



Serious Organised Crime and Police Act 2005

2005 CHAPTER 15

PART 2

INVESTIGATIONS, PROSECUTIONS, PROCEEDINGS AND PROCEEDS OF CRIME

CHAPTER 4

PROTECTION OF WITNESSES AND OTHER PERSONS

82 Protection of persons involved in investigations or proceedings

- (1) A protection provider may make such arrangements as he considers appropriate for the purpose of protecting a person of a description specified in Schedule 5 if—
 - (a) the protection provider considers that the person's safety is at risk by virtue of his being a person of a description so specified, and
 - (b) the person is ordinarily resident in the United Kingdom.
- (2) A protection provider may vary or cancel any arrangements made by him under subsection (1) if he considers it appropriate to do so.
- (3) If a protection provider makes arrangements under subsection (1) or cancels arrangements made under that subsection, he must record that he has done so.
- (4) In determining whether to make arrangements under subsection (1), or to vary or cancel arrangements made under that subsection, a protection provider must, in particular, have regard to—
 - (a) the nature and extent of the risk to the person's safety,
 - (b) the cost of the arrangements,
 - (c) the likelihood that the person, and any person associated with him, will be able to adjust to any change in their circumstances which may arise from the

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making of the arrangements or from their variation or cancellation (as the case may be), and

- (d) if the person is or might be a witness in legal proceedings (whether or not in the United Kingdom), the nature of the proceedings and the importance of his being a witness in those proceedings.
- (5) A protection provider is—
- (a) a chief officer of a police force in England and Wales;
 - (b) a chief constable of a police force in Scotland;
 - (c) the Chief Constable of the Police Service of Northern Ireland;
 - (d) the Director General of SOCA;
 - (e) any of the Commissioners for Her Majesty’s Revenue and Customs;
 - (f) the Director of the Scottish Drug Enforcement Agency;
 - (g) a person designated by a person mentioned in any of the preceding paragraphs to exercise his functions under this section.
- (6) The Secretary of State may, after consulting the Scottish Ministers, by order amend Schedule 5 so as to add, modify or omit any entry.
- (7) Nothing in this section affects any power which a person has (otherwise than by virtue of this section) to make arrangements for the protection of another person.

83 Joint arrangements

- (1) Arrangements may be made under section 82(1) by two or more protection providers acting jointly.
- (2) If arrangements are made jointly by virtue of subsection (1), any powers conferred on a protection provider by this Chapter are exercisable in relation to the arrangements by—
 - (a) all of the protection providers acting together, or
 - (b) one of the protection providers, or some of the protection providers acting together, with the agreement of the others.
- (3) Nothing in this section or in section 84 affects any power which a protection provider has to request or obtain assistance from another protection provider.

84 Transfer of responsibility to other protection provider

- (1) A protection provider who makes arrangements under section 82(1) may agree with another protection provider that, as from a date specified in the agreement—
 - (a) the protection provider will cease to discharge any responsibilities which he has in relation to the arrangements, and
 - (b) the other protection provider will discharge those responsibilities instead.
- (2) Any such agreement may include provision for the making of payments in respect of any costs incurred or likely to be incurred in consequence of the agreement.
- (3) If an agreement is made under subsection (1), any powers conferred on a protection provider by this Chapter (including the power conferred by subsection (1)) are, as from the date specified in the agreement, exercisable by the other protection provider as if he had made the arrangements under section 82(1).

- (4) Each protection provider who makes an agreement under subsection (1) must record that he has done so.

85 Duty to assist protection providers

- (1) This section applies if a protection provider requests assistance from a public authority in connection with the making of arrangements under section 82(1) or the implementation, variation or cancellation of such arrangements.
- (2) The public authority must take reasonable steps to provide the assistance requested.
- (3) “Public authority” includes any person certain of whose functions are of a public nature but does not include—
- (a) a court or tribunal,
 - (b) either House of Parliament or a person exercising functions in connection with proceedings in Parliament, or
 - (c) the Scottish Parliament or a person exercising functions in connection with proceedings in the Scottish Parliament.

86 Offence of disclosing information about protection arrangements

- (1) A person commits an offence if—
- (a) he discloses information which relates to the making of arrangements under section 82(1) or to the implementation, variation or cancellation of such arrangements, and
 - (b) he knows or suspects that the information relates to the making of such arrangements or to their implementation, variation or cancellation.
- (2) A person who commits an offence under this section is liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine or to both;
 - (b) on summary conviction, to imprisonment for a term not exceeding 12 months, to a fine not exceeding the statutory maximum or to both.
- (3) In the application of this section to Scotland or Northern Ireland, the reference in subsection (2)(b) to 12 months is to be read as a reference to 6 months.

87 Defences to liability under section 86

- (1) A person (P) is not guilty of an offence under section 86 if—
- (a) at the time when P disclosed the information, he was or had been a protected person,
 - (b) the information related only to arrangements made for the protection of P or for the protection of P and a person associated with him, and
 - (c) at the time when P disclosed the information, it was not likely that its disclosure would endanger the safety of any person.
- (2) A person (D) is not guilty of an offence under section 86 if—
- (a) D disclosed the information with the agreement of a person (P) who, at the time the information was disclosed, was or had been a protected person,

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- (b) the information related only to arrangements made for the protection of P or for the protection of P and a person associated with him, and
 - (c) at the time when D disclosed the information, it was not likely that its disclosure would endanger the safety of any person.
- (3) A person is not guilty of an offence under section 86 if he disclosed the information for the purposes of safeguarding national security or for the purposes of the prevention, detection or investigation of crime.
- (4) A person is not guilty of an offence under section 86 if—
- (a) at the time when he disclosed the information, he was a protection provider or involved in the making of arrangements under section 82(1) or in the implementation, variation or cancellation of such arrangements, and
 - (b) he disclosed the information for the purposes of the making, implementation, variation or cancellation of such arrangements.
- (5) The Secretary of State may by order make provision prescribing circumstances in which a person who discloses information as mentioned in section 86(1) is not guilty in England and Wales or in Northern Ireland of an offence under that section.
- (6) The Scottish Ministers may by order make provision prescribing circumstances in which a person who discloses information as mentioned in section 86(1) is not guilty in Scotland of an offence under that section.
- (7) If sufficient evidence is adduced to raise an issue with respect to a defence under or by virtue of this section, the court or jury must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not.

88 Offences of disclosing information relating to persons assuming new identity

- (1) A person (P) commits an offence if—
- (a) P is or has been a protected person,
 - (b) P assumed a new identity in pursuance of arrangements made under section 82(1),
 - (c) P discloses information which indicates that he assumed, or might have assumed, a new identity, and
 - (d) P knows or suspects that the information disclosed by him indicates that he assumed, or might have assumed, a new identity.
- (2) A person (D) commits an offence if—
- (a) D discloses information which relates to a person (P) who is or has been a protected person,
 - (b) P assumed a new identity in pursuance of arrangements made under section 82(1),
 - (c) the information disclosed by D indicates that P assumed, or might have assumed, a new identity, and
 - (d) D knows or suspects—
 - (i) that P is or has been a protected person, and
 - (ii) that the information disclosed by D indicates that P assumed, or might have assumed, a new identity.
- (3) A person who commits an offence under this section is liable—

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- (a) on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine or to both;
 - (b) on summary conviction, to imprisonment for a term not exceeding 12 months, to a fine not exceeding the statutory maximum or to both.
- (4) In the application of this section to Scotland or Northern Ireland, the reference in subsection (3)(b) to 12 months is to be read as a reference to 6 months.

89 Defences to liability under section 88

- (1) P is not guilty of an offence under section 88(1) if, at the time when he disclosed the information, it was not likely that its disclosure would endanger the safety of any person.
- (2) D is not guilty of an offence under section 88(2) if—
- (a) D disclosed the information with the agreement of P, and
 - (b) at the time when D disclosed the information, it was not likely that its disclosure would endanger the safety of any person.
- (3) D is not guilty of an offence under section 88(2) if he disclosed the information for the purposes of safeguarding national security or for the purposes of the prevention, detection or investigation of crime.
- (4) D is not guilty of an offence under section 88(2) if—
- (a) at the time when he disclosed the information, he was a protection provider or involved in the making of arrangements under section 82(1) or in the implementation, variation or cancellation of such arrangements, and
 - (b) he disclosed the information for the purposes of the making, implementation, variation or cancellation of such arrangements.
- (5) The Secretary of State may by order make provision prescribing circumstances in which a person who discloses information as mentioned in subsection (1) or (2) of section 88 is not guilty in England and Wales or in Northern Ireland of an offence under that subsection.
- (6) The Scottish Ministers may by order make provision prescribing circumstances in which a person who discloses information as mentioned in subsection (1) or (2) of section 88 is not guilty in Scotland of an offence under that subsection.
- (7) If sufficient evidence is adduced to raise an issue with respect to a defence under or by virtue of this section, the court or jury must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not.

90 Protection from liability

- (1) This section applies if—
- (a) arrangements are made for the protection of a person under section 82(1), and
 - (b) the protected person assumes a new identity in pursuance of the arrangements.
- (2) No proceedings (whether civil or criminal) may be brought against a person to whom this section applies in respect of the making by him of a false or misleading representation if the representation—
- (a) relates to the protected person, and

- (b) is made solely for the purpose of ensuring that the arrangements made for him to assume a new identity are, or continue to be, effective.
- (3) The persons to whom this section applies are—
- (a) the protected person;
 - (b) a person who is associated with the protected person;
 - (c) a protection provider;
 - (d) a person involved in the making of arrangements under section 82(1) or in the implementation, variation or cancellation of such arrangements.

91 Transitional provision

- (1) This section applies to arrangements which were, at any time before the commencement of section 82, made by a protection provider, or any person acting with his authority, for the purpose of protecting a person of a description specified in Schedule 5.
- (2) If the following three conditions are satisfied, the arrangements are to be treated as having been made by the protection provider under section 82(1).
- (3) The first condition is that the protection provider could have made the arrangements under section 82(1) had it been in force at the time when the arrangements were made.
- (4) The second condition is that the arrangements were in operation immediately before the commencement of section 82.
- (5) The third condition is that the protection provider determines that it is appropriate to treat the arrangements as having been made under section 82(1).
- (6) A determination under subsection (5) may be made at any time before the end of the period of six months beginning with the day on which section 82 comes into force.
- (7) A protection provider must make a record of a determination under subsection (5).
- (8) Subsection (9) applies if—
 - (a) at any time before the commencement of section 82, arrangements were made by a person specified in subsection (11), or any person acting with the authority of such a person, for the purpose of protecting a person of a description specified in Schedule 5, and
 - (b) functions in relation to the arrangements are, at any time before the end of the period of six months mentioned in subsection (6), exercisable by a protection provider.
- (9) The provision made by subsections (1) to (7) applies in relation to the arrangements as if they had been made by the protection provider.
- (10) Accordingly, if the three conditions mentioned in subsections (3) to (5) are satisfied in relation to the arrangements, they are to be treated, by virtue of subsection (2), as having been made by the protection provider under section 82(1).
- (11) The persons specified in this subsection are—
 - (a) the Director General of the National Criminal Intelligence Service;
 - (b) the Director General of the National Crime Squad;
 - (c) any of the Commissioners of Her Majesty's Customs and Excise.

92 Transitional provision: supplemental

- (1) In this section—
 - (a) “the arrangements” are arrangements which are treated as having been made by a protection provider by virtue of section 91(2), and
 - (b) “the relevant date” is the date of the record made by the protection provider, in relation to the arrangements, in pursuance of section 91(7).
- (2) A person does not commit an offence under section 86(1) by disclosing information relating to the arrangements unless the information is disclosed on or after the relevant date.
- (3) But it is immaterial whether the information relates to something done in connection with the arrangements before or on or after the relevant date.
- (4) A person does not commit an offence under section 88(1) or (2) by disclosing information relating to a person who assumed a new identity in pursuance of the arrangements unless the information is disclosed on or after the relevant date.
- (5) But it is immaterial whether the person assumed a new identity before or on or after the relevant date.
- (6) Section 90 applies in relation to a false or misleading representation relating to a person who assumed a new identity in pursuance of the arrangements only if the false or misleading representation is made on or after the relevant date.
- (7) But it is immaterial whether the person assumed a new identity before or on or after the relevant date.

93 Provision of information

- (1) This section applies if—
 - (a) a protection provider makes arrangements under section 82(1), or
 - (b) a protection provider determines under section 91(5) that it is appropriate to treat arrangements to which that section applies as having been made under section 82(1).
- (2) The protection provider must inform the person to whom the arrangements relate of the provisions of this Chapter as they apply in relation to the arrangements.
- (3) If the protection provider considers that the person would be unable to understand the information, by reason of his age or of any incapacity, the information must instead be given to a person who appears to the protection provider—
 - (a) to be interested in the welfare of the person to whom the arrangements relate, and
 - (b) to be the appropriate person to whom to give the information.
- (4) If arrangements are made jointly under section 82(1) (by virtue of section 83), the protection providers involved in the arrangements must nominate one of those protection providers to perform the duties imposed by this section.

94 Interpretation of Chapter 4

- (1) This section applies for the purposes of this Chapter.

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- (2) “Protection provider” is to be construed in accordance with section 82.
- (3) A person is a protected person if—
- (a) arrangements have been made for his protection under subsection (1) of section 82, and
 - (b) the arrangements have not been cancelled under subsection (2) of that section.
- (4) A person is associated with another person if any of the following apply—
- (a) they are members of the same family;
 - (b) they live in the same household;
 - (c) they have lived in the same household.
- (5) A person assumes a new identity if either or both of the following apply—
- (a) he becomes known by a different name;
 - (b) he makes representations about his personal history or circumstances which are false or misleading.
- (6) A reference to a person who is a witness in legal proceedings includes a reference to a person who provides any information or any document or other thing which might be used in evidence in those proceedings or which (whether or not admissible as evidence in those proceedings)—
- (a) might tend to confirm evidence which will or might be admitted in those proceedings,
 - (b) might be referred to in evidence given in those proceedings by another witness, or
 - (c) might be used as the basis for any cross examination in the course of those proceedings,
- and a reference to a person who might be, or to a person who has been, a witness in legal proceedings is to be construed accordingly.
- (7) A reference to a person who is a witness in legal proceedings does not include a reference to a person who is an accused person in criminal proceedings unless he is a witness for the prosecution and a reference to a person who might be, or to a person who has been, a witness in legal proceedings is to be construed accordingly.
- (8) A reference to a person who is or has been a member of staff of an organisation includes a reference to a person who is or has been seconded to the organisation to serve as a member of its staff.
- (9) “The Scottish Drug Enforcement Agency” and “the Director” of that Agency have the meanings given by section 42(2).