

# **SERIOUS CRIME ACT 2015**

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## **EXPLANATORY NOTES**

### **TERRITORIAL EXTENT**

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

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

##### **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 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.

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

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>1</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>2</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>3</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>4</sup>. The Scottish Government published its response to the consultation on 4 April 2014<sup>5</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 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.

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<sup>1</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>2</sup> <http://www.official-documents.gov.uk/document/cm85/8502/8502.pdf>

<sup>3</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>4</sup> <http://www.scotland.gov.uk/Publications/2013/09/9917/downloads>

<sup>5</sup> <http://www.scotland.gov.uk/Resource/0044/00447665.pdf>