

SERIOUS CRIME ACT 2007

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: Serious Crime Prevention Orders

General

Enforcement

Section 25: Offence of failing to comply with order

76. This section provides that an offence is committed where the subject of an order, without reasonable excuse, fails to comply with its terms. *Subsection (2)* sets out the potential penalties which may be imposed on the subject of the order where such an offence is committed. *Subsections (3) and (4)* make technical provision for the difference in maximum sentence for conviction on a summary offence in Northern Ireland and for the fact that a copy of the original order is admissible as evidence of the fact that it was made in proceedings under this section respectively. Paragraph 4 of Schedule 13 to the Act provides that, in England and Wales, in relation to an offence committed before the commencement of section 282(1) of the Criminal Justice Act 2003, the reference in *subsection (2)(a)* to 12 months is to be read as 6 months, and the same in relation to Scotland until the commencement of section 45(1) of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007.

Section 26: Powers of forfeiture in respect of offence

77. This section confers on the court the power to order forfeiture of any item in the possession of the subject of the order, at the time of an offence under section 25, which the court considers was involved in the commission of that offence (*subsection (1)*). *Subsection (2)* provides that, before making such an order, the court must allow any person, in addition to the person who has been convicted, who claims to be the owner of the item in question, or to have an interest in it, to make representations. *Subsection (3)* states that a forfeiture order must not come into force while it is still possible for there to be an appeal to set aside or vary that order (ignoring any power to appeal out of time).
78. *Subsections (4) and (5)* state that as well as being able to make a forfeiture order, the court is able to make any other provision it considers necessary for the forfeiture to be given effect to, including provision relating to the retention, handling, destruction or other disposal of the item in question.
79. *Subsection (6)* sets out that any forfeiture order may be varied at any time by the court which made it.

Section 27: Powers to wind up companies etc: England and Wales and Scotland

80. This section provides the relevant applicant authorities with the power to petition the court (including the courts in Scotland for a body registered there) for the winding up of a company, partnership or relevant body. *Subsection (1)* states that, in order for the

sanction to be available, the company, partnership or relevant body must have been convicted of the offence in section 25 of breach of an order and the relevant applicant authority must also consider it to be in the public interest for the company, partnership or relevant body to be wound up.

81. *Subsections (2) – (5)* provide that the power to petition for winding up taps into the existing powers to wind up companies and partnerships in the [Insolvency Act 1986 \(c. 45\)](#) (“the 1986 Act”). If a court decides to order the winding up of a company or partnership the provisions of the 1986 Act on how the winding up is to be conducted will apply. *Subsection (2)* provides that, in relation to an application for the winding up of a company or the company’s winding up, the provisions of the 1986 Act concerning the winding up of companies apply, as if the application were an application under section 124A of that Act, which is concerned with winding up in the public interest, subject to the following modifications. Firstly, *subsection (3)* provides for the relevant applicant authority to present the petition for winding up, whereas it would normally be the Secretary of State under section 124A of the 1986 Act. Secondly, *subsection (4)* states that the court can only make an order to wind up the company under section 125 of the 1986 Act if the company has been found guilty of the offence in section 25 and the court considers that it is just and equitable for the company to be wound up.
82. *Subsection (5)* taps into the power to make provision for insolvent partnerships under section 420 of the 1986 Act. Section 420 of the 1986 Act provides that the Lord Chancellor may make an order to the effect that the provisions of the 1986 Act are to apply to insolvent partnerships with such modifications as may be specified. This power is extended for the purposes of section 27 to all partnerships.
83. *Subsection (6)* provides the appropriate Minister with the power to provide, by order, for the Act of 1986 to apply with modifications to a relevant body. By virtue of *subsection (7)* an order under subsections (5) or (6) must provide that the court will only wind up a partnership or relevant body to which this section applies if the partnership or relevant body has been convicted of the offence in section 25 and where it would be just and equitable to do so.
84. *Subsection (8)* prevents a petition being presented in Scotland in relation to a body that can be sequestrated under the Bankruptcy (Scotland) Act 1985. The reason for this is that the winding up of such bodies is devolved to Scotland.
85. *Subsection (9)* makes it clear that no application for winding up may be made, or order for such winding up granted by the court, if an appeal against the conviction under section 25 has been made but not finally determined, or if the time limit for such an appeal has not yet run out (although *subsection (11)* states that any power to appeal out of time which might exist is to be ignored for the purposes of this subsection).
86. *Subsection (10)* states that no application may be made, or order granted under this section, if the company, partnership or relevant body is already being wound up by the court.
87. *Subsection (12)* defines the terms “company” and “the court” for the purposes of this section. The former takes the same meaning as in Parts 1 to 7 of the 1986 Act, including an unregistered company, unless the unregistered company is a relevant body. Under section 220 of the 1986 Act an unregistered company includes any association and any company but not a company registered in any part of the United Kingdom under the Joint Stock Companies Acts or under the legislation (past or present) relating to companies in Great Britain. “The Joint Stock Companies Acts” means the Joint Stock Companies Act 1856, the Joint Stock Companies Acts 1856, 1857, the Joint Stock Banking Companies Act 1857 and the Act to enable Joint Stock Banking Companies to be formed on the principle of limited liability, or any one or more of those Acts (as the case may require), but does not include the Joint Stock Companies Act 1844 (see section 735 of the Companies Act 1985). Under section 251 of the 1986 Act “company” is given the same meaning as in Part XXVI of the Companies Act 1985. Section 735

of that Act provides that a company means a company formed and registered under that Act, or an existing company. “Existing company” means a company formed and registered under the former Companies Acts, but does not include a company registered under the Joint Stock Companies Acts, the Companies Act 1862 or the Companies (Consolidation) Act 1908 in what was then Ireland. “The former Companies Acts” means the Joint Stock Companies Acts, the Companies Act 1862, the Companies (Consolidation) Act 1908, the Companies Act 1929 and the Companies Acts 1948 to 1983.

88. “Court” is also defined by reference to Parts 1 to 7 of the 1986 Act. For the purposes of the Act the term does not include a court in Northern Ireland. Section 117 of the 1986 Act provides that the High Court has jurisdiction to wind up any company registered in England and Wales and, where the amount of a company's share capital paid up or credited as paid up does not exceed £120,000, then (subject to the other subsections of section 117) the county court of the district in which the company's registered office is situated has concurrent jurisdiction with the High Court to wind up the company.
89. The term “relevant body” for the purposes of the order making power in *subsection (6)* is also defined in *subsection (12)*. Paragraphs (a) to (c) of the definition list a number of specific mutual bodies. Paragraph (d) defines a limited liability partnership as a relevant body. Paragraph (e) provides a power for the Secretary of State to add other descriptions of bodies to the definition of relevant body by order. Subsection (12) also defines the term appropriate Minister for the purposes of the power in subsection (6). The Treasury is the appropriate Minister in relation to the bodies listed in paragraphs (a) to (c) of the definition of relevant body and the Secretary of State is the appropriate Minister in all other cases. The power has been split in this way because the Treasury has policy responsibility for the bodies in paragraphs (a) to (c).

Section 28: Powers to wind up companies etc: Northern Ireland

90. This section relates to Northern Ireland and corresponds to section 27. The provisions are of the same effect as those in section 27 but they tap into the [Insolvency \(Northern Ireland\) Order 1989 \(SI 1989/2405 \(N.I. 19\)\)](#) rather than the Insolvency Act 1986. The other significant difference is that in Northern Ireland the Treasury will only be the appropriate Minister under section 28(6) in relation to building societies and incorporated friendly societies.

Section 29: Powers to wind up: supplementary

91. This section contains three order making powers. The first power in *subsection (1)* enables the Secretary of State to make an order making such modifications as he considers appropriate to the application of the Insolvency Act 1986, or as the case maybe, the Insolvency (Northern Ireland) Order 1989, by virtue of sections 27(2) and 28(2). Those sections already make some modifications to the application of that Act or Order but this power allows the Secretary of State to make any further modifications that may be needed. The second power in *subsection (3)* enables the Secretary of State to make an order to apply, with any necessary modifications, any other enactment in connection with the provisions in section 27(2) to (4) and 28(2) to (4).
92. The third power in *subsection (4)* enables the Secretary of State to make supplementary and consequential application of enactments in connection with the exercise of the order making powers in sections 27(5) and 28(5) (winding up of partnerships) and 27(6) and 28(6) (winding up of a relevant body).