

SERIOUS CRIME ACT 2015

EXPLANATORY NOTES

TERRITORIAL EXTENT

Part 3: Organised, Serious and Gang-Related Crime

Commentary on Sections

Section 45: Offence of participating in activities of organised crime group

157. *Subsection (1)* provides for the offence of participating in activities of an organised criminal group.
158. The conduct (*actus reus*) and mental (*mens rea*) elements of the offence are set out in *subsection (2)*. The conduct element is satisfied if a person takes part in any activities which are criminal activities of an organised crime group, or will help an organised crime group to carry on criminal activities. The mental element of the offence is satisfied if it can be shown that the person knew or reasonably suspected that he or she was engaging in such activities. The term “criminal activities” is defined in *subsections (3) to (5)*. The definition is such as to capture participation in only serious criminal conduct which is determined as an offence attracting a sentence of imprisonment of at least seven years. The reference therein to obtaining “any gain or benefit” should be interpreted broadly so as to include crimes with tangible but non-monetary objectives, for example, when the predominant motivation is sexual gratification, such as the receipt of or trade in images of child sex abuse. An “organised crime group” is defined in *subsections (6) and (7)*. The offence will be triable on indictment only and subject to a maximum penalty of five years’ imprisonment (*subsection (9)*).
159. *Subsection (8)* provides for a defence where a person’s participation in the activities of an organised crime group was necessary for the purposes of the prevention or detection of crime. Such a defence would, in particular, be relevant to a police or NCA officer engaging in activities as part of an investigation into an organised crime group.