

SERIOUS ORGANISED CRIME AND POLICE ACT 2005

EXPLANATORY NOTES

THE ACT

Commentary on Sections

Part 2: Investigations, prosecutions, proceedings and proceeds of crime

Chapter 1: Investigatory powers of DPP etc.

162. The Director of the SFO (as well as a number of regulatory bodies and the Asset Recovery Agency and in Scotland the Lord Advocate in cases of serious and complex fraud) has the power to compel individuals to co-operate with investigations by producing documents and answering questions. This Chapter provides similar powers for the police, SOCA and HM Revenue and Customs investigations in relation to organised crime, terrorist or certain revenue offences. The powers will only be exercisable by the Director of Public Prosecutions (DPP) or the Director of Revenue and Customs Prosecutions (or prosecutors with delegated authority) or, in Scotland, the Lord Advocate and will not apply to professionally privileged material. Statements made by persons in compliance with a requirement under this Chapter cannot be used in evidence against them, except in very limited circumstances.

Sections 60-63: Investigatory powers of DPP etc.; Offences to which this Chapter applies; Disclosure notices; Production of documents

163. These sections provide that the DPP, the Director of Revenue and Customs Prosecutions and the Lord Advocate (or a prosecutor with delegated authority) can issue a disclosure notice. The sections restrict disclosure notices and the power to enter and seize documents (section 66) to investigations into offences involving: drug trafficking, money laundering, directing terrorism, people trafficking, arms trafficking, counterfeiting, intellectual property theft, pimps and brothels, blackmail, terrorist funding and certain tax and excise fraud offences (section 61). *Subsections (2) and (3)* of section 61 exclude certain offences where amounts less than £5,000 are involved. *Subsections (4) and (5)* of the section confer on the Home Secretary and Scottish Ministers the power to amend this list of offences (or the £5,000 threshold) by order subject to the affirmative resolution procedure. The prosecutor will be able to issue a disclosure notice if there are reasonable grounds for believing that the recipient of the notice can provide information of substantial value to the investigation of any of these offences (section 62(1)). The disclosure notice would be a written notice signed by the prosecutor setting out the requirements on the recipient to answer questions, produce documents or otherwise provide information, as well as where, when and how these requirements should be met (section 62(3) and (4)). The notice can be given to its recipient by a police constable, designated member of staff of SOCA or officer of HM Revenue and Customs (section 62(2)), who will be able to take copies or extracts from

the specified documents or require the recipient to explain the documents or where any unavailable documents are (section 63).

Section 64: Restrictions on requiring information etc.

164. This section excludes the following material from the provisions in this Chapter:
- material subject to legal professional privilege (confidential communications between a professional legal adviser and their client relating to legal advice or proceedings);
 - confidential personal records relating to any business or profession;
 - confidential journalistic material; and
 - confidential banking information - unless the person to whom the obligation of confidence is owed consents to the disclosure or the prosecutor specifically authorises the requirement to be made.

Section 65: Restrictions on use of statements

165. This section provides that a statement made by a person in response to a requirement imposed under this Chapter cannot be used in evidence in criminal proceedings against them, other than proceedings for an offence under section 67 or for an offence of giving a false statutory declaration or statement. The only exception is where the person seeks in other criminal proceedings to use another statement which is inconsistent with the statement made in response to the requirement under this Chapter.

Section 66: Power to enter and seize documents

166. This section provides for a magistrate, or sheriff in Scotland, to issue a warrant to enter and seize documents where someone has failed to provide documents specified in a disclosure notice or it is not practicable to give a disclosure notice or doing so might seriously prejudice an investigation. The warrant would authorise a constable, a member of SOCA's staff or an officer of HMRC to enter, using force if necessary, and search the premises and seize and retain any specified documents. The constable or other person authorised by the warrant may take other people with him on the search, but must show the warrant to the occupier of the premises on request.

Section 67: Offences in connection with disclosure notices or search warrants

167. This section creates new summary offences of failing to comply with a disclosure notice and of obstructing a person in the exercise of a warrant under section 66. The maximum penalty is a level 5 fine (currently £5,000) or a term of imprisonment of 51 weeks (in Scotland, 12 months), or both. The section also creates an offence of making a false or misleading statement which if tried on indictment is punishable by a fine or up to 2 years imprisonment, or both.

Section 68: Procedure applicable to search warrants

168. This section amends Part 1 of Schedule 1 to the Criminal Justice and Police Act 2001 so as to secure that where it is not practicable to determine on the premises being searched whether a document can be seized or to separate it from other material, the material can be seized and removed.

Section 69: Manner in which disclosure notice may be given

169. This section provides that a disclosure notice may be given to a person by delivering it to him, leaving it at his proper address or sending it by post to him at that address. The definition of a person's "proper address" is his usual or last-known address. This section does not apply to Scotland.

These notes refer to the Serious Organised Crime and Police Act 2005 (c.15) which received Royal Assent on 7th April 2005

Section 70: Interpretation

170. This section defines terms used in Chapter 1 of Part 2.