

# **SERIOUS CRIME ACT 2015**

---

## **EXPLANATORY NOTES**

### **TERRITORIAL EXTENT**

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

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

##### **Organised crime groups**

140. In the Serious and Organised Crime Strategy, the Government undertook to bring forward proposals to “better tackle people who actively support, and benefit from, participating in organised crime, learning from legislation that is already being used elsewhere in the world<sup>1</sup>” (paragraph 4.60).
141. In 2006, the UK ratified the UN Convention against Transnational Organised Crime<sup>2</sup>. Article 5(1) of the Convention (criminalisation of participation in an organized criminal group) provides -
- (1) “Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:
    - (a) Either or both of the following as criminal offences distinct from those involving the attempt or completion of the criminal activity:
      - (i) Agreeing with one or more other persons to commit a serious crime for a purpose relating directly or indirectly to the obtaining of a financial or other material benefit and, where required by domestic law, involving an act undertaken by one of the participants in furtherance of the agreement or involving an organized criminal group;
      - (ii) Conduct by a person who, with knowledge of either the aim and general criminal activity of an organized criminal group or its intention to commit the crimes in question, takes an active part in:
        - a. Criminal activities of the organized criminal group;
        - b. Other activities of the organized criminal group in the knowledge that his or her participation will contribute to the achievement of the above-described criminal aim;
    - (b) Organising, directing, aiding, abetting, facilitating or counselling the commission of serious crime involving an organized criminal group.”
142. Article 5 of the Convention therefore provides for either a conspiracy offence or a participation offence, or both, to be implemented into domestic law. The elements

---

<sup>1</sup> Legislative Guide for the United Nations Convention against Transnational Organized Crime and the Protocols thereto (United Nations Office on Drugs and Crime 2004) [http://www.unodc.org/pdf/crime/legislative\\_guides/02%20Legislative%20guide\\_TOC%20Convention.pdf](http://www.unodc.org/pdf/crime/legislative_guides/02%20Legislative%20guide_TOC%20Convention.pdf)

<sup>2</sup> <http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf>

of the offence specified in Article 5(1)(a)(i) are based on a conspiracy offence. The requirements of this offence include the intentional agreement with one or more other persons to commit a serious crime for a purpose relating directly or indirectly to obtaining a financial or other material benefit. This requirement criminalises the mere agreement to commit serious crime for the purpose of obtaining a financial or other material benefit, irrespective of whether that agreement is acted upon. In England and Wales, section 1 of the Criminal Justice Act 1977 provides for the offence of conspiracy in the following terms –

- “(1) Subject to the following provisions of this Part of this Act, if a person agrees with any other person or persons that a course of conduct shall be pursued which, if the agreement is carried out in accordance with their intentions, either—
- (a) will necessarily amount to or involve the commission of any offence or offences by one or more of the parties to the agreement, or
  - (b) would do so but for the existence of facts which render the commission of the offence or any of the offences impossible,

he is guilty of conspiracy to commit the offence or offences in question.

143. The elements of the offence specified in Article 5(1)(a)(ii) are based on active participation. This type of offence was initially considered more suitable for civil law jurisdictions whose laws do not recognise conspiracy or do not allow criminalisation of a mere agreement to commit a crime, but increasingly Governments are adopting a combined approach. For example, sections 71 and 72 of the Republic of Ireland’s Criminal Justice Act 2006<sup>3</sup> provide for an offence of conspiracy and of participation in a criminal organisation.
144. Serious organised crime is often carried out by groups of individuals working together to maximise the benefits they derive from their criminal activity. By acting in combination it allows individuals to obtain a greater benefit from their criminal conduct than they might do if working alone and outside an established criminal group. Working through an organised criminal group can also provide protection for those at the very top of such groups who can instruct or direct others to carry out activity on their behalf but who do not themselves carry out criminal acts and therefore prove difficult to prosecute.
145. The new participation offence in England and Wales is intended to provide a new means by which the NCA, the police and prosecutors can tackle serious organised crime. The new offence can be used to target not only those who head a criminal organisation and who plan, coordinate and manage, but do not always directly participate in the commission of the final criminal acts; but also the other members of the group and associates who participate in activities such as the provision of materials, services, infrastructure and information that contribute to the overall criminal capacity and capability of the organised crime group.

#### Serious crime prevention orders

146. Part 1 of the Serious Crime Act 2007 (“the 2007 Act”) makes provision for Serious Crime Prevention Orders (“SCPOs”). SCPOs are a form of civil order aimed at preventing serious crime. These orders are intended to be used against those involved in serious crime, with the terms attached to an order designed to protect the public by preventing, restricting or disrupting involvement in serious crime.
147. An SCPO may be made by the Crown Court where it is sentencing a person who has been convicted of a serious offence (including when sentencing a person convicted of such an offence in the magistrates’ court but committed to the Crown Court for sentencing). Orders may also be made by the High Court where it is satisfied that a person has been involved in serious crime, whether that involvement was in England, Wales, Northern Ireland or elsewhere, and where it has reasonable grounds to believe that the order would protect the public by preventing, restricting or disrupting

---

3 <http://www.irishstatutebook.ie/2006/en/act/pub/0026/index.html>

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

involvement by the subject of the order in serious crime in England, Wales and Northern Ireland. A serious offence in England and Wales and Northern Ireland is one which is listed in Schedule 1 to the 2007 Act, or an offence which is sufficiently serious that the court considers it should be treated as it were part of the list. Section 47 extends the list of trigger offences in Schedule 1 to the 2007 Act.

148. The 2007 Act allows for SCPOs to be made against individuals (aged 18 or over), bodies corporate, partnerships or unincorporated associations. SCPOs may contain such prohibitions, restrictions, or requirements or such other terms that the court considers appropriate for the purpose of protecting the public by preventing, restricting or disrupting serious crime. Section 5 of the 2007 Act contains an illustrative list of the type of prohibitions, restrictions, or requirements that may be attached to an order. For example, these might relate to a person's travel, financial dealings or the people with whom he or she is allowed to associate. Orders can last for up to five years. Breach of the order is a criminal offence, subject to a maximum sentence of five years' imprisonment or an unlimited fine, or both.
149. Sections 6 to 15 of the 2007 Act contain a number of safeguards, including conferring rights on affected third parties to make representations during any proceedings and protection for information subject to legal professional privilege. As a consequence of section 8 of the 2007 Act a SCPO may be made only on an application by the Director of Public Prosecutions (or Director of Public Prosecutions for Northern Ireland) or the Director of the Serious Fraud Office.
150. SCPOs were brought into force on 6 April 2008. As at 31 March 2014, 317 SCPOs have been granted by the Crown Court and one by the High Court<sup>4</sup>. There have been nine convictions for breach of an SCPO. Further details of the implementation of the SCPO are contained in a memorandum by the Home Office submitted to the Home Affairs Select Committee and Justice Select Committee in November 2012 in relation to the post-legislative scrutiny of the 2007 Act<sup>5</sup>.
151. The provisions in Part 1 of the 2007 Act broadly apply only to England and Wales and Northern Ireland, although the offence of breaching a SCPO is UK-wide<sup>6</sup>. The then Scottish Government decided to consider the effectiveness of SCPOs elsewhere in the UK before deciding whether these orders should be introduced in Scotland. In September 2013, the Scottish Government published a consultation on the extension of SCPOs to Scotland<sup>7</sup>. The Scottish Government published its response to the consultation on 4 April 2014<sup>8</sup>, and indicated that it would ask the UK Government to bring forward the necessary amendments to the 2007 Act in order that there was a single UK-wide regime for SCPOs. Section 46 and Schedule 1 make the necessary amendments to the 2007 Act to this end.
152. Chapter 3 of Part 2 (sections 76 to 81) of SOCPA makes provision for Financial Reporting Orders ("FROs"). FROs enable the court to require a person who has been convicted of certain offences (including, fraud, obtaining services dishonestly, conspiracy to defraud, false accounting, an offence specified as a "lifestyle offence" in Schedule 2 to POCA, an offence under the Bribery Act 2010, offences under the Drug Trafficking Act 1994, fund-raising for the purposes of terrorism and various tax evasion offences) to make reports to law enforcement agencies regarding their financial affairs, where the court is satisfied that the risk of the defendant (or accused in Scotland) committing another such offence is "sufficiently high" so as to justify the making of an order. In making an FRO, the court will specify: the duration of the order and the frequency of reports; what financial details and supporting documents should be in

---

<sup>4</sup> These figures represent those SCPOs known to the National Crime Agency and its predecessor the Serious Organised Crime Agency. Other SCPOs may have been granted which were not reported to the NCA or SOCA.

<sup>5</sup> <http://www.official-documents.gov.uk/document/cm85/8502/8502.pdf>

<sup>6</sup> The Scottish Parliament adopted a legislative consent motion in relation to this aspect of the Bill for the 2007 Act on 8 March 2007 - <http://www.scottish.parliament.uk/parliamentarybusiness/Bills/16199.aspx>

<sup>7</sup> <http://www.scotland.gov.uk/Publications/2013/09/9917/downloads>

<sup>8</sup> <http://www.scotland.gov.uk/Resource/0044/00447665.pdf>

or accompany each report; and who the reports should be made to and the deadline for providing them. Failure to comply with the requirement of an order or, without reasonable excuse, making false or misleading statements is a summary offence subject to a maximum penalty of six months' imprisonment in England and Wales and Northern Ireland and 12 months' imprisonment in Scotland.

153. As at 31 March 2014, the NCA (and its predecessor, the Serious Organised Crime Agency) has obtained 119 FROs. This is substantially less than the original expectation of some 1,500 a year and a number of deficiencies have been identified. In particular, as breach of an order is only triable summarily this both limits the investigative powers available to law enforcement agencies under the Police and Criminal Evidence Act 1984 and places a six month time limit on mounting a prosecution for non-compliance (by virtue of the restriction imposed by section 127 of the Magistrates' Courts Act 1980). By consolidating the FRO within the SCPO, non-compliance would become an indictable offence and thereby overcome these drawbacks.

### Gang injunctions

154. Part 4 of the Policing and Crime Act 2009 ("the 2009 Act") makes provision for injunctions to prevent gang-related violence ("gang injunctions"). Gang injunctions are a preventative civil order that enable the police or a local authority to apply to a county court<sup>9</sup>, or the High Court, for an injunction against an individual to prevent gang-related violence. Gang injunctions allow courts to place a range of prohibitions and requirements (including supportive, positive requirements) on the behaviour and activities of a person (aged 14 or over) involved in gang-related violence. These conditions could include prohibiting someone from being in a particular place or requiring them to participate in rehabilitative activities.
155. The 25 out of then 33 Ending Gang and Youth Violence priority areas<sup>10</sup> that returned data in response to a Home Office survey reported that, between January 2011 (when the provisions in Part 4 of the 2009 Act were brought into force) and January 2014, 108 gang injunctions had been put in place.
156. The Serious and Organised Crime Strategy pointed to the link between urban street gangs and organised crime. At paragraph 2.7, the Strategy stated that "there are connections between gangs and organised crime: urban gang members may engage in street drug dealing on behalf of organised criminals and some gangs aspire to and may become organised crime groups in their own right". A review of the operation of gang injunctions was published by the Home Office in January 2014<sup>11</sup>. Amongst other things, the review found that the definition of a gang used in Part 4 of the 2009 Act was seen by police officers to have some limitations for addressing local gang issues. In response to this finding, the Government undertook to consult interested parties to explore whether the definition of a gang within the legislation should be changed to reflect the evolving nature of street gang activity across the country and ensure that gang injunctions can be used to target the right individuals. Section 51 makes resulting changes to Part 4 of the 2009 Act.

## Commentary on Sections

### *Section 45: Offence of participating in activities of organised crime group*

157. *Subsection (1)* provides for the offence of participating in activities of an organised criminal group.

---

<sup>9</sup> Section 18 of the Crime and Courts Act 2013 provides for youth courts to have jurisdiction to grant gang injunctions in respect of persons under 18 years, that section is not yet in force.

<sup>10</sup> Barking and Dagenham, Birmingham, Bradford, Brent, Camden, Croydon, Derby, Ealing, Enfield, Greenwich, Hackney, Hammersmith and Fulham, Haringey, Islington, Knowsley, Lambeth, Leeds, Lewisham, Liverpool, Manchester, Merton, Newham, Nottingham, Oldham, Salford, Sandwell, Sheffield, Southwark, Tower Hamlets, Waltham Forest, Wandsworth, Westminster and Wolverhampton. Ten new areas were added in October 2014: Barnet, Bromley, Havering, Hillingdon, Kensington and Chelsea, Luton, Ipswich, Thanet, Stoke-on-Trent and Tendring.

<sup>11</sup> <https://www.gov.uk/government/publications/review-of-the-operation-of-injunctions-to-prevent-gang-related-violence>

158. The conduct (*actus reus*) and mental (*mens rea*) elements of the offence are set out in *subsection (2)*. The conduct element is satisfied if a person takes part in any activities which are criminal activities of an organised crime group, or will help an organised crime group to carry on criminal activities. The mental element of the offence is satisfied if it can be shown that the person knew or reasonably suspected that he or she was engaging in such activities. The term “criminal activities” is defined in *subsections (3) to (5)*. The definition is such as to capture participation in only serious criminal conduct which is determined as an offence attracting a sentence of imprisonment of at least seven years. The reference therein to obtaining “any gain or benefit” should be interpreted broadly so as to include crimes with tangible but non-monetary objectives, for example, when the predominant motivation is sexual gratification, such as the receipt of or trade in images of child sex abuse. An “organised crime group” is defined in *subsections (6) and (7)*. The offence will be triable on indictment only and subject to a maximum penalty of five years’ imprisonment (*subsection (9)*).
159. *Subsection (8)* provides for a defence where a person’s participation in the activities of an organised crime group was necessary for the purposes of the prevention or detection of crime. Such a defence would, in particular, be relevant to a police or NCA officer engaging in activities as part of an investigation into an organised crime group.

### ***Section 46 and Schedule 1: Extension of Part 1 of Serious Crime Act 2007 to Scotland***

160. *Section 46* gives effect to Schedule 1 which extend the provisions in respect of SCPOs contained in Part 1 of the 2007 Act to Scotland and, in so doing, make the necessary modifications to that Part to take account of Scots law.
161. *Paragraph 2* of Schedule 1 amends section 1 of the 2007 Act to provide that the Scottish civil courts, namely the Court of Session or a sheriff, may make an SCPO. In England and Wales and in Northern Ireland the equivalent power is conferred on the High Court. The test for making an order in Scotland is the mirror image to that applicable in the other parts of the UK. The court must be satisfied that a person has been involved in serious crime, whether that involvement was in Scotland 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 person who is subject to the order in Scotland. The rest of this paragraph make amendments to section 1 which are consequential upon the civil courts in Scotland having the power to make a SCPO.
162. *Paragraph 3* amends subsection (6) of section 2 of the 2007 Act. That subsection provides that the test set out in section 2(4), rather than the test in section 3(1), should be used when a court in England and Wales is determining whether a person has been involved in serious crime in Northern Ireland for the purposes of an England and Wales order. The amendments also modify section 2(6) to refer to the new test (see below) for determining whether a person has been involved in serious crime in Scotland. *Paragraph 5* makes similar amendments to section 3 of the 2007 Act which makes equivalent provision to section 2 for Northern Ireland.
163. *Paragraph 4* inserts new section 2A into the 2007 Act which replicates the provisions in section 2 of that Act for Scotland. New section 2A defines, for the purposes of Part 1, what constitutes both having been involved in serious crime in Scotland or elsewhere, and involvement in serious crime in Scotland. A distinction is drawn between these two phrases because the first part of the test, in new section 1(1A)(a), is concerned with a person who has been involved in serious crime in Scotland or elsewhere, whereas the second part of the test, in new section 1(1A)(b), is concerned with future involvement in serious crime in Scotland only.
164. New section 2A(1) provides that a person has been involved in serious crime in Scotland for the purpose of Part 1 of the 2007 Act, if he or she has committed a serious offence in Scotland, has facilitated the commission by another person of a serious offence in Scotland, or has conducted himself or herself in a way that was likely to facilitate the



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

commission by himself or herself or another person of a serious offence in Scotland (whether or not such an offence was committed). Facilitation here takes its natural meaning of “to make easier”.

165. Further to this, new section 2A(2) sets out that a “serious offence in Scotland” is an offence under the law of Scotland 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 new Part 1A of Schedule 1 to the 2007 Act (as inserted by *paragraph 31*), 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 new Part 1A of Schedule 1 to the 2007 Act is not an exhaustive list. The second part of the test in new section 2A(2)(b) allows the court to treat offences that do not appear in Part 1A of Schedule 1 as being serious offences if, based on the circumstances of the case, the court considers the offence is sufficiently serious to be treated as such.
166. New section 2A(3) defines “involvement in serious crime in Scotland” for the purposes of Part 1 of the 2007 Act. 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 Scotland. Involvement in serious crime in Scotland means one or more of the following: the commission of a serious offence in Scotland; conduct which facilitates the commission by another person of a serious offence in Scotland; conduct which is likely to facilitate the commission, by the person whose conduct it is or another person, of a serious offence in Scotland (whether or not such an offence is committed).
167. New section 2A(4) defines what is meant by the respondent having been involved in serious crime in a place other than Scotland for the purposes of Part 1 of the 2007 Act. This is for the purposes of the first part of the statutory test contained in new section 1(1A)(a), relating to past action which merits the imposition of an order. Subsection (4) of new section 2A makes identical provision to subsection (1) of that section, except insofar as this subsection is concerned with serious offences which have occurred in a jurisdiction outside of Scotland.
168. New section 2A(5) defines a “serious offence in a country outside Scotland”. The court has to apply a three stage test when it is considering the application or matter in question. Firstly, the conduct must be an offence under the law of a country outside Scotland. Secondly, the conduct must also be an offence in Scotland if it had been committed in or as regards Scotland. Thirdly, the offence must either fall within the list of offences, or within a description specified, in new Part 1A of Schedule 1 to the 2007 Act if committed in or as regards Scotland or it is conduct which the court considers is sufficiently serious so as to be treated as if it did so.
169. New section 2A(6) states that the test set out in new section 2A(4), rather than the test in sections 2(1) and 3(1), should be used when a Scottish court is determining whether a person has been involved in serious crime in England and Wales or Northern Ireland, as the case may be, for the purposes of a Scottish order.
170. New section 2A(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 country outside the UK it will still be a serious offence under Part 1 of the 2007 Act if the conduct meets the test in new section 2A(5).
171. *Paragraph 6* inserts new subsection (4A) into section 4 of the 2007 Act which confers on the Scottish Ministers a power to amend new Part 1A of Schedule 1 to that Act. This order-making power mirrors the existing powers conferred on the Secretary of State and the Department of Justice in Northern Ireland to amend Parts 1 and 2 respectively. As a result of the amendment made to section 89 of the 2007 Act by *paragraph 29*, any such order is subject to the affirmative procedure in the Scottish Parliament.

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

172. *Paragraph 7* amends section 5 of the 2007 Act which sets out examples of the types of provisions that an SCPO might include. Section 5(2) as amended would state—
- “Examples of prohibitions, restrictions or requirements that may be imposed by serious crime prevention orders in England and Wales, *Scotland* or Northern Ireland include prohibitions, restrictions or requirements in relation to places other than England and Wales, *Scotland* or (as the case may be) Northern Ireland.
173. *Paragraph 8* amends section 7 of the 2007 Act which provides that the Secretary of State and Northern Ireland Department of Justice may, by order, expressly exclude the application of SCPOs to persons falling within a specified description. Under the 2007 Act an order can be imposed on any person and this includes individuals, bodies corporate, partnerships and unincorporated associations. The order-making power has not been exercised. New section 7(1A) confers an equivalent order-making power on the Scottish Ministers. As a result of the amendment to section 89 of the 2007 Act, made by *paragraph 29*, an order under new section 7(1A) will be subject to the negative procedure.
174. *Paragraph 9* amends section 8 of the 2007 Act which sets out who may apply for an SCPO. The amendment provides that in *Scotland*, an SCPO may only be applied for by the Lord Advocate.
175. *Paragraph 10* amends section 9 of the 2007 Act which gives the High Court the power to allow affected persons to make representations at the hearing in relation to the making, variation or discharge of an SCPO. The amendment confers a similar power on the appropriate court in *Scotland*. New section 9(4A) provides that the High Court of Justiciary in *Scotland* (criminal court) must, on an application by a person, give a person an opportunity to make representations in criminal proceedings before this court arising out of section 24B(3) of the 2007 Act if it considers that the making, or variation, of an SCPO is likely to have a significant adverse effect on the person.
176. *Paragraph 11* amends section 10 of the 2007 Act which makes provision for ensuring that the subject of an SCPO has notice of its existence. For the purpose of serving such notice, section 10(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. Section 10(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. The amendment modifies the definition of “the relevant applicant authority” to include the Lord Advocate.
177. *Paragraph 12* amends section 12 of the 2007 Act which provides that an SCPO does not override legal professional privilege. New section 12(4A) makes similar provision for *Scotland*; the equivalent concept in *Scotland* is “confidentiality of communications”.
178. *Paragraph 13* amends section 13 of the 2007 Act which sets out further safeguards on the operation of the SCPO regime by placing restrictions on the extent to which an order can require the production of excluded material and banking information. In England and Wales “excluded material” is defined by reference to section 11 of the Police and Criminal Evidence Act 1984, the definition covers –
- 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.

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

There is no equivalent definition of “excluded material” in Scotland so the modification made to section 13 by paragraph 13 adopts the England and Wales definition.

179. *Paragraph 14* amends section 17 of the 2007 Act which deals with how an SCPO may be varied, either on application by the relevant applicant authority, by the subject of the order or by a third party. New subsection (1A) of section 17, inserted by paragraph 14(2), provides a power to the appropriate court in Scotland to vary the terms of an SCPO 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 Scotland.
180. *Paragraph 15* amends section 18 of the 2007 Act which makes provision for the discharge of an SCPO either on application by the relevant applicant authority, by the subject of the order or by a third party. The amendment confers on the appropriate court in Scotland the power to discharge an SCPO in Scotland.
181. *Paragraph 16* amends the title of section 22 of the 2007 Act (which deals with the inter-relationship between SCPOs made in the High Court and Crown Court) to make it clear that that section relates to orders made in England and Wales or Northern Ireland.
182. *Paragraph 17* inserts new sections 22A to 22D into the 2007 Act which broadly mirror sections 19 to 22 of the 2007 Act which provide for SCPOs on conviction.
183. New section 22A confers on the High Court of Justiciary and the sheriff a civil jurisdiction to be able to impose an SCPO where a person has been convicted of a serious criminal offence. The High Court’s powers arise either where a person has been convicted by a sheriff and remitted to the High Court to be dealt with, or convicted by the High Court itself, in relation to a serious offence committed in Scotland (new section 22A(1)). The meaning of a serious offence committed in Scotland is to be determined in accordance with new Part 1A of Schedule 1 to the 2007 Act.
184. New section 22A(2) replicates the second part of the test contained in new section 1(1A) (b). It provides that the High Court or sheriff may impose an SCPO where the court or sheriff 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 Scotland.
185. New section 22A(4) replicates section 1(3) of the 2007 Act, providing the courts with the flexibility to include such terms in the SCPO as they consider appropriate for this purpose. New section 22A(5) provides that the powers of the High Court and sheriff under new section 22A are subject to the same safeguards contained in sections 6 to 15 of the 2007 Act as those that apply to an SCPO made under section 1 of the 2007 Act.
186. New section 22B, together with new section 22C, makes provision for the two cases in which the High Court of Justiciary or sheriff can vary the terms of an SCPO, namely on the conviction for a serious offence of a person already subject to an SCPO (new section 22B), or the conviction of a person for breach of an SCPO (section 22C). New section 22B provides the High Court of Justiciary or sheriff with the power to vary an SCPO where the person before it is the subject of an SCPO and has been found guilty of a serious offence in Scotland (new section 22B(1)). New section 22B(2) provides that, in such a circumstance, the High Court or sheriff 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 Scotland.
187. New section 22B(3) provides that such a variation can only be applied for by the Lord Advocate. New section 22B(4) provides that an SCPO can only be varied by the High Court or sheriff in addition to a sentence imposed in relation to the offence concerned. New section 22B(5) provides that, subject to the limitation that an SCPO cannot last



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

for more than five years, the High Court or sheriff may vary an order to increase the length of the order or of any of the provisions contained in it.

188. New section 22C provides the High Court or sheriff with the power, in terms similar to new section 22B, to vary or replace an SCPO when it is dealing with a person who has been convicted of the breach of an order under the offence set out in section 25 of the 2007 Act.
189. New section 22D deals with the inter-relationship between SCPOs made in the Scottish civil courts under new section 1(1A) and those made in the criminal courts under new section 22A. New section 22D(1) enables the Scottish criminal courts, in the circumstances provided for in new sections 22B and 22C, to vary an SCPO made by the civil courts under section 1(1A). The fact that an SCPO has been varied by the Scottish criminal courts does not prevent the order being further varied or discharged by the civil courts (new section 22D(2)). New section 22D(3) and (4) provides that a refusal by the High Court or sheriff to make or vary an SCPO on conviction does not preclude an application to the civil courts to make or vary an SCPO under section 1(1A) in relation to the same offence.
190. *Paragraph 18* inserts new sections 24A and 24B into the 2007 Act which broadly replicate the appeal provisions in sections 23 and 24 of that Act which apply to England and Wales.
191. New section 24A(1) provides that an appeal may be made to the Inner House of the Court of Session (equivalent to the Court of Appeal in England and Wales) by any person who was given an opportunity to make representations at the original proceedings under the provision set out in section 9 of the 2007 Act, against a decision of the Outer House of the Court of Session (equivalent to the High Court in England and Wales) to make an SCPO, 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 SCPO have existing rights of appeal under section 28 of the Court of Session Act 1988 and new section 24A(2) makes it clear that the provision of new section 24A(1) does not oust or prejudice that right of appeal.
192. New section 24B of the 2007 Act provides for appeals against SCPOs made, varied or discharged on conviction. New section 24B(1), by treating the making, variation or discharge of an SCPO on conviction as part of the sentence, has the effect of conferring on the subject of an order a right of appeal under the provisions of the Criminal Procedure (Scotland) Act 1995. New section 24B(2) enables the Lord Advocate to appeal against a refusal to grant an SCPO on conviction. New section 24B(3) confers a right of appeal on third parties against the making, variation or discharge of an SCPO on conviction.
193. *Paragraph 19* amends section 27 of the 2007 which makes provision for the winding-up of companies, partnerships or relevant bodies in England and Wales and Scotland so as to limit its application to England and Wales. *Paragraph 20* then inserts new section 27A into the 2007 Act which makes such provision for Scotland.
194. New section 27A provides the Scottish Ministers with the power to petition the court for the winding up of a company, partnership or relevant body (as defined in new section 27A(12)). New section 27A(1) provides 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 the 2007 Act of breach of an SCPO and the Scottish Ministers must also consider it to be in the public interest for the company, partnership or relevant body to be wound up.
195. New section 27A(2) to (4) provides that the power to petition for winding up taps into the existing powers to wind up companies in the Insolvency Act 1986 (“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. New section 27A(2)

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

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, new section 27A(3) provides for the Scottish Ministers to present the petition for winding up, whereas it would normally be the Secretary of State under section 124A of the 1986 Act. Secondly, new section 27A(4) provides 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 of the 2007 Act and the court considers that it is just and equitable for the company to be wound up.

196. New section 27A(5) and (6) taps into the power to dissolve a partnership in the Partnership Act 1890.
197. New section 27A(7) provides the appropriate Minister (as defined in new section 27A(12)) with the power to provide, by order, for the 1986 Act to apply with modifications to a relevant body. As a result of new section 27A(8) an order under new section 27A(7) 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 of the 2007 Act and where it would be just and equitable to do so.
198. New section 27A(9) provides 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 of the 2007 Act has been made but not finally determined, or if the time limit for such an appeal has not yet expired (although new section 27A(11) provides that any power to appeal out of time which might exist is to be ignored for the purposes of section 27A(9)).
199. New section 27A(10) provides 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.
200. *Paragraph 21* makes amendments to section 29 of the 2007 Act consequential upon the insertion of new section 27A. Section 29 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 or she considers appropriate to the application of the Insolvency Act 1986 (the relevant parts of which extend to Scotland), or as the case may be, the Insolvency (Northern Ireland) Order 1989, by virtue of sections 27(2) and 28(2). 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). 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). The consequential amendments to section 29 ensure that each of these order-making powers will also operate in relation to the power to wind up companies, partnerships and other relevant bodies in new section 27A.
201. *Paragraph 22* amends section 31 of the 2007 Act which makes provision for the operation of SCPOs against partnerships other than limited liability partnerships, which are covered by section 30 of the 2007 Act. Section 31(3) provides a gloss for the meaning of "involved in serious crime in England and Wales, Northern Ireland or elsewhere" and "involvement in serious crime in England and Wales or Northern Ireland" when a court is considering an order in relation to a partnership. A partnership is involved in serious crime if any of the partners is so involved. Paragraph 22(2) expands this gloss to cover Scotland.
202. *Section 31(6)* provides that the rules of court relating to the service of documents and certain legislative provisions listed – including sections 70 and 143 of the Criminal

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

Procedure (Scotland) Act 1995 - apply as if the partnership were a body corporate. Paragraph 22(3) repeals the entry in relation to the Criminal Procedure (Scotland) Act 1995. Section 70 of that Act has been amended by the Criminal Justice and Licensing (Scotland) Act 2010 and the Partnerships (Prosecution) Scotland Act 2013 so as to make specific provision for service of an indictment on a partnership, as such, it is no longer necessary to gloss the operation of section 70 so as to treat a partnership as if it were a body corporate. *Paragraph 23* makes a similar amendment to section 32 of the 2007 Act which makes provision for the operation of orders against unincorporated associations.

203. *Paragraph 24* amends section 34 of the 2007 Act which makes provision to ensure that Part 1 of that 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). As a result of that 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 European Union plus Iceland, Liechtenstein and Norway) other than the UK and certain protections for intermediary service providers. Section 34(1) provides that an order may not include terms which restrict the freedom of an information service provider established in a European Economic Area state other than the UK to provide information society services in relation to a European Economic Area state unless certain conditions, contained in section 34(2) and (3), are met. The conditions in section 34(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 in England and Wales or Northern Ireland, as the case may be; (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. Paragraph 24 amends section 34(2) so that it operates in relation to SCPOs made in Scotland.
204. *Paragraph 25* inserts new section 36A into the 2007 Act, this provides for the civil standard of proof, that is on the balance of probabilities, to apply to any proceedings under sections 22A, 22B, 22C or 22E of the 2007 Act in relation to an SCPO before the High Court of Justiciary and the sheriff court. This mirrors the position in England and Wales and Northern Ireland as provided for in sections 35 and 36 of the 2007 Act.
205. *Paragraph 26* amends section 39 of the 2007 Act which makes provision for the inclusion of a term in an SCPO made against a body corporate, partnership or unincorporated association authorising a “law enforcement agency” to appoint a person to monitor whether the order is being complied with. Paragraph 26 amends the definition of a “law enforcement agency” in section 24(10) to include a reference to the chief constable of the Police Service of Scotland.
206. *Paragraph 27* amends section 40 of the 2007 Act which deals with the means by which the costs of authorised monitors will be determined. Section 40(1) and (2) enables the “appropriate authority” to provide, by order, the practice and procedure (including provision about appeals) which must be followed for determining the amount of costs or interest. Section 40(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. Section 40(4) provides that the appropriate authority must, by order, set out what those steps are. Section 40(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 as a consequence of a civil order or judgment. Paragraph 27(2) and (3) narrow the operation of section 40(5) to England and Wales and Northern Ireland and then make equivalent provision for Scotland. Section 40(6) provides for interest to be payable on the unpaid costs and for this to be calculated in accordance with the provision in section 17 of the Judgments Act 1838 (that is at 8% per year). That Act does not extend to Scotland and paragraph 27(4) inserts new section 40(6A) to make analogous provision for Scotland. Paragraph 27(5) amends section 40(9) to provide that, in relation to SCPOs in Scotland,

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

the Scottish Ministers are the appropriate authority. Orders made under section 40 are subject to the negative resolution procedure.

207. *Paragraph 28* inserts appropriate additions to the index of defined expressions in Part 1 of the 2007 Act.
208. *Paragraph 29* amends section 89 of the 2007 Act which provides for the making of orders under that Act. The amendments to section 89(2) extend to the Scottish Ministers the power to make orders making different provision for different cases, descriptions of cases, or purposes and containing supplementary, incidental, consequential, transitional, transitory or saving provision.
209. *Paragraph 30* amends section 93 of the 2007 Act which provides for the extent of that Act. The amendment to section 93(2), read with section 93(7), will provide for Part 1 of the 2007 Act to extend to Scotland as well as, as now, England and Wales and Northern Ireland.

***Section 47: Serious crime prevention orders: meaning of “serious offence”***

210. Schedule 1 to the 2007 Act lists the serious offences conviction for which, or involvement in which, can trigger the making of a SCPO. *Subsections (1) to (4)* of this section add various specified firearms offences, offences under the Computer Misuse Act 1990 and the offence in section 6 of the Misuse of Drugs Act 1971 (cultivation of cannabis plants) in Part 1 of Schedule 1 (which relates to England and Wales) to that Act. *Subsections (5) to (8)* add the equivalent offences to Part 2 of Schedule 1 to the 2007 Act (which relates to Northern Ireland).

***Section 48: Powers of Crown Court to replace orders on breach***

211. As a result of section 16(2) of the 2007 Act, the maximum duration of an SCPO is five years. This overall limit constrains a court’s powers to extend the duration of an order, including when considering the variation of an order on breach under section 21 of the 2007 Act (see subsection (7) of that section). This section amends section 21 of the 2007 Act to enable the court, following the conviction of a person for breach of an SCPO, to discharge the existing SCPO and make a new order for up to five years. The amendments to section 21 preserve the option of varying the existing SCPO, including by extending its duration subject to the overall five-year limit running from the date the order was activated.

***Section 49: Extension of order where person charged***

212. This section inserts new section 22E into the 2007 Act which provides for the duration of an SCPO to extend beyond five years in specified circumstances. New section 22E provides for an SCPO to continue in force where the subject of an SCPO has been charged with a serious offence (namely one of those specified in Schedule 1 to the 2007 Act) or with breach of an SCPO. On an application by the Director of Public Prosecution or Director of the Serious Fraud Office (or, in Scotland, the Lord Advocate), a court may provide that an SCPO continues in force pending the outcome of the criminal proceedings in respect of the offence for which the subject of an SCPO has been charged. In deciding whether to grant an application to extend the duration of an SCPO under new section 22E, the court is required to apply the same test that applies to the grant or variation of an order, namely that the court has reasonable grounds for believing that an extension of the order would protect the public by preventing, restricting or disrupting involvement by the subject of the order in serious crime. Where a person subject of an SCPO is convicted of a serious offence, it will be open to the court to vary the existing SCPO (exercising the powers in section 20 of the 2007 Act) or make a fresh one (exercising the powers in section 19 of the 2007 Act). Where a person subject of an SCPO is convicted of breach of the order, it will be open to the court to vary the existing SCPO or make a fresh one in accordance with section 21 of the 2007 Act, as



amended by section 48. The court to whom a relevant applicant authority applies to is set out in new section 22E(2).

***Section 50: Serious crime prevention orders and financial reporting etc***

213. *Subsection (1)* repeals sections 76, 77 and 78 of SOCPA which provide for the making of FROs in England and Wales, Scotland and Northern Ireland respectively. As a result, instead of a sentencing court making a stand-alone FRO under the provisions of that Act, the High Court or Crown Court (in Scotland, the High Court of Justiciary or sheriff) could, on an application by the Director of Public Prosecutions or Director of the Serious Fraud Office or, in Scotland, the Lord Advocate, attach financial reporting requirements as part of an SCPO.
214. *Subsection (2)* inserts new section 5A into the 2007 Act which provides for a disclosure gateway similar to that contained in section 81 of SOCPA. New section 5A makes provision for the law enforcement officer to whom reports will be made under the terms of an information requirement imposed as part of a SCPO to disclose the information to another person for the purposes of checking the accuracy of the information provided or discovering the true position (new section 5A(2)). Such a disclosure might, for example, be made to a bank or other financial institution with which the subject of the SCPO holds an account. The normal duty of confidence a bank may have in relation to one of its clients is waived by virtue of new section 5A(5). Similarly, any other person may disclose information to the law enforcement officer or a person to whom the law enforcement officer has disclosed information (new section 5A(3)). A law enforcement officer may also make disclosures of such information for the purpose of preventing, detecting, investigating or prosecuting criminal offences (new section 5A(4)). This disclosure gateway applies to any information supplied by the subject of an SCPO in accordance with an information requirement contained in the order; whilst this will usually relate to financial information the gateway is not restricted to such information.

***Section 51: Injunctions to prevent gang-related violence and drug-dealing activity***

215. This section replaces the existing section 34 of the 2009 Act which sets out the circumstances in which a court may grant a gang injunction. Two conditions must currently be satisfied. The first condition is that the respondent has engaged in, or assisted or encouraged, “gang-related violence”. Once this condition is satisfied, the court may grant an injunction if a second condition is satisfied, namely that it thinks it is necessary to do so in order “to prevent the respondent from engaging in, or encouraging or assisting, gang-related violence” (section 34(3)(a)) or “to protect the respondent from gang-related violence” (section 34(3)(b)). Section 34(5) of the 2009 Act defines gang-related violence as:

“Violence or a threat of violence which occurs in the course of, or is otherwise related to, the activities of a group that:

- (a) consists of at least 3 people;
- (b) uses a name, emblem or colour or has any other characteristic that enables its members to be identified by others as a group; and
- (c) is associated with a particular area.

216. This definition is now considered by front line professionals to be unduly restrictive and fails to reflect the true nature of how gangs operate. In particular, a gang does not always have a name, emblem, colour or other characteristic which enables its members to be identified as a group. Instead, a collection of individuals may operate as a group and engage in criminality with some degree of organisation without such common identifying features. In addition, gangs are increasingly involved in criminality, particularly drug-related criminality, beyond their own areas or may operate in a manner that does not associate the group with a given area. In recognition of this, the revised section 34 of the 2009 Act recasts the key features of a gang to be a group which:



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

- Consists of at least three people (revised section 34(5)(a));
  - Has one or more characteristics that enable its members to be identified by others as a group (revised section 34(5)(b)); and
  - Engages in gang-related violence or is involved in the illegal drug market (revised section 34(2) read with revised section 34(6) and (7)).
217. The identifying characteristics of a gang may, but need not, relate to any of the following:
- The use by the group of a common name, emblem or colour;
  - The group's leadership or command structure;
  - The group's association with a particular area;
  - The group's involvement with a particular unlawful activity.
218. As now, the court will be able to attach prohibitions or requirements to an injunction (revised section 34(4)). Such prohibitions or requirements may, for example, bar the respondent from going to a particular place or area or from associating with and/or contacting a specified person or persons, or requiring him or her to participate in set activities on specified days.