

# **SERIOUS CRIME ACT 2015**

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## **EXPLANATORY NOTES**

### **TERRITORIAL EXTENT**

#### **Part 3: Organised, Serious and Gang-Related Crime**

##### **Summary and Background**

##### **Organised crime groups**

140. In the Serious and Organised Crime Strategy, the Government undertook to bring forward proposals to “better tackle people who actively support, and benefit from, participating in organised crime, learning from legislation that is already being used elsewhere in the world<sup>1</sup>” (paragraph 4.60).
141. In 2006, the UK ratified the UN Convention against Transnational Organised Crime<sup>2</sup>. Article 5(1) of the Convention (criminalisation of participation in an organized criminal group) provides -
- (1) “Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:
    - (a) Either or both of the following as criminal offences distinct from those involving the attempt or completion of the criminal activity:
      - (i) Agreeing with one or more other persons to commit a serious crime for a purpose relating directly or indirectly to the obtaining of a financial or other material benefit and, where required by domestic law, involving an act undertaken by one of the participants in furtherance of the agreement or involving an organized criminal group;
      - (ii) Conduct by a person who, with knowledge of either the aim and general criminal activity of an organized criminal group or its intention to commit the crimes in question, takes an active part in:
        - a. Criminal activities of the organized criminal group;
        - b. Other activities of the organized criminal group in the knowledge that his or her participation will contribute to the achievement of the above-described criminal aim;
    - (b) Organising, directing, aiding, abetting, facilitating or counselling the commission of serious crime involving an organized criminal group.”
142. Article 5 of the Convention therefore provides for either a conspiracy offence or a participation offence, or both, to be implemented into domestic law. The elements

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<sup>1</sup> Legislative Guide for the United Nations Convention against Transnational Organized Crime and the Protocols thereto (United Nations Office on Drugs and Crime 2004) [http://www.unodc.org/pdf/crime/legislative\\_guides/02%20Legislative%20guide\\_TOC%20Convention.pdf](http://www.unodc.org/pdf/crime/legislative_guides/02%20Legislative%20guide_TOC%20Convention.pdf)

<sup>2</sup> <http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf>

of the offence specified in Article 5(1)(a)(i) are based on a conspiracy offence. The requirements of this offence include the intentional agreement with one or more other persons to commit a serious crime for a purpose relating directly or indirectly to obtaining a financial or other material benefit. This requirement criminalises the mere agreement to commit serious crime for the purpose of obtaining a financial or other material benefit, irrespective of whether that agreement is acted upon. In England and Wales, section 1 of the Criminal Justice Act 1977 provides for the offence of conspiracy in the following terms –

- “(1) Subject to the following provisions of this Part of this Act, if a person agrees with any other person or persons that a course of conduct shall be pursued which, if the agreement is carried out in accordance with their intentions, either—
- (a) will necessarily amount to or involve the commission of any offence or offences by one or more of the parties to the agreement, or
  - (b) would do so but for the existence of facts which render the commission of the offence or any of the offences impossible,

he is guilty of conspiracy to commit the offence or offences in question.

143. The elements of the offence specified in Article 5(1)(a)(ii) are based on active participation. This type of offence was initially considered more suitable for civil law jurisdictions whose laws do not recognise conspiracy or do not allow criminalisation of a mere agreement to commit a crime, but increasingly Governments are adopting a combined approach. For example, sections 71 and 72 of the Republic of Ireland’s Criminal Justice Act 2006<sup>3</sup> provide for an offence of conspiracy and of participation in a criminal organisation.
144. Serious organised crime is often carried out by groups of individuals working together to maximise the benefits they derive from their criminal activity. By acting in combination it allows individuals to obtain a greater benefit from their criminal conduct than they might do if working alone and outside an established criminal group. Working through an organised criminal group can also provide protection for those at the very top of such groups who can instruct or direct others to carry out activity on their behalf but who do not themselves carry out criminal acts and therefore prove difficult to prosecute.
145. The new participation offence in England and Wales is intended to provide a new means by which the NCA, the police and prosecutors can tackle serious organised crime. The new offence can be used to target not only those who head a criminal organisation and who plan, coordinate and manage, but do not always directly participate in the commission of the final criminal acts; but also the other members of the group and associates who participate in activities such as the provision of materials, services, infrastructure and information that contribute to the overall criminal capacity and capability of the organised crime group.

#### Serious crime prevention orders

146. Part 1 of the Serious Crime Act 2007 (“the 2007 Act”) makes provision for Serious Crime Prevention Orders (“SCPOs”). SCPOs are a form of civil order aimed at preventing serious crime. These orders are intended to be used against those involved in serious crime, with the terms attached to an order designed to protect the public by preventing, restricting or disrupting involvement in serious crime.
147. An SCPO may be made by the Crown Court where it is sentencing a person who has been convicted of a serious offence (including when sentencing a person convicted of such an offence in the magistrates’ court but committed to the Crown Court for sentencing). Orders may also be made by the High Court where it is satisfied that a person has been involved in serious crime, whether that involvement was in England, Wales, Northern Ireland or elsewhere, and where it has reasonable grounds to believe that the order would protect the public by preventing, restricting or disrupting

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3 <http://www.irishstatutebook.ie/2006/en/act/pub/0026/index.html>

*These notes refer to the Serious Crime Act 2015 (c.9)  
which received Royal Assent on 3rd March 2015*

involvement by the subject of the order in serious crime in England, Wales and Northern Ireland. A serious offence in England and Wales and Northern Ireland is one which is listed in Schedule 1 to the 2007 Act, or an offence which is sufficiently serious that the court considers it should be treated as it were part of the list. Section 47 extends the list of trigger offences in Schedule 1 to the 2007 Act.

148. The 2007 Act allows for SCPOs to be made against individuals (aged 18 or over), bodies corporate, partnerships or unincorporated associations. SCPOs may contain such prohibitions, restrictions, or requirements or such other terms that the court considers appropriate for the purpose of protecting the public by preventing, restricting or disrupting serious crime. Section 5 of the 2007 Act contains an illustrative list of the type of prohibitions, restrictions, or requirements that may be attached to an order. For example, these might relate to a person's travel, financial dealings or the people with whom he or she is allowed to associate. Orders can last for up to five years. Breach of the order is a criminal offence, subject to a maximum sentence of five years' imprisonment or an unlimited fine, or both.
149. Sections 6 to 15 of the 2007 Act contain a number of safeguards, including conferring rights on affected third parties to make representations during any proceedings and protection for information subject to legal professional privilege. As a consequence of section 8 of the 2007 Act a SCPO may be made only on an application by the Director of Public Prosecutions (or Director of Public Prosecutions for Northern Ireland) or the Director of the Serious Fraud Office.
150. SCPOs were brought into force on 6 April 2008. As at 31 March 2014, 317 SCPOs have been granted by the Crown Court and one by the High Court<sup>4</sup>. There have been nine convictions for breach of an SCPO. Further details of the implementation of the SCPO are contained in a memorandum by the Home Office submitted to the Home Affairs Select Committee and Justice Select Committee in November 2012 in relation to the post-legislative scrutiny of the 2007 Act<sup>5</sup>.
151. The provisions in Part 1 of the 2007 Act broadly apply only to England and Wales and Northern Ireland, although the offence of breaching a SCPO is UK-wide<sup>6</sup>. The then Scottish Government decided to consider the effectiveness of SCPOs elsewhere in the UK before deciding whether these orders should be introduced in Scotland. In September 2013, the Scottish Government published a consultation on the extension of SCPOs to Scotland<sup>7</sup>. The Scottish Government published its response to the consultation on 4 April 2014<sup>8</sup>, and indicated that it would ask the UK Government to bring forward the necessary amendments to the 2007 Act in order that there was a single UK-wide regime for SCPOs. Section 46 and Schedule 1 make the necessary amendments to the 2007 Act to this end.
152. Chapter 3 of Part 2 (sections 76 to 81) of SOCPA makes provision for Financial Reporting Orders ("FROs"). FROs enable the court to require a person who has been convicted of certain offences (including, fraud, obtaining services dishonestly, conspiracy to defraud, false accounting, an offence specified as a "lifestyle offence" in Schedule 2 to POCA, an offence under the Bribery Act 2010, offences under the Drug Trafficking Act 1994, fund-raising for the purposes of terrorism and various tax evasion offences) to make reports to law enforcement agencies regarding their financial affairs, where the court is satisfied that the risk of the defendant (or accused in Scotland) committing another such offence is "sufficiently high" so as to justify the making of an order. In making an FRO, the court will specify: the duration of the order and the frequency of reports; what financial details and supporting documents should be in

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<sup>4</sup> These figures represent those SCPOs known to the National Crime Agency and its predecessor the Serious Organised Crime Agency. Other SCPOs may have been granted which were not reported to the NCA or SOCA.

<sup>5</sup> <http://www.official-documents.gov.uk/document/cm85/8502/8502.pdf>

<sup>6</sup> The Scottish Parliament adopted a legislative consent motion in relation to this aspect of the Bill for the 2007 Act on 8 March 2007 - <http://www.scottish.parliament.uk/parliamentarybusiness/Bills/16199.aspx>

<sup>7</sup> <http://www.scotland.gov.uk/Publications/2013/09/9917/downloads>

<sup>8</sup> <http://www.scotland.gov.uk/Resource/0044/00447665.pdf>

or accompany each report; and who the reports should be made to and the deadline for providing them. Failure to comply with the requirement of an order or, without reasonable excuse, making false or misleading statements is a summary offence subject to a maximum penalty of six months' imprisonment in England and Wales and Northern Ireland and 12 months' imprisonment in Scotland.

153. As at 31 March 2014, the NCA (and its predecessor, the Serious Organised Crime Agency) has obtained 119 FROs. This is substantially less than the original expectation of some 1,500 a year and a number of deficiencies have been identified. In particular, as breach of an order is only triable summarily this both limits the investigative powers available to law enforcement agencies under the Police and Criminal Evidence Act 1984 and places a six month time limit on mounting a prosecution for non-compliance (by virtue of the restriction imposed by section 127 of the Magistrates' Courts Act 1980). By consolidating the FRO within the SCPO, non-compliance would become an indictable offence and thereby overcome these drawbacks.

#### Gang injunctions

154. Part 4 of the Policing and Crime Act 2009 ("the 2009 Act") makes provision for injunctions to prevent gang-related violence ("gang injunctions"). Gang injunctions are a preventative civil order that enable the police or a local authority to apply to a county court<sup>9</sup>, or the High Court, for an injunction against an individual to prevent gang-related violence. Gang injunctions allow courts to place a range of prohibitions and requirements (including supportive, positive requirements) on the behaviour and activities of a person (aged 14 or over) involved in gang-related violence. These conditions could include prohibiting someone from being in a particular place or requiring them to participate in rehabilitative activities.
155. The 25 out of then 33 Ending Gang and Youth Violence priority areas<sup>10</sup> that returned data in response to a Home Office survey reported that, between January 2011 (when the provisions in Part 4 of the 2009 Act were brought into force) and January 2014, 108 gang injunctions had been put in place.
156. The Serious and Organised Crime Strategy pointed to the link between urban street gangs and organised crime. At paragraph 2.7, the Strategy stated that "there are connections between gangs and organised crime: urban gang members may engage in street drug dealing on behalf of organised criminals and some gangs aspire to and may become organised crime groups in their own right". A review of the operation of gang injunctions was published by the Home Office in January 2014<sup>11</sup>. Amongst other things, the review found that the definition of a gang used in Part 4 of the 2009 Act was seen by police officers to have some limitations for addressing local gang issues. In response to this finding, the Government undertook to consult interested parties to explore whether the definition of a gang within the legislation should be changed to reflect the evolving nature of street gang activity across the country and ensure that gang injunctions can be used to target the right individuals. Section 51 makes resulting changes to Part 4 of the 2009 Act.

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<sup>9</sup> Section 18 of the Crime and Courts Act 2013 provides for youth courts to have jurisdiction to grant gang injunctions in respect of persons under 18 years, that section is not yet in force.

<sup>10</sup> Barking and Dagenham, Birmingham, Bradford, Brent, Camden, Croydon, Derby, Ealing, Enfield, Greenwich, Hackney, Hammersmith and Fulham, Haringey, Islington, Knowsley, Lambeth, Leeds, Lewisham, Liverpool, Manchester, Merton, Newham, Nottingham, Oldham, Salford, Sandwell, Sheffield, Southwark, Tower Hamlets, Waltham Forest, Wandsworth, Westminster and Wolverhampton. Ten new areas were added in October 2014: Barnet, Bromley, Havering, Hillingdon, Kensington and Chelsea, Luton, Ipswich, Thanet, Stoke-on-Trent and Tendring.

<sup>11</sup> <https://www.gov.uk/government/publications/review-of-the-operation-of-injunctions-to-prevent-gang-related-violence>