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IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

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THE QUEEN

-v-

JOHN HANRAHAN

and

JAMES JOHN HANRAHAN

_____

Before: McCloskey LJ, O'Hara J and Huddleston J

INDEX **PARAGRAPH No**

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McCloskey LJ (delivering the judgment of the court)

Preface

[1] This appeal against sentence is brought with the leave of the single judge. It raises certain novel and hitherto unresolved questions relating to the violent offences prevention order regime introduced by Part 8 of the Justice (NI) Act 2015. Keegan J was moved to grant leave to appeal by the novelty of the legal issues and the desirability of authoritative guidance from this court.

The Appellants' Offences, Convictions and Sentencing

[2] The two Appellants are father and son. James John Hanrahan (aged 47 years) is the father and John Hanrahan (aged 28) is the son. Both pleaded not guilty to all charges when initially arraigned. They were re-arraigned some seven weeks later. On this occasion the father pleaded guilty to the 2nd, 3rd, 4th and 8th to 13th counts, with the remaining three counts "left on the books". The son pleaded guilty to the first to fourth counts and to the substituted lesser offence of simple burglary (count five) while counts 6 to 10 were "left on the books". The offences to which both Appellants pleaded guilty and the consequential sentencing are set forth in the following table:

Offences of which convicted	Sentences and orders
(1) Count 1 – Aggravated burglary – 41a Kilmore Road, Crossgar – armed with a hammer -19/10/17	**James** – left on the books **John** - 4 year DCS (50/50)
(2) Count 2 – Burglary – 1 Benburb Road, Moy – armed with a screwdriver – 26/2/18	**James –** 4 years DCS (50/50) **John –** 4 years DCS (50/50)
(3) Count 3 – Common assault – Gerard Boyle – 26/2/18	**James –** 6 months **John –** 6 months
(4) Count 4 – Burglary with intent to steal – 18 Ivy Park, Middleton – 26/2/18	**James –** 4 years DCs (50/50) **John –** 4 years DCS (50/50)
(5) Count 5 – Aggravated burglary – 14 Seagoe Park, Portadown – armed with iron bar – 7/3/18	**James –** left on the books **John – [Pleaded to simple burglary –]** 4 years DCS
(6) Count 6 – Aggravated burglary and attempting to steal – 14 Seagoe Park, Portadown – armed with a bat – 7/3/18	**James –** left on the books **John** – left on the books
(7) Count 7 – Common assault – Craig Willsher – 7/3/18	**James –** left on the books **John –** left on the books
(8) Count 8 – Aggravated burglary with intent to steal	**James** – 5 years DCS (50/50)

– St Patrick's Park, Hilltown - armed with a knife – 7/3/18	**John –** left on the books
(9) Count 9 – Common assault – Roberta Colgan – 7/3/18	**James –** 1 year **John -** left on the books
(10) Count 10 – Common assault – Ross Parr – 7/3/18	**James –** 1 year **John -** left on the books
(11) Count 11 – Driving while disqualified – 7/3/18	**James Hanrahan only** – 9 months & 3 year disqualification
(12) Count 12 – Dangerous driving – 7/3/18	**James Hanrahan only**- 9 months & 3 year disqualification
(13) Count 13 – Using a motor vehicle without insurance – 7/3/18	**James Hanrahan only** – 3 months
	All sentences were ordered to operate concurrently. Both Appellants were also punished by a Violent Offences Prevention Order of five years duration.

[3] In brief compass, the two Appellants were involved jointly in a series of burglaries, either simple or aggravated, between 19 October 2017 and 7 March 2018, at five separate dwelling houses in various locations. Four common assaults occurred during some of the burglaries, committed by one or other applicant, as indicated in the table above. The weapons used in the burglaries were a hammer, an iron bar, a bat and a knife. All of the burgled properties were private residences. All were either damaged or ransacked. The father was also convicted of the three driving offences specified above.

[4] As regards the four counts of common assault:

(i) Both Appellants pleaded guilty to the common assault of the 79 year old father of the occupant at Benburb Road, Moy. As they exited the ransacked house, one of them pushed against the injured party, causing him to drop two plates of food in his hands. The injured party gave chase, but was stopped by the same man, who then pushed him and threatened him with a screwdriver, which was held to his chest as he said "Come any closer and I'll put this through you".

(ii) The second assault victim was the occupant of an adjoining house, who heard noises coming from the property at approximately 4.15 in the afternoon. He knocked on the door

and observed two men in the hall, who subsequently ran out. He was called a "bastard" and was struck on the shoulder with a bat, causing him to fall to the ground. A third man, armed with what looked like an iron bar, ran out of the house. All three got into a car and escaped. This assault was "left on the books" in relation to both applicants.

(iii) The final two assaults were committed during the course of the aggravated burglary of another residential property. At approximately 18.45, a neighbour (a lady) heard banging and smashing glass from the next door property. She approached the back of her neighbour's house with her husband and son whereupon they were accosted by three men, all carrying knives. The men shouted "… we have knives, get out of the way or we will f…ing stab you". The neighbour moved to let them pass and stumbled on the path; as the men escaped. Her son heard his mother scream as he ran towards the three men. His police statement describes one of the men threatening him with a Stanley knife and saying "I'll f…ing stab you." James Hanrahan pleaded guilty to both assaults and they were "left on the books" in relation to John Hanrahan.

None of the victims suffered any significant injury.

[5] ***Grounds of Appeal***

The Appellants' grounds of appeal are identical:

(i) The sentencing court erred in determining that it was appropriate to impose a Violent Offences Prevention Order.

(ii) Alternatively, if such an Order was not imposed in error, the court erred in imposing *"the intrusive and unnecessary conditions of the Order"* in each case.

Chronology

[6] The parties' representatives helpfully co-operated with the court in the compilation of a chronology of the Appellants' prosecution and sentencing. The court draws from this the following:

(a) **2nd April 2019** - The Appellants were arraigned at Newry Crown Court and pleaded not guilty to all counts**.** The Appellants were charged jointly with Counts 1 to 10. James John Hanrahan (the father) was charged with Counts 11 – 13

(b) **24th May 2019** - John Hanrahan pleaded guilty to Counts 1 to 5 inclusive. Counts 1 – 4 related to a series of offences all occurring on the 19th October 2017. Count 5 related to an offence occurring on the 28th September 2017. The remainder of the Counts were left on the books not to be proceeded with without the leave of the Court or the Court of Appeal.

(c) **24th May 2019** - James John Hanrahan pleaded guilty to Counts 2 – 4, 8 – 13 inclusive. Counts 2 – 4 related to offences occurring on the 19th October 2017. Counts 8 – 10 and 11 - 13 related to offences committed on the 7th March 2018.

(d) The outstanding Counts against each of the Appellants were left on the books not to be proceeded with without the leave of the Court or the Court of Appeal.

(e) **21st June 2019 –** Pleas entered. Judge adjourned to consider sentence.

(f) **26th June 2019** - The Appellants were sentenced at Newry Crown Court.

The Violent Offences Prevention Orders

[7] On the date of the hearing when the pleas in mitigation were made counsel for the prosecution invited the court to make a Violent Offences Prevention Order ("VOPO") in respect of each Appellant. This had been highlighted in the PPS sentencing submission provided to defence counsel and the court the previous day. A draft of the proposed VOPO was provided in advance of the hearing the following morning. The transcript records that defence counsel made certain submissions in response. The judge acceded to the prosecution application upon the conclusion of his sentencing decision promulgated five days later. In each case the terms of the order, which reflect verbatim the PPS draft, are the following:

(i) *The Defendant is prohibited from residing at an address without prior approval from his designated risk manager or staying overnight at any other address or place without prior approval of his designated risk manager.*

(ii) *The Defendant is prohibited from being in a state of intoxication in a public place.*

(iii) *The Defendant must engage with his own GP and/or community addiction services by following their advice and co-operating fully with any care or treatment they recommend.*

(iv) *The Defendant must engage in courses designed to reduce his risk as recommended and offered by his designated risk manager, PBNI or other agencies to assist with his addictions, violent behaviour and re-offending.*

(v) The Defendant must receive visits from and keep in touch with his designated risk manager.

(vi) The Defendant must permit his designated risk manager entry into his address for any necessary risk assessment or other communication that is required.

(vii) The Defendant must provide his designated risk manager with current mobile phone numbers and vehicle registrations and keep him/her updated of any changes.

[8] Taking into account the terms of each order and the periods of imprisonment imposed, this court was concerned to ascertain their post-sentence effect. This elicited the following information:

(i) Both Appellants, having been in custody remand since March 2018, became sentenced prisoners with immediate effect following their sentencing on 26 June 2019.

(ii) The Appellants' earliest dates of release from prison fall in September 2020 (the father) and March 2020 (the son).

At a practical level, therefore the issue of complying with the orders has not arisen and will not arise until both Appellants have completed their respective custodial sentences.

[9] In acceding to the prosecution's applications, the sentencing judge (per the transcript) said the following:

> "[Regarding the father] *I have absolutely no difficulty given his record in imposing a Violent Offences Prevention Order. It's clearly necessary given his record and the projection that he still is someone who is a high risk of reoffending. The terms appear to be proportionate.*"

With regard to the son the judge stated:

> "*In relation to John Hanrahan* [I do so] *with somewhat more reluctance because his record is not of the same extent. However given the fact that weapons were used during the course of these burglaries and although the weapons were not used, violence was offered to persons who tried to interfere and in those circumstances I am willing to grant the order.*"

The judge then purported to impose orders with a duration of seven years. This was subsequently rectified, in some unspecified way, to the statutory maximum period of five years.

Pre – Sentence Reports

[10] Some further information bearing on the issues considered above is contained in the pre-sentence reports relating to the Appellants.

James Joseph Hanrahan

The probation officer's report discloses the following of note: this Appellant was admitted to the enhanced prison regime some five months following his initial remand in custody; he has had no prison disciplinary adjudications; he has passed two drugs consumption tests; he has participated in numeracy and literacy courses; he has attended in excess of 110 "Recycling bin party" sessions; and he has engaged in cookery and library classes and the Barnardo's "Being a Dad" programme. He expressed shame, self-disgust and victim empathy. He was assessed as presenting a high risk of re-offending. He did not satisfy the criteria for posing a significant risk of serious harm to others (and, hence, did not satisfy the statutory test of "dangerousness: see *infra*"). The author evidently considered this Appellant a suitable candidate for a period of probationary supervision and recommended specific conditions accordingly.

John Hanrahan

As regards this Appellant (the son) the probation officer's report discloses the following of note: he did not begin offending until aged 24 and attributes his criminal record to heavy alcohol and drug consumption and dependency; he has successfully undergone drug testing during his pre-sentencing remand custody; he has enhanced prisoner status; and he has completed a diploma in waste recycling. In common with his father, he was assessed as posing a high likelihood of reoffending in the next two years, while not presenting a significant risk of serious harm to the public. He was evidently considered a suitable candidate for post-imprisonment probationary supervision and the author formulated proposed conditions to this effect.

[11] ***Criminal Records***

James Joseph Hanrahan has 38 previous convictions spanning several offence types, including one for aggravated burglary, nine driving offences, two for serious assault and four for theft. These have been punished by driving disqualifications, suspended sentences and varying periods of imprisonment, including 'straight custodial' and determinate custodial sentences.

John Hanrahan had seven previous convictions when sentenced in the present case. They were for handling stolen goods, resisting police, criminal damage (in October 2015), obstructing police (in January 2018) and burglary with intent to commit grievous bodily harm (in July 2017).

[12] The exercise of juxtaposing the two criminal records is instructive. The father's criminal career began when aged 17. It has been punctuated by substantial gaps. He was aged almost 40 when he received his first sentence of immediate imprisonment (six months for two offences of dishonesty). His most serious and sustained period of offending dates from 2012 to the beginning of 2018. Road traffic offences predominated until the discrete spate of offences giving rise to the sentence under appeal to this court.

[13] In contrast, John Hanrahan (the son) – as noted above – was first convicted when aged 24 years. Prior to the spate of offending giving rise to this appeal, his criminal record consisted of two offences of handling stolen goods, one of criminal damage and three public order offences. These were punished by a mixture of community orders, a fine and a conditional discharge.

Legal Framework

[14] 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)."*

The "*specified offences*" are reproduced in the Appendix to this judgment.

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."*

[15] 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."

[16] 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."*

[17] 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.

[18] 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.

[19] 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.

[20] Thus the legislation makes provision for two distinct types of VOPO. The first may be imposed as part of a convicted person's sentence. The second may be imposed at any time, entirely unrelated to prosecution or conviction or sentence. It is convenient to describe these distinctive species as the "*sentencing VOPO*" and the "*free standing VOPO*".

The Human Rights Dimension

[21] As noted in *Re Pearce* [2019] NIQB …, [McC 11094] 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.

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.*
>
> *(j) 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."*

In *Re Pearce* [unreported, 22/11/19, MCC11094] the High Court decided that the offending VOPO did not violate either of these Convention rights. Clearly, Article 8 rights will be highly case specific. In contrast, the dismissal of the Article 7 challenge was of a different character, being in effect a conclusion that all VOPOs will be Article 7 compliant.

The Respondents' Evidence in Re Pearce

[22] The choreography of *Re Pearce* and these conjoined appeals has had the beneficial effect that the evidence available to this court, as recorded in the *Pearce* decision, is of a broader and more detailed nature than would otherwise have been expected. What follows in the next few paragraphs is drawn directly from the judgment in *Pearce*.

[23] Evidence was filed on behalf of both the Department of Justice ("*DOJ")* and the Chief Constable of the Police Service of Northern Ireland ("PSNI"). The evidence included 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.*"

[24] 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*".

[25] 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.*"

[26] The evidence also included 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]."

[27] An affidavit was 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.

[28] The second of the Respondents' affidavits in *Re Pearce* was 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 Magistrate's Courts (Violent Offences Prevention Orders) Rules (NI) 2016. The commencement dates for all of these measures were 01 September and 02 November 2015 respectively.

[29] The DOJ deponent also addressed the DOJ publication "*Guidance on the Violent Offences Prevention Order*" 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*".

[30] Neither party addressed any argument to the court on the status or effect of this instrument of guidance. Furthermore it does not in any apparent way sound on the court's determination of these appeals. In these circumstances we consider it prudent to offer no analysis or commentary.

The Issues

[31] We have identified the following central issues:

(i) The legal test for the imposition of a VOPO.

(ii) Satisfying the legal test.

(iii) Procedural fairness.

We shall address each issue in turn.

The legal Test

[32] The legal test is prescribed by section 55 of the 2015 Act. The test is exactly the same for a sentencing VOPO and a free standing VOPO. The question for the court in both cases is *whether it considers a VOPO necessary for the purpose of protecting the public from the risk of serious harm caused by the convicted offender (in the case of the sentencing VOPO) or the respondent (in the case of the free standing VOPO):* per section 55(1) of the 2015 Act. Specifically "***the risk of serious violent harm***" means *the risk of serious violent harm caused by a person is a reference to protecting the public, or 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* (per s 55(2)). Cognisance of the list of "*specified offences*" is also essential: section 55(2) and Part 1 of Schedule 2 to the 2008 Order (reproduced in the Appendix to this judgment). The test is both exhaustive and exclusively statutory. It has no judicially devised elements.

[33] On behalf of the Appellants Mr Frank O'Donohue QC (with Mr Sean Devine of counsel) submitted that a VOPO cannot be imposed in the absence of a specific finding of "*dangerousness*", applying the statutory test enshrined in Article 15 of the Criminal Justice (NI) Order 2008 is satisfied. Article 15 provides:

"15. – (1) This Article applies where –

(a) a person has been convicted on indictment of a specified offence; an

(b) it falls to a court to assess under Article 13 or 14 whether there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further such offences.

(2) The court in making the assessment referred to in paragraph (1)(b) –

(a) shall take into account all such information as is available to it about the nature and circumstances of the offence;

(b) may take into account any information which is before it about any pattern of behaviour of which the offence forms part; and

(c) may take into account any information about the offender which is before it."

[34] We reject this argument. It is contra-indicated by all of the following considerations. First, Article 15 of the 2008 Order does not feature in the 2015 Act VOPO regime. Second, there is no evidential foundation for supposing that the omission of the former from the latter was inadvertent. Third, to incorporate the former within the latter would have entailed a simple mechanism had this been the underlying intention. Fourth, the differing statutory terminology of "*serious harm*" and "*serious violent harm*" must be acknowledged. Fifth, Article 15 of the 2008 Order operates only in the sentencing context, whereas the VOPO has a further and separate free standing nature and function.

[35] In this case the judge did not apply the statutory test in respect of either Appellant. As regards the father, the three criteria which the judge identified were his criminal record, his high risk of re-offending and the proportionality of the proposed terms. With regard to the son, the only clearly discernible criterion applied was that of "*offering violence*" to a third party in some of the index offences. The elaborate and more focused exercise required of the judge by section 55 of the 2015 Act was not undertaken.

Satisfying the Legal Test

[36] The second issue raises the question of how the legal test can be satisfied in a given case. This, self-evidently, is an unavoidably case sensitive question. We shall

address it by reference to the fact sensitive context of these two appeals. In adopting this approach some more general guidance will also be possible.

[37] In our view the statutory language "*… considers necessary …*"does not create a framework involving any burden or standard of proof. This is, rather, *par excellence*, the vocabulary of predictive evaluative judgement, a familiar phenomenon in the field of criminal justice. This assessment is reinforced by the consideration that in the specific context of the sentencing VOPO the legislation does not require an application to this effect by the prosecution. Thus a VOPO can be lawfully made by a court acting on its own initiative. No contrary argument was formulated by either party, correctly so in our view.

[38] While there is no burden or standard of proof in play, we consider it clear that every VOPO must have a sufficient evidential foundation. In the case of a sentencing VOPO this will normally be found in the committal papers, where appropriate supplemented by any additional evidence served, the subject's criminal record (if any) and any other relevant materials, for example, professional reports generated in the instant case or in previous cases. In the case of a freestanding VOPO it is to be expected that the supporting evidence will in the generality of cases be of the same kind.

[39] In every case the court must be satisfied that the "*risk*", as defined in section 55(2), is current. The phraseology "*current risk*" may be considered unsatisfactory. However, as emphasised in *Re Pearce*, every VOPO is forward looking in nature. Considered in its full statutory context, we consider that "*current risk*" denotes a risk *assessed as of today, but relating to the future,* measured on the basis of the available evidence.

[40] The VOPO's under challenge in these appeals throw into sharp relief the question of whether a sentencing VOPO is appropriate in the context of a sentencing disposal involving a substantial period of immediate imprisonment. In every case of a sentencing disposal involving any period of imprisonment, section 55 of the 2015 Act obliges the court to focus carefully on the post-release phase. It being virtually impossible to conceive of any case in which the public or any particular members of the public will not be immediately protected from the risk of serious violent harm perpetrated by a convicted Defendant sentenced to any term of imprisonment, the question for the sentencing court must be: is a VOPO considered necessary for the purpose of protecting the public or any particular member or members of the public from the risk of serious violent harm perpetrated by the convicted Defendant following his projected release from prison?

[41] In the case of a freestanding VOPO application to the Magistrates' Court the applicant will have to focus carefully on the evidence considered necessary to secure the order pursued. It is to be expected that in most cases the respondent will have had previous interaction with the criminal justice system. In such cases materials such as pre-sentence reports, sentencing transcripts, prison reports, previous or extant licence conditions, and witness statements, will normally be available. There

could also be sensitive material in some instances. In the majority of cases one would expect that the respondent is a person either at liberty or about to be released from prison. The formal and focused nature of freestanding VOPO applications should ensure that all available material bearing on the statutory test is available to the court. This will be supplemented by such evidential response as the respondent chooses to make.

[42] Given the foregoing analysis it seems likely that the court will generally be better equipped to apply the statutory test in the freestanding VOPO application context. The judge will not be burdened by the myriad other considerations and judicial responsibilities which arise in the sentencing context. In contrast, where the possibility of a sentencing VOPO arises, whether upon application by the prosecution or at the instigation of the court, the challenge for the typically busy Crown Court Judge will always be significant. It is appropriate to add that the judge will be entitled to expect the maximum assistance from all legal representatives.

[43] The differences between the freestanding VOPO and sentencing VOPO contexts are not confined to the practical. While in both contexts the court is required to engage in an exercise of forecasting, the situation and circumstances of the respondent are likely to be quite different in practice. We have already drawn attention to the circumstances of what might be assumed to be the typical freestanding VOPO application respondent. From the perspective of the statutory test, the most important of these is present or imminent liberty. The significance of this is that the court's forecast is directed to the immediate future.

[44] In cases where the dominant sentence which the court is proposing will entail immediate liberty for the defendant - via, for example, a suspended sentence or a probation order or, indeed, a "time spent" custodial sentence – the Crown Court judge, in common with the district judge, will be addressing the immediate future. This is to be contrasted with what one might expect to be a fairly typical sentencing VOPO scenario, namely cases where the main sentencing disposal will involve immediate imprisonment for the defendant, particularly where this will be of substantial dimensions, the application of the statutory test will inevitably be more difficult. The more distant the first day of liberty for the sentenced defendant the more challenging the application of the statutory test will be.

[45] The present appeals illustrate the challenge just noted. The custody/licence disposal which the judge selected for each of the Appellants entailed immediate imprisonment of 2 ½ years for the father and two years for the son, subject of course to reduction for remand custody. Neither of the VOPOs imposed, having regard to their terms, was capable of having any immediate practical effect. On the date when they were imposed the effect of the father's custodial sentence was that he would be in prison for the next ensuing 15 months approximately, while in the son's case the period would be around nine months. This court is not suggesting that VOPOs were necessarily wrong in principle in these circumstances. The point rather is that in any case where the sentencing disposal chosen by the judge involves a substantial period

of immediate imprisonment it will be more difficult to satisfy the statutory test for a sentencing VOPO.

[46] The reasons underpinning the foregoing analysis are essentially pragmatic. The shorter the period of immediate imprisonment, the easier the forecasting exercise will be as the judge will not be addressing the distant future. Thus the fact of intervening imponderables will present less of a challenge. The most obvious and significant imponderable will be that of the offender's progress in prison. This is illustrated by the concrete case of James John Hanrahan. We have in [10] above drawn attention to this Appellant's very positive progress as a remand prisoner. On the sentencing date the judge had virtually no means of knowing whether this would continue – or indeed improve – during the following 15 months. *Ditto* in the case of John Hanrahan whose progress in remand custody, while positive, had not been as striking but who would have opportunities to impress further during the next ensuing nine months. The sentencing judge's armoury did not include a crystal ball.

[47] This analysis throws into sharp relief the contrast between the sentencing VOPO and the freestanding VOPO. In the concrete case of these Appellants the prosecution was under no obligation to apply for a VOPO at the sentencing stage. It rather appears that the application was prompted by the police. This court makes no criticism of either agency in this respect. However, the inescapable reality is the following. If no sentencing VOPO application had been made a much better informed decision whether to apply for this measure via the freestanding VOPO route at a later date could have been made. This is so because evidence, in the form of conventional reports, of the Appellants' progress in prison would have become available. This evidence would inform decision makers about matters such as prison regime, offender classification, courses and activities undertaken, qualifications achieved, disciplinary adjudications, drug testing and, where appropriate, compliance with conditions of compassionate temporary release or pre-release testing. We consider that all or most of these matters would have a bearing on the application of the statutory test. The proposition that the public is at less risk of serious violent harm perpetrated by a strongly rehabilitated prisoner seems uncontroversial.

[48] Furthermore, care must be taken to ensure that the imposition of a sentencing VOPO does not run the risk of operating as a disincentive to the rehabilitation of convicted offenders in the prison setting. Promoting the incentive to rehabilitate oneself is positively in the public interest. This is a main theme of the recent judgment of this court in *R v Dunlop* [2019] NICA 32 at [76] especially.

[49] Brief mention of the Sexual Offences Prevention Order ("SOPO") analogy is appropriate. The VOPO and the SOPO share certain similarities. Fundamentally, each is forward looking in nature, designed to protect the public from future offending. Each seeks to do so by restricting the subject's life choices and lifestyle and, where appropriate, imposing supervision and scrutiny by criminal justice agencies and possibly other professionals. Each is governed by the statutory

criterion of necessity. In *R v Smith and Others* [2011] EWCA Crim 1772 the English Court of Appeal held that in the case of a SOPO the court must be alert to the factors of oppression and proportionality. A similar approach has been adopted by this court see *R v Jones* [2011] NICA 62 at [10] – [11] and *R v Simpson* [2014] NICA 83 at [8]. We consider that this applies equally to the two species of VOPO.

[50] The Serious Crime Prevention Order ("SCPO) is another sentencing measure which has features in common with the VOPO. This order is available in both the jurisdiction of England and Wales and that of N. Ireland *(per s 8 of the Serious Crime Act 2007) It can be made only if the court has reasonable grounds to believe that it would protect the public by preventing, restricting or disrupting involvement by the defendant in serious crime, as defined: see s 19(2). The English Court of Appeal considered this species of order in *R v Boness* [2005] EWCA Crim 2395 and *R v Hancox and Others* [2010] EWCA Crim 102. In the latter case, at [11], Hughes LJ adverted to:

> "*…the importance of the order being practicable and enforceable and satisfying the test of precision and certainty. Preventive orders of this kind in effect create for the Defendant upon whom they are imposed a new criminal offence punishable with imprisonment for up to 5 years. They must be expressed in terms from which he, and any police man contemplating arrest or other means of enforcement, can readily know what he may and may not do.*"

The "*in accordance with the law*" ECHR requirement of foreseeability springs readily to mind. We consider that this passage applies equally to the VOPO. Fundamentally the subject must understand clearly how the relevant restrictions and intrusions are designed to operate from day to day. This means that particular care must be invested in the language in which the terms are formulated. Simple, clear and succinct terms are essential.

[51] Finally, as Blackstone 2020, paragraphs D25.71 – 77 demonstrates, the sentencing measure of the violent offences order ("VOO"), considered in *Pearce* at [23], differs in significant respects from the exclusively Northern Irish VOPO. The VOO is not an available disposal in this jurisdiction.

VOPOs: Procedural Fairness

[52] The third of the three principal issues which we have identified is that of procedure in the specific context of the sentencing VOPO. Neither the parent legislation nor any of the subordinate instruments prescribes the procedure to be followed. Furthermore, no provision is made for this matter to be addressed by appropriate Crown Court rules. Notwithstanding there is no obvious reason why the elementary requirements of procedural fairness cannot be observed. In the recent decision of this court in *R v Morrow* [2019] NICA 71, at [32] especially, one finds emphasis on the consideration that every defendant's fair trial rights extend to

the sentencing process. In the case of the sentencing VOPO this means that reasonable notice must be given of any prosecution application for this measure and the defendant and his legal representatives must have a reasonable opportunity to respond. The giving of notice will be largely meaningless unless it is accompanied by a draft of the proposed VOPO.

[53] In the present case the requisite notification was given by prosecuting counsel to defence counsel and the court via the PPS sentencing submission on the eve of the plea in mitigation hearing. The proposed VOPO, in draft, was provided before the hearing began. While these notifications might appear to have been rather late, no actual unfairness to either Appellant ensued. There was no protest about timing on their behalf and the relevant transcript makes clear that defence counsel availed of the opportunity to address this discrete issue. Thus there was due observance of both Appellants' fair trial rights in this instance.

[54] It is not difficult to envisage cases where an eve of hearing notification of a proposed sentencing VOPO application may be too late. This could result in at least two undesirable scenarios. The first is that of the hearing having to be adjourned. Delay and disruption of this kind advance no cause. Furthermore both are prejudicial to injured parties. The second is that of the hearing proceeding and the defendant's fair trial rights being infringed by reason of the lateness.

[55] We would suggest that in cases where a sentencing VOPO application is to be made the relevant police officers and PPS officials apply their minds to this at the earliest possible stage, engaging proactively with prosecuting counsel and concentrating particularly on the proposed terms of the order. Those concerned will simultaneously focus on the desirability of giving the maximum advance notice possible to defence lawyers. While we are mindful of practical realities, we consider that a few days advance notice should normally be achievable. This will usually mean that the decision to apply for a VOPO and the associated notification to the defence and the sentencing court will precede receipt of the pre-sentence report. While this is unfortunate no obvious solution is apparent. However this serves to prompt the observation that in such circumstances the decision to apply for a VOPO should normally be provisional in nature, to be revisited upon receipt of the pre-sentence report and any other relevant mitigation reports or materials generated on behalf of the defendant. This observation is driven by the imperative of the relevant decision being as fully informed as possible, a fundamental principle of public law.

Conclusion

[56] This court has sympathy with the sentencing judge. He found himself dealing with a new sentencing measure without the benefit of any guidance from this court or the decision in *Pearce*. The application was thrust upon the judge with little notice and, perhaps understandably, received limited attention in the presentations of both parties' counsel. These factors would explain why the judge initially (a) overlooked the VOPO issue and (b) erred as regards the maximum permissible statutory period when the case was re-listed five days later for the purpose of passing sentence.

[57] Developing our analysis in [34] above we conclude that the VOPOs imposed on these Appellants cannot withstand challenge. As already indicated, the judge did not apply the statutory test and, indeed, applied an alien test. In this way the several ingredients of the statutory test were neglected. Furthermore, the judge focused only on the index offending and criminal records of the Appellants in circumstances where it was incumbent upon him to balance a series of other facts and considerations, in particular those contained in the pre-sentence reports as highlighted above. The conclusion that the imposition of the VOPOs in this case was erroneous in law must follow. No other aspect of the Appellants' sentencing is under appeal. The appeals succeed accordingly and the sentencing of both Appellants is varied to this extent.

APPENDIX

PART 1 SPECIFIED VIOLENT OFFENCES

1. Manslaughter.

2. Kidnapping.

3. Riot.

4. Affray.

5. False imprisonment.

The Offences against the Person Act 1861 (c. 100)

6. An offence under—

section 4 (soliciting murder),

section 16 (threats to kill),

section 18 (wounding with intent to cause grievous bodily harm),

section 20 (malicious wounding),

section 21 (attempting to choke, suffocate or strangle in order to commit or assist in committing an indictable offence),

section 22 (using chloroform etc. to commit or assist in the committing of any indictable offence)

section 23 (maliciously administering poison etc. so as to endanger life or inflict grievous bodily harm),

section 27 (abandoning children),

section 28 (causing bodily injury by explosives),

section 29 (using explosives etc. with intent to do grievous bodily harm),

section 30 (placing explosives with intent to do bodily injury),

section 31 (setting spring guns etc. with intent to do grievous bodily harm),

section 32 (endangering the safety of railway passengers),

section 35 (injuring persons by furious driving), or

section 37 (assaulting officer preserving wreck).

7. An offence under section 47 of assault occasioning actual bodily harm.[A violent offences prevention order can be made on conviction only if victim is vulnerable adult or aged under 18 or living is same household, or if offence is aggravated by racial etc hostility (Justice Act 2015 (NI c.9) ss.55-76, s.55(4))]

The Explosive Substances Act 1883 (c. 3)

8. An offence under—

section 2 (causing explosion likely to endanger life or property),

section 3 (attempt to cause explosion, or making or keeping explosive with intent to endanger life or property), or

section 4 (possession of explosives or ammunition in suspicious circumstances).

The Infanticide Act (Northern Ireland) 1939 (c. 5)

9. An offence under section 1 (infanticide).

The Criminal Justice Act (Northern Ireland) 1945 (c. 15)

10. An offence under section 25 (child destruction).

The Criminal Justice (Miscellaneous Provisions) Act (Northern Ireland) 1968 (c. 28)

11. An offence under section 7(1)(b) (assault with intent to resist arrest).

The Children and Young Persons Act (Northern Ireland) 1968 (c. 34)

12. An offence under section 20 (cruelty to children).

The Theft Act (Northern Ireland) 1969 (c. 16)

13. An offence under section 8 (robbery or assault with intent to rob).

14. An offence under section 9 of burglary with intent to—

(a) inflict grievous bodily harm on a person, or

(b) do unlawful damage to a building or anything in it.

15. An offence under section 10 (aggravated burglary).

The Criminal Jurisdiction Act 1975 (c. 59)

15A. An offence under section 2 (hi-jacking of vehicles or ships).

The Criminal Damage (Northern Ireland) Order 1977 (NI 4)

16. An offence of arson under Article 3.

17. An offence under Article 3(2) (destroying or damaging property) other than offence of arson

The Road Traffic (Northern Ireland) Order 1981 (NI 1)

18. An offence under Article 172B (aggravated vehicle-taking causing death or grievous bodily injury).

The Taking of Hostages Act 1982 (c. 28)

19. An offence under section 1 (hostage-taking).

The Aviation Security Act 1982 (c. 36)

20. An offence under—

section 1 (hijacking),

section 2 (destroying, damaging or endangering safety of aircraft),

section 3 (other acts endangering or likely to endanger safety of aircraft), or

section 4 (offences in relation to certain dangerous articles).

The Mental Health (Northern Ireland) Order 1986 (NI 4)

21. An offence under Article 121 (ill-treatment of patients).

The Criminal Justice Act 1988 (c. 33)

22. An offence under section 134 (torture).

The Aviation and Maritime Security Act 1990 (c. 31)

23. An offence under—

section 1 (endangering safety at aerodromes),

section 9 (hijacking of ships),

section 10 (seizing or exercising control of fixed platforms),

section 11 (destroying fixed platforms or endangering their safety),

section 12 (other acts endangering or likely to endanger safe navigation), or

section 13 (offences involving threats).

The Channel Tunnel (Security) Order 1994 (SI 1994/570)

24. An offence under Part 2 (offences relating to Channel Tunnel trains and the tunnel system).

The Road Traffic (Northern Ireland) Order 1995 (NI 18)

25. An offence under—

Article 9 (causing death or grievous bodily injury by dangerous driving), or

Article 14 (causing death or grievous bodily injury by careless driving when under the influence of drink or drugs).

The Protection from Harassment (Northern Ireland) Order 1997 (NI 9)

26. An offence under Article 6 (putting people in fear of violence).

The Police (Northern Ireland) Act 1998 (c. 32

27. An offence under section 66 (assaulting or obstructing a constable etc.).

The Terrorism Act 2000 (c. 11)

[from 12 Jan 2010 re offences committed on or after that day: if found to have been committed over a period of 2 or more days, or at some time during a period of 2 or more days, it must be taken to have been committed on the last of those days.]

27A An offence under—

section 54 (weapons training),

section 56 (directing terrorist organisation),

section 57 (possession of article for terrorist purposes), or

section 59 (inciting terrorism overseas). [S.59 applies only in England/Wales; this should be a reference to s.60 which is the equivalent provision for NI] – Valentine annotation

The International Criminal Court Act 2001 (c. 17)

28. An offence under section 51 or 52 (genocide, crimes against humanity, war crimes and related offences), other than one involving murder.

The Anti-terrorism, Crime and Security Act 2001 (c. 24)

[from 12 Jan 2010 re offences committed on or after that day: if found to have been committed over a period of 2 or more days, or at some time during a period of 2 or more days, it must be taken to have been committed on the last of those days.]

28A An offence under—

section 47 (use etc of nuclear weapons),

section 50 (assisting or inducing certain weapons-related acts overseas), or

section 113 (use of noxious substance or thing to cause harm or intimidate).

The Female Genital Mutilation Act 2003 (c. 31)

29. An offence under—

section 1 (female genital mutilation),

section 2 (assisting a girl to mutilate her own genitalia), or

section 3 (assisting a non-UK person to mutilate overseas a girl's genitalia).

The Domestic Violence, Crime and Victims Act 2004 (c. 28)

30. An offence under section 5 (causing or allowing a child or vulnerable adult to die or suffer serious physical harm).

The Firearms (Northern Ireland) Order 2004 (NI 3)

31. An offence under—

Article 58 (possession with intent),

Article 59 (use of firearm to resist arrest),

Article 60 (carrying firearm with criminal intent), or

Article 64 (possession of a firearm in suspicious circumstances).

The Terrorism Act 2006 (c. 11)

[from 12 Jan 2010 re offences committed on or after that day: if found to have been committed over a period of 2 or more days, or at some time during a period of 2 or more days, it must be taken to have been committed on the last of those days.]

31A An offence under—

section 5 (preparation of terrorist acts),

section 6 (training for terrorism),

section 9 (making or possession of radioactive device or material),

section 10 (use of radioactive device or material for terrorist purposes etc), or

section 11 (terrorist threats relating to radioactive devices etc).

The Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015

31A. [dup] An offence under—

section 1 (slavery, servitude and forced or compulsory labour);

section 2 (human trafficking) which is not within Part 2 of this Schedule.

Other offences

32. An offence of—

(a) aiding, abetting, counselling, procuring or inciting the commission of an offence specified in this Part of this Schedule,

(b) conspiring to commit an offence so specified, or

(c) attempting to commit an offence so specified.

33. An offence under Part 2 of the Serious Crime Act 2007 (c. 27) (encouraging or assisting crime) in relation to an offence specified in this Part of this Schedule.

34. An attempt to commit murder or a conspiracy to commit murder