

SERIOUS ORGANISED CRIME AND POLICE ACT 2005

EXPLANATORY NOTES

THE ACT

Commentary on Sections

Part 6: Final provisions

Section 172: Orders and regulations

455. This section sets out the parliamentary procedure, if any, that applies in respect of the various order and regulation-making powers in the Act. All such powers exercisable by the Secretary of State are subject to the negative resolution procedure save for those specified in *subsection (4)* (where no parliamentary procedure applies) and *subsection (5)* (where the affirmative procedure applies). *Subsection (2)* specifies that any delegated power exercisable by the Secretary of State includes the power to make different provision for different cases or different purposes or areas.. This subsection also enables orders and regulations to make incidental, supplementary, consequential, transitory, transitional or saving provisions. Orders or regulations made by the Scottish Ministers under the Act attract the same, or similar, provisions (see *subsections (1), (2) and (6) to (8)*).

Section 173: Supplementary, incidental, consequential etc. provision

456. This section enables the Secretary of State to make supplementary, incidental or consequential provision. An order made under this power will be subject to negative resolution procedure, unless primary legislation is being amended in which case it is subject to the affirmative resolution procedure. In the circumstances set out in *subsection (5)* a similar power is exercisable by the Scottish Ministers.
457. This section is different from the power provided in section 172(2) in that it is exercisable independently of the commencement power in section 178 and creates in effect a free-standing power to make consequential provisions at any time, including a power to amend primary and secondary legislation. It is considered necessary, particularly in respect of the SOCA and arrest provisions, to pick up any consequential amendments not identified before the Act's introduction or during its passage.

Section 174: Minor and consequential amendments, repeals and revocations

458. This section gives effect to Schedules 16 and 17 which make minor and consequential amendments and set out legislation to be repealed by this Act.

Section 175: Penalties for offences: transitional modification for England and Wales

459. The penalties for various new offences set out in the Act have been drafted in such a way as to reflect the new sentencing framework provided for in the Criminal Justice Act 2003. This section substitutes lower maximum penalties that would apply for specified offences until such time as the relevant provisions of the 2003 Act come into force.

Section 176: Expenses

460. This section authorises additional expenditure incurred by the Secretary of State as a result of the provisions of the Act and increases in expenditure under existing Acts.

Section 177: Interpretation

461. This section defines 'SOCA' and 'enactment' for the purposes of the Act.

Section 178: Commencement

462. This section provides for commencement (*subsections (1) to (8)*). *Subsection (9)* enables provisions of the Act to be piloted, for example in specified police force areas, before being rolled out country wide. *Subsection (10)* confers on the Secretary of State a free standing order-making power (that is, separate from the power to make commencement orders) to make transitional or saving provisions connected with the coming into force of any provision in the Act. The order-making power is not subject to any parliamentary procedure. *Subsection (11)* confers a similar power on the Scottish Ministers

Section 179: Short title and extent

463. *Subsection (1)* sets out the short title of the Act. *Subsections (2) to (10)* set out extent of the Act. The SOCA provisions (Part 1 of the Act) and provisions on financial reporting orders (Chapter 3 of Part 2), witness protection (Chapter 4 of Part 2), international obligations (Chapter 5 of Part 2) and Proceeds of Crime (Chapter 6 of Part 2) will apply throughout the UK. Chapter 1 of Part 2 (investigatory powers of the DPP) will extend to England, Wales and Scotland. The Queen's Evidence provisions in Chapter 2 of Part 2 will extend to England, Wales and Northern Ireland. The provisions of the Act amending existing legislation will, with some exceptions, have the same extent as the relevant legislation (*subsection (7)*).