



# Serious Crime Act 2007

## 2007 CHAPTER 27

### PART 1

#### SERIOUS CRIME PREVENTION ORDERS

##### *General*

### **1 Serious crime prevention orders**

- (1) The High Court in England and Wales may make an order if—
  - (a) it is satisfied that a person has been involved in serious crime (whether in England and Wales or elsewhere); and
  - (b) it has reasonable grounds to believe that the order would protect the public by preventing, restricting or disrupting involvement by the person in serious crime in England and Wales.
- (2) The High Court in Northern Ireland may make an order if—
  - (a) it is satisfied that a person has been involved in serious crime (whether in Northern Ireland or elsewhere); and
  - (b) it has reasonable grounds to believe that the order would protect the public by preventing, restricting or disrupting involvement by the person in serious crime in Northern Ireland.
- (3) An order under this section may contain—
  - (a) such prohibitions, restrictions or requirements; and
  - (b) such other terms;as the court considers appropriate for the purpose of protecting the public by preventing, restricting or disrupting involvement by the person concerned in serious crime in England and Wales or (as the case may be) Northern Ireland.
- (4) The powers of the court in respect of an order under this section are subject to sections 6 to 15 (safeguards).
- (5) In this Part “serious crime prevention order” means—

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- (a) an order under this section; or
  - (b) an order under section 19 (corresponding order of the Crown Court on conviction).
- (6) For the purposes of this Part references to the person who is the subject of a serious crime prevention order are references to the person against whom the public are to be protected.

## **2 Involvement in serious crime: England and Wales orders**

- (1) For the purposes of this Part, a person has been involved in serious crime in England and Wales if he—
- (a) has committed a serious offence in England and Wales;
  - (b) has facilitated the commission by another person of a serious offence in England and Wales; or
  - (c) has conducted himself in a way that was likely to facilitate the commission by himself or another person of a serious offence in England and Wales (whether or not such an offence was committed).
- (2) In this Part “a serious offence in England and Wales” means an offence under the law of England and Wales which, at the time when the court is considering the application or matter in question—
- (a) is specified, or falls within a description specified, in Part 1 of Schedule 1; or
  - (b) is one which, in the particular circumstances of the case, the court considers to be sufficiently serious to be treated for the purposes of the application or matter as if it were so specified.
- (3) For the purposes of this Part, involvement in serious crime in England and Wales is any one or more of the following—
- (a) the commission of a serious offence in England and Wales;
  - (b) conduct which facilitates the commission by another person of a serious offence in England and Wales;
  - (c) conduct which is likely to facilitate the commission, by the person whose conduct it is or another person, of a serious offence in England and Wales (whether or not such an offence is committed).
- (4) For the purposes of section 1(1)(a), a person has been involved in serious crime elsewhere than in England and Wales if he—
- (a) has committed a serious offence in a country outside England and Wales;
  - (b) has facilitated the commission by another person of a serious offence in a country outside England and Wales; or
  - (c) has conducted himself in a way that was likely to facilitate the commission by himself or another person of a serious offence in a country outside England and Wales (whether or not such an offence was committed).
- (5) In subsection (4) “a serious offence in a country outside England and Wales” means an offence under the law of a country outside England and Wales which, at the time when the court is considering the application or matter in question—
- (a) would be an offence under the law of England and Wales if committed in or as regards England and Wales; and
  - (b) either—

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- (i) would be an offence which is specified, or falls within a description specified, in Part 1 of Schedule 1 if committed in or as regards England and Wales; or
  - (ii) is conduct which, in the particular circumstances of the case, the court considers to be sufficiently serious to be treated for the purposes of the application or matter as if it meets the test in sub-paragraph (i).
- (6) The test in subsection (4) is to be used instead of the test in section 3(1) in deciding for the purposes of section 1(1)(a) whether a person has been involved in serious crime in Northern Ireland.
- (7) An act punishable under the law of a country outside the United Kingdom constitutes an offence under that law for the purposes of subsection (5), however it is described in that law.

### **3 Involvement in serious crime: Northern Ireland orders**

- (1) For the purposes of this Part, a person has been involved in serious crime in Northern Ireland if he—
- (a) has committed a serious offence in Northern Ireland;
  - (b) has facilitated the commission by another person of a serious offence in Northern Ireland; or
  - (c) has conducted himself in a way that was likely to facilitate the commission by himself or another person of a serious offence in Northern Ireland (whether or not such an offence was committed).
- (2) In this Part “a serious offence in Northern Ireland” means an offence under the law of Northern Ireland which, at the time when the court is considering the application or matter in question—
- (a) is specified, or falls within a description specified, in Part 2 of Schedule 1; or
  - (b) is one which, in the particular circumstances of the case, the court considers to be sufficiently serious to be treated for the purposes of the application or matter as if it were so specified.
- (3) For the purposes of this Part, involvement in serious crime in Northern Ireland is any one or more of the following—
- (a) the commission of a serious offence in Northern Ireland;
  - (b) conduct which facilitates the commission by another person of a serious offence in Northern Ireland;
  - (c) conduct which is likely to facilitate the commission, by the person whose conduct it is or another person, of a serious offence in Northern Ireland (whether or not such an offence is committed).
- (4) For the purposes of section 1(2)(a), a person has been involved in serious crime elsewhere than in Northern Ireland if he—
- (a) has committed a serious offence in a country outside Northern Ireland;
  - (b) has facilitated the commission by another person of a serious offence in a country outside Northern Ireland; or
  - (c) has conducted himself in a way that was likely to facilitate the commission by himself or another person of a serious offence in a country outside Northern Ireland (whether or not such an offence was committed).

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- (5) In subsection (4) “a serious offence in a country outside Northern Ireland” means an offence under the law of a country outside Northern Ireland which, at the time when the court is considering the application or matter in question—
- (a) would be an offence under the law of Northern Ireland if committed in or as regards Northern Ireland; and
  - (b) either—
    - (i) would be an offence which is specified, or falls within a description specified, in Part 2 of Schedule 1 if committed in or as regards Northern Ireland; or
    - (ii) is conduct which, in the particular circumstances of the case, the court considers to be sufficiently serious to be treated for the purposes of the application or matter as if it meets the test in sub-paragraph (i).
- (6) The test in subsection (4) is to be used instead of the test in section 2(1) in deciding for the purposes of section 1(2)(a) whether a person has been involved in serious crime in England and Wales.
- (7) An act punishable under the law of a country outside the United Kingdom constitutes an offence under that law for the purposes of subsection (5), however it is described in that law.

#### **4 Involvement in serious crime: supplementary**

- (1) In considering for the purposes of this Part whether a person has committed a serious offence—
- (a) the court must decide that the person has committed the offence if—
    - (i) he has been convicted of the offence; and
    - (ii) the conviction has not been quashed on appeal nor has the person been pardoned of the offence; but
  - (b) the court must not otherwise decide that the person has committed the offence.
- (2) In deciding for the purposes of this Part whether a person (“the respondent”) facilitates the commission by another person of a serious offence, the court must ignore—
- (a) any act that the respondent can show to be reasonable in the circumstances; and
  - (b) subject to this, his intentions, or any other aspect of his mental state, at the time.
- (3) In deciding for the purposes of this Part whether a person (“the respondent”) conducts himself in a way that is likely to facilitate the commission by himself or another person of a serious offence (whether or not such an offence is committed), the court must ignore—
- (a) any act that the respondent can show to be reasonable in the circumstances; and
  - (b) subject to this, his intentions, or any other aspect of his mental state, at the time.
- (4) The Secretary of State may by order amend Schedule 1.

## **5 Type of provision that may be made by orders**

- (1) This section contains examples of the type of provision that may be made by a serious crime prevention order but it does not limit the type of provision that may be made by such an order.
- (2) Examples of prohibitions, restrictions or requirements that may be imposed by serious crime prevention orders in England and Wales or Northern Ireland include prohibitions, restrictions or requirements in relation to places other than England and Wales or (as the case may be) Northern Ireland.
- (3) Examples of prohibitions, restrictions or requirements that may be imposed on individuals (including partners in a partnership) by serious crime prevention orders include prohibitions or restrictions on, or requirements in relation to—
  - (a) an individual's financial, property or business dealings or holdings;
  - (b) an individual's working arrangements;
  - (c) the means by which an individual communicates or associates with others, or the persons with whom he communicates or associates;
  - (d) the premises to which an individual has access;
  - (e) the use of any premises or item by an individual;
  - (f) an individual's travel (whether within the United Kingdom, between the United Kingdom and other places or otherwise).
- (4) Examples of prohibitions, restrictions or requirements that may be imposed on bodies corporate, partnerships and unincorporated associations by serious crime prevention orders include prohibitions or restrictions on, or requirements in relation to—
  - (a) financial, property or business dealings or holdings of such persons;
  - (b) the types of agreements to which such persons may be a party;
  - (c) the provision of goods or services by such persons;
  - (d) the premises to which such persons have access;
  - (e) the use of any premises or item by such persons;
  - (f) the employment of staff by such persons.
- (5) Examples of requirements that may be imposed on any persons by serious crime prevention orders include—
  - (a) a requirement on a person to answer questions, or provide information, specified or described in an order—
    - (i) at a time, within a period or at a frequency;
    - (ii) at a place;
    - (iii) in a form and manner; and
    - (iv) to a law enforcement officer or description of law enforcement officer;notified to the person by a law enforcement officer specified or described in the order;
  - (b) a requirement on a person to produce documents specified or described in an order—
    - (i) at a time, within a period or at a frequency;
    - (ii) at a place;
    - (iii) in a manner; and
    - (iv) to a law enforcement officer or description of law enforcement officer;

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notified to the person by a law enforcement officer specified or described in the order.

- (6) The prohibitions, restrictions or requirements that may be imposed on individuals by serious crime prevention orders include prohibitions, restrictions or requirements in relation to an individual’s private dwelling (including, for example, prohibitions or restrictions on, or requirements in relation to, where an individual may reside).
- (7) In this Part—
- “document” means anything in which information of any description is recorded (whether or not in legible form);
- “a law enforcement officer” means—
- (a) a constable;
  - (b) a member of the staff of the Serious Organised Crime Agency who is for the time being designated under section 43 of the Serious Organised Crime and Police Act 2005 (c. 15);
  - (c) an officer of Revenue and Customs; or
  - (d) a member of the Serious Fraud Office; and
- “premises” includes any land, vehicle, vessel, aircraft or hovercraft.
- (8) Any reference in this Part to the production of documents is, in the case of a document which contains information recorded otherwise than in legible form, a reference to the production of a copy of the information in legible form.

*General safeguards in relation to orders*

**6 Any individual must be 18 or over**

An individual under the age of 18 may not be the subject of a serious crime prevention order.

**7 Other exceptions**

A person may not be the subject of a serious crime prevention order if the person falls within a description specified by order of the Secretary of State.

**8 Limited class of applicants for making of orders**

A serious crime prevention order may be made only on an application by—

- (a) in the case of an order in England and Wales—
  - (i) the Director of Public Prosecutions;
  - (ii) the Director of Revenue and Customs Prosecutions; or
  - (iii) the Director of the Serious Fraud Office; and
- (b) in the case of an order in Northern Ireland, the Director of Public Prosecutions for Northern Ireland.

**9 Right of third parties to make representations**

- (1) The High Court must, on an application by a person, give the person an opportunity to make representations in proceedings before it about the making of a serious crime

prevention order if it considers that the making of the order would be likely to have a significant adverse effect on that person.

(2) The High Court must, on an application by a person, give the person an opportunity to make representations in proceedings before it about the variation of a serious crime prevention order if it considers that—

- (a) the variation of the order; or
- (b) a decision not to vary it;

would be likely to have a significant adverse effect on that person.

(3) The High Court must, on an application by a person, give the person an opportunity to make representations in proceedings before it about the discharge of a serious crime prevention order if it considers that—

- (a) the discharge of the order; or
- (b) a decision not to discharge it;

would be likely to have a significant adverse effect on that person.

(4) The Crown Court must, on an application by a person, give the person an opportunity to make representations in proceedings before it arising by virtue of section 19, 20 or 21 if it considers that the making or variation of the serious crime prevention order concerned (or a decision not to vary it) would be likely to have a significant adverse effect on that person.

(5) A court which is considering an appeal in relation to a serious crime prevention order must, on an application by a person, give the person an opportunity to make representations in the proceedings if that person was given an opportunity to make representations in the proceedings which are the subject of the appeal.

## **10 Notice requirements in relation to orders**

(1) The subject of a serious crime prevention order is bound by it or a variation of it only if—

- (a) he is represented (whether in person or otherwise) at the proceedings at which the order or (as the case may be) variation is made; or
- (b) a notice setting out the terms of the order or (as the case may be) variation has been served on him.

(2) The notice may be served on him by—

- (a) delivering it to him in person; or
- (b) sending it by recorded delivery to him at his last-known address (whether residential or otherwise).

(3) For the purposes of delivering such a notice to him in person, a constable or a person authorised for the purpose by the relevant applicant authority may (if necessary by force)—

- (a) enter any premises where he has reasonable grounds for believing the person to be; and
- (b) search those premises for him.

(4) In this Part “the relevant applicant authority” means—

- (a) in relation to a serious crime prevention order in England and Wales—

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- (i) where the order was applied for by the Director of Public Prosecutions, the Director of Public Prosecutions;
  - (ii) where the order was applied for by the Director of Revenue and Customs Prosecutions, the Director of Revenue and Customs Prosecutions; and
  - (iii) where the order was applied for by the Director of the Serious Fraud Office, the Director of the Serious Fraud Office; and
- (b) in relation to a serious crime prevention order in Northern Ireland, the Director of Public Prosecutions for Northern Ireland.

### *Information safeguards*

#### **11 Restrictions on oral answers**

A serious crime prevention order may not require a person to answer questions, or provide information, orally.

#### **12 Restrictions for legal professional privilege**

- (1) A serious crime prevention order may not require a person—
  - (a) to answer any privileged question;
  - (b) to provide any privileged information; or
  - (c) to produce any privileged document.
- (2) A “privileged question” is a question which the person would be entitled to refuse to answer on grounds of legal professional privilege in proceedings in the High Court.
- (3) “Privileged information” is information which the person would be entitled to refuse to provide on grounds of legal professional privilege in such proceedings.
- (4) A “privileged document” is a document which the person would be entitled to refuse to produce on grounds of legal professional privilege in such proceedings.
- (5) But subsection (1) does not prevent an order from requiring a lawyer to provide the name and address of a client of his.

#### **13 Restrictions on excluded material and banking information**

- (1) A serious crime prevention order may not require a person to produce—
  - (a) in the case of an order in England and Wales, any excluded material as defined by section 11 of the Police and Criminal Evidence Act 1984 (c. 60); and
  - (b) in the case of an order in Northern Ireland, any excluded material as defined by Article 13 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I.12)).
- (2) A serious crime prevention order may not require a person to disclose any information or produce any document in respect of which he owes an obligation of confidence by virtue of carrying on a banking business unless condition A or B is met.
- (3) Condition A is that the person to whom the obligation of confidence is owed consents to the disclosure or production.
- (4) Condition B is that the order contains a requirement—



- (a) to disclose information, or produce documents, of this kind; or
- (b) to disclose specified information which is of this kind or to produce specified documents which are of this kind.

#### **14 Restrictions relating to other enactments**

- (1) A serious crime prevention order may not require a person—
- (a) to answer any question;
  - (b) to provide any information; or
  - (c) to produce any document;
- if the disclosure concerned is prohibited under any other enactment.
- (2) In this section—
- “enactment” includes an Act of the Scottish Parliament, Northern Ireland legislation and an enactment comprised in subordinate legislation, and includes an enactment whenever passed or made; and
- “subordinate legislation” has the same meaning as in the Interpretation Act 1978 (c. 30) and also includes an instrument made under—
- (a) an Act of the Scottish Parliament; or
  - (b) Northern Ireland legislation.

#### **15 Restrictions on use of information obtained**

- (1) A statement made by a person in response to a requirement imposed by a serious crime prevention order may not be used in evidence against him in any criminal proceedings unless condition A or B is met.
- (2) Condition A is that the criminal proceedings relate to an offence under section 25.
- (3) Condition B is that—
- (a) the criminal proceedings relate to another offence;
  - (b) the person who made the statement gives evidence in the criminal proceedings;
  - (c) in the course of that evidence, the person makes a statement which is inconsistent with the statement made in response to the requirement imposed by the order; and
  - (d) in the criminal proceedings evidence relating to the statement made in response to the requirement imposed by the order is adduced, or a question about it is asked, by the person or on his behalf.

#### *Duration, variation and discharge of orders*

#### **16 Duration of orders**

- (1) A serious crime prevention order must specify when it is to come into force and when it is to cease to be in force.
- (2) An order is not to be in force for more than 5 years beginning with the coming into force of the order.

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- (3) An order can specify different times for the coming into force, or ceasing to be in force, of different provisions of the order.
- (4) Where it specifies different times in accordance with subsection (3), the order—
  - (a) must specify when each provision is to come into force and cease to be in force; and
  - (b) is not to be in force for more than 5 years beginning with the coming into force of the first provision of the order to come into force.
- (5) The fact that an order, or any provision of an order, ceases to be in force does not prevent the court from making a new order to the same or similar effect.
- (6) A new order may be made in anticipation of an earlier order or provision ceasing to be in force.

## **17 Variation of orders**

- (1) The High Court in England and Wales may, on an application under this section, vary a serious crime prevention order in England and Wales if it has reasonable grounds to believe that the terms of the order as varied would protect the public by preventing, restricting or disrupting involvement, by the person who is the subject of the order, in serious crime in England and Wales.
- (2) The High Court in Northern Ireland may, on an application under this section, vary a serious crime prevention order in Northern Ireland if it has reasonable grounds to believe that the terms of the order as varied would protect the public by preventing, restricting or disrupting involvement, by the person who is the subject of the order, in serious crime in Northern Ireland.
- (3) An application for the variation of an order under this section may be made by—
  - (a) the relevant applicant authority; or
  - (b) subject as follows—
    - (i) the person who is the subject of the order; or
    - (ii) any other person.
- (4) The court must not entertain an application by the person who is the subject of the order unless it considers that there has been a change of circumstances affecting the order.
- (5) The court must not entertain an application by any person falling within subsection (3)(b)(ii) unless it considers that—
  - (a) the person is significantly adversely affected by the order;
  - (b) condition A or B is met; and
  - (c) the application is not for the purpose of making the order more onerous on the person who is the subject of it.
- (6) Condition A is that—
  - (a) the person falling within subsection (3)(b)(ii)—
    - (i) has, on an application under section 9, been given an opportunity to make representations; or
    - (ii) has made an application otherwise than under that section;in earlier proceedings in relation to the order (whether before the High Court or the Crown Court); and

- (b) there has been a change of circumstances affecting the order.
- (7) Condition B is that—
- (a) the person falling within subsection (3)(b)(ii) has not made an application of any kind in earlier proceedings in relation to the order (whether before the High Court or the Crown Court); and
  - (b) it was reasonable in all the circumstances for the person not to have done so.
- (8) A variation on an application under subsection (3)(a) may include an extension of the period during which the order, or any provision of it, is in force (subject to the original limits imposed on the order by section 16(2) and (4)(b)).

## **18 Discharge of orders**

- (1) On an application under this section—
- (a) the High Court in England and Wales may discharge a serious crime prevention order in England and Wales; and
  - (b) the High Court in Northern Ireland may discharge a serious crime prevention order in Northern Ireland.
- (2) An application for the discharge of an order may be made by—
- (a) the relevant applicant authority; or
  - (b) subject as follows—
    - (i) the person who is the subject of the order; or
    - (ii) any other person.
- (3) The court must not entertain an application by the person who is the subject of the order unless it considers that there has been a change of circumstances affecting the order.
- (4) The court must not entertain an application by any person falling within subsection (2)(b)(ii) unless it considers that—
- (a) the person is significantly adversely affected by the order; and
  - (b) condition A or B is met.
- (5) Condition A is that—
- (a) the person—
    - (i) has, on an application under section 9, been given an opportunity to make representations; or
    - (ii) has made an application otherwise than under that section; in earlier proceedings in relation to the order (whether before the High Court or the Crown Court); and
  - (b) there has been a change of circumstances affecting the order.
- (6) Condition B is that—
- (a) the person has not made an application of any kind in earlier proceedings in relation to the order (whether before the High Court or the Crown Court); and
  - (b) it was reasonable in all the circumstances for the person not to have done so.

*Extension of jurisdiction to Crown Court*

**19 Orders by Crown Court on conviction**

- (1) Subsection (2) applies where the Crown Court in England and Wales is dealing with a person who—
  - (a) has been convicted by or before a magistrates' court of having committed a serious offence in England and Wales and has been committed to the Crown Court to be dealt with; or
  - (b) has been convicted by or before the Crown Court of having committed a serious offence in England and Wales.
- (2) The Crown Court may, in addition to dealing with the person in relation to the offence, make an order if it has reasonable grounds to believe that the order would protect the public by preventing, restricting or disrupting involvement by the person in serious crime in England and Wales.
- (3) Subsection (4) applies where the Crown Court in Northern Ireland is dealing with a person who has been convicted by or before the Crown Court of having committed a serious offence in Northern Ireland.
- (4) The Crown Court may, in addition to dealing with the person in relation to the offence, make an order if it has reasonable grounds to believe that the order would protect the public by preventing, restricting or disrupting involvement by the person in serious crime in Northern Ireland.
- (5) An order under this section may contain—
  - (a) such prohibitions, restrictions or requirements; and
  - (b) such other terms;as the court considers appropriate for the purpose of protecting the public by preventing, restricting or disrupting involvement by the person concerned in serious crime in England and Wales or (as the case may be) Northern Ireland.
- (6) The powers of the court in respect of an order under this section are subject to sections 6 to 15 (safeguards).
- (7) An order must not be made under this section except—
  - (a) in addition to a sentence imposed in respect of the offence concerned; or
  - (b) in addition to an order discharging the person conditionally.
- (8) An order under this section is also called a serious crime prevention order.

**20 Powers of Crown Court to vary orders on conviction**

- (1) Subsection (2) applies where the Crown Court in England and Wales is dealing with a person who—
  - (a) has been convicted by or before a magistrates' court of having committed a serious offence in England and Wales and has been committed to the Crown Court to be dealt with; or
  - (b) has been convicted by or before the Crown Court of having committed a serious offence in England and Wales.
- (2) The Crown Court may—

- (a) in the case of a person who is the subject of a serious crime prevention order in England and Wales; and
  - (b) in addition to dealing with the person in relation to the offence;vary the order if the court has reasonable grounds to believe that the terms of the order as varied would protect the public by preventing, restricting or disrupting involvement by the person in serious crime in England and Wales.
- (3) Subsection (4) applies where the Crown Court in Northern Ireland is dealing with a person who has been convicted by or before the Crown Court of having committed a serious offence in Northern Ireland.
- (4) The Crown Court may—
  - (a) in the case of a person who is the subject of a serious crime prevention order in Northern Ireland; and
  - (b) in addition to dealing with the person in relation to the offence;vary the order if the court has reasonable grounds to believe that the terms of the order as varied would protect the public by preventing, restricting or disrupting involvement by the person in serious crime in Northern Ireland.
- (5) A variation under this section may be made only on an application by the relevant applicant authority.
- (6) A variation must not be made except—
  - (a) in addition to a sentence imposed in respect of the offence concerned; or
  - (b) in addition to an order discharging the person conditionally.
- (7) A variation may include an extension of the period during which the order, or any provision of it, is in force (subject to the original limits imposed on the order by section 16(2) and (4)(b)).

## **21 Powers of Crown Court to vary orders on breach**

- (1) Subsection (2) applies where the Crown Court in England and Wales is dealing with a person who—
  - (a) has been convicted by or before a magistrates' court of having committed an offence under section 25 in relation to a serious crime prevention order and has been committed to the Crown Court to be dealt with; or
  - (b) has been convicted by or before the Crown Court of having committed an offence under section 25 in relation to a serious crime prevention order.
- (2) The Crown Court may—
  - (a) in the case of an order in England and Wales; and
  - (b) in addition to dealing with the person in relation to the offence;vary the order if it has reasonable grounds to believe that the terms of the order as varied would protect the public by preventing, restricting or disrupting involvement by the person in serious crime in England and Wales.
- (3) Subsection (4) applies where the Crown Court in Northern Ireland is dealing with a person who has been convicted by or before the Crown Court of an offence under section 25 in relation to a serious crime prevention order.
- (4) The Crown Court may—
  - (a) in the case of an order in Northern Ireland; and

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- (b) in addition to dealing with the person in relation to the offence;  
vary the order if it has reasonable grounds to believe that the terms of the order as varied would protect the public by preventing, restricting or disrupting involvement by the person in serious crime in Northern Ireland.
- (5) A variation under this section may be made only on an application by the relevant applicant authority.
- (6) A variation must not be made except—
  - (a) in addition to a sentence imposed in respect of the offence concerned; or
  - (b) in addition to an order discharging the person conditionally.
- (7) A variation may include an extension of the period during which the order, or any provision of it, is in force (subject to the original limits imposed on the order by section 16(2) and (4)(b)).

## **22 Inter-relationship between different types of orders**

- (1) The fact that a serious crime prevention order has been made or varied by the High Court does not prevent it from being varied by the Crown Court in accordance with this Part.
- (2) The fact that a serious crime prevention order has been made or varied by the Crown Court does not prevent it from being varied or discharged by the High Court in accordance with this Part.
- (3) A decision by the Crown Court not to make an order under section 19 does not prevent a subsequent application to the High Court for an order under section 1 in consequence of the same offence.
- (4) A decision by the Crown Court not to vary a serious crime prevention order under section 20 or 21 does not prevent a subsequent application to the High Court for a variation of the order in consequence of the same offence.

### *Appeals*

## **23 Additional right of appeal from High Court**

- (1) An appeal may be made to the Court of Appeal in relation to a decision of the High Court—
  - (a) to make a serious crime prevention order;
  - (b) to vary, or not to vary, such an order; or
  - (c) to discharge or not to discharge such an order;by any person who was given an opportunity to make representations in the proceedings concerned by virtue of section 9(1), (2) or (as the case may be) (3).
- (2) Subsection (1) is without prejudice to the rights of other persons to make appeals, by virtue of section 16 of the Senior Courts Act 1981 (c. 54) or section 35 of the Judicature (Northern Ireland) Act 1978 (c. 23), in relation to any judgments or orders of the High Court about serious crime prevention orders.

## 24 Appeals from Crown Court

- (1) An appeal against a decision of the Crown Court in relation to a serious crime prevention order may be made to the Court of Appeal by—
  - (a) the person who is the subject of the order; or
  - (b) the relevant applicant authority.
- (2) In addition, an appeal may be made to the Court of Appeal in relation to a decision of the Crown Court—
  - (a) to make a serious crime prevention order; or
  - (b) to vary, or not to vary, such an order;by any person who was given an opportunity to make representations in the proceedings concerned by virtue of section 9(4).
- (3) Subject to subsection (4), an appeal under subsection (1) or (2) lies only with the leave of the Court of Appeal.
- (4) An appeal under subsection (1) or (2) lies without the leave of the Court of Appeal if the judge who made the decision grants a certificate that the decision is fit for appeal under this section.
- (5) Subject to any rules of court made under section 53(1) of the Senior Courts Act 1981 (c. 54) (distribution of business between civil and criminal divisions), the criminal division of the Court of Appeal is the division which is to exercise jurisdiction in relation to an appeal under subsection (1) or (2) from a decision of the Crown Court in the exercise of its jurisdiction in England and Wales under this Part.
- (6) An appeal against a decision of the Court of Appeal on an appeal to that court under subsection (1) or (2) may be made to the Supreme Court by any person who was a party to the proceedings before the Court of Appeal.
- (7) An appeal under subsection (6) lies only with the leave of the Court of Appeal or the Supreme Court.
- (8) Such leave must not be granted unless—
  - (a) it is certified by the Court of Appeal that a point of law of general public importance is involved in the decision; and
  - (b) it appears to the Court of Appeal or (as the case may be) the Supreme Court that the point is one which ought to be considered by the Supreme Court.
- (9) The Secretary of State may for the purposes of this section by order make provision corresponding (subject to any specified modifications) to that made by or under an enactment and relating to—
  - (a) appeals to the Court of Appeal under Part 1 of—
    - (i) the Criminal Appeal Act 1968 (c. 19); or
    - (ii) the Criminal Appeal (Northern Ireland) Act 1980 (c. 47);
  - (b) appeals from any decision of the Court of Appeal on appeals falling within paragraph (a); or
  - (c) any matter connected with or arising out of appeals falling within paragraph (a) or (b).
- (10) An order under subsection (9) may, in particular, make provision about the payment of costs.

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*Status: This is the original version (as it was originally enacted).*

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- (11) The power to make an appeal to the Court of Appeal under subsection (1)(a) operates instead of any power for the person who is the subject of the order to make an appeal against a decision of the Crown Court in relation to a serious crime prevention order by virtue of—
  - (a) section 9 or 10 of the Criminal Appeal Act 1968; or
  - (b) section 8 of the Criminal Appeal (Northern Ireland) Act 1980.
- (12) Section 33(3) of the Criminal Appeal Act 1968 (limitation on appeal from criminal division of the Court of Appeal: England and Wales) does not prevent an appeal to the Supreme Court under subsection (6) above.

### *Enforcement*

## **25 Offence of failing to comply with order**

- (1) A person who, without reasonable excuse, fails to comply with a serious crime prevention order commits an offence.
- (2) A person who commits an offence under this section is liable—
  - (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum or to both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine or to both.
- (3) In the application of subsection (2)(a) in Northern Ireland, the reference to 12 months is to be read as a reference to 6 months.
- (4) In proceedings for an offence under this section, a copy of the original order or any variation of it, certified as such by the proper officer of the court which made it, is admissible as evidence of its having been made and of its contents to the same extent that oral evidence of those things is admissible in those proceedings.

## **26 Powers of forfeiture in respect of offence**

- (1) The court before which a person is convicted of an offence under section 25 may order the forfeiture of anything in his possession at the time of the offence which the court considers to have been involved in the offence.
- (2) Before making an order under subsection (1) in relation to anything the court must give an opportunity to make representations to any person (in addition to the convicted person) who claims to be the owner of that thing or otherwise to have an interest in it.
- (3) An order under subsection (1) may not be made so as to come into force at any time before there is no further possibility (ignoring any power to appeal out of time) of the order being varied or set aside on appeal.
- (4) Where the court makes an order under subsection (1), it may also make such other provision as it considers to be necessary for giving effect to the forfeiture.
- (5) That provision may, in particular, include provision relating to the retention, handling, destruction or other disposal of what is forfeited.
- (6) Provision made by virtue of this section may be varied at any time by the court that made it.



## **27 Powers to wind up companies etc: England and Wales and Scotland**

- (1) The Director of Public Prosecutions, the Director of Revenue and Customs Prosecutions or the Director of the Serious Fraud Office may present a petition to the court for the winding up of a company, partnership or relevant body if—
  - (a) the company, partnership or relevant body has been convicted of an offence under section 25 in relation to a serious crime prevention order; and
  - (b) the Director concerned considers that it would be in the public interest for the company, partnership or (as the case may be) relevant body to be wound up.
- (2) The Insolvency Act 1986 (c. 45) applies in relation to—
  - (a) a petition under this section for the winding up of a company; and
  - (b) the company's winding up;as it applies in relation to a petition under section 124A of the Act of 1986 for the winding up of a company and the company's winding up (winding up on grounds of public interest) but subject to the modifications in subsections (3) and (4).
- (3) Section 124(4)(b) of the Act of 1986 (application for winding up) applies in relation to a petition under this section as if it permits the petition to be presented by the Director of Public Prosecutions, the Director of Revenue and Customs Prosecutions or the Director of the Serious Fraud Office.
- (4) The court may make an order under section 125 of the Act of 1986 (powers of court on hearing of petition) to wind up the company only if—
  - (a) the company has been convicted of an offence under section 25 in relation to a serious crime prevention order; and
  - (b) the court considers that it is just and equitable for the company to be wound up.
- (5) Section 420 of the Act of 1986 (power to make provision about insolvent partnerships) applies for the purposes of this section as if the reference to an insolvent partnership were a reference to a partnership to which this section applies.
- (6) The appropriate Minister may by order provide for the Act of 1986 to apply, with such modifications as that person considers appropriate, in relation to a petition under this section for the winding up of a relevant body and the relevant body's winding up.
- (7) An order made by virtue of subsection (5) or (6) must ensure that the court may make an order to wind up the partnership or relevant body only if—
  - (a) the partnership or relevant body has been convicted of an offence under section 25 in relation to a serious crime prevention order; and
  - (b) the court considers that it is just and equitable for the partnership or relevant body to be wound up.
- (8) No petition may be presented to, or order to wind up made by, a court in Scotland by virtue of this section in respect of a company, partnership or relevant body whose estate may be sequestrated under the Bankruptcy (Scotland) Act 1985 (c. 66).
- (9) No petition may be presented, or order to wind up made, by virtue of this section if—
  - (a) an appeal against conviction for the offence concerned has been made and not finally determined; or
  - (b) the period during which such an appeal may be made has not expired.
- (10) No petition may be presented, or order to wind up made, by virtue of this section if the company, partnership or relevant body is already being wound up by the court.

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*Status: This is the original version (as it was originally enacted).*

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(11) In deciding for the purposes of subsection (9) whether an appeal is finally determined or whether the period during which an appeal may be made has expired, any power to appeal out of time is to be ignored.

(12) In this section—

“appropriate Minister” means—

- (a) in relation to a relevant body falling within paragraphs (a) to (c) of the definition of “relevant body” below, the Treasury; and
- (b) in relation to any other relevant body, the Secretary of State;

“company” has the same meaning as in Parts 1 to 7 of the Insolvency Act 1986 (c. 45) (see section 251 of that Act) but—

- (a) does not include a relevant body; and
- (b) subject to this, does include an unregistered company within the meaning of Part 5 of that Act (see section 220 of that Act);

“the court” has the same meaning as in Parts 1 to 7 of the Insolvency Act 1986 but does not include a court in Northern Ireland;

“an industrial and provident society” means a society registered under the Industrial and Provident Societies Act 1965 (c. 12) or a society deemed by virtue of section 4 of that Act to be so registered;

“partnership” does not include a relevant body; and

“relevant body” means—

- (a) a building society (within the meaning of the Building Societies Act 1986 (c. 53));
- (b) an incorporated friendly society (within the meaning of the Friendly Societies Act 1992 (c. 40));
- (c) an industrial and provident society;
- (d) a limited liability partnership; or
- (e) such other description of person as may be specified by order made by the Secretary of State;

and the references to sections 124 to 125 of the Insolvency Act 1986 (c. 45) include references to those sections as applied by section 221(1) of that Act (unregistered companies).

## **28 Powers to wind up companies etc: Northern Ireland**

(1) The Director of Public Prosecutions for Northern Ireland may present a petition to the court for the winding up of a company, partnership or relevant body if—

- (a) the company, partnership or relevant body has been convicted of an offence under section 25 in relation to a serious crime prevention order; and
- (b) the Director of Public Prosecutions for Northern Ireland considers that it would be in the public interest for the company, partnership or (as the case may be) relevant body to be wound up.

(2) The Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I.19)) applies in relation to—

- (a) a petition under this section for the winding up of a company; and
- (b) the company’s winding up;

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- as it applies in relation to a petition under Article 104A of the Order of 1989 for the winding up of a company and the company's winding up (winding up on grounds of public interest) but subject to the modifications in subsections (3) and (4).
- (3) Article 104(5)(b) of the Order of 1989 (application for winding up) applies in relation to a petition under this section as if it permits the petition to be presented by the Director of Public Prosecutions for Northern Ireland.
- (4) The court may make an order under Article 105 of the Order of 1989 (powers of court on hearing of petition) to wind up the company only if—
- (a) the company has been convicted of an offence under section 25 in relation to a serious crime prevention order; and
  - (b) the court considers that it is just and equitable for the company to be wound up.
- (5) Article 364 of the Order of 1989 (power to make provision about insolvent partnerships) applies for the purposes of this section as if the reference to an insolvent partnership were a reference to a partnership to which this section applies.
- (6) The appropriate Minister may by order provide for the Order of 1989 to apply, with such modifications as that person considers appropriate, in relation to a petition under this section for the winding up of a relevant body and the relevant body's winding up.
- (7) An order made by virtue of subsection (5) or (6) must ensure that the court may make an order to wind up the partnership or relevant body only if—
- (a) the partnership or relevant body has been convicted of an offence under section 25 in relation to a serious crime prevention order; and
  - (b) the court considers that it is just and equitable for the partnership or relevant body to be wound up.
- (8) No petition may be presented, or order to wind up made, by virtue of this section if—
- (a) an appeal against conviction for the offence concerned has been made and not finally determined; or
  - (b) the period during which such an appeal may be made has not expired.
- (9) No petition may be presented, or order to wind up made, by virtue of this section if the company, partnership or relevant body is already being wound up by the court.
- (10) In deciding for the purposes of subsection (8) whether an appeal is finally determined or whether the period during which an appeal may be made has expired, any power to appeal out of time is to be ignored.
- (11) In this section—
- “appropriate Minister” means—
    - (a) in relation to a relevant body falling within paragraph (a) or (b) of the definition of “relevant body” below, the Treasury; and
    - (b) in relation to any other relevant body, the Secretary of State;
  - “company” has the same meaning as in Parts 2 to 7 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I.19)) (see Article 5 of that Order) but—
    - (a) does not include a relevant body; and
    - (b) subject to this, does include an unregistered company within the meaning of Part 6 of that Order (see Article 184 of that Order);
  - “the court” means the High Court in Northern Ireland;

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“an industrial and provident society” means a society registered under the Industrial and Provident Societies Act (Northern Ireland) 1969 (c. 24) or a society deemed by virtue of section 4 of that Act to be so registered;

“partnership” does not include a relevant body; and

“relevant body” means—

- (a) a building society (within the meaning of the Building Societies Act 1986 (c. 53));
- (b) an incorporated friendly society (within the meaning of the Friendly Societies Act 1992 (c. 40));
- (c) an industrial and provident society;
- (d) a limited liability partnership; or
- (e) such other description of person as may be specified by order made by the Secretary of State;

and the references to Articles 104 to 105 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I.19)) include references to those Articles as applied by Article 185(1) of that Order (unregistered companies).

## **29 Powers to wind up: supplementary**

- (1) The Secretary of State may by order make such modifications as he considers appropriate to the application of—
  - (a) the Insolvency Act 1986 (c. 45) by virtue of section 27(2); or
  - (b) the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I.19)) by virtue of section 28(2).
- (2) Any modifications made by virtue of subsection (1) are in addition to the modifications made by section 27(3) and (4) or (as the case may be) section 28(3) and (4).
- (3) The Secretary of State may by order make such consequential or supplementary provision, applying with or without modifications any provision made by or under an enactment, as he considers appropriate in connection with section 27(2) to (4) or 28(2) to (4).
- (4) An order made by virtue of section 27(5) or (6), section 28(5) or (6) or subsection (1) above may, in particular, contain consequential or supplementary provision applying, with or without modifications, any provision made by or under an enactment.

### *Particular types of persons*

## **30 Bodies corporate including limited liability partnerships**

- (1) For the purposes of section 10 in its application to a serious crime prevention order against a body corporate or to the variation of such an order—
  - (a) a notice setting out the terms of the order or variation—
    - (i) is delivered to the body corporate in person if it is delivered to an officer of the body corporate in person; and
    - (ii) is sent by recorded delivery to the body corporate at its last-known address if it is so sent to an officer of the body corporate at the address of the registered office of that body or at the address of its principal office in the United Kingdom; and

- (b) the power conferred by subsection (3) of that section is a power to enter any premises where the person exercising the power has reasonable grounds for believing an officer of the body corporate to be and to search those premises for the officer.
- (2) If an offence under section 25 committed by a body corporate is proved to have been committed with the consent or connivance of—
- (a) an officer of the body corporate; or
  - (b) a person who was purporting to act in any such capacity;
- he (as well as the body corporate) is guilty of the offence and liable to be proceeded against and punished accordingly.
- (3) Nothing in this section prevents a serious crime prevention order from being made against an officer or employee of a body corporate or against any other person associated with a body corporate.
- (4) In this section—
- “body corporate” includes a limited liability partnership;
  - “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate; and
  - “officer of a body corporate” means any director, manager, secretary or other similar officer of the body corporate.

### **31 Other partnerships**

- (1) A serious crime prevention order against a partnership must be made in the name of the partnership (and not in that of any of the partners).
- (2) An order made in the name of the partnership continues to have effect despite a change of partners provided that at least one of the persons who was a partner before the change remains a partner after it.
- (3) For the purposes of this Part, a partnership is involved in serious crime in England and Wales, Northern Ireland or elsewhere if the partnership, or any of the partners, is so involved; and involvement in serious crime in England and Wales or Northern Ireland is to be read accordingly.
- (4) For the purposes of section 10 in its application to a serious crime prevention order against a partnership or to the variation of such an order—
- (a) a notice setting out the terms of the order or variation—
    - (i) is delivered to the partnership in person if it is delivered to any of the partners in person or to a senior officer of the partnership in person; and
    - (ii) is sent by recorded delivery to the partnership at its last-known address if it is so sent to any of the partners or to a senior officer of the partnership at the address of the principal office of the partnership in the United Kingdom; and
  - (b) the power conferred by subsection (3) of that section is a power to enter any premises where the person exercising the power has reasonable grounds for believing a partner or senior officer of the partnership to be and to search those premises for the partner or senior officer.

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*Status: This is the original version (as it was originally enacted).*

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- (5) Proceedings for an offence under section 25 alleged to have been committed by a partnership must be brought in the name of the partnership (and not in that of any of the partners).
- (6) For the purposes of such proceedings—
- (a) rules of court relating to the service of documents have effect as if the partnership were a body corporate; and
  - (b) the following provisions apply as they apply in relation to a body corporate—
    - (i) section 33 of the Criminal Justice Act 1925 (c. 86) and Schedule 3 to the Magistrates' Courts Act 1980 (c. 43);
    - (ii) sections 70 and 143 of the Criminal Procedure (Scotland) Act 1995 (c. 46); and
    - (iii) section 18 of the Criminal Justice Act (Northern Ireland) 1945 (c. 15 (N.I.)) and Schedule 4 to the Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I.26)).
- (7) A fine imposed on the partnership on its conviction for an offence under section 25 is to be paid out of the partnership assets.
- (8) If an offence under section 25 committed by a partnership is proved to have been committed with the consent or connivance of a partner or a senior officer of the partnership, he (as well as the partnership) is guilty of the offence and liable to be proceeded against and punished accordingly.
- (9) For the purposes of subsection (8)—
- (a) references to a partner or to a senior officer of a partnership include references to any person purporting to act in such a capacity; and
  - (b) subsection (5) is not to be read as prejudicing any liability of a partner under subsection (8).
- (10) Nothing in this section prevents a serious crime prevention order from being made against—
- (a) a particular partner; or
  - (b) a senior officer or employee of a partnership or any other person associated with a partnership.
- (11) In this section—
- “senior officer of a partnership” means any person who has the control or management of the business carried on by the partnership at the principal place where it is carried on; and
  - “partnership” does not include a limited liability partnership.

## **32 Unincorporated associations**

- (1) A serious crime prevention order against an unincorporated association must be made in the name of the association (and not in that of any of its members).
- (2) An order made in the name of the association continues to have effect despite a change in the membership of the association provided that at least one of the persons who was a member of the association before the change remains a member after it.
- (3) For the purposes of section 10 in its application to a serious crime prevention order against an unincorporated association or to the variation of such an order—

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- (a) a notice setting out the terms of the order or variation—
    - (i) is delivered to the association in person if it is delivered to an officer of the association in person; and
    - (ii) is sent by recorded delivery to the association at its last-known address if it is so sent to an officer of the association at the address of the principal office of the association in the United Kingdom; and
  - (b) the power conferred by subsection (3) of that section is a power to enter any premises where the person exercising the power has reasonable grounds for believing an officer of the association to be and to search those premises for the officer.
- (4) Proceedings for an offence under section 25 alleged to have been committed by an unincorporated association must be brought in the name of the association (and not in that of any of its members).
- (5) For the purposes of such proceedings—
- (a) rules of court relating to the service of documents have effect as if the association were a body corporate; and
  - (b) the following provisions apply as they apply in relation to a body corporate—
    - (i) section 33 of the Criminal Justice Act 1925 (c. 86) and Schedule 3 to the Magistrates' Courts Act 1980 (c. 43);
    - (ii) sections 70 and 143 of the Criminal Procedure (Scotland) Act 1995 (c. 46); and
    - (iii) section 18 of the Criminal Justice Act (Northern Ireland) 1945 (c. 15 (N.I.)) and Schedule 4 to the Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I.26)).
- (6) A fine imposed on the association on its conviction for an offence under section 25 is to be paid out of the funds of the association.
- (7) If an offence under section 25 committed by an unincorporated association is proved to have been committed with the consent or connivance of an officer of the association, he (as well as the association) is guilty of the offence and liable to be proceeded against and punished accordingly.
- (8) For the purposes of subsection (7)—
- (a) references to an officer of an unincorporated association include references to any person purporting to act in such a capacity; and
  - (b) subsection (4) is not to be read as prejudicing any liability of an officer of an unincorporated association under subsection (7).
- (9) Nothing in this section prevents a serious crime prevention order from being made against—
- (a) a member, officer or employee of an unincorporated association; or
  - (b) any other person associated with an unincorporated association.
- (10) In this section—
- “officer of an unincorporated association” means any officer of an unincorporated association or any member of its governing body; and
  - “unincorporated association” means any body of persons unincorporate but does not include a partnership.

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*Status: This is the original version (as it was originally enacted).*

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### 33 Overseas bodies

The Secretary of State may by order modify section 30, 31 or 32 in its application to a body of persons formed under law having effect outside the United Kingdom.

### 34 Providers of information society services

- (1) A serious crime prevention order may not include terms which restrict the freedom of a service provider who is established in an EEA state other than the United Kingdom to provide information society services in relation to an EEA state unless the conditions in subsections (2) and (3) are met.
- (2) The condition in this subsection is that the court concerned considers that the terms—
  - (a) are necessary for the objective of protecting the public by preventing, restricting or disrupting involvement in—
    - (i) in the case of an order in England and Wales, serious crime in England and Wales; and
    - (ii) in the case of an order in Northern Ireland, serious crime in Northern Ireland;
  - (b) relate to an information society service which prejudices that objective or presents a serious and grave risk of prejudice to it; and
  - (c) are proportionate to that objective.
- (3) The conditions in this subsection are that—
  - (a) a law enforcement officer has requested the EEA state in which the service provider is established to take measures which the law enforcement officer considers to be of equivalent effect under the law of the EEA state to the terms and the EEA state has failed to take the measures; and
  - (b) a law enforcement officer has notified the Commission of the European Communities and the EEA state of—
    - (i) the intention to seek an order containing the terms; and
    - (ii) the terms.
- (4) It does not matter for the purposes of subsection (3) whether the request or notification is made before or after the making of the application for the order.
- (5) A serious crime prevention order may not include terms which impose liabilities on service providers of intermediary services so far as the imposition of those liabilities would result in a contravention of Article 12, 13 or 14 of the E-Commerce Directive (various protections for service providers of intermediary services).
- (6) A serious crime prevention order may not include terms which impose a general obligation on service providers of intermediary services covered by Articles 12, 13 and 14 of the E-Commerce Directive—
  - (a) to monitor the information which they transmit or store when providing those services; or
  - (b) actively to seek facts or circumstances indicating illegal activity when providing those services.
- (7) For the purposes of this section—
  - (a) a service provider is established in a particular EEA state if he effectively pursues an economic activity using a fixed establishment in that EEA state for



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an indefinite period and he is a national of an EEA state or a company or firm mentioned in Article 48 of the EEC Treaty;

- (b) the presence or use in a particular place of equipment or other technical means of providing an information society service does not, of itself, constitute the establishment of a service provider;
- (c) where it cannot be determined from which of a number of establishments a given information society service is provided, that service is to be regarded as provided from the establishment where the service provider has the centre of his activities relating to the service;

and references to a person being established in an EEA state are to be read accordingly.

(8) In this section—

“the E-Commerce Directive” means Directive [2000/31/EC](#) of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce);

“information society services”—

- (a) has the meaning given in Article 2(a) of the E-Commerce Directive (which refers to Article 1(2) of Directive [98/34/EC](#) of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations); and
- (b) is summarised in recital 17 of the E-Commerce Directive as covering “any service normally provided for remuneration, at a distance, by means of electronic equipment for the processing (including digital compression) and storage of data, and at the individual request of a recipient of a service”;

“intermediary services” means an information society service which—

- (a) consists in the provision of access to a communication network or the transmission in a communication network of information provided by a recipient of the service;
- (b) consists in the transmission in a communication network of information which—
  - (i) is provided by a recipient of the service; and
  - (ii) is the subject of automatic, intermediate and temporary storage which is solely for the purpose of making the onward transmission of the information to other recipients of the service at their request more efficient; or
- (c) consists in the storage of information provided by a recipient of the service;

“recipient”, in relation to a service, means any person who, for professional ends or otherwise, uses an information society service, in particular for the purposes of seeking information or making it accessible; and

“service provider” means a person providing an information society service.

(9) For the purposes of paragraph (a) of the definition of “intermediary services”, the provision of access to a communication network and the transmission of information in a communication network includes the automatic, intermediate and transient storage of the information transmitted so far as the storage is for the sole purpose of carrying out the transmission in the network.

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- (10) Subsection (9) does not apply if the information is stored for longer than is reasonably necessary for the transmission.

### *Supplementary*

#### **35 Proceedings in the High Court**

- (1) Proceedings before the High Court in relation to serious crime prevention orders are civil proceedings.
- (2) One consequence of this is that the standard of proof to be applied by the court in such proceedings is the civil standard of proof.

#### **36 Proceedings in the Crown Court**

- (1) Proceedings before the Crown Court arising by virtue of section 19, 20 or 21 are civil proceedings.
- (2) One consequence of this is that the standard of proof to be applied by the court in such proceedings is the civil standard of proof.
- (3) Two other consequences of this are that the court—
  - (a) is not restricted to considering evidence that would have been admissible in the criminal proceedings in which the person concerned was convicted; and
  - (b) may adjourn any proceedings in relation to a serious crime prevention order even after sentencing the person concerned.
- (4) The Crown Court, when exercising its jurisdiction in England and Wales under this Part, is a criminal court for the purposes of Part 7 of the Courts Act 2003 (c. 39) (procedure rules and practice directions).
- (5) A serious crime prevention order may be made as mentioned in section 19(7)(b) in spite of anything in sections 12 and 14 of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) or (as the case may be) Articles 4 and 6 of the Criminal Justice (Northern Ireland) Order 1996 (S.I. 1996/3160 (N.I.24)) (which relate to orders discharging a person absolutely or conditionally and their effect).
- (6) A variation of a serious crime prevention order may be made as mentioned in section 20(6)(b) or 21(6)(b) in spite of anything in sections 12 and 14 of the Act of 2000 or (as the case may be) Articles 4 and 6 of the Order of 1996.

#### **37 Functions of applicant authorities**

Schedule 2 (functions of applicant authorities under this Part) has effect.

#### **38 Disclosure of information in accordance with orders**

- (1) A person who complies with a requirement imposed by a serious crime prevention order to answer questions, provide information or produce documents does not breach—
  - (a) any obligation of confidence; or
  - (b) any other restriction on making the disclosure concerned (however imposed).

- (2) But see sections 11 to 14 (which limit the requirements that may be imposed by serious crime prevention orders in connection with answering questions, providing information or producing documents).

### **39 Compliance with orders: authorised monitors**

- (1) A serious crime prevention order against a body corporate, partnership or unincorporated association may authorise a law enforcement agency to enter into arrangements with—
- (a) a specified person; or
  - (b) any person who falls within a specified description of persons;
- to perform specified monitoring services or monitoring services of a specified description.
- (2) A person with whom the agency has entered into arrangements in accordance with such an authorisation is known for the purposes of this section as an authorised monitor.
- (3) A serious crime prevention order which provides for an authorised monitor may, for the purpose of enabling the performance of monitoring services, impose requirements of the type mentioned in section 5(5) as if the references in paragraph (a)(iv) and (b)(iv) of that provision to a law enforcement officer included references to an authorised monitor.
- (4) A serious crime prevention order which provides for an authorised monitor may require any body corporate, partnership or unincorporated association which is the subject of the order to pay to the law enforcement agency concerned some or all of the costs incurred by the agency under the arrangements with the authorised monitor.
- (5) Any such order—
- (a) must specify the period, or periods, within which payments are to be made;
  - (b) may require the making of payments on account;
  - (c) may include other terms about the calculation or payment of costs.
- (6) The tests for making or varying a serious crime prevention order in sections 1(1)(b), (2)(b) and (3), 17(1) and (2), 19(2), (4) and (5), 20(2) and (4) and 21(2) and (4) do not operate in relation to an order so far as the order contains terms of the kind envisaged by subsections (4) and (5) above (or by subsection (1) above for the purposes of those subsections).
- (7) But a court must not include in a serious crime prevention order (whether initially or on a variation) terms of the kind envisaged by subsection (4) or (5) unless it considers that it is appropriate to do so having regard to all the circumstances including, in particular—
- (a) the means of the body corporate, partnership or unincorporated association concerned;
  - (b) the expected size of the costs; and
  - (c) the effect of the terms on the ability of any body corporate, partnership or unincorporated association which is carrying on business to continue to do so.
- (8) A law enforcement agency must inform the subject of a serious crime prevention order which provides for an authorised monitor of the name of, and an address for, any

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person with whom the agency has entered into arrangements in accordance with the authorisation in the order.

(9) Nothing in this section affects the ability of law enforcement agencies to enter into arrangements otherwise than in accordance with an authorisation under this section.

(10) In this section—

“law enforcement agency” means—

- (a) a police authority or the Northern Ireland Policing Board;
- (b) the Serious Organised Crime Agency;
- (c) the Commissioners for Her Majesty’s Revenue and Customs; or
- (d) the Director of the Serious Fraud Office;

“monitoring services” means—

- (a) analysing some or all information received in accordance with a serious crime prevention order;
- (b) reporting to a law enforcement officer as to whether, on the basis of the information and any other information analysed for this purpose, the subject of the order appears to be complying with the order or any part of it; and
- (c) any related services; and

“specified”, in relation to a serious crime prevention order, means specified in the order.

#### **40 Costs in relation to authorised monitors**

(1) The Secretary of State may by order make provision about the practice and procedure for determining the amount of—

- (a) any costs payable by virtue of section 39(4) and (5); and
- (b) any interest payable in respect of those costs.

(2) Such provision may, in particular, include provision about appeals.

(3) Where any amounts required to be paid by virtue of section 39(4) and (5) have not been paid within a required period, the law enforcement agency concerned must take reasonable steps to recover them and any interest payable in respect of them.

(4) The Secretary of State must by order provide for what are reasonable steps for the purposes of subsection (3).

(5) Any amounts which have not been recovered despite the taking of the reasonable steps are recoverable as if due to the law enforcement agency concerned by virtue of a civil order or judgment.

(6) Where any amounts required to be paid by virtue of section 39(4) and (5) are, in the case of an order of the Crown Court, not paid within a required period, the unpaid balance from time to time carries interest at the rate for the time being specified in section 17 of the Judgments Act 1838 (c. 110) (interest on civil judgment debts).

(7) For the purposes of section 25, a failure to comply with a requirement imposed by virtue of section 39(4) and (5) to make payments occurs when the amounts become recoverable as mentioned in subsection (5) above (and not before).

(8) In this section “law enforcement agency” has the same meaning as in section 39.

#### **41 Powers of law enforcement officers to retain documents**

- (1) A law enforcement officer—
- (a) may take and retain copies of, or extracts from, any document produced to a law enforcement officer in pursuance of a serious crime prevention order; and
  - (b) may retain any document so produced for as long as he considers that it is necessary to retain it (rather than any copy of it) for the purposes for which the document was obtained.
- (2) A law enforcement officer may retain any document produced to a law enforcement officer in pursuance of a serious crime prevention order until the conclusion of any legal proceedings if he has reasonable grounds for believing that the document—
- (a) may have to be produced for the purposes of those proceedings; and
  - (b) might be unavailable unless retained.

#### *Interpretation: Part 1*

#### **42 Interpretation: Part 1**

In this Part—

- “act” and “conduct” include omissions and statements;
- “country” includes territory;
- “modifications” includes additions and omissions (and “modify” is to be read accordingly);
- “the public” includes a section of the public or a particular member of the public.

#### **43 Index of defined expressions: Part 1**

In this Part, the expressions listed in the left-hand column have the meaning given by, or are to be interpreted in accordance with, the provisions listed in the right-hand column.

<i>Expression</i>	<i>Provision</i>
act	section 42
committed a serious offence	section 4(1)
conduct	section 42
conducts oneself in a way likely to facilitate the commission by oneself or another person of a serious offence	section 4(3)
country	section 42
Director of Public Prosecutions, Director of Revenue and Customs Prosecutions, Director of the Serious Fraud Office and Director of Public Prosecutions for Northern Ireland	Paragraphs 2(2), 7(2), 13(2) and 17 of Schedule 2
document	section 5(7)

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<i>Expression</i>	<i>Provision</i>
facilitates the commission by another person of a serious offence	section 4(2)
involvement in serious crime: England and Wales orders	sections 2, 4 and 31(3)
involvement in serious crime: Northern Ireland orders	sections 3, 4 and 31(3)
law enforcement officer	section 5(7)
modifications (and modify)	section 42
person who is the subject of a serious crime prevention order	section 1(6)
premises	section 5(7)
production of documents	section 5(8)
the public	section 42
relevant applicant authority	section 10(4)
serious crime prevention order	section 1(5)
serious offence in England and Wales	section 2(2)
serious offence in Northern Ireland	section 3(2)