

SERIOUS CRIME ACT 2007

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: Serious Crime Prevention Orders

General

Particular types of bodies

Section 30: Bodies corporate including limited liability partnerships

93. This section makes certain provisions to enable the application of orders to bodies corporate. *Subsection (1)* sets out that, for the purposes of section 10, notice of an order is delivered in person to the body corporate if it is delivered to an officer of the body corporate in person. In addition, such an order is deemed to have been sent by recorded delivery to the body corporate at its last known address if it is so sent to an officer at the address of the registered office of that body or at the address of its principal office in the United Kingdom. Finally, this subsection provides that the power set out in section 10(3), enabling a constable or other authorised person to enter premises, by force if necessary, and search those premises for the subject of the order to deliver the notice to him, applies, in the case of a body corporate, to being able to do so in relation to an officer of the body corporate.
94. *Subsection (2)* applies where there has been a breach of an order, constituting an offence under section 25. If such a breach has been committed with the consent or connivance of either an officer of the body corporate or someone who purports to be such, then, in addition to the body corporate, that person is guilty of the offence and liable to be proceeded against and punished accordingly.
95. *Subsection (3)* makes it clear that there is nothing to stop there being an order against a body corporate and also a parallel order running alongside against any individual who might be involved or associated with that body corporate, including an officer or employee.
96. *Subsection (4)* defines certain terms – “body corporate”, “director” and “officer of a body corporate” for the purposes of this section.

Section 31: Other partnerships

97. This section makes provision for the operation of orders against partnerships other than limited liability partnerships, which are covered by section 30. *Subsection (1)* makes clear that an order sought against a partnership must be made in the name of the partnership and not in the name of any of the constituent partners. *Subsection (2)* provides that an order continues to have effect if the partners change unless all the partners who were partners at the time the order was made leave the partnership. If all the partners at the time the order was made leave the order will cease to have effect.

*These notes refer to the Serious Crime Act 2007 (c.27)
which received Royal Assent on 30th October 2007*

98. *Subsection (3)* provides a gloss for the meaning of ‘involved in serious crime’ and ‘involvement in serious crime’ when a court is considering an order in relation to a partnership. A partnership is involved in serious crime or an order will prevent its involvement in serious crime if any of the partners is so involved.
99. *Subsection (4)* makes provision for service on a partnership for the purposes of section 10 of the Act. Service in person will be effected by service on any partner or senior officer of the partnership in person. Service by recorded delivery will be effected by sending a notice to any partner or any senior officer of the partnership at the principal office of the partnership in the United Kingdom. The power to enter and search in section 10(3) is to be construed as a power to enter and search for a partner or a senior officer of the partnership.
100. *Subsection (5)* provides that any proceedings for breach of an order under section 25 should be brought in the name of the partnership. *Subsection (6)* provides that the rules of court relating to the service of documents and certain legislative provisions listed apply as if the partnership were a body corporate. Where a partnership is convicted in such proceedings, *subsection (7)* states that the fine is to be paid out of the partnership’s assets.
101. *Subsection (8)* makes similar provision to section 30(2). Where an offence under section 25 is committed with the consent or connivance of a partner or senior officer of the partnership, that person is also guilty of the offence. For the purposes of this subsection, *subsection (9)* makes it clear, firstly, that any references to a partner or senior officer of the partnership include references to any person purporting to act in such a capacity. Secondly, while *subsection (5)* makes clear that any proceedings brought under section 25 must be brought in the name of the partnership, this does not prejudice the liability of a partner under *subsection (8)* in relation to an offence committed with his consent or connivance.
102. *Subsection (10)* makes similar provision to section 30(3), making clear that nothing in this section prevents an order being made against an individual who is involved or associated in any way with the partnership.
103. *Subsection (11)* defines the terms “senior officer of a partnership” and “partnership”.

Section 32: Unincorporated associations

104. This section makes provision for the operation of orders against unincorporated associations. *Subsection (1)* provides that an order against an unincorporated association must be made in the name of the association and not in the name of any of its members. *Subsection (2)* provides that an order continues to have effect if the members of an association change unless all the members who were members at the time the order was made leave the association. If all the members at the time the order was made leave the order will cease to have effect.
105. *Subsection (3)* makes provision for service on an unincorporated association for the purposes of section 10 of the Act. Service in person will be effected by service on an officer of the association in person. Service by recorded delivery will be effected by sending a notice to an officer of the association at the principal office of the association in the United Kingdom. The power to enter and search in section 10(3) is to be construed as a power to enter and search for an officer of the association.
106. *Subsection (4)* provides that any proceedings for breach of an order under section 25 should be brought in the name of the association and not any of its members. *Subsection (5)* provides that the rules of court relating to the service of documents and certain legislative provisions listed apply as if the association were a body corporate. Where an association is convicted in such proceedings, *subsection (6)* states that the fine is to be paid out of the association’s funds.

107. *Subsection (7)* makes similar provision to section 30(2). Where an offence under section 25 is committed with the consent or connivance of an officer of the association, that person is also guilty of the offence. For the purposes of this subsection, *subsection (8)* makes it clear, firstly, that any references to an officer of an association include references to any person purporting to act in such a capacity. Secondly, while *subsection (4)* makes clear that any proceedings brought under section 25 must be brought in the name of the association, this does not prejudice the liability of an officer of an association under *subsection (7)* in relation to an offence committed with his consent or connivance.
108. *Subsection (9)* makes similar provision to section 30(3), making clear that nothing in this section prevents an order being made against an individual who is involved or associated in any way with the association.
109. *Subsection (10)* defines the terms “officer of an unincorporated association” and “unincorporated association”.

Section 33: Overseas bodies

110. This section provides an order-making power for the Secretary of State to modify any provision contained in section 30, 31 or 32 in its application to a body which is formed under law having effect outside the United Kingdom. This provision is included to take account of the possibility that special provision may be needed to enable orders to be made against, and function in relation to, overseas bodies.

Section 34: Providers of information society services

111. *Section 34* is included in the Act in order to ensure that the Act complies with the provisions set out in the 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) (“the Directive”). As a result of the Directive, there are certain conditions on what terms can be imposed on a service provider established in a state in the European Economic Area (this is the EU plus Iceland, Liechtenstein and Norway) other than the UK and certain protections for intermediary service providers.
112. *Subsection (1)* provides that an order may not include terms which restrict the freedom of an information service provider established in a European Economic Area (EEA) state other than the United Kingdom to provide information society services in relation to an EEA state unless certain conditions, contained in *subsections (2) and (3)* are met
113. The conditions in *subsection (2)* are 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 serious crime;
 - (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.
114. The conditions in *subsection (3)* are that:
- (a) a law enforcement officer has requested the EEA state in which the service provider is established take measures which the law enforcement officer considers to be of equivalent effect under the law of the EEA state to the terms of the order 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

*These notes refer to the Serious Crime Act 2007 (c.27)
which received Royal Assent on 30th October 2007*

(ii) the terms.

115. *Subsection (4)* provides that, in relation to the requests and notifications provided for in *subsection (3)*, it does not matter whether the request or notification is made before or after the application for a serious crime prevention order.
116. *Subsection (5)* imposes conditions on what terms can be included in an order against a provider of intermediary services, giving effect to the protections in Articles 12, 13 and 14 of the Directive. These are services provided by mere conduits, caches and hosts (terms used in the Directive). The Directive provides that, provided certain specified conditions are met, the intermediary service providers set out above must not be liable for the information they transmit, copy or store.
117. In the case of a “mere conduit” the service consists of either a transmission in a communication network of information which has been provided by a recipient of the service (e.g. the transmission of a customer’s email) or where the service consists of the provision of access to a communication network.
118. “Caching” is effectively where a service provider stores copies of a web-page, usually one which is very popular, in order to speed up access to that page as it does not have to keep going backwards and forwards to the host. The caching must be automatic, intermediate, temporary and solely for the purpose of making the onward transmission of the information more efficient.
119. “Hosting” is the storage of any information where that information has been provided to the service provider by someone using the service.
120. *Subsection (6)* also provides that the court must not impose any obligation to generally monitor information being transmitted, copied or stored as this is expressly prohibited under Article 15 of the Directive.
121. *Subsection (7)* sets out what constitutes a service provider being established in an EEA state. *Subsections (8) – (10)* go on to define the meaning of certain terms used in the section.