude the use of VOOs in many domestic violence cases.*"

[25] The evidence also includes the further DOJ paper, "*Summary of Representations Made*" published four months later in October 2011. Neither the affidavits nor the arguments of the parties focused on this publication. It suffices to reproduce the following attenuated passages:

> "*All of the respondent organisations expressed broad support for the proposed legislative provisions. There were a number of points of detail raised, some for the legislative framework, but many more suited to administrative guidance and procedures* [paragraph 3.1] ….
>
> *The vast majority of the, albeit small number of, responses were largely in favour of introducing these changes to the law* [paragraph 5.1]."

[26] An affidavit has been sworn by a Detective Inspector of police who operates within the PSNI "Public Protection" department which supervises the management of violent and sex offences in this jurisdiction. This contains the following salient averments:

(i) An application for a VOPO is made only where considered "*necessary, proportionate and ……. justified with a sound rationale.*"

(ii) The prohibitions sought by every VOPO application "*… are based on the subject's offending history and risk posed.*"

(iii) "*Existing orders are periodically reviewed to determine whether they remain necessary and proportionate.*"

(iv) VOPOs "*… are invaluable in managing the risk posed by violent offenders. By making the individual subject to notification requirements and relevant prohibitions, the order provides officers with the necessary information and powers to ensure an appropriate level of supervision and effective risk management.*"

(v) VOPOs are particularly important in cases where an offender is not subject to the requirements and restrictions of mechanisms such as a non-molestation order, bail conditions and licence conditions.

Finally, the Detective Inspector discloses that at the time of swearing his affidavit (30 August 2019) there were 33 "*Registered Violent Offenders*" in Northern Ireland of whom 13 had either been convicted of or were being prosecuted for breaching a VOPO, while ten remained in custody. The remaining ten members of this group,

therefore, *prima facie* had been complying with the requirements of their individual VOPOs.

[27] The second of the Respondents' affidavits has been sworn by the Head of Criminal Policy Branch of DOJ. This discloses:

(i) In July 2011 DOJ initiated a public consultation exercise relating to the possible introduction of a measure equivalent to the VOO in the jurisdiction of Northern Ireland.

(ii) The context was shaped by *inter alia* the concerns of PSNI and the Probation Service about the lack of supervision and control of certain types of violent offenders, particularly those not subject to the restrictions imposed by licenced release or probation.

(iii) The preference espoused by Northern Ireland criminal justice agencies was for the introduction of a measure more akin to the Sexual Offences Prevention Order ("SOPO") than the English/Welsh VOO.

The ensuing Justice Bill (2014) received Royal assent on 24 July 2015. The Act was commenced in tandem with the Violent Offences Regulations and the procedural provisions of the Magistrates' Courts (Violent Offences Prevention Orders) Rules (NI) 2016. The commencement dates for all of these measures were 01 September and 02 November 2015 respectively.

[28] The DOJ deponent also addresses the DOJ publication "*Guidance on the Violent Offences Prevention Order*" (the "*statutory guidance*") published in 2016. The salient averments are the following:

(i) The main objective of the VOPO is "*to assist in mitigating the risk of violent reoffending from certain offenders living in Northern Ireland*."

(ii) The VOPO is "*a targeted risk management tool based on an assessment, either at conviction or later application, of the serious violent harm that the offender poses to the public*."

(iii) Every VOPO application should be made "*only where it is necessary to protect the public from the risk of serious violent harm from qualifying offenders*."

(iv) Every police application for a VOPO, or interim VOPO must contain "*a list of proposed prohibitions or requirements (on which they may consult other partner agencies)* ….. [which] ……. *must be*

> *clear, proportionate and necessary to protect the public from serious harm*."

The Article 7 ECHR Challenge

[29] Against the background outlined above, the challenge to the impugned VOPO unfolded in the following way. On behalf of the Applicant, Mr Lavery QC submitted that the VOPO constitutes a "*penalty*" imposed retroactively in contravention of Article 7 ECHR. Counsel relied particularly on *Welch v United Kingdom* [1995] 20 EHRR 247 which held that the post-conviction confiscation order was, by virtue of a series of specific features (*infra*), an additional subsequent penalty contravening Article 7. Mr Lavery submitted that the pre-requisite of a relevant criminal conviction is "*the scheme's major flaw*" as there is an inextricable nexus between conviction and VOPO. He further submitted that the VOPO infringes the Applicant's Article 8 ECHR rights in a disproportionate manner.

[30] The riposte of Mr Tony McGleenan QC (with Mr Matthew Corkey, of counsel) on behalf of DOJ entailed the central submission that the imposition of a VOPO is not a "*penalty*" within the embrace of Article 7 ECHR. This was underpinned by three core propositions. First, the purpose of every VOPO is the protection of the public and not the punishment of the subject. Second, proportionality features in both the decision whether to apply for or impose a VOPO and the content of the order. Third, the existence of a conviction for a violent offence as regards the subject is simply a gateway criterion for the making of a VOPO. Mr McGleenan further highlighted the free standing offence which breach of a VOPO entails (per section 71) and the variation, renewal and discharge provisions of section 60.

[31] In *Welch v United Kingdom* [1995] 20 EHRR 247 the ECtHR devised a test which has been consistently applied in subsequent cases. The context was a challenge to a confiscation order imposed pursuant to legislation, the Drug Trafficking Offences Act 1986 which came into operation postdating the subject offences. The court formulated the following test at [28]:

> "*The wording of Article 7(1), second sentence, indicates that the starting point in any assessment of the existence of a penalty is whether the measure in question is imposed following conviction for a 'criminal offence'. Other factors that may be taken into account as relevant in this connection are the nature and purpose of the measure in question; its characterisation under national law; the procedures involved in the making and implementation of the measure; and its severity.*"

The language of this passage suggests that whereas the "*starting point*" must be applied in every case where an Article 7 debate arises, the "*other factors*" identified by the court are not designed to operate as an exhaustive prescription. Having thus observed, the tendency in the subsequent Strasbourg and domestic jurisprudence has been to consider the four specified criteria in every case.

[32] In *Scoppola v Italy (No 2)* [2010] 51 EHRR 12 the ECtHR provided the following expanded guidance on Article 7:

> *"[92] The guarantee enshrined in art.7 , which is an essential element of the rule of law, occupies a prominent place in the Convention system of protection, as is underlined by the fact that no derogation from it is permissible under art.15 of the Convention in time of war or other public emergency. It should be construed and applied, as follows from its object and purpose, in such a way as to provide effective safeguards against arbitrary prosecution, conviction and punishment.*
>
> *[93] Article 7(1) of the Convention goes beyond prohibition of the retrospective application of criminal law to the detriment of the accused. It also sets forth, more generally, the principle that only the law can define a crime and prescribe a penalty (nullum* crimen, nulla poena sine lege*). While it prohibits in particular extending the scope of existing offences to acts which previously were not criminal offences, it also lays down the principle that the criminal law must not be extensively construed to an accused's detriment, for instance by analogy.*
>
> *[94] It follows that offences and the relevant penalties must be clearly defined by law. This requirement is satisfied where the individual can know from the wording of the relevant provision and, if need be, with the assistance of the courts' interpretation of it, what acts and omissions will make him criminally liable.*
>
> *[95] The Court must therefore verify that at the time when an accused person performed the act which led to his being prosecuted and convicted there was in force a legal provision which made that act punishable, and that the punishment imposed did not exceed the limits fixed by that provision.*
>
> ***(ii) The notion of "penalty"***
>
> *[96] The notion of "penalty" in art.7(1) of the Convention, like those of "civil rights and obligations" and "criminal charge" in art.6(1) , has an autonomous meaning. To render the protection offered by art.7 effective, the Court must remain free to go behind appearances and assess for itself whether a particular measure amounts in substance to a "penalty" within the meaning of this provision.*
>
> *[97] The wording of art.7(1) , second sentence, indicates that the starting-point in any assessment of the existence of a penalty is whether the measure in question is imposed following conviction for a "criminal offence". Other factors*

> *that may be taken into account as relevant in this connection are the nature and purpose of the* ****351*** *measure in question; its characterisation under national law; the procedures involved in the making and implementation of the measure; and its severity.*
>
> *[98] Both the Commission and the Court in their case law have drawn a distinction between a measure that constitutes in substance a "penalty" and a measure that concerns the "execution" or "enforcement" of the "penalty". In consequence, where the nature and purpose of a measure relates to the remission of a sentence or a change in a regime for early release, this does not form part of the "penalty" within the meaning of art.7 ."*

[32] This is followed by an expansive treatise on the foreseeability of the criminal law including the propriety of judicial interpretation, the gradual development of case law and the dynamic and evolutive response of the Convention to any emerging consensus in the context of changing conditions in Contracting States. In these passages the court also expounded its general approach to its own previous decisions.

[33] In the varied jurisprudence belonging to this field Article 7 has been considered in relation to a broad spectrum of domestic law measures: confiscation orders following drug offences convictions (*Welch*); an increased term of imprisonment imposed pursuant to a law enacted after the offence had been committed (*Jamil v France* [1995] 21 EHRR 65); the automatic assignment of a convicted sex offender to a sex offenders register pursuant to a law postdating his offences and convictions (*Gardel v France* Application No 16428/05); the application of the sex offender's registration and notification requirements pursuant to a law (the Sex Offenders Act 1997) postdating the subject offences and convictions (*Adamson v United Kingdom* Application No 42293/98 and *Ibbotson v United Kingdom* Application No 40146/98); the imposition of enhanced notification requirements on a convicted sex offender pursuant to legislation postdating his offences and convictions (*R v Foley* [2019] NICA 44); a disqualification order preventing a convicted sex offender from working with children under legislation which post-dated the subject offences (*R v Field* and *R v Young* [2003] 1 WLR 882); and football banning orders of an enlarged duration introduced by legislation postdating the relevant offences (*Gough v Chief Constable of Derbyshire Constabulary* [2001] 4 All ER 289).

[34] As set forth above, the statutory provisions under which the Applicant was subjected to a VOPO were devised and came into operation some years after both (a) the so-called "*qualifying offences*" and (b) what is described in the police application to the court as "*subsequent behaviour after the index offence*". In counsels' skeleton argument the following submission is formulated:

> "*The Applicant's main complaint is that the scheme is a retroactive heavier penalty.*"

Article 7(1) ECHR enshrines two distinct prohibitions against retroactive effect. The Applicant's case invokes the second sentence of Article 7(1), thus entailing the contention that the impugned VOPO constitutes "*… a heavier penalty … imposed than the one that was applicable at the time the criminal offence was committed*".

[35] While *Welch* exhorts the adoption of a "*starting point*" which entails asking whether the impugned measure was imposed following conviction for a criminal offence, this must not distract from consideration of whether the measure constitutes a "*penalty*". This was the main focus of the arguments of both parties.

[36] In accordance with *Welch*, the first step in the exercise is to pose the question of whether the impugned VOPO was imposed on the Applicant "*following* [his] *conviction for a 'criminal offence'*". Part 8 of the 2015 Act enables a VOPO to be made in two separate situations. The first (per section 56) is where the court in question "*deals with*" a person who has been convicted of "*a specified offence*" (as defined). Section 56 clearly contemplates that a VOPO may, at the sentencing stage, be imposed in addition to any sentencing measures adopted by the court to punish the offender for his convictions. The second situation (per section 57) is separated from the conviction and sentencing scenario. It clearly envisages a free standing, detached application to the relevant court for a VOPO sometime after the date when the subject became a "*qualifying offender*" (as defined). The present case is of the latter *genre*.

[37] Thus the *Welch* "*starting point*" question in this case becomes: was the 2017 VOPO imposed on the Applicant "*following*" his convictions in respect of specified offences some nine years previously? The ECtHR has attempted no definition of the requirement of "*following*" in the cases to which the court was referred. We consider that "*following*" is to be construed broadly. It does not require immediacy. Rather it invites consideration of whether there is an identifiable nexus between the impugned measure and the preceding offending. Under the section 57 regime such a nexus is essential. We consider the necessary connection to be established. Thus our evaluation of the *Welch* "*starting point*" is that the impugned VOPO was imposed on the Applicant following his 2008 convictions.

[38] As noted above, the critical question in this case is whether the impugned VOPO constitutes a "*penalty*" within the embrace of Article 7(1) ECHR. We observe that in our determination of this issue this court is not concerned with VOPOs generally. Rather, its sole concern is the VOPO imposed on this litigant. Thus the spotlight is very firmly upon Thomas Pearce, his life situation and circumstances throughout the two year period under scrutiny.

[39] While the word "*penalty*" has an autonomous ECHR meaning, it has not in any of the Strasbourg or domestic jurisprudence which the court has considered

been accorded any special or sophisticated construction. "*Penalty*" is an unpretentious member of the English language. It conventionally denotes the imposition of a punishment or material detriment of some kind, something having punitive effect. A measure of this kind may arise in a broad range of contexts – criminal, civil, contractual, fiscal, corporate, sporting, social and others. The first conclusion which can be firmly made in the present case is that the impugned VOPO was not imposed upon the Applicant to punish him for his previous offending. With one exception, it was both remote from and unconnected with his earlier convictions. The exception is that the previous convictions were a *sine qua non* to the application to the court under section 57 for the impugned VOPO. The relevance of the earlier convictions does not extend beyond this.

[40] Thus the VOPO was not a "*penalty*" imposed on the Applicant in respect of any preceding offending. Nor, as both the application to the Magistrates' Court and the terms of the VOPO make clear, was it designed to punish him for some previous conduct other than criminal convictions. Rather it was entirely forward looking in nature. The intervention of this court occurs at a very advanced stage of the VOPO's lifetime. Thus the question for the court becomes: has the Applicant been penalised by the VOPO during its two year lifespan?

[41] Turning to the *Welch* "other factors" we consider first the characterisation of the VOPO under the laws of this jurisdiction and the related issue. We acknowledge that the moving party is the PSNI and the adjudicating judicial authority is a court which exercises criminal jurisdiction. However beyond these two considerations the VOPO and the related procedures lack the main trappings of the criminal law compartment of our legal system. In particular, and inexhaustively, there is no prosecutor; there is no indictment or equivalent; there are no supporting depositions; the elaborate statutory criminal disclosure arrangements do not apply; there is no possibility of the subject being remanded in custody; the concepts of acquittal and conviction are of no application; a VOPO cannot generate a criminal record or augment an existing one; and the court in question exercises jurisdiction in both criminal and civil matters. Its civil jurisdiction is extensive: see *inter alia* Part VI (debt and ejectment proceedings), Part VII (applications and appeals concerning licences, permits and kindred instruments) and Part VIII ("Civil Proceedings Upon Complaint") of the Magistrates' Courts (NI) Order 1981.

[42] Next we turn to the nature and purpose of the VOPO in this case. We have already described both the application to the court and the ensuing order as forward looking. The VOPO is concerned with past events only to the extent that these may have a bearing on what could occur in the future. It seeks to influence and control future events. It does so by imposing restrictions on the subject's conduct and lifestyle. Its overarching aim is to provide future protection for the public. It also has a clear deterrent element, operating as a disincentive to future offending, given the potential for prosecution and conviction arising out of a breach of its terms. It is in all respects conceived and designed as a measure of public protection. In the

language of the decided cases, in both Article 7 and Article 6 ECHR contexts, it is summed up in a single word: preventive.

[43] The foregoing conclusion is made without reference to the judicial evaluation of different measures in other cases. Such measures belong to their particular legal contexts and do not provide exact analogues. That said, while we consider that the robustness of the conclusion in the foregoing paragraph requires no fortification, if further support were necessary it could be drawn legitimately from measures considered in other cases which may be described as reasonably comparable, in particular the registration and notification scheme relating to sex offenders, the SOPO and football banning orders.

[44] The final consideration to which we turn is the impact of the impugned VOPO on Mr Pearce. Consideration has been given above to the affidavits filed on behalf of the Applicant: see [7] and [10]. As already noted, the Applicant has sworn no affidavit. This failure is not harmonious with the public law character of judicial review proceedings and has been the subject of adverse judicial comment in previous cases. In *Re D's application* [2003] NI 295 the Northern Ireland Court of Appeal said the following at [11]:

> "*We would observe at this point that the affidavit grounding the application was sworn …….* [by] *an apprentice solicitor ….*
> *In this affidavit he purports to depose to a number of substantive facts at the heart of the matter, which no doubt he obtained on instructions from his client. We have said on previous occasions that affidavits which contain such facts in judicial review applications ought to be sworn by the persons with first-hand knowledge of the essential facts and that it is undesirable that affidavits should be sworn by solicitors or other persons deposing to such facts. In our opinion leave to apply for judicial review should not generally be given nor should legal aid be granted until proper first-hand evidence is filed.*"

Comparable pronouncements can be found in other cases.

We shall address these issues further *infra*.

[45] Second, the aforementioned failure is not in conformity with the Judicial Review Practice Direction, which clearly contemplates that every Applicant in judicial review proceedings will swear affidavit evidence. In particular, Part B of the latter emphasises the importance of "*averments of fact*" and draws attention to the "*duty of candour to the court*": each of these requirements applies, in the first place, to the Applicant, being the person who is invoking the supervisory jurisdiction of the High Court and its discretionary jurisdiction to award a remedy in a quintessentially public law context.

[46] Third, it is clearly implicit in Order 53, Rule 3(2)(a) that the affidavit "*verifying the facts relied on*" to be lodged at the leave stage will in the generality of cases be sworn by the Applicant. In those cases where the Applicant cannot depose to the necessary underlying facts whether in whole or in part, he/she should swear an affidavit explaining and illuminating why. The terms of Rule 3(2)(b) and Rule 5(2) made clear that other affidavits may permissibly be provided.

[47] A failure of this kind on the part of the Applicant may have varies consequences. In the first place, this kind of failure is likely to undermine the strength and cogency of the evidence upon which the Applicant is inviting the court to act. This falls to be considered in the context of a consistent stream of jurisprudence to the effect that at the substantive hearing stage where the affidavits of both (or more) of the parties disclose conflicts of evidence same will be resolved against the Applicant. This is illustrated in *Re Cranston's Application* [2002] NI1 and *Re TP's Application* [2006] NIJB 171 at [12]. As the Court of Appeal has explained recently, this is an incident of the Applicant bearing the burden of proof in judicial review proceedings: See *JG v The Upper Tribunal, Immigration and Asylum Chamber* [2019] NICA 27 at [34].

[48] Furthermore, there is an abundance of decisions, in the matter of affidavits, emphasising the importance of strict compliance with the requirements of Order 41 of the Rules. For a recent example see *Re Hegarty's Application* [2018] NIQB 20 at [3] where the court stated:

> *"Ultimately, there were three affidavits on behalf of the Applicant. The prolixity of the Applicant's affidavits (147 paragraphs of text spanning 48 pages) tends to obscure the compact and uncomplicated factual and legal frameworks of his challenge. The affidavits contain large swathes of comment, supposition, conjecture, much sworn argument and, in one section, double hearsay. The Applicant's three affidavits were supplemented by three further affidavits, two of them quite substantial, sworn by his solicitors. It is timely to remind practitioners of the requirements enshrined in Order 41 of the Rules of the Court of Judicature and paragraphs [3] – [8] and Appendix 4 of the Judicial Review Practice Note. Disregard of these requirements occurs with alarming frequency in this court. I would urge all practitioners to digest this observation conscientiously. A failure to comply with the procedural requirements regulating affidavits advances no cause. It positively undermines the litigant's case and can generate avoidable additional cost and unnecessary delay."*

The tendency of Practice Directions in both the various divisions of the High Court and the Court of Appeal has been to re-emphasise and replicate these requirements of the Rules. Moreover, these requirements are frequently reiterated in specific case management directions of the court. To this equation one must add judicial

decisions. In this way practitioners are repeatedly reminded of the standards and procedures to be observed.

[49] The court's consideration of the impact of the impugned VOPO on the Applicant is linked to the last of the touchstones identified in *Welch* namely the "*severity*" of the measure under scrutiny. Examination of the further evidence provided pursuant to the court's direction reveals that since the initial, interim VOPO was made, on 24 April 2017, the Applicant has been in custody arising out of a variety of offences during some 15 months in total: some two thirds of the overall period. Thus the combination of the VOPO conditions and the statutory notification requirements has been capable of affecting him during some six months (staggered) only.

[50] Addressing and assessing each of the seven conditions in the order in turn:

(i) The prohibition on any form of communication with the IP can only be characterised essential, balanced and manifestly proportionate.

(ii) The notification and approval requirements relating to where the Applicant resides, or stays overnight, are at most modest intrusions.

(iii) The requirement of disclosure of his offending to potential female partners is at most awkward and inconvenient and invites the same assessment as (i) in particular and also (ii).

(iv) The prohibition on unsupervised contact with children or vulnerable adults without the requisite prior approval invites the assessment in (i) and (ii).

(v) The prohibition on being intoxicated in a public place is at most inconvenient.

(vi) *Ditto* the requirement of communication with his designated risk manager ("*DRM*").

(vii) *Ditto* the requirement to engage in specified courses.

[51] The exercise carried out above serves to highlight the potency of the public interest underpinning the impugned VOPO. The order subjects the Applicant to specific restrictions in the interests of protecting the IP and protecting others. The other public interests advanced are those of reducing the possibility of further offending by the Applicant and furthering his rehabilitation. As observed by Bingham LCJ in *B v Chief Constable* at [25], this is positively to the Applicant's advantage. Analysed in this way, while the summary description "*preventive*" in [42]

above is partly accurate it is inadequate as it fails to faithfully reflect all of the public interests, together with the private interest (the Applicant's), furthered by the VOPO.

[52] Venturing beyond the VOPO, the court does not doubt that the statutory notification requirements, enshrined in sections 64 – 73 of the 2015 Act and the Violent Offences Regulations (considered in [16] – [17] above: and see the Appendix) are exacting and intrusive. In the abstract they impose certain restrictions on the subject's lifestyle. However, they are designed mainly to ensure effective supervision by the criminal justice authorities of the subject via the duty to provide specified information at the requisite times. They are manifestly designed to promote the public interests of preventing crime, deterring criminality, protecting the rights and freedoms of others and rehabilitating the person concerned. Significantly they do not entail any restriction on the subject's freedom of movement or his liberty generally.

[53] The foregoing assessment is unavoidably abstract in nature. It is not possible for the court to venture beyond this given the evidential deficiencies in the Applicant's case previously highlighted. It seems virtually inevitable that the impact of every VOPO will vary from one subject to another. Variables will include age, gender, employment status, place of residence, family circumstances and individual lifestyle. The infirmities in the evidence in the present case have prevented the court from conducting any real examination of the impact of the impugned VOPO on this Applicant.

[54] At this stage it is appropriate for the court to adopt a panoramic view taking into account that all of the *Welch* touchstones fall to be considered together. The court has conducted this exercise in [35] – [53] above. In so doing, we have undertaken various analyses and assessments. Standing back, we have reached the firm conclusion that the impugned VOPO is not a "*penalty*" within the meaning and embrace of Article 9 ECHR. The Applicant's main ground of challenge therefore fails.

[55] The Applicant's second ground of challenge is based on Article 8 ECHR. It was presented as a subsidiary challenge. It suffers from the intrinsic frailty that there is no direct evidence of the impact of the impugned VOPO on the Applicant's private and family life at any stage of the order's existence. The court accepts that in principle a VOPO could, by virtue of its impact on the subject's private or family life, attract the protections of (or "*engage*") Article 8 ECHR, via section 6 HRA 1998. The question whether a VOPO has this effect in any given case is a fact sensitive one. The court accepts that in some cases it may be appropriate to infer this from the primary evidence presented. In the present case, and not without considerable hesitation, we are disposed to make the inference, favourable to the Applicant, that the private life dimension of Article 8 ECHR is engaged. The family life dimension of Article 8 plainly does not arise.

[56] Next it is necessary for the court to consider whether an interference with the Applicant's right to respect for private life has been demonstrated. We consider that an "*interference*" must take the form of an intrusion or effect that is more than minimal in the circumstances. This is clear from *R* (*Razgar) v SSHD* [2004] 2 AC 368 at [17] (2). A qualitative evaluation of the impugned measure is required in order to determine whether the notional threshold is overcome. Having regard to what is, objectively, known about the Applicant's life circumstances since the imposition of the impugned VOPO and in the absence of any affidavit evidence from him, we conclude that the VOPO has not given rise to an interference with his right to respect for private life and is, therefore, lawful.

[57] If the foregoing conclusion is incorrect we are satisfied for the reasons set forth in [39] – [52] above that the impugned VOPO pursues a series of legitimate aims in a proportionate manner and, satisfying these further touchstones, is lawful.

Duty of Candour

[58] Our final conclusion is that the Applicant has not been candid with the court. The discharge of his duty of candour in this case would have required in particular the provision of evidence updating the outdated information contained in his criminal record, together with evidence relating to the impact of the impugned VOPO and statutory notification requirements on him. The breach of an Applicant's duty of candour in judicial review proceedings can have varied consequences. This topic is discussed in *Judicial Review Cards Face Up,* Volume 2 [2016] JR, p 188. Every breach of a party's duty of candour, which applies to Applicants and Respondents in equal measure (*ante*), is antithetical to the ethos of judicial review proceedings. Since the JR publication this issue has arisen with some emphasis in the case of *Citizen's UK v SSHD* [2018] EWCA Civ 1812.

[59] In light of our conclusions above, no question of granting the Applicant a remedy arises. In every judicial review case the grant of remedy is discretionary: see *Family Reunification and Judicial Review Remedies In UTIAC*, Volume 22 [2017] JR 22. The Applicant's demonstrable failure to acquit his duty of candour to the court impels to two conclusions in the present case. First, he has misused the process of this court, manifestly so. Second, if he had succeeded on either of these grounds of challenge, a serious issue as to whether any consequential discretionary remedy should be granted would have arisen.

Omnibus Conclusion

[60] For the reasons given the Applicant's challenge fails. We consider that the threshold for the grant of leave to apply for judicial review has not been overcome. Accordingly the order of the court is a dismissal of the application for leave to apply for judicial review. Subject to any further submissions costs will follow the event and legal aid provision will be made if appropriate.

APPENDIX

Section 64

"64.—(1) References in the following provisions of this Part to an offender subject to notification requirements are references to an offender who is for the time being subject to a violent offences prevention order or an interim violent offences prevention order which is in force under this Part.

(2) Subsection (1) has effect subject to section 67(7) (which excludes from section 67 an offender subject to an interim violent offences prevention order)."

Section 65

"(1) An offender subject to notification requirements must notify the required information to the police within the period of 3 days beginning with the date on which the violent offences prevention order or the interim violent offences prevention order comes into force in relation to the offender ("the relevant date").

(2) The "required information" is the following information about the offender—

(a) date of birth;

(b) national insurance number;

(c) name on the relevant date or, if the offender used two or more names on that date, each of those names;

(d) home address on the relevant date;

(e) name on the date on which the notification is given or, if the offender used two or more names on that date, each of those names;

(f) home address on the date on which the notification is given;

(g) the address of any other premises in the United Kingdom at which on that date the offender regularly resides or stays;

(h) any information prescribed by regulations made by the Department [in force 1 Sept 2015].

(3) When determining the period of 3 days mentioned in subsection (1), there is to be disregarded any time when the offender is—

(a) remanded in or committed to custody by an order of a court;

(b) serving a custodial sentence;

(c) detained in a hospital; or

(d) outside the United Kingdom.

(4) In this Part "home address" means in relation to the offender—

(a) the address of the offender's sole or main residence in the United Kingdom, or

(b) if the offender has no such residence, the address or location of a place in the United Kingdom where the offender can regularly be found or, if there is more than one such place, such one of them as the offender selects."

Section 66

"66.—(1) An offender subject to notification requirements must, within the period of 3 days beginning with the date on which any notifiable event occurs, notify to the police—

(a) the required new information, and

(b) the information mentioned in section 65(2).

(2) A "notifiable event" means—

(a) the use by the offender of a name which has not been notified to the police under section 65 or this section;

(b) any change of the offender's home address;

(c) the expiry of any qualifying period during which the offender has resided or stayed at any premises in the United Kingdom the address of which has not been notified to the police under section 65 or this section;

(d) any prescribed change of circumstances; or

(e) the release of the offender from custody pursuant to an order of a court or from a custodial sentence or detention in a hospital.

(3) The "required new information" is—

(a) the name referred to in subsection (2)(a),

(b) the new home address (see subsection (2)(b)),

(c) the address of the premises referred to in subsection (2)(c),

(d) the prescribed details, or

(e) the fact that the offender has been released as mentioned in subsection (2)(e),

as the case may be.

(4) A notification under subsection (1) may be given before the notifiable event occurs, but in that case the offender must also specify the date when the event is expected to occur.

(5) If a notification is given in accordance with subsection (4) and the event to which it relates occurs more than 2 days before the date specified, the notification does not affect the duty imposed by subsection (1).

(6) If a notification is given in accordance with subsection (4) and the event to which it relates has not occurred by the end of the period of 3 days beginning with the date specified—

(a) the notification does not affect the duty imposed by subsection (1), and

(b) the offender must, within the period of 6 days beginning with the date specified, notify to the police the fact that the event did not occur within the period of 3 days beginning with the date specified.

(7) Section 65(3) applies to the determination of—

(a) any period of 3 days for the purposes of subsection (1), or

(b) any period of 6 days for the purposes of subsection (6),

as it applies to the determination of the period of 3 days mentioned in section 65(1).

(8) In this section—

(a) "prescribed change of circumstances" means any change—

(i) occurring in relation to any matter in respect of which information is required to be notified by virtue of section 65(2)(h), and

(ii) of a description prescribed by regulations made by the Department;

(b) "the prescribed details", in relation to a prescribed change of circumstances, means such details of the change as may be so prescribed.

(9) In this section "qualifying period" means—

(a) a period of 7 days, or

(b) two or more periods, in any period of 12 months, which taken together amount to 7 days."

Section 67

"(1) An offender subject to notification requirements must, within the applicable period after each notification date, notify to the police the information mentioned in section 65(2), unless the offender has already given a notification under section 66(1) within that period.

(2) A "notification date" means, in relation to the offender, the date of any notification given by the offender under section 65(1) or 66(1) or subsection (1).

(3) Where the applicable period would (apart from this subsection) end while subsection (4) applies, that period is to be treated as continuing until the end of the period of 3 days beginning with the date on which subsection (4) first ceases to apply.

(4) This subsection applies if the offender is—

(a) remanded in or committed to custody by an order of a court,

(b) serving a custodial sentence,

(c) detained in a hospital, or

(d) outside the United Kingdom.

(5) In this section "the applicable period" means—

(a) in any case where subsection (6) applies, such period as may be prescribed by regulations made by the Department, and

(b) in any other case, the period of one year.

(6) This subsection applies if the last home address notified by the offender under section 65(1) or 66(1) or subsection (1) was the address or location of such a place as is mentioned in section 65(4)(b).

(7) Nothing in this section applies to an offender who is subject to an interim violent offences prevention order."

Section 68

"(1) This section applies to an offender subject to notification requirements at any time if the last home address notified by the offender under section 65(1), 66(1) or 67(1) was an address in Northern Ireland such as is mentioned in section 65(4)(a) (sole or main residence).

(2) If the offender intends to be absent from that home address for a period of more than 3 days ("the relevant period"), the offender must, not less than 12 hours before leaving that home address, notify to the police the information set out in subsection (3).

(3) The information is—

(a) the date on which the offender will leave that home address;

(b) such details as the offender holds about—

(i) the offender's travel arrangements during the relevant period;

(ii) the offender's accommodation arrangements during that period;

(iii) the offender's date of return to that address.

(4) In this section—

"travel arrangements" include, in particular, the means of transport to be used and the dates of travel,

"accommodation arrangements" include, in particular, the address of any accommodation at which the relevant offender will spend the night during the relevant period and the nature of that accommodation.

(5) Where—

(a) an offender has given a notification under subsection (2), and

(b) at any time before that mentioned in that subsection, the information notified becomes inaccurate or incomplete,

the offender must give a further notification under subsection (2).

(6) Where an offender—

(a) has notified a date of return to the offender's home address, but

(b) returns to that home address on a date other than that notified,

the offender must notify the date of the offender's actual return to the police within 3 days of the actual return.

(7) Nothing in this section requires an offender to notify any information which falls to be notified in accordance with a requirement imposed by regulations under section 69.

(8) In calculating the relevant period for the purposes of this section there is to be disregarded—

(a) any period or periods which the offender intends to spend at, or travelling directly to or from, an address of the kind mentioned in section 65(2)(g) notified to the police under section 65(1), 66(1) or 67(1);

(b) any period or periods which the offender intends to spend at, or travelling directly to or from, any premises, if his stay at those premises would give

rise to a requirement to notify the address of those premises under section 66(2)(c)."

Section 69

"The Department may by regulations make provision with respect to offenders subject to notification requirements, or any description of such offenders—

(a) requiring such persons, before they leave the United Kingdom, to give in accordance with the regulations a notification under subsection (2);

(b) requiring such persons, if they subsequently return to the United Kingdom, to give in accordance with the regulations a notification under subsection (3).

[(2)(3) in force 2 Nov 2015 for making regs]

(2) A notification under this subsection must disclose—

(a) the date on which the offender proposes to leave the United Kingdom;

(b) the country (or, if there is more than one, the first country) to which the offender proposes to travel and the proposed point of arrival (determined in accordance with the regulations) in that country;

(c) any other information prescribed by the regulations which the offender holds about the offender's departure from or return to the United Kingdom, or about the offender's movements while outside the United Kingdom.

(3) A notification under this subsection must disclose any information prescribed by the regulations about the offender's return to the United Kingdom."

Section 70

"An offender gives a notification to the police under section 65(1), 66(1), 67(1) or 68(2) or (6) by—

(a) attending at any police station in Northern Ireland prescribed by regulations under section 87(1)(a) of the Sexual Offences Act 2003, and

(b) giving an oral notification to any police officer, or to any person authorised for the purpose by the officer in charge of the station.

(2) Any notification given in accordance with this section must be acknowledged; and the acknowledgement must be—

(a) in writing, and

(b) in such form as the Department may direct.

(3) Where a notification is given under section 65(1), 66(1), 67(1) or 68(2) or (6), the offender must, if requested to do so by the police officer or other person mentioned in subsection (1)(b), allow that officer or person to—

(a) take the offender's fingerprints,

(b) photograph any part of the offender, or

(c) do both of those things.

(4) Fingerprints and photographs taken from an offender under this section—

(a) are to be used for verifying the identity of the offender at any time while the offender is subject to notification requirements; and

(b) may also, subject to the following provisions of this section, be used for any purpose related to the prevention, detection, investigation or prosecution of offences (whether or not under this Part), but for no other purpose.

(5) Fingerprints taken from an offender under this section must be destroyed no later than the date on which the offender ceases to be subject to notification requirements, unless they are retained under the power conferred by subsection (7).

(6) Subsection (7) applies where—

(a) fingerprints have been taken from a person under any power conferred by the Police and Criminal Evidence (Northern Ireland) Order 1989;

(b) fingerprints have also subsequently been taken from that person under this section; and

(c) the fingerprints taken as mentioned in paragraph (a) do not constitute a complete and up to date set of the person's fingerprints or some or all of those fingerprints are not of sufficient quality to allow satisfactory analysis, comparison or matching.

(7) Where this subsection applies—

(a) the fingerprints taken as mentioned in subsection (6)(b) may be retained as if taken from the person under the power mentioned in subsection (6)(a); and

(b) the fingerprints taken as mentioned in subsection (6)(a) must be destroyed.

(8) Photographs taken of any part of the offender under this section must be destroyed no later than the date on which the offender ceases to be subject to notification requirements unless they are retained by virtue of an order under subsection (9).

(9) The Chief Constable may apply to a District Judge (Magistrates' Courts) for an order extending the period for which photographs taken under this section may be retained.

(10) An application for an order under subsection (9) must be made within the period of 3 months ending on the last day on which the offender will be subject to notification requirements.

(11) An order under subsection (9) may extend the period for which photographs may be retained by a period of 2 years beginning when the offender ceases to be subject to notification requirements.

(12) The following persons may appeal to the county court against an order under subsection (9), or a refusal to make such an order—

(a) the Chief Constable;

(b) the person in relation to whom the order was sought.

(13) In this section—

(a) "photograph" includes any process by means of which an image may be produced; and

(b) references to the destruction or retention of photographs or fingerprints include references to the destruction or retention of copies of those photographs or fingerprints."

Section 71

"(1) If a person fails, without reasonable excuse, to comply with any prohibition or requirement contained in—

(a) a violent offences prevention order, or

(b) an interim violent offences prevention order,

the person commits an offence.

(2) If a person fails, without reasonable excuse, to comply with—

(a) section 65(1), 66(1) or (6)(b), 67(1), 68(2) or (6) or 70(3), or

(b) any requirement imposed by regulations made under section 69(1),

the person commits an offence.

(3) If a person notifies to the police, in purported compliance with—

(a) section 65(1), 66(1), 67(1) or 68(2) or (6), or

(b) any requirement imposed by regulations made under section 69(1),

any information which the person knows to be false, the person commits an offence.

(4) As regards an offence under subsection (2), so far as it relates to non-compliance with—

(a) section 65(1), 66(1), 67(1) or 68(2) or (6), or

(b) any requirement imposed by regulations made under section 69(1),

a person commits such an offence on the first day on which the person first fails, without reasonable excuse, to comply with the provision mentioned in paragraph (a) or (as the case may be) the requirement mentioned in

paragraph (b), and continues to commit it throughout any period during which the failure continues.

(5) But a person must not be prosecuted under subsection (2) more than once in respect of the same failure.

(6) A person guilty of an offence under this section is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or a fine or both."

Section 72

"(1) This section applies to information notified to the police under section 65(1), 66(1) or 67(1).

(2) The Chief Constable may, for the purposes of the prevention, detection, investigation or prosecution of offences under this Part, supply information to which this section applies to—

(a) a relevant Northern Ireland department,

(b) the Secretary of State, or

(c) a person providing services to a relevant Northern Ireland department or the Secretary of State in connection with a relevant function,

for use for the purpose of verifying the information.

(3) In relation to information supplied to any person under subsection (2), the reference to verifying the information is a reference to—

(a) checking its accuracy by comparing it with information held—

(i) where the person is a relevant Northern Ireland department or the Secretary of State, by that department or the Secretary of State in connection with the exercise of a relevant function, or

(ii) where the person is within subsection (2)(c), by that person in connection with the provision of services as mentioned there, and

(b) compiling a report of that comparison.

(4) Subject to subsection (5), the supply of information under this section is to be taken not to breach any restriction on the disclosure of information (however arising).

(5) This section does not authorise the doing of anything that contravenes the data protection legislation.

(6) This section does not affect any power to supply information that exists apart from this section.

(7) In this section—

"the data protection legislation" has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act);

"relevant Northern Ireland department" means the [Department for the Economy], the Department of the Environment [?] or the [Department for Communities];

"relevant function" means—

(a) in relation to the [Department for Communities or Department for the Economy], a function relating to employment or training;

(b) in relation to the [Department for Infrastructure], a function under Part 2 of the Road Traffic (Northern Ireland) Order 1981;

(c) in relation to the [Department for Communities], a function relating to social security or child support;

(d) in relation to the Secretary of State, a function relating to passports."

Section 73

"(1) A report compiled under section 72 may be supplied to the Chief Constable by—

(a) the relevant Northern Ireland department,

(b) the Secretary of State, or

(c) a person within section 72(2)(c).

(2) Such a report may contain any information held—

(a) by the relevant Northern Ireland department or the Secretary of State in connection with the exercise of a relevant function, or

(b) by a person within section 72(2)(c) in connection with the provision of services as mentioned there.

(3) Where such a report contains information within subsection (2), the Chief Constable—

(a) may, subject to subsections (4) to (8), retain the information, whether or not used for the purposes of the prevention, detection, investigation or prosecution of offences under this Part, and

(b) may use the information for any purpose related to the prevention, detection, investigation or prosecution of offences (whether or not under this Part), but for no other purpose.

(4) The information must be destroyed no later than the date on which the offender ceases to be subject to notification requirements unless it is retained by virtue of an order under subsection (5).

(5) The Chief Constable may apply to a District Judge (Magistrates' Court) for an order extending the period for which the information may be retained.

(6) An application for an order under subsection (5) must be made within the period of 3 months ending on the last day on which the offender will be subject to notification requirements.

(7) An order under subsection (5) may extend the period for which the information may be retained by a period of 2 years beginning when the offender ceases to be subject to notification requirements.

(8) The following persons may appeal to the county court against an order under subsection (5), or a refusal to make such an order—

(a) the Chief Constable;

(b) the person in relation to whom the order was sought.

(9) Subsections (4) to (7) of section 72 apply in relation to this section as they apply in relation to section 72."

Section 74

"(1) This section applies to an offender subject to notification requirements who is—

(a) serving a custodial sentence; or

(b) detained in a hospital.

(2) The Department may by regulations make provision requiring the person who is responsible for such an offender to give notice to specified persons—

(a) of the fact that that person has become responsible for the offender; and

(b) of any occasion when—

(i) the offender is released, or

(ii) a different person is to become responsible for the offender.

(3) In subsection (2) "specified persons" means persons specified, or of a description specified, in the regulations.

(4) The regulations may make provision for determining who is to be taken for the purposes of this section as being responsible for an offender."

Section 75

"(1) If, on an application made by a police officer of the rank of superintendent or above, a lay magistrate is satisfied that the requirements in subsection (2) are met in relation to any premises, the lay magistrate may issue a warrant authorising a constable—

(a) to enter the premises for the purpose of assessing the risks posed by the offender subject to notification requirements to whom the warrant relates; and

(b) to search the premises for that purpose.

(2) The requirements are—

(a) that the address of each set of premises specified in the application is an address falling within subsection (3);

(b) that the offender is not one to whom subsection (4) applies;

(c) that it is necessary for a constable to enter and search the premises for the purpose mentioned in subsection (1)(a);

(d) that, in a case where a person other than the offender resides there, it is proportionate in all the circumstances for a constable to enter and search the premises for that purpose; and

(e) that on at least two occasions a constable has sought entry to the premises in order to search them for that purpose and has been unable to obtain entry for that purpose.

(3) An address falls within this subsection if—

(a) it is the address which was last notified in accordance with this Part by the offender to the police as the offender's home address; or

(b) there are reasonable grounds to believe that the offender resides there or may regularly be found there.

(4) This subsection applies to an offender if the offender is—

(a) remanded in or committed to custody by order of a court;

(b) serving a custodial sentence;

(c) detained in a hospital; or

(d) outside the United Kingdom.

(5) A warrant issued under this section must specify the one or more sets of premises to which it relates.

(6) The warrant may authorise the constable executing it to use reasonable force if necessary to enter and search the premises.

(7) The warrant may authorise entry to and search of premises on more than one occasion if, on the application, the lay magistrate is satisfied that it is necessary to authorise multiple entries in order to achieve the purpose mentioned in subsection (1)(a).

(8) Where a warrant issued under this section authorises multiple entries, the number of entries authorised may be unlimited or limited to a maximum.

(9) In this section a reference to the offender subject to notification requirements to whom the warrant relates is a reference to the offender—

(a) who has in accordance with this Part notified the police that the premises specified in the warrant are the offender's home address; or

(b) in respect of whom there are reasonable grounds to believe that the offender resides there or may regularly be found there."

Section 76

"(1) In this Part—

"country" includes territory;

"custodial sentence" means—

(a) a sentence of imprisonment;

(b) a sentence of detention in a young offenders centre;

(c) a sentence of detention under Article 13(4)(b) or 14(5) of the Criminal Justice (Northern Ireland) Order 2008;

(d) a sentence of detention under Article 45 of the Criminal Justice (Children) (Northern Ireland) Order 1998;

(e) an order under Article 39 of that Order sending the offender to a juvenile justice centre;

(f) an order under Article 44A of that Order sending the offender to secure accommodation;

(g) any other sentence under which a person is detained in custody;

"detained in a hospital" means detained in a hospital under Part 3 of the Mental Health (Northern Ireland) Order 1986;

"home address" has the meaning given by section 65(4);

"interim violent offences prevention order" means an order made under section 61;

"qualifying offender" has the meaning given by section 58(1);

"specified offence" has the meaning given by section 55(3) and (4);

"violent offences prevention order" has the meaning given by section 55(1).

(2) References in this Part to "D" in relation to a violent offences prevention order, or an application for such an order, are references to the person in relation to whom the order has effect or is sought.

(3) References in this Part to protecting the public from the risk of serious violent harm caused by a person are to be read in accordance with section 55(2).

(4) References in this Part to a finding of the kind mentioned in section 58(2)(b) or (c) or (3)(b) or (c) include references to a case where a decision on appeal is to the effect that there should have been such a finding in the proceedings concerned.

(5) References in this Part to an offender subject to notification requirements are to be read in accordance with section 64.

(6) Reference in this Part to a conviction include references to a finding of a court in summary proceedings, where the court makes an order under Article 44(4) of the Mental Health (Northern Ireland) Order 1986 that the accused did the act charged."