

SERIOUS CRIME ACT 2007

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: Serious Crime Prevention Orders

General

Section 1: Serious crime prevention orders

14. This section gives the High Court the power to make a Serious Crime Prevention Order (“an order”). A Serious Crime Prevention Order is a new kind of civil injunctive order which is aimed at preventing serious crime. If a person breaches an order he commits a criminal offence. *Subsection (1)* sets out the test which the High Court in England and Wales must apply to determine whether such an order can be made. It provides that an order may be made if the Court is satisfied that a person has been involved in serious crime, whether that involvement was in England and Wales or elsewhere in the world, 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 and Wales. Under the first part of the test in section 1(1) (a) a person can be involved in serious crime that has occurred in England and Wales or elsewhere. Under the second part of the test in section 1(1)(b) the public must be protected from the involvement of a person in serious crime in England and Wales only. Being ‘involved’ in serious crime in England and Wales or elsewhere is defined in sections 2 and 4. ‘Involvement’ in serious crime in England and Wales is defined in section 2(3). *Subsection (2)* provides for the same provision for Northern Ireland as is set out for England and Wales in *subsection (1)*. *Subsection (3)* provides that the Court may impose such terms in the order, whether prohibitions, restrictions, requirements or other terms, as it considers appropriate so as to protect the public by preventing, restricting or disrupting the involvement of the subject of the order in serious crime. *Subsection (4)* provides that the powers in section 1 to make such an order are subject to the safeguards set out in sections 6 to 15 of the Act.
15. *Subsection (5)* provides that, for the purposes of Part 1 of the Act, the term “serious crime prevention order” means either an order under this section or an order under section 19. Section 19 makes provision for the Crown Court, rather than the High Court, to make an order following the conviction of the subject of the order for a serious offence. *Subsection (6)* provides that, in Part 1 of the Act, any reference to the subject of a serious crime prevention order is a reference to the person from whom the public is to be protected, namely the person who has been involved in serious crime and whose involvement in serious crime is to be prevented, restricted or disrupted.

Section 2: Involvement in serious crime: England and Wales orders

16. This section defines what constitutes both having been involved in serious crime in England and Wales or elsewhere, and involvement in serious crime in England and Wales, in relation to Part 1 of the Act. A distinction is drawn between these two phrases because the first part of the test, in section 1(1)(a), is concerned with a person who has

been involved in serious crime in England and Wales or elsewhere, whereas the second part of the test, in section 1(1)(b), is concerned with future involvement in serious crime in England and Wales only. This distinction is also relevant elsewhere in the Act, in particular in section 19(2) which is concerned with orders to be made by the Crown Court. *Subsection (1)* sets out that a person has been involved in serious crime, in England and Wales in relation to the first part of the statutory test in section 1(1), if he has committed a serious offence in England and Wales, has facilitated the commission by another person of a serious offence in England and Wales, or has conducted himself in a way that was likely to facilitate the commission by himself or another person of a serious offence in England and Wales (whether or not such an offence was committed). Facilitation here takes its natural meaning of ‘to make easier’.

17. Further to this, *subsection (2)* sets out that a ‘serious offence in England and Wales’ is one which, at the time the court considers the application for an order or the matter in question, is contained in the list set out in Part 1 of Schedule 1 to the Act, or is an offence which is sufficiently serious that the court considers it should be treated as if it were set out in that list. The list in Part 1 of Schedule 1 is not an exhaustive list and the second part of the test allows the court to treat offences that do not appear in Part 1 of Schedule 1 as being serious offences.
18. *Subsection (3)* defines ‘involvement in serious crime in England and Wales’ for the purposes of the second part of the statutory test contained in section 1(1)(b). That part of the test sets out the harm from which the public must be protected. The court must have reasonable grounds to believe that the order will prevent, restrict or disrupt the involvement of the respondent in serious crime in England and Wales. Involvement in serious crime in England and Wales means one or more of the following: the commission of a serious offence in England and Wales; conduct which facilitates the commission by another person of a serious offence in England or Wales; conduct which is likely to facilitate the commission, by the person whose conduct it is or another person, of a serious offence in England and Wales (whether or not such an offence is committed).
19. *Subsection (4)* defines what is meant by the respondent having been involved in serious crime in a place other than England and Wales for the purposes of Part 1 of the Act. This is for the purposes of the first part of the statutory test contained in section 1(1)(a), relating to past action which merits the imposition of an order. *Subsection (4)* makes identical provision to *subsection (1)*, except insofar as this subsection is concerned with serious offences which have occurred elsewhere in the world than in England and Wales.
20. *Subsection (5)* defines a ‘serious offence in a country outside England and Wales’. The court has to apply a three stage test. Firstly, the conduct must be an offence in the place outside England and Wales. Secondly, at the time the court considers the application for an order or the matter in question, the conduct must be an offence in England and Wales if it had been committed in or as regards England and Wales. Thirdly, at that time, the offence would fall within the list of offences, or within a description specified, in Part 1 of Schedule 1 to the Act if committed in or as regards England and Wales or it is conduct which the court considers is sufficiently serious so as to be treated as if it did so.
21. *Subsection (6)* states that the test set out in *subsection (4)*, rather than the test in section 3(1), should be used when an England and Wales court is determining whether a person has been involved in serious crime in Northern Ireland for the purposes of an England and Wales order.
22. *Subsection (7)* provides that, when considering whether conduct is an offence under the law of a country outside the UK, the test will be met however the conduct is described in that law. This means that even if an act is not described as an offence in the law of the other country it will still be a serious offence under Part 1 of the Act if it meets the test in *subsection (5)*.

Section 3: Involvement in serious crime: Northern Ireland orders

23. This section defines what constitutes both having been involved in serious crime in Northern Ireland and involvement in serious crime in Northern Ireland, in relation to Part 1 of the Act. The section also defines what constitutes having been involved in serious crime elsewhere than in Northern Ireland. The subsections of this section are the same as that provided for in section 2 (above) but for Northern Ireland.

Section 4: Involvement in serious crime: supplementary

24. *Subsection (1)* states that the court, when it is considering whether a person has committed a serious offence, must only decide that he has done so if he has been convicted of the offence and that conviction has not been quashed on appeal nor has he been pardoned of the offence.
25. *Subsection (2)* provides that, when considering whether the proposed subject of the order (“the respondent”) facilitates the commission by another person of a serious offence, the court must ignore any act that the respondent can show to be reasonable in the circumstances. *Subsection (3)* similarly provides for such an act to be ignored when considering whether the respondent conducts himself in a way that is likely to facilitate the commission by himself or another of a serious offence. Subject to this, the court must ignore the intentions and other aspects of the mental state of the respondent at the time of the act in question. This means that it does not matter if the respondent did not, for example, intend to facilitate the commission of a serious offence, or had no knowledge that he was conducting himself in a way that was likely to facilitate serious crime.
26. *Subsection (4)* provides the Secretary of State the power to amend Schedule 1 by order.

Section 5: Type of provision that may be made by orders

27. This section contains examples of the types of provisions that a serious crime prevention order might include, but does not limit the flexibility of the court, provided for by section 1(3), to impose such provisions as it thinks appropriate for the purposes of protecting the public by preventing, restricting or disrupting the subject’s involvement in serious crime. *Subsection (2)* sets out that the order may require that the subject of the order does or does not do something outside England and Wales or Northern Ireland, provided that the provision prevents, restricts or disrupts involvement by the respondent in serious crime in England and Wales or Northern Ireland.
28. *Subsection (3)* sets out examples of possible prohibitions, restrictions or requirements which might be placed on an individual (including partners in a partnership) by an order. These prohibitions, restrictions or requirements might relate to, for example, a person’s travel, financial dealings or the people with whom he is allowed to associate.
29. *Subsection (4)* provides similar examples of prohibitions, restrictions or requirements which might be imposed on bodies corporate, partnerships and unincorporated associations. These prohibitions, restrictions or requirements might relate to, for example, the provision of goods and services, the way in which that body conducts its financial dealings or its employment of staff.
30. *Subsection (5)* allows the details of how questions are to be answered, information provided or documents produced to be left by the court to the discretion of a law enforcement officer. The subsection provides that where the terms of an order contain a requirement relating to the answering of questions or the provision of information, a law enforcement officer specified or described in the order may specify the following elements of how that requirement of the order should be complied with: the timing (including within a period or at a frequency); the location, the form and manner; and to which law enforcement officer or description of law enforcement officer the information or answers are to be provided. The same is true in relation to the production

of a document, except that there is no provision for specifying the form in which it should be produced, as the form of a document will be determined by the way the information it contains is recorded and the provisions of *subsections (7) and (8)*.

31. *Subsection (6)* expressly states that any prohibitions, restrictions or requirements which are imposed as terms of an order on an individual may be in relation to an individual's private dwelling. This would, for example, enable the court to include a term in an order which placed a prohibition, restriction or requirement on where an individual was able to reside provided, in the circumstances of the case, such a term would meet the test in section 1(1)(b) and would be proportionate.
32. *Subsection (7)* defines the terms 'document', 'law enforcement officer' and 'premises'. The definition of law enforcement officer includes a reference to a member of the staff of the Serious Organised Crime Agency ("SOCA") who is for the time being designated under section 43 of the [Serious Organised Crime and Police Act 2005 \(c. 15\)](#). Under section 43 a member of the staff of SOCA can be designated with the powers of a constable, the customs powers of an officer of Revenue and Customs or the powers of an immigration officer. Only a member of the staff of SOCA who has been designated with the powers of a constable would be able to exercise these powers because these are not customs powers or immigration officers' powers. Also included within this definition are officers of Her Majesty's Revenue and Customs and members of the Serious Fraud Office. *Subsection (8)* provides that any document which is produced must be rendered in legible form.

General safeguards in relation to orders

Section 6: Any individual must be 18 or over

33. This section states that an order must not be imposed on anyone under the age of 18.

Section 7: Other exceptions

34. This section provides that the Secretary of State may, by order, expressly exclude the application of serious crime prevention orders to persons falling within a specified description. At the moment an order can be imposed on any person and this includes individuals, bodies corporate, partnerships and unincorporated associations. An order under this section will be subject to the negative resolution procedure.

Section 8: Limited class of applicants for making of orders

35. This section provides that an order in the case of England and Wales can only be applied for by the Director of Public Prosecutions, the Director of Revenue and Customs Prosecutions or the Director of the Serious Fraud Office. It is expected that a Director will decide whether or not to make an application on the basis of information from law enforcement agencies such as the police, Revenue and Customs and SOCA. In the case of Northern Ireland an order may be applied for by the Director of Public Prosecutions for Northern Ireland. These persons are referred to elsewhere in the Act as the relevant applicant authorities.

Section 9: Right of third parties to make representations

36. This section provides a safeguard where the making, variation or discharge of an order or not making a variation to an order or discharging it would be likely to have a significant adverse effect on someone who is not the subject of the order. This section gives the court the power to allow such persons to make representations at the hearing in relation to the making, variation or discharge of an order. *Subsection (1)* states that in such a situation, the High Court must, when considering the making of an order, on application by such a person, give the person the opportunity to make representations to the court if it considers that the making of an order would be likely to have a significant adverse effect on that person. *Subsections (2) and (3)* provide that the court must give

a person the opportunity to make representations at a variation or discharge hearing if it considers that they are likely to be significantly adversely affected by a decision to vary, discharge or not vary or discharge.

37. *Subsection (4)* imposes a similar requirement on the Crown Court if it is considering making an order under section 19, or varying an order under its powers in sections 20 or 21, if it considers that the making or variation of an order (or the decision not to vary an order) is likely to have a significant adverse effect on that person.
38. *Subsection (5)* provides that, where a court is considering an appeal in relation to an order, it must, upon application, give a person the opportunity to make representations to the court if that person was given such an opportunity at the original hearing.

Section 10: Notice requirements in relation to orders

39. This section makes provision for ensuring that the subject of the order has notice of its existence. An order will not necessarily be made in the presence of the subject of the order. Under the Civil Procedure Rules (with amendments if necessary), if the applicant for the order can satisfy the court that the notice of the application for an order was served on the subject of the order and the court is satisfied that the test for making an order is met, the court will make the order even if the subject of the order has not appeared for the hearing. However, in such a situation the order cannot take effect unless a notice setting out the terms of the order has been served on the subject of the order. *Subsection (1)* states that a person is bound by the terms of an order if he is represented (whether in person or otherwise) at the hearing at which the order, or variation of the terms of the order, is made, or if a notice setting out the terms of the order, or variation, has been served on him. Service may be, as stipulated in *subsection (2)*, either in person or by recorded delivery to the subject at their last known address. *Subsection (3)* provides a power for a constable or person authorised by the relevant applicant authority, to enter and search for the person concerned, by force if necessary, any premises where they have reasonable grounds for believing the subject to be. *Subsection (4)* provides the definition of “the relevant applicant authority”. The effect of the definition is that the relevant applicant authority will be the prosecutor that applied for the order.

Information safeguards

Section 11: Restrictions on oral answers

40. This section makes clear that these orders will not be used as a means of forcing the subject of an order to answer questions, or provide information, orally. This limits the extent to which a requirement under section 5(5) can operate.

Section 12: Restrictions for legal professional privilege

41. This section provides that an order does not override legal professional privilege. *Subsection (1)* provides that an order cannot require its subject to answer a privileged question, provide privileged information or produce a privileged document. *Subsections (2)–(4)* state that these terms refer to a privilege which the subject would be able to rely on in the High Court. *Subsection (5)* provides that, notwithstanding the protection in subsection (1), an order may require a lawyer to provide the name and address of a client.

Section 13: Restrictions on excluded material and banking information

42. This section sets out further safeguards by placing restrictions on the extent to which an order can require the production of excluded material and banking information. *Subsection (1)* provides that an order may not require a person to produce any excluded material. Excluded material in the case of England and Wales is defined with reference

to section 11 of the Police and Criminal Evidence Act 1984. Section 11 provides that excluded material means:

- personal records which a person has acquired or created in the course of any trade, business, profession or other occupation or for the purposes of any paid or unpaid office and which he holds in confidence;
 - human tissue or tissue fluid which has been taken for the purposes of diagnosis or medical treatment and which a person holds in confidence; and
 - journalistic material which a person holds in confidence and which consists of documents or of records other than documents.
43. Excluded material in the case of Northern Ireland is defined with reference to article 13 of the Police and Criminal Evidence (Northern Ireland) Order 1989.
44. *Subsections (2) to (4)* are concerned with banking information. *Subsection (2)* provides that an order may not require a person to disclose any information or produce any document which is the subject of a duty of confidence from a banking business, unless either of the conditions contained in *subsections (3) and (4)* are met. The first condition is that the person to whom the duty is owed consents to the disclosure. The second condition contains two alternatives. The first alternative is that there is specific provision in the order for the disclosure of such information, in other words an express requirement for the production of banking information in general. The second alternative is that there is a specific requirement to disclose specified information or a specified document which amounts to banking information.

Section 14: Restrictions relating to other enactments

45. This section makes provision for the interaction between an order and prohibitions on the disclosure of information contained in enactments. *Subsection (1)* provides that an order cannot require a person either to answer any questions, provide any information or produce any documents, if he is prohibited from doing so under any other enactment. *Subsection (2)* contains a number of definitions.

Section 15: Restrictions on use of information obtained

46. This section relates to the interaction between the provisions of an order and the need to protect the privilege against self-incrimination. *Subsection (1)* provides that a statement (which by virtue of section 11 can only be a written statement), provided by a person as a result of a requirement in an order, cannot be used against him in criminal proceedings except if either one of two conditions are met.
47. *Subsection (2)* sets out the first condition, namely that such a statement can be used if the criminal proceedings are in relation to the offence of failing to comply with the order itself, contained in section 25. The second condition, set out in *subsection (3)*, is that the proceedings relate to an offence other than an offence under section 25, the person gives evidence in those proceedings, when giving evidence makes a statement which is inconsistent with the statement made in response to the requirement of the order, and in the proceedings evidence relating to the statement made in response to the requirement imposed by the order is adduced, or a question about it is asked, by the person or on his behalf.

Duration, variation and discharge of orders

Section 16: Duration of orders

48. This section makes provision for how long an order will be in force and for a requirement to stipulate when its provisions come into force. It provides that an order can last for a maximum of 5 years from the date of its first provision coming into force, but that it can specify that provisions come into force, or cease to have effect, at different

times, and these must be specified in the order. A court is able to make a new order replicating an order, or any part of it, which has ended, provided that the statutory test contained in section 1(1) is still met. This can be done in anticipation of an order ceasing to have effect.

Section 17: Variation of orders

49. This section deals with how an order may be varied, either on application by the relevant applicant authority, by the subject of the order or by a third party. *Subsection (1)* for England and Wales and *subsection (2)* for Northern Ireland provide a power to the High Court to vary the terms of an order where it has reasonable grounds to believe that the new terms of the order would protect the public by preventing, restricting or disrupting involvement by the subject of the order in serious crime in England and Wales (in the case of the High Court in England and Wales) or Northern Ireland (in the case of the High Court in Northern Ireland). This is identical to the second part of the test contained in section 1(1)(b) and ensures that a varied order must continue to meet that test. Under *subsection (3)*, either the relevant applicant authority, the subject of the order or a third party can apply for a variation of the terms of the order.
50. *Subsection (4)* states that the subject of the order can only apply for a variation of the terms of the order where the court considers that there has been a change of circumstances affecting the order.
51. *Subsections (5)–(7)* relate to the rights of third parties to apply for variation of the terms of an order. The High Court can only consider an application for variation by a third party if a three stage test, set out in *subsection (5)*, is met. Firstly, a third party must show that they are significantly adversely affected by the order. Secondly, one of two conditions must be met. The first condition relates to when a third party has been given the opportunity to make representations (on an application under section 9), or has made an application otherwise than under that section, and there has been a change in circumstances affecting the order (*subsection (6)*). The second condition relates to when the third party has not made an application of any kind in earlier proceedings in relation to the order, but he can show that it was reasonable in all the circumstances for him not to have been so involved (*subsection (7)*). The third part of the test is that third parties cannot apply for a variation of the terms of an order to make them more onerous on the subject of the order.
52. Subject to the fact that an order cannot last for more than 5 years, *subsection (8)* provides that, as a result of an application by the relevant applicant authority, the court may vary an order to increase the length of the order or of any of the provisions contained in it.

Section 18: Discharge of orders

53. Similarly to section 17, this section deals with how an order may be discharged either on application by the relevant applicant authority, by the subject of the order or by a third party. *Subsections (3)–(6)* make identical provision to section 17(4)–(7), with the exception of reference to a third party applying to make an order more onerous, which is not relevant in relation to the discharge of an order.

Extension of jurisdiction to Crown Court

Section 19: Orders by Crown Court on conviction

54. Although the main route for making an order will be an application to the High Court, as provided in section 1, this section confers on the Crown Court in England and Wales a civil jurisdiction to be able to impose an order also called a serious crime prevention order (as provided by *subsection (8)*) where a person has been convicted of a serious criminal offence. The Crown Court's powers arise either where a person has been convicted by a magistrates' court and committed to the Crown Court to be dealt with, or convicted by the Crown Court itself, in relation to a serious offence

committed in England and Wales (*subsection (1)*). This replaces the first part of the test in section 1(1)(a). The meaning of a serious offence committed in England and Wales is to be determined in accordance with section 2 and Part 1 of Schedule 1.

55. *Subsection (2)* replicates the second part of the test contained in section 1(1)(b). It states that the Crown Court in England and Wales may impose an order where it has reasonable grounds to believe that the terms of the order would protect the public by preventing, restricting or disrupting involvement by the subject of the order in serious crime in England and Wales.
56. *Subsection (3)* confers on the Crown Court in Northern Ireland a civil jurisdiction to be able to impose a serious crime prevention order where a person has been convicted of a serious criminal offence. The Crown Court's powers arise where a person has been convicted by or before the Crown Court of having committed a serious offence in Northern Ireland (*subsection (3)*). This replaces the first part of the test in section 1(2)(a). The meaning of a serious offence committed in Northern Ireland is to be determined in accordance with section 3 and Part 2 of Schedule 1.
57. *Subsection (4)* replicates the second part of the test contained in section 1(2)(b). It states that the Crown Court in Northern Ireland may impose an order where it has reasonable grounds to believe that the terms of the order would protect the public by preventing, restricting or disrupting involvement by the subject of the order in serious crime in Northern Ireland.
58. *Subsection (5)* replicates section 1(3), providing the courts with the flexibility to include such terms in the order as they consider appropriate for this purpose. As with orders before the High Court, section 5 will apply to orders before the Crown Court.
59. *Subsection (6)* makes clear that the powers of the Crown Court are subject to the same safeguards, contained in sections 6 to 15, as the powers of the High Court.
60. *Subsection (7)* states that an order can only be made by the Crown Court in addition to a sentence imposed in relation to the offence concerned or in addition to giving a conditional discharge. This makes it clear that an order is not an alternative to sentencing a person for the trigger offence. Once an order has been made by the Crown Court any applications for variation or discharge of the order will be dealt with by the High Court unless section 20 or section 21 applies.
61. *Subsection (8)* confirms that such an order made by the Crown Court will also be called a serious crime prevention order.

Section 20: Powers of the Crown Court to vary orders on conviction

62. This section, together with section 21, makes provision for the two cases in which the Crown Court can vary the terms of an order, namely on the conviction for a serious offence of a person already subject to an order (section 20), or the conviction of a person for breach of an order (section 21). The Crown Court cannot discharge an order. This can only be done by the High Court. Section 20 provides the Crown Court with the power to vary an order where the person before it is the subject of an order and has been found guilty of a serious offence in England and Wales, either having been committed from the magistrates' court or having been convicted in the Crown Court (*subsection (1)*). *Subsection (2)* provides that, in such a circumstance, the Crown Court may vary the terms of that order where it has reasonable grounds to believe that the new terms of the order would protect the public by preventing, restricting or disrupting involvement by the subject of the order in serious crime in England and Wales.
63. *Subsections (3) and (4)* provide for Northern Ireland the same provisions as set out in *subsections (1) and (2)* for England and Wales, although a person cannot be committed from a magistrates' court to the Crown Court for sentence in Northern Ireland, so this provision is not replicated.

64. *Subsection (5)* states that such a variation can only be applied for by the relevant applicant authority.
65. *Subsection (6)* replicates section 19(7), in that an order can only be varied by the Crown Court in addition to a sentence imposed in relation to the offence concerned or in addition to giving a conditional discharge. Similarly, *subsection (7)* replicates section 17(8) in that, subject to the fact that an order cannot last for more than 5 years, as a result of an application by the relevant applicant authority, the court may vary an order to increase the length of the order or of any of the provisions contained in it.

Section 21: Powers of Crown Court to vary orders on breach

66. This section provides the Crown Court, in similar terms to section 20, with the power to vary an order when it is dealing with a person who has been convicted of breach of an order under the offence set out in section 25.

Section 22: Inter-relationship between different types of orders

67. *Subsections (1) and (2)* make it clear that the fact that the High Court has done something in relation to the order does not prevent the Crown Court from doing something in relation to the order (so far as permitted by Part 1) and vice versa.
68. *Subsections (3) and (4)* set out that a refusal by the Crown Court to make or vary an order does not preclude an application to the High Court to make or vary an order, in relation to the same offence.

Appeals

Section 23: Additional right of appeal from High Court

69. This section adds to the current rights of appeal from the High Court contained in section 16 of the Senior Courts Act 1981 and section 35 of the Judicature (Northern Ireland) Act 1978 and pertains to appeals by third parties. *Subsection (1)* provides that an appeal may be made by any person who was given leave to make representations at the original proceedings under the provision set out in section 9, against a decision of the High Court to make an order, to vary or not to vary an order, or to discharge or not to discharge an order. The relevant applicant authority and the subject of the order have existing rights of appeal under section 16 of the Senior Courts Act 1981 or under section 35 of the Judicature (Northern Ireland) Act 1978 and *subsection (2)* makes it clear that the provisions of *subsection (1)* do not oust or prejudice those rights of appeal. By virtue of paragraph 3 of Schedule 13 to the Act the reference here to the Senior Courts Act 1981 is to be read as a reference to the Supreme Court Act 1981 until the commencement of paragraph 1(1) of Part 1 of Schedule 11 to the [Constitutional Reform Act 2005 \(c. 4\)](#).

Section 24: Appeals from Crown Court

70. In contrast to the High Court there are no clear rights of appeal against a decision of the Crown Court in relation to the making or variation of an order and as a consequence they are provided for in this section. *Subsection (1)* allows the relevant applicant authority and the subject of the order to appeal to the Court of Appeal against a decision of the Crown Court in relation to an order. *Subsection (2)* allows a third party to appeal a decision of the Crown Court to make, vary, or not to vary an order if they made representations in accordance with section 9. *Subsection (3)* provides that, subject to subsection (4) an appeal is allowed only if the Court of Appeal grants leave.
71. *Subsection (4)* provides that appeals against a decision of the Crown Court in relation to an order can be made without the leave of the Court of Appeal if a certificate has been issued by the trial judge saying that the issue is fit for appeal.

72. *Subsection (5)* sets out that the appropriate division of the Court of Appeal to hear appeals in relation to decisions of the Crown Court will be the Criminal Division. This will allow all appeals from the proceedings in the Crown Court at which the serious crime prevention order was made or varied (such as an appeal against conviction) to be dealt with by the same route of appeal.
73. *Subsections (6) – (8)* provide that an appeal against a decision by the Court of Appeal can be made to the Supreme Court by any person who was a party to the proceedings in the Court of Appeal. This appeal can only be made with the leave of the Court of Appeal or the Supreme Court. Such leave must not be granted unless there is a point of law of general public importance and the Court of Appeal considers that this point should be considered by the Supreme Court. The Supreme Court, as referred to in this section, replaces the House of Lords under the Constitutional Reform Act 2005. If the relevant provisions of that Act of 2005 have not been commenced at the date of commencement of this section then transitory provision will be made so that this section refers to the House of Lords.
74. *Subsections (9) and (10)* provide an order making power to the Secretary of State to provide for procedural provisions in relation to appeals from the Crown Court in relation to serious crime prevention orders. This is necessary because the current provisions in the Criminal Appeal Act 1968 and the Criminal Appeal (Northern Ireland) Act 1980 will not apply because the appeals will not be under the rights of appeal in those Acts. The power allows the Secretary of State to make an order containing provisions that correspond to any provisions relating to appeals to the Court of Appeal under the 1968 Act or the 1980 Act, appeals from the Court of Appeal and any matter connected with or arising out of such appeals.
75. *Subsection (11)* makes it clear that the rights of appeal set out in section 24 are the appropriate ones in relation to decision of the Crown Court and they operate instead of, or are not subject to, the other rights of appeal listed. *Subsection (12)* ensures that the provision in the Criminal Appeal Act 1968 which prevents appeals to the Supreme Court other than under that Act will not apply to appeals under section 24.

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).

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.
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
 - (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.

Supplementary

Section 35: Proceedings in the High Court

122. This section sets out certain issues relating to proceedings in the High Court. *Subsection (1)* states that proceedings in relation to a serious crime prevention order before the High Court will be civil in nature. This classification will be effective for domestic law purposes. It is also intended that proceedings for an order will be classified as civil rather than criminal for the purposes of Articles 6 and 7 of the European Convention on Human Rights. A consequence of *subsection (1)*, as set out in *subsection (2)*, is that the standard of proof applied by the High Court will be the civil standard. This is only one consequence of the proceedings being classified as civil. There will be other consequences which are not specified in the Act, for example, hearsay evidence will be admissible in the proceedings. In the case of *R (McCann) v. Crown Court at Manchester* [2003] 1 AC 787, the leading case on anti-social behaviour orders, the House of Lords held that although the civil standard of proof would apply in relation to an application for an anti-social behaviour order the standard is a flexible one ranging from proof on the balance of probabilities, at the lowest level, to beyond reasonable doubt, at the highest. The House of Lords stated that they would expect a high standard of proof to be applied in relation to anti-social behaviour order applications, particularly in relation to whether a person has acted in an anti-social manner, and the same principle is likely to apply in relation to applications for serious crime prevention orders.

Section 36: Proceedings in the Crown Court

123. This section sets out certain issues relating to proceedings in the Crown Court. *Subsection (1)* provides that proceedings in the Crown Court when exercising its jurisdiction under sections 19, 20 or 21 will be civil proceedings. This is to make it clear that, although the Crown Court is normally a court of criminal jurisdiction, when it is exercising its powers to make or vary an order it is acting as a court of civil jurisdiction. As with proceedings before the High Court, it is intended that the proceedings will

be civil rather than criminal for ECHR purposes. *Subsection (2)* provides that the applicable standard of proof will be the civil one. *Subsection (3)* provides that the court can take into account evidence beyond that which would have been admissible in the criminal proceedings during which the proposed subject of the order was convicted. This would include hearsay evidence. The subsection also provides that the court may adjourn proceedings, even after sentencing. The consequences set out in *subsections (2) and (3)* are just three consequences of the proceedings being civil. There will be others that are not specified in the Act

124. *Subsection (4)* provides that the appropriate committee for the making of rules of court in relation to orders made in the Crown Court is the Criminal Procedure Rule Committee under the powers in Part 7 of the Courts Act 2003. This is in line with the location of rules of court in relation to other civil orders on conviction.
125. *Subsections (5) and (6)* provide that serious crime prevention orders may be made or varied by the Crown Court in spite of sections 12 and 14 of the Powers of Criminal Courts (Sentencing) Act 2000 or the corresponding provisions in Northern Ireland, which relate to discharging a person absolutely or conditionally. This means that a person who is given an absolute or conditional discharge can still have an order made in relation to him or have his existing order varied by the Crown Court. Express provision is needed in the Act because the effect of sections 12 and 14 of the 2000 Act is that a person who is given an absolute or conditional discharge is not sentenced for the offence and is not treated as having a conviction for the offence. The effect of these sections needs to be altered in relation to serious crime prevention orders because the Crown Court only has jurisdiction to make or vary such an order if there has been a conviction for a serious offence and an order is made in addition to sentence.

Section 37 and Schedule 2: Functions of applicant authorities

126. This section gives effect to Schedule 2 which provides for the functions of the applicant authorities that can make applications for orders (Director of Public Prosecutions, Director of Revenue and Customs Prosecutions, Director of the Serious Fraud Office and Director of Public Prosecutions for Northern Ireland). These functions include applying for serious crime prevention orders, or the variation or discharge of an order; appearing on applications by others for the variation or discharge of an order; having the conduct of or appearing in any other proceedings about a serious crime prevention order; providing advice about any proceedings or possible proceedings in connection with a serious crime prevention order; or anything for the purposes of, or in connection with, these functions. Special provision has to be made because functions in relation to serious crime prevention orders fall outside the usual prosecutorial functions of the Directors.
127. *Paragraphs 1 to 5* of Schedule 2 list the functions of the Director of Public Prosecutions under Part 1 of the Act and provide that he can delegate his functions to a Crown Prosecutor (paragraph 2). Paragraphs 6 to 11 of this Schedule list the functions of the Director of Revenue and Customs Prosecutions under Part 1 of the Act and provide that he can delegate his functions to a Revenue and Customs Prosecutor (paragraph 7). Paragraphs 12 to 15 of this Schedule list the functions of the Director of the Serious Fraud Office under Part 1 of the Act and provide that he can delegate his functions to a member of the Serious Fraud Office (paragraph 13). The powers to delegate alter the usual position in relation to the carrying out of functions on behalf of the Directors by their staff. A Director must expressly delegate his functions rather than it occurring automatically. This is intended to ensure that the exercise of the powers is kept under tight control by the Directors.
128. *Paragraphs 3, 8 and 14* provide that the functions of the Directors are exercisable under the superintendence of the Attorney General.

129. Paragraphs 16 to 20 of this Schedule list the functions of the Director of Public Prosecutions for Northern Ireland under Part 1 of the Act and make provision about the exercising of those functions.

Section 38: Disclosure of information in accordance with orders

130. This section provides a protection for a person subject to an order when the terms of an order require him to answer a question, provide information or produce a document. In such a situation, he will not be in breach of any obligation of confidence or any other restriction on disclosing the information concerned when he discloses such information in compliance with the terms of an order. *Subsection (2)* reminds the reader that any such requirements contained in an order relating to the provision of information are subject to the safeguards set out in sections 11 to 14.

Section 39: Compliance with orders: authorised monitors

131. This section relates to the inclusion of a term in an order authorising the appointment of a person to monitor whether an order is being complied with (“an authorised monitor”). The section goes on to provide that a monitor can be given information under the terms of an order and that the subject of an order can be ordered to pay the costs of the monitor. Requirements under this section can only be imposed on a body corporate, partnership or unincorporated association, they cannot be imposed on an individual.
132. *Subsection (1)* provides that an order can authorise a law enforcement body to employ a “specified person” or “any person who falls within a specified description of persons” to perform specified monitoring services or monitoring services of a specified description, in relation to enforcement of other terms of an order. This person is an “authorised monitor”, as set out in *subsection (2)*.
133. *Subsection (3)* provides that the authorised monitor will be able to receive information from the organisation subject to the order under a term imposed under section 5(5) as if it were a law enforcement body. For example, the order might state that the organisation has to provide its accounts on a quarterly basis – this section means that these can be provided to the monitor. *Subsection (4)* provides that some or all of the costs incurred by the agency under the arrangements with the authorised monitor can be recovered from the organisation.
134. *Subsection (6)* states that the test in section 1(1)(b) (and the other places the same test appears in Part 1) does not apply in relation to recovering the costs of authorised monitors. This means that the court does not have to have reasonable grounds to believe that the appointment and costs of an authorised monitor would protect the public by preventing, restricting or disrupting involvement by the person in serious crime. The reason for this is that it would be very difficult to demonstrate (even though there is no question of proof under 1(1)(b)) that recovering the costs of monitors would *directly* prevent serious crime. Rather, the purpose is to ensure that other terms of an order (which *would* directly prevent serious crime) are complied with by enabling law enforcement to engage such monitors to look at potentially complex information.
135. *Subsection (7)* replaces the test in section 1(1)(b) and elsewhere. It provides the framework within which the court must decide whether it would be appropriate to include a term requiring the payment of costs in an order. The court can only do so where it considers it is appropriate to do so having regard to all the circumstances including, in particular–
- (a) the means of the body corporate, partnership or unincorporated association concerned;
 - (b) the expected size of the costs; and
 - (c) the effect of the terms on the ability of any body corporate, partnership or unincorporated association which is carrying on business to continue to do so.

136. *Subsection (8)* sets out that, where an authorised monitor is employed by a law enforcement body under an authorisation in an order, they must inform the subject of the order of the name and address of that authorised monitor.
137. *Subsection (9)* makes clear that nothing in these provisions affects the ability of a law enforcement body to enter into any arrangements with third parties outside the scope of these provisions. *Subsection (10)* defines some of the terms used in the section.

Section 40: Costs in relation to authorised monitors

138. *Section 40* deals with the means by which the costs of authorised monitors will be determined. *Subsection (1)* provides an order making power to the Secretary of State to provide the procedure which must be followed for determining the amount of costs or interest. This includes, as set out in *subsection (2)*, provision about an appeals mechanism.
139. *Subsection (3)* provides that where the costs of the monitor have not been paid by the organisation within the period specified in the order under section 39(5)(a) the law enforcement body must take reasonable steps to recover them. *Subsection (4)* states that the Secretary of State must, by order, set out what those steps are. *Subsection (5)* goes on to provide that, after taking such steps, if the costs have still not been paid, they are recoverable as if due to the law enforcement agency concerned by virtue of a civil order or judgement. Interest will also be payable on the unpaid costs.
140. *Subsection (7)* sets out that, for the purposes of the offence of failing to comply with the terms of an order (section 25), the offence occurs only after law enforcement have taken the reasonable steps referred to above, and money is still due, and not before.

Section 41: Powers of law enforcement officers to retain documents

141. This section provides law enforcement officers with powers to take copies of and retain documents. This power is needed in light of the possibility that an order will contain a condition requiring a person to produce documents as set out in section 5(5). *Subsection (1)* provides that the officer may take and retain copies of, or extracts from, documents which are produced under the terms of an order, and that he may retain the documents themselves for as long as he considers necessary for the purposes for which they were obtained. *Subsection (2)* provides that a law enforcement officer may retain documents until the conclusion of any legal proceedings if he has reasonable grounds to believe that the documents may have to be produced in the proceedings, and that they might not be available for those proceedings if he did not retain them.

Section 42: Interpretation: Part 1

142. This section provides definitions for some of the terminology used in Part 1 of the Act, including the terms “act”, “conduct”, “country” and “the public”.

Section 43: Index of defined expressions: Part 1

143. This section contains an index of expressions which have a meaning given to them, or are to be interpreted in accordance with, other provisions in the Act.