

EXPLANATORY MEMORANDUM TO
THE MAGISTRATES' COURTS (VIOLENT OFFENDER ORDERS) RULES 2009

2009 No. 2197 L.26

1. This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the instrument**
 - 2.1 The instrument set outs how applications for Violent Offender Orders are to be made. A Violent Offender Order is a new type of civil preventative order which is designed to protect the public from the risk of serious violent harm caused by a person who has previously been convicted of a serious violent offence.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None
4. **Legislative Context**
 - 4.1 The instrument is made as part of the implementation of Part 7 of the Criminal Justice and Immigration Act 2008 (the **2008 Act**), which created the Violent Offender Order. The instrument is made under section 144 of the Magistrates' Courts Act 1980 and section 99(7) of the 2008 Act. This is the first use of the power in section 99(7).
 - 4.2 A related instrument is the Criminal Justice and Immigration Act 2008 (Violent Offender Orders) (Notification Requirements) Regulations 2009 which is subject to the draft affirmative procedure. That instrument has now been approved by both Houses of Parliament and will shortly be made, also as part of the implementation of Part 7.
5. **Territorial Extent and Application**
 - 5.1 This instrument applies to England and Wales.
6. **European Convention on Human Rights**
 - 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.
7. **Policy background**
 - 7.1 The 2008 Act created Violent Offender Orders as a preventative measure aimed at protecting the public from the risk of serious violent harm caused by a "qualifying offender" – this will typically be a person who has been sentenced to imprisonment of 12 months or more for a serious violent offence. Violent Offender Orders are made by the Magistrates' Court on application by the police, subject to

certain criteria being satisfied. A Violent Offender Order will allow the police service to manage the risk that some violent offenders continue to pose to the public on completion of their sentence for that offence. Violent Offender Orders place specific restrictions on the activities of those offenders by prohibiting them from particular persons, places or events. A person subject to a Violent Offender Order is also subject to notification requirements which require them to notify the police at least once a year of personal information such as name, date of birth and home address.

7.2 Violent Offender Orders are designed to continue the active management of violent offenders beyond the completion of their sentence in order to limit their opportunities for violent re-offending. This is because serious re-offending while an offender is under active management is a relatively rare phenomenon. Multi Agency Public Protection Arrangement (MAPPA) reports for England and Wales for 2008 indicate that of the 16,000 Category 2 offenders (i.e. those who have committed violent and sexual offences) they manage, there were around 70 instances of offenders being convicted of a further serious offence.

7.3 This instrument makes provision relating to applications for Violent Offender Orders. It prescribes the application form to be used when applying for a Violent Offender Order or interim Violent Offender Order. It also provides that when an application is made to vary, discharge or renew a Violent Offender Order or to vary or discharge an interim Violent Offender Order this must be done in writing, setting out the reason for the application.

7.4 The instrument also makes provision relating to persons who have been convicted of a serious violent offence outside England and Wales. Under the 2008 Act, for such a person to fall within the definition of “qualifying offender”, one of the criteria is that their offence would have been a serious violent offence if they had committed it in England and Wales. The person is able to challenge whether this requirement is met and the instrument provides that they should give notice setting out their challenge no later than 3 days before the hearing. If they do not give such a notice, the requirement is taken to be met. (The 2008 Act however also enables the court, if it thinks fit, to permit the person to make such a challenge even if a notice has not been served.)

7.5 Violent Offender Orders were of some public interest on announcement and during their passage through Parliament. However, the provisions in this instrument are of limited political and legal importance.

8. Consultation outcome

8.1 Violent Offender Orders were subject to a consultation exercise in May 2007 with a range of stakeholders, of which 31 responded. The Home Office took on board many of the responses such as removing the requirement for those subject to Violent Offender Orders to take positive steps for example attending drug and alcohol treatment programmes.

A more detailed analysis of the consultation can be found here: <http://www.homeoffice.gov.uk/documents/response-violent-offender.pdf?view=Binary>

8.2 The Home Office has not carried out a public consultation on this instrument. It has however engaged with the key stakeholders on an ongoing basis through the Violent Offender Orders management board, which has been created to oversee the implementation of Violent Offender Orders. This board comprises bodies such as the Association of Chief Police Officers, the National Offender Management Service, the Association of Police lawyers and MAPPA. The rule committee and the criminal procedure rule committee have been consulted on these rules.

9. Guidance

9.1 The Home Office will be issuing a Home Office circular to Her Majesty's Court Service on how the courts should manage the making of these orders. Guidance on Violent Offender Orders, which will include guidance on the requirements of this instrument for the Police Service, will be published by the Home Office and made available on its website. Where the police are managing a Violent Offender Order they will provide guidance to ensure the person subject to the Violent Offender Order understands the implications of being subject to the order.

10. Impact

10.1 No impact on business, charities or voluntary bodies is foreseen.

10.2 The impact on the public sector is negligible.

10.3 An Impact Assessment has not been prepared for this instrument. This is because no impact on business, charities or voluntary bodies is foreseen and the impact on the public sector is negligible.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 Violent Offender Orders are designed to help prevent violent re-offending. These orders and their supporting legislation will be monitored and reviewed for 12 months by the Violent Offender Orders management board and the legislation may be amended accordingly.

13. Contact

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