

2009 No. 2197 (L. 26)

MAGISTRATES' COURTS, ENGLAND AND WALES

PROCEDURE

The Magistrates' Courts (Violent Offender Orders) Rules 2009

<i>Made</i> - - - -	<i>10th August 2009</i>
<i>Laid before Parliament</i>	<i>13th August 2009</i>
<i>Coming into force</i> - -	<i>7th September 2009</i>

The Lord Chief Justice, with the concurrence of the Lord Chancellor, makes the following Rules in exercise of the powers conferred by section 144 of the Magistrates' Courts Act 1980(a) and section 99(7) of the Criminal Justice and Immigration Act 2008(b).

In accordance with section 144 of the Magistrates' Courts Act 1980, the Lord Chief Justice has consulted with the rule committee appointed under that section.

Citation, commencement and interpretation

1.—(1) These Rules may be cited as the Magistrates' Courts (Violent Offender Orders) Rules 2009 and shall come into force on 7th September 2009.

(2) In these Rules, a reference to a section is a reference to a section of the Criminal Justice and Immigration Act 2008.

Violent offender orders and interim violent offender orders

2.—(1) An application for—

- (a) a violent offender order made under section 100; or
- (b) an interim violent offender order made under section 104,

shall be in the form set out in Schedule 1 to these Rules.

(2) A violent offender order made under section 101 shall be in the form set out in Schedule 2 to these Rules.

(3) An interim violent offender order made under section 104 shall be in the form set out in Schedule 3 to these Rules.

(a) 1980 c.43. Section 144 was amended by paragraph 25 of Schedule 18 to the Courts and Legal Services Act 1990 (c.41), paragraph 29 of Schedule 11 to the Access to Justice Act 1999 (c.22), paragraph 245 of Schedule 8 and Schedule 10 to the Courts Act 2003 (c.39) and paragraph 102 of Schedule 4 to the Constitutional Reform Act 2005 (c.4). Section 144 is also amended by paragraph 4 of Schedule 11 to the Constitutional Reform Act 2005 and paragraph 43 of Schedule 21 to the Legal Services Act 2007 (c.29).

(b) 2008 c.4.

Application for variation, discharge or renewal

3.—(1) This rule applies to an application under section 103 for—

- (a) the variation, discharge or renewal of a violent offender order;
- (b) the variation or discharge of an interim violent offender order.

(2) An application shall be made in writing and shall specify the reason why the applicant believes the court should vary, discharge or renew the order, as the case may be.

Time limit for service of a notice under section 99(7)

4. If the defendant wishes to serve on the applicant a notice under section 99(7) (notice denying that an act done outside England and Wales would have constituted a specified offence if it had been done in England and Wales), the defendant must do so no later than three days before the hearing date for the application under section 100.

30th July 2009

Judge C.J.

I concur

10th August 2009

Bridget Prentice
Parliamentary Under Secretary of State
Ministry of Justice

SCHEDULE 1

Rule 2(1)

Form

Application by complaint for [Violent Offender Order] [and] [Interim Violent Offender Order]

(Criminal Justice and Immigration Act 2008 [s.100] [and] [s.104])

.....Magistrates' Court (Code)

Date.....

Defendant.....

Date of birth.....

Address.....

The defendant being a qualifying offender, in that:

For an offence of.....

[He] [She] appeared before Court

[Being a court outside England and Wales and the corresponding offence this would have constituted had the act been done in England and Wales:

.....]

And on (date of [conviction][finding]).....

[He] [She] was:

[convicted and [a custodial sentence of months was imposed] [a hospital order was made [with] [without] a restriction order]]

[found not guilty by reason of insanity and [a hospital order was made [with] [without] a restriction order] [a supervision order was made]]

[found to be under a disability and to have done the act charged and [a hospital order was made [with] [without] a restriction order] [a supervision order was made]]

[Where the court was outside England and Wales, details of the [conviction] [sentence of imprisonment or other detention] [order made] [finding] in respect of the offence:

.....]

[And it is alleged that the defendant has since the date (or the first date) of the above conviction or finding, acted in such a way as to give reasonable cause to believe that it is necessary for a violent offender order under section 101 of the Criminal Justice and Immigration Act 2008 to be made in respect of the defendant. Short description of acts, including date(s) and further comments:

.....

.....

.....

.....]

[Information relating to an application for an interim violent offender order:

.....

.....]

[Where application is made for interim only:

Date of application for violent offender order

Accordingly, application is made for [a violent offender order] [an interim violent offender order] [a violent offender order and an interim violent offender order] containing the following prohibitions, restrictions or cautions:

.....

.....

.....

The complaint of

Address.....

.....

Who states that the facts given in this form are true to the best of [his] [her] knowledge and belief.

Signed

Note

A violent offender order/an interim violent offender order is an order which contains such prohibitions, restrictions or conditions authorised by section 102 of the Criminal Justice and Immigration Act 2008 as the court making the order considers necessary for the purpose of protecting the public from the risk of serious violent harm caused by the defendant.

This means that the order must be considered necessary for the purpose of protecting the public in the United Kingdom or any particular members of the public in the United Kingdom from a current risk of serious physical or psychological harm caused by the defendant committing one or more specified offences (see section 98 of the Criminal Justice and Immigration Act 2008).

SCHEDULE 2

Rule 2(2)

Form
Violent Offender Order
(Criminal Justice and Immigration Act 2008 s.101)

.....Magistrates' Court
(Code)

Date.....
Defendant.....
Date of birth.....
Address.....
Case Number.....

The court found that you are a qualifying offender and that, since becoming a qualifying offender, you have acted in the following way which makes it necessary to make a violent offender order for the purpose of protecting the public from the risk of serious violent harm caused by you:

.....
.....
.....

Order

You must not:

.....
.....
.....

This order comes into force on

This order lasts until.....

Justices' Clerk

The **notification requirements** apply to you while this order lasts.

You must notify the police within 3 days of this order coming into force of

- (a) your date of birth
- (b) your national insurance number
- (c) your name and any other names you use and your home address on the date this order comes into force
- (d) your name and any other names you use and your home address on the date you notify
- (e) the address of any other premises in the United Kingdom at which you regularly reside or stay.

You must also re-notify this information to the police at least annually.

You must also re-notify this information and tell the police within 3 days

- (a) if you use a name which you have not already notified to the police
- (b) if you change your home address
- (c) of any address in the United Kingdom which you have not already notified to the police where you live or stay for a period of 7 days or longer. This means either one period of 7 days or two or more periods amounting to 7 days or more in any period of 12 months

(d) of your release from custody pursuant to an order of a court or from imprisonment, service detention or detention in a hospital.

You can notify the police by attending any police station in your local police area and giving an oral notification to a police officer or authorised person at that station.

You must also allow the police to take your fingerprints and photograph.

If you are travelling abroad, you must also tell the police

- (a) the date when you will leave the United Kingdom
- (b) the country to which you will travel (the first if there are more than one)
- (c) your point of arrival in that country
- (d) any other prescribed information about your departure and return to the United Kingdom or your movements while outside the United Kingdom.

Your local Police Service Headquarters will be able to explain these conditions in more detail – in particular the information you must bring with you when you attend the first time – and tell you at which local police station you should attend.

Warning

If you do not obey any part of this order (including the notification requirements), you will commit an offence and may be fined or sentenced to imprisonment for up to five years (or both).

Right of appeal

You have the right to appeal against the making of this order to the Crown Court within 21 days.

Advice and help

This notice is only a summary of what you must do. If you need further help or advice about it, you should see a solicitor.

SCHEDULE 3

Rule 2(3)

Form

Interim Violent Offender Order

(Criminal Justice and Immigration Act 2008 s.104)

.....Magistrates’ Court
(Code)

Date.....
 Defendant.....
 Date of birth.....
 Address.....
 Case Number.....

An application for a violent offender order has been made in respect of you (the “main application”).

It appears to the court, for the following reasons, that:

- (a) you are a qualifying offender;
- (b) if the court were determining the main application, it would be likely to make a violent offender order in respect of you; and
- (c) it is desirable to act before the main application is determined, with a view to securing the immediate protection of the public from the risk of serious violent harm caused by you.

.....
.....
.....

Order

You must not:

.....
.....
.....
.....

This order comes into force on

This order lasts until.....

Justices' Clerk

The **notification requirements** apply to you while this order lasts.

You must notify the police within 3 days of this order coming into force of

- (a) your date of birth
- (b) your national insurance number
- (c) your name and any other names you use and your home address on the date this order comes into force
- (d) your name and any other names you use and your home address on the date you notify the address of any other premises in the United Kingdom at which you regularly reside or stay.

You must also re-notify this information and tell the police within 3 days

- (a) if you use a name which you have not already notified to the police
- (b) if you change your home address
- (c) of any address in the United Kingdom which you have not already notified to the police where you live or stay for a period of 7 days or longer. This means either one period of 7 days or two or more periods amounting to 7 days or more in any period of 12 months
- (d) of your release from custody pursuant to an order of a court or from imprisonment, service detention or detention in a hospital

You can notify the police by attending any police station in your local police area and giving an oral notification to a police officer or authorised person at that station.

You must also allow the police to take your fingerprints and photograph.

If you are travelling abroad, you must also tell the police

- (a) the date when you will leave the United Kingdom
- (b) the country to which you will travel (the first if there are more than one)
- (c) your point of arrival in that country
- (d) any other prescribed information about your departure and return to the United Kingdom or your movements while outside the United Kingdom

Your local Police Service Headquarters will be able to explain these conditions in more detail – in particular the information you must bring with you when you attend the first time – and tell you at which local police station you should attend.

Warning

If you do not obey any part of this order (including the notification requirements, you will commit an offence and may be fined or sentenced to imprisonment for up to five years (or both).

Right of appeal

You have the right to appeal against the making of this order to the Crown Court within 21 days.

Advice and help

This notice is only a summary of what you must do. If you need further help or advice about it, you should see a solicitor.

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules prescribe the application form which must be used when applying for a violent offender order or an interim violent offender order under the Criminal Justice and Immigration Act 2008 (the “2008 Act”).

The Rules also prescribe the form which must be used when making a violent offender order or an interim violent offender order.

The Rules provide that an application to vary, discharge or renew a violent offender order or to vary or discharge an interim violent offender order must be made in writing, specifying the reason for the application.

The Rules also provide that if the defendant wishes to serve a notice on the applicant under section 99(7) of the 2008 Act (which is a notice denying that an act done outside England and Wales would have constituted a specified offence if it had been done in England and Wales) the defendant must do so no later than three days before the hearing date for the application under section 100 of the 2008 Act.

A full regulatory impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

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