

SERIOUS ORGANISED CRIME AND POLICE ACT 2005

EXPLANATORY NOTES

THE ACT

Commentary on Sections

Part 5: Miscellaneous

Section 145: Interference with contractual relationships so as to harm animal research organisation

371. This section creates a new criminal offence. *Subsections (1) to (4)* need to be read together as these describe the new offence. There are two steps involved in establishing whether an offence has been committed under these provisions. Firstly, a person needs to either commit a crime or a tortious act causing loss or damage (see paragraph 372 below), or threaten someone that they or someone else will commit a crime or such a tortious act, with the intention of harming an “animal research organisation” (as defined in section 148). Secondly, this needs to be likely or intended to cause the person against whom the crime or relevant tortious act is committed or threatened to fail to perform a contractual obligation, to withdraw from a contract or to decide not to enter into a contract. For this purpose “contract” and “contractual” include non-contractual arrangements.
372. A tortious act is an act which is wrong in civil law but is not a criminal offence. The normal remedy is for the victim of the tort to sue for damages in the civil courts. The effect of the section is to make a tortious act which causes loss or damage, and which is committed with the necessary intention, a criminal offence. By virtue of subsection 3(b), no offence is committed if the only relevant tortious act is inducement to breach a contract. The effect of this subsection is to ensure that no offence is committed by those peacefully advocating or representing that one person should cease doing business with another on the basis that that others connection to an animal research organisation.
373. *Subsection (5)* defines what is meant by “harming” an animal research organisation - to cause such an organisation loss or damage of any kind, or to prevent or hinder such an organisation from carrying on any of its activities.
374. *Subsections (6) and (7)* ensure that the offence will not be committed where the act on which it might otherwise be based is a tortious act done in contemplation or furtherance of a “trade dispute” as defined in the Trade Union and Labour Relations (Consolidation) Act 1992.

Section 146: Intimidation of persons connected with animal research organisation

375. *Subsection (1)*, read with *subsection (5)*, creates a further criminal offence. It is committed where a person (“A”), with the intention of persuading another person (“B”) not to do something he is entitled to do, or to do something he is not obliged to do,

threatens B that A himself or someone else will commit a crime or do a tortious act causing loss or damage to B or someone else, and A does so wholly or mainly because B has a connection with an animal research organisation.

376. *Subsection (2)* lists the kinds of persons who are connected, directly or indirectly, with an animal research organisation for the purpose of the offence. The list includes the employees and office holders of animal research organisations; people with a financial interest in those organisations (including shareholders) or who give financial support to them; suppliers and customers and those with a financial interest in them or who financially support them, and people personally known to these people; students at educational establishments that are animal research organisations are included. In turn, those who supply and are customers of these people, or are known to them, are also included.
377. *Subsection (3)* has the effect that for the purposes of the list in subsection (2) the term “office holder” includes directors, managers and secretaries of companies, charity trustees, and partners in partnerships. *Subsection (4)* ensures for the purposes of the list in subsection (2) that the terms “customer” and “supplier” include customers and suppliers of goods, services and facilities. *Subsection (6)* gives the Secretary of State the power to amend subsection (2) (the list of connected persons) by means of an order subject to the affirmative resolution procedure. *Subsections (7) and (8)* exclude acts done in contemplation or furtherance of a trade dispute from the scope of the offence and operate in the same way as subsections (6) and (7) of section 142.

Section 147: Penalty for offences under sections 145 and 146

378. *Subsection (1)* sets out the penalties on conviction for the new offences. A trial may take place either in a magistrates’ court or in a Crown Court. If a person is found guilty by a magistrates’ court, the maximum sentence is 51 weeks imprisonment, or a fine equal to statutory maximum (currently £5,000), or both. If a person is found guilty in a Crown Court, the maximum sentence is 5 years’ imprisonment, an unlimited fine, or both.
379. *Subsection (2)* provides that prosecutions can only be instituted by or with the consent of the Director of Public Prosecutions.

Section 148: Animal research organisations

380. *Section 148* defines animal research organisations for the purposes of the two offences in sections 145 and 146. The persons and organisations are listed in *subsections (2) and (3)*. *Subsection (2)* describes the first group of people and organisations: they are the owners, lessees or licensees of premises where procedures regulated under the Animals (Scientific Procedures) Act 1986 may take place or where animals to be used in such procedures may be bred or supplied from. *Subsection (3)* lists a second category of persons and organisations: they are the employers of holders of licences to carry out regulated procedures on animals, and of persons named in certificates designating places where the breeding or supply of animals for use in such procedures may take place, and those who engage such people under contracts for their services.
381. *Subsection (4)* gives the Secretary of State a power, by means of an order subject to the affirmative resolution procedure, to amend the section to include any other description of persons who are involved in regulated procedures under the 1986 Act, or have a direct connection with such persons.

Section 149: Extension of sections 145 to 147

382. *Section 149* gives the Secretary of State the power, by means of an order subject to the affirmative resolution procedure, to extend the scope of the new offences created in sections 145 and 146 so that the offences apply in relation to criminal acts and tortious acts causing loss or damage done in relation to other descriptions of persons or organisations.

383. *Subsection (2)* imposes a restriction on the order making power in *subsection (1)*. It has the effect that the Secretary of State may only make an order if satisfied that a series of events has taken place that were directed at the description of persons or organisations, or people connected with them, which would have been offences under sections 145 and 146 had they been directed at animal research organisations or people connected with them.

Section 150: Offence in respect of incorrectly registered vehicles

384. This section inserts a new section 43C into the Vehicle Excise and Registration Act 1994 (“the 1994 Act”). It creates a new offence of using, on a public road or in a public place, a vehicle which is incorrectly registered if vehicle excise duty is chargeable on that vehicle or that vehicle is an exempt vehicle in respect of which a nil licence is required to be in force. A vehicle is incorrectly registered if the name and address of the keeper are not recorded on the register provided for by the Secretary of State under the 1994 Act. A vehicle is also incorrectly registered if any of the particulars on the register in respect of the vehicle are incorrect.
385. It is already an offence under the 1994 Act for the keeper of a vehicle to fail to correct these details on the register. At present, however, a person found driving such a vehicle escapes penalty if he cannot be proved to be the keeper.
386. It is a defence under subsection (3) of new section 43C for the user to show that there was no reasonable opportunity for the name and address of the keeper to be supplied for registration or that there was no reasonable opportunity to correct incorrect particulars on the register. It is a defence under subsection (4)(a) of new section 43C for the user to show that he had reasonable grounds for believing, or that it was reasonable for him to expect, that the name and address of the keeper or the particulars were correctly recorded. Subsection (4)(b) of new section 43C allows further defences to be provided by regulation.
387. A person who is guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale (currently £1000). Subsection (2) of the section amends Schedule 3 to the Road Traffic Offenders Act 1988 so as to make an offence under new section 43C of the 1994 Act a fixed penalty offence.

Section 151: Power of constables etc. to require production of registration documents in respect of a vehicle

388. This section inserts a new section 28A into the Vehicle Excise and Registration Act 1994. It provides constables and persons authorised by the Secretary of State for the purposes of this section with a power to require a person using a vehicle to produce the registration document issued in respect of that vehicle on demand. An authorised person exercising this power must produce evidence of his authority to exercise the power if requested to do so. A person who does not produce the document required will be committing an offence, unless one of three conditions applies. The first is if within 7 days or as soon as reasonably practicable the person produces the document required in person at a police station or vehicle testing station nominated by him at the time of the request. The second condition is that the vehicle is subject to a lease or hire agreement, that the vehicle is not, and is not required to be, registered in the name of the lessee or hirer under that agreement, that the person produces appropriate evidence of the agreement within seven days or as soon as reasonably practicable at a police station or vehicle testing station nominated by him and the person has reasonable grounds for believing or it is reasonable for him to expect that the person from whom the vehicle has been leased or hired is able to produce or require the production of the registration document. The third condition is that any exception to the offence provided in regulations made under new section 28A is met.
389. A person who is guilty of an offence under new section 28A is liable on summary conviction to a fine not exceeding level 2 on the standard scale (currently £500).

Section 152: Power to seize etc. vehicles driven without licence or insurance

390. This section inserts new sections 165A and 165B into the Road Traffic Act 1988 (“the 1988 Act”). It gives the police a specific power to seize immediately vehicles which are detected being used by uninsured drivers or drivers who do not have a valid licence, and for the vehicle to be removed, released or disposed of in accordance with regulations made by the Secretary of State. Those regulations are likely to require payment of prescribed charges, and the production of a valid insurance certificate or licence, in connection with the release of a vehicle.
391. Subsection (1) of new section 165A sets out that the new powers provided by subsection (5) can be exercised only when one of the conditions set out in subsections (2) to (4) is met. The conditions in subsections (2) and (3) are that a constable in uniform has required a person to produce his licence and counterpart or evidence of insurance, the person has not done so and the constable has reasonable grounds to believe that a vehicle is or had been driven by a person not appropriately insured against third party risk or without a valid licence. The condition in subsection (4) is that a constable in uniform has required a vehicle to stop, but it has not stopped or stopped long enough for appropriate enquiries and the constable has reasonable grounds for believing that the vehicle is being driven without appropriate insurance or a valid licence. Subsections (2) to (4) refer to the constable using the powers he already has under section 163 of the 1988 Act (to stop a vehicle), under section 164 of the 1988 Act (to require production of licence and counterpart) and under section 165 of the 1988 Act (to require the production of insurance documents). Under subsection (5) of new section 165A the officer would have the power to seize and remove the vehicle, a power to enter premises (other than a private dwelling house) on which he has reasonable grounds for believing the vehicle to be in order to effect the seizure and a power to use reasonable force, if necessary for these purposes.
392. New section 165B allows the Secretary of State to make regulations that set the procedures and arrangements for removal, retention, release and disposal of vehicles, including prescribed charges and periods, and arrangements for notifying the registered keeper, owner or driver. The seizure power in new section 165A will not come into effect until regulations under new section 165B are made.
393. The provision required by subsection (3) of new section 165B excuses from any payment a registered keeper or owner who could demonstrate that he was not driving the vehicle at the time, that the seized vehicle had been used without his knowledge and consent and that he could not reasonably have prevented it from being driven.

Section 153: Disclosure of information about insurance status of vehicles

394. This section will enable the police to have access to insurance industry data relating to vehicles whose use is no longer insured. The police will be able to link the processed data to Automated Number-Plate Reader (ANPR) units to assist them in detecting people driving without insurance.

Section 154: Power to require specimens of breath at roadside or at hospital etc.

395. This section amends sections 6D (Arrest), 7 (Provision of specimens for analysis), 8 (Choice of specimens of breath), 9 (Protection for hospital patients) and 10 (Detention of persons affected by alcohol or a drug) of the Road Traffic Act 1988. The amendments will permit police to carry out an evidential breath test not only at a police station, but also at a hospital, or at or near a place (such as the roadside) where a preliminary breath test has been administered. The results of the evidential breath test will be admissible as evidence in court. Under the current law an evidential breath test may only be administered at a police station.

396. The preliminary test will continue to be available under section 6A (Power to administer preliminary tests) for the police to screen suspects. The option of taking a person to a police station for an evidential test remains.
397. In the event of a positive result or a refusal, or if the police officer believes the equipment not to be working properly, the person may be arrested and taken to a police station. If a person is unable to provide breath he may be required to provide a specimen of blood or urine, which must be taken at a police station. If the breath reading is no more than 50 microgrammes of alcohol per 100 millilitres of breath, the person who provided it may ask for it to be replaced by a specimen of blood or urine which must be taken at a police station.
398. Although the police may complete the evidential breath testing procedure satisfactorily at the roadside they may need in some circumstances to arrest the person and detain him at a police station until he is fit to drive. The section amends section 10 of the Road Traffic Act 1988 so as to provide that a person may be detained at a police station if a constable has reasonable grounds for believing that, were that person then driving or attempting to drive a mechanically propelled vehicle on a road, he would commit an offence under section 4 or 5 of that Act.

Section 155: Payments by Secretary of State to police authorities in relation to the prevention, detection and enforcement of certain traffic offences

399. **Section 155** allows the Secretary of State to make payments to police authorities in respect of the whole or any part of their expenditure on the prevention and detection of the motoring offences specified in *subsection (3)* and on enforcement action relating to such offences. This will, with the agreement of the Treasury, enable money from fixed penalties for such offences to be recycled to fund such future prevention, detection and enforcement activities. In practice this will enable resources to be directed towards the deployment of police intercept teams using automatic number plate recognition technology.
400. *Subsection (4)* contains a power for the Secretary of State to amend the list of specified offences by order (subject to the negative resolution procedure).

Section 156: Payments by Scottish Ministers to police authorities etc. in relation to the prevention, detection and enforcement of certain traffic offences

401. **Section 156** allows the Scottish Ministers to make payments to police authorities or joint police boards in respect of the whole or any part of their expenditure on the prevention and detection of the motoring offences specified in *subsection (3)* and on enforcement action relating to such offences. This will, with the agreement of the Treasury, enable money from fixed penalties for such offences to be recycled to fund such future prevention, detection and enforcement activities. In practice this will enable resources to be directed towards the deployment of police intercept teams using automatic number plate recognition technology.
402. *Subsection (4)* contains a power for the Scottish Ministers to amend the list of specified offences by order (subject to the negative resolution procedure).

Section 157: Publication of local policing information

403. This section inserts new section 8A into the Police Act 1996. It places a duty on police authorities to produce a summary of information on local policing matters, specifically for members of the public, as soon as possible after the end of each financial year (31st March).
404. *New section 8A(3)* permits the Secretary of State, by order (subject to the negative resolution procedure), to specify matters that must be included in this 'local policing

summary'. Examples of the types of material that may be required to be included in the summary are:

- a) crime statistics for the police area, including data showing the trend over time and comparisons with other forces or Basic Command Units, for:
 - i) all crime;
 - ii) volume crimes (vehicle crime, robbery, domestic burglary);
 - iii) violent crime; and
 - iv) sanction detections (i.e. crimes detected where there was a method of disposal which had consequences e.g. a warning, caution, reprimand as opposed to those detected and written off because for example the injured party no longer wished to press charges);
- b) any performance indicators, standards and targets specified or set in relation to policing in the local area for the financial year being reported upon;
- c) local and force level policing priorities;
- d) numbers of police officers, Community Support Officers and other police staff employed by the police authority in the local area;
- e) details of any assessments undertaken by Her Majesty's Inspectors of Constabulary in the local area;
- f) contact details for local police commanders;
- g) contact details for local police stations;
- h) information on the membership, role and priorities of the police authority;
- i) information on how the public can get involved in local community safety initiatives;
- j) local projects/ initiatives that are underway; and
- k) information on joining the police.

405. *New section 8A(4)* requires police authorities to publish and then make appropriate efforts to distribute the 'local policing summary' to all households in its police area.

406. *New section 8A(5)* requires police authorities to have regard to any guidance issued by the Secretary of State on the form and content of the local policing summary.

407. *New section 8A(6)* requires the Secretary of State, prior to making an order under *new section 8A(2)* or issuing guidance, to consult with appropriate stakeholders – including police authority and chief officer representative bodies (namely, the Association of Police Authorities and the Association of Chief Police Officers).

Section 158: Responsibilities in relation to the health and safety etc. of police

408. This section, which came into force on Royal Assent, amends the Health and Safety at Work etc. Act 1974 ('the 1974 Act') so that any prosecution of a chief officer of police for an offence under that Act is ordinarily brought against the office of chief constable rather than against the individual incumbent. This would bring the position of a chief officer into line with that of police authorities which are liable as bodies corporate for breaches of health and safety legislation in respect of police staff (who are employees of police authorities).

409. *Subsection (1)* inserts new subsections (2A) to (2F) into section 51A of the 1974 Act (which applies Part 1 of that Act to the police). *New section 51A(2A)* provides that a

chief officer shall be treated as a corporation sole for the purpose of the application of Part 1 of the 1974 Act to the police. Accordingly, any prosecution under the Act would be pursued against the office of chief constable rather than against the office holder for the time being. However, the chief officer for the time being may also be prosecuted in a personal capacity if it can be shown that he personally consented to the commission of an offence or personally connived in its commission, or was personally negligent (new *section 51A(2B) and (2C)*).

410. New *section 51A(2D)* and *(2E)* makes it clear that in relation to contraventions of the 1974 Act, it is the corporation sole who is treated as the employer of officers rather than the chief officer in person who would otherwise be vicariously liable for unlawful conduct of officers under his direction and control. New *section 51A(2F)* adapts new *section 51A(2A) to (2C)* to Scotland which does not have the concept of a corporate sole.
411. *Subsection (4)* repeals provisions in the Police Reform Act 2002 relating to health and safety. These provisions have not been brought into force.
412. *Subsection (5)* backdates the effects of the amendments to the 1974 Act to 1st July 1998 for the purpose of any legal proceedings commenced on or after the commencement of this section which, by virtue of section 178, was the date this Act received Royal Assent (namely 7th April 2005). The effect of *subsection (6)* is that anything done by a chief officer before the commencement of this section shall be deemed to have been done by him in his capacity as a corporation sole for the purposes of any proceedings under the 1974 Act.
413. *Subsection (7)* provides that the individual liability conferred by new *section 51A(2B)* of the 1974 Act does not apply in respect of anything occurring before this Act received Royal Assent.

Section 159 and Schedule 11: Investigations: accelerated procedure in special cases

414. *Section 159* introduces Schedule 11, which makes amendments to Schedule 3 to the Police Reform Act 2002 to enable disciplinary proceedings to be brought earlier than currently possible where certain ‘special’ conditions are met. Those conditions are met where there is good evidence that the police officer has committed a criminal offence that would justify dismissal and the appropriate authority considers that it is in the public interest for the person to cease to be a member of a police force, or a special constable without delay.
415. Currently, the provisions in Schedule 3 to the 2002 Act prevent the bringing of criminal or disciplinary proceedings in relation to any matter which is the subject of an investigation until the investigation has been completed and a report has been submitted to the Independent Police Complaints Commission or to the appropriate authority. Furthermore, they prevent the bringing of disciplinary proceedings until any criminal proceedings have been brought to a conclusion.
416. Where the special conditions are met, the amendments made by Schedule 11 allow a report to be submitted before the investigation has been completed and for disciplinary proceedings to be brought earlier than would otherwise have been possible. The disciplinary proceedings may also be brought before any related criminal proceedings (the appropriate authority would consult the Director of Public Prosecutions before proceeding in this way). The Director of Public Prosecutions may request that the investigation be continued, notwithstanding the commencement of disciplinary proceedings.

Section 160 and Schedule 12: Investigations: deaths and serious injuries after contact with the police

417. This section gives effect to Schedule 12 which amends Part 2 of the Police Reform Act 2002 to bring a new category of cases under the jurisdiction of the Independent

Police Complaints Commission. The new category, 'death or serious injury matters', will cover cases where persons have died or been seriously injured following some form of direct or indirect contact with the police and there is reason to believe that the contact may have caused or contributed to the death or serious injury. They will be cases that do not involve a complaint or a conduct matter when first identified and categorised. Such cases may relate to the direction and control of a police force, which would normally be excluded by section 14 of the Act.

418. *Paragraph 12* of Schedule 12 amends Schedule 3 to the 2002 Act to ensure that this new category of cases is recorded and referred to Independent Police Complaints Commission for a determination regarding investigation under paragraph 15 of Schedule 3. On completion of the investigation, a final report into a death or serious injury matter will be submitted and the Independent Police Complaints Commission may make recommendations or give advice under section 10(1)(e) of the 2002 Act (*paragraph 24* of Schedule 12). Where the investigation reveals a conduct matter (a criminal or disciplinary offence), the matter will be treated as a conduct matter from that point forward under Schedule 3 to the 2002 Act. Thus, disciplinary proceedings may be brought.

Section 161: Abolition of Royal Parks Constabulary

419. This section abolishes the Royal Parks Constabulary (RPC) and provides that RPC constables' appointments as constables will terminate on an appointed day. This does not affect their employment as Crown servants. The section also gives effect to Schedule 13.