

# SERIOUS CRIME ACT 2015

---

## EXPLANATORY NOTES

### TERRITORIAL EXTENT

#### Part 6: Miscellaneous and General

#### Commentary on Sections

#### *Schedule 4: Minor and consequential amendments*

339. *Paragraph 1* amends the Schedule to the Visiting Forces Act 1952 which defines “offences against the person” for the purposes of section 3 of that Act. Section 3 provides that a member of a visiting force charged with certain offences, including an offence against the person, shall not be tried in a UK court if the person against whom the alleged offence was committed had an association with the visiting force of the accused or another visiting force from the same country as the accused. Paragraph (1)(b)(xi) of Schedule 1 to the Visiting Forces Act 1952 lists offences under the Female Genital Mutilation Act 2003. The amendment to paragraph (1)(b)(xi) provides that it includes only the existing offences in the 2003 Act (that is, sections 1, 2 and 3) and not the new offences inserted into the 2003 Act by sections 72 and 73.
340. *Paragraph 2* make consequential amendments to the Street Offences Act 1959 as a result of the restriction of the offence of loitering or soliciting for the purposes of prostitution to persons aged 18 or over, as provided for in subsection (7) of section 68.
341. *Paragraph 3* amends section 50 of the Criminal Appeal Act 1968 consequential on section 3. The effect is to disapply a defendant’s appeals rights under that Act against a determination made under new section 10A of POCA given that such appeal rights are separately provided for in section 3. *Paragraph 4* makes a similar amendment to the Criminal Appeal (Northern Ireland) Act 1980 consequential on section 26.
342. *Paragraph 5* adds all proceedings in respect of an FGM protection order to the list of proceedings allocated to the Family Division of the High Court as listed in paragraph 3 of Schedule 1 to the Senior Courts Act 1981.
343. *Paragraph 6(1)* amends the Civil Jurisdiction and Judgments Act 1982 consequential upon the provisions in section 23. *Paragraph 6(1)* amends section 18(6A) of the Civil Jurisdiction and Judgments Act 1982. Section 18 of that Act provides for the enforcement of UK judgments in other parts of the UK. Section 18(5)(d) make it explicit that section 18 applies to “an interim order made in connection with the civil recovery of proceeds of unlawful conduct”; this expression is defined in section 18(6A). The effect of these provisions is that, among other things, an order appointing a receiver in connection with property freezing orders (made under section 245E of POCA) can be enforced in all parts of the UK. *Paragraph 6(1)* amends section 18(6A) of the Civil Jurisdiction and Judgments Act 1982 so as to adds orders relating to PPO receivers. *Paragraph 6(2)* enables the amendments made to the Civil Jurisdiction and Judgments Act 1982 by paragraph 6(1) to be extended to the Channel Islands, Isle of Man and British overseas territories by order made under section 52(2) of that Act.

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

344. *Paragraph 7* amends sections 1 to 3A of the 1990 Act to make it explicit on the face of that Act that the maximum penalty on summary conviction in Scotland for any of the offences provided for in those sections is 12 months. When the 1990 Act was originally enacted the maximum sentence for these offences on summary conviction in Scotland was six months and the text of the Act still provides as such. However, section 45(2) of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 glossed all either way offences that were on the statute book before 18 January 2007 so that they carry a maximum penalty of 12 months instead of a lesser penalty of, in this case, six months. This paragraph now makes textual amendments to the 1990 Act to reflect this glossing provision. In doing so, it will ensure that the maximum penalty of 12 months applies to any summary conviction for an offence under section 3A of the 1990 Act as amended by section 42 of the Act.
345. *Paragraph 8* makes a consequential amendment to the heading of section 3A of the 1990 Act arising from the provisions in section 42.
346. *Paragraphs 9 to 11* make consequential amendments to the 1990 Act arising from the provisions in section 41. In particular, the amendments to section 6 of that Act apply the extended extra-territorial jurisdiction provided for in section 43 to inchoate offences related to the offences under the 1990 Act (that is, the offences of conspiracy to commit or attempting to commit a 1990 Act offence).
347. *Paragraph 12* amends the heading of section 10 of the 1990 Act consequential upon section 44.
348. *Paragraph 13* amends section 58A of the Courts and Legal Services Act 1990 to add proceedings in respect of FGM protection orders to the list of family proceedings that cannot be the subject of an enforceable conditional fee agreement. Such agreements allow clients to agree with their lawyers that the lawyer will not receive all or part of his or her usual fees or expenses if the case is lost; but that, if it is won, the client will pay an uplift to the solicitor in addition to the usual fee.
349. *Paragraphs 14 to 16* make consequential amendments to the Criminal Procedure (Scotland) Act 1995. Paragraph 14 amends section 108 of that Act to enable the Lord Advocate to appeal against the refusal of a court to make an SCPO following the conviction of a person on indictment. Paragraph 15 amends section 175 of that Act to confer on the prosecution in summary proceedings a similar right to appeal against the refusal by a sheriff court to make an SCPO on conviction. Paragraph 16 amends section 222 of that Act (which relates to the enforcement in Scotland of fines imposed by a court in England and Wales) and is consequential upon the provisions in sections 10 and 32 increasing the default sentences for non payment of a confiscation order.
350. *Paragraph 17* amends section 63 of the Family Law Act 1996, which defines “family proceedings” for the purposes of that Act, so as to provide that proceedings in respect of an FGM protection order (other than orders made in the course of criminal proceedings for an offence under the 2003 Act) are to be categorised as family proceedings.
351. *Paragraph 18* provides that the new section 71(2A) of RIPA, inserted by section 83, applies not just to a new code of practice but also to a revised code.
352. *Paragraphs 19, 35 and 46* amend sections 6, 92 and 156 of POCA, which relate to the making of confiscation orders in England and Wales, Scotland and Northern Ireland respectively, so that the duty on the court to make a confiscation order for the recoverable amount is qualified where it would be disproportionate to make an order in such terms. In such a case the court must make an order requiring the defendant to pay whatever lesser amount (if any) it thinks would be proportionate. The amendments to POCA place the Supreme Court’s judgment in the case of *R v Waya* ([2012] UKSC 51) on a statutory footing as recommended by the Joint Committee on Human Rights in their report on the Serious Crime Bill (Second Report, session 2014/15).

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

353. *Paragraphs 209 to 26, 28 and 29* make amendments to sections 12, 14, 15, 19, 20, 21, 22, 32 and 33 of POCA consequential upon section 6 so that victim surcharge orders are treated on a similar basis to compensation orders and unlawful profits orders in the context of those sections.
354. *Paragraph 27* amends section 31 of POCA consequential on section 3. *Paragraph 27(2)* amends the title of section 31 in recognition of the fact that that section no longer deals solely with appeals by prosecutors.
355. *Paragraph 27(3)* amends section 31(3) of POCA, the effect of which is to provide that a prosecutor may not appeal under section 31 a decision of a Crown Court not to make a determination under new section 10A or the form of such a determination where made. The right of appeal for a prosecutor in such cases is instead provided for in new section 31(4) of POCA.
356. *Paragraph 30* amends section 35 of POCA consequential on section 10. The effect is to disapply the application of section 139(4) of the 2000 Act (which sets out the tariff for default sentences for failure to pay a fine) to the enforcement of unpaid confiscation orders given that section 10 now makes bespoke provision for default sentences in such cases.
357. *Paragraph 31* amends section 41 of POCA, which provides for restraint orders, consequential upon section 11. New section 41(7D) requires the court when making a restraint order to consider whether to impose a ban on the defendant's travel outside of the UK.
358. *Paragraph 32* amends section 42 of POCA to address an anomaly in the drafting of that section. Section 42(6) and (7) set out circumstances where the Crown Court must discharge a restraint order. Subsection (6) deals with the circumstances where a restraint order was made following the commencement of proceedings for an offence or was made following an application under any of sections 19 to 22, 27 or 28 of POCA (which relate to the reconsideration of a confiscation order or the decision not to make such an order and with the making of a confiscation order where the defendant absconds). In such cases, the Crown Court is required to discharge the restraint order on the conclusion of the criminal proceedings or on the determination of the application. Subsection (7) then deals with the circumstances where a restraint order was made after the start of an investigation into an offence but before charges are brought or where an application under any of sections 19 to 22, 27 or 28 of POCA was to be made. In such cases, the Crown Court is required to discharge the restraint order if within a reasonable time proceedings for the offence are not started or the application is not made. But where proceedings are started or an application is made within a reasonable time, subsection (7) places no duty on the court, akin to that in subsection (6), to discharge the restraint order on the conclusion of the proceedings or application. Paragraph 32 substitutes new section 42(7) and (8) for the existing section 42(7) and in so doing addresses this anomaly. The criminal proceedings in this context will only be concluded when the offender complies fully with the terms of the confiscation order (see section 85(5)(a) of POCA).
359. *Paragraph 33* amends section 55 of POCA consequential upon section 6. Section 55 sets out how the designated officer responsible for fine enforcement in the magistrates' court must dispose of monies received in satisfaction of a confiscation order. The amendment ensures that all priority orders, as defined in section 6, have third call on such monies after meeting any expenses of an insolvency practitioner or receiver where one or other has been appointed.
360. *Paragraph 34* amends section 89 of POCA consequential on section 3. Section 89 establishes the general rules that apply to any appeal to the Court of Appeal under Part 2 of POCA. Section 89(4) makes provision for the award of costs at the discretion of the court. The new section 89(4)(za), inserted by paragraph 34, enables the Court of Appeal to award costs in respect of appeals against a determination under new section 10A.

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

361. *Paragraphs 36 to 43* make like amendments to Part 3 of POCA (Confiscation: Scotland) to those made by paragraphs 21 to 26, 30 and 32.
362. *Paragraph 44* makes a similar amendment to section 131 of POCA to that made to section 55 of that Act by paragraph 33.
363. *Paragraphs 47 to 51* make like amendments to Part 4 of POCA (confiscation: Northern Ireland) to those made by paragraphs 20, 27, 30, 31 and 32.
364. *Paragraphs 52 and 53* make consequential amendments to sections 273 and 277 of POCA as a result of the provisions in section 23. Section 273 of POCA makes provision about recoverable property consisting of rights under a pension scheme. Section 273(4) allows a recovery order covering rights under a pension scheme to provide for the scheme's trustees or managers to recover costs incurred by them in: (a) complying with a recovery order; or (b) providing information, prior to the making of the order, to the enforcement authority, receiver appointed under section 245E of POCA, interim receiver or interim administrator – the amendment made by paragraph 52 adds PPO receivers to this list. Section 277 of POCA makes further provision in relation to recoverable property which includes rights under a pension scheme, where a consent order has been made in relation to such property. A consent order stays (or in Scotland, sists) the proceedings of a recovery order where agreement is reached for the disposal of the recoverable property, and each person to whose property either the agreement or the proceedings relate is a party to both the proceedings and the agreement. Section 277(7) of POCA makes like provision to section 273(4) described above and paragraph 53 effects the same consequential amendment.
365. *Paragraph 54*, which is consequential upon section 23, adds a reference to a PPO receiver to the general interpretation section in Part 5 of POCA.
366. *Paragraph 56* amends section 416 of POCA, which defines terms used in Part 8 of POCA, so that the terms “realisable property” and “confiscation order” as used in Part 8, as a result of the amendments made by section 38, attract the appropriate definitions of those terms contained in Parts 2 (England and Wales), 3 (Scotland) and 4 (Northern Ireland) of the Act.
367. *Paragraphs 58, 64, 65, 68(3) to (5), 69, 70(3) and 90* carry through to other legislative provisions the changes to the nomenclature used in the offences in sections 48 to 50 of the Sexual Offences Act 2003, as amended by section 68.
368. *Paragraph 59*, which is consequential upon section 23, amends paragraph 1 of Schedule 10 to POCA. That paragraph disapplies sections 75 and 77 of the Taxes Management Act 1970 in relation to receivers and administrators appointed under POCA – including management receivers, interim receivers and interim administrators in civil recovery proceedings. This exempts such receivers and administrators from having to pay any income tax or capital gains tax due on any property in respect of which they are appointed. The amendment to paragraph 1 of Schedule 10 to POCA adds a reference to a PPO receiver.
369. *Paragraph 60* provides that new sections 5B and 5C of the 2003 Act, inserted by sections 74 and 75 of the Act, extend to England and Wales only.
370. *Paragraph 62* is consequential on section 68; it amends section 54 of the Sexual Offences Act 2003 so as to preserve the existing definitions of “prostitute” and “payment” for the purposes of sections 51A to 53A of that Act.
371. *Paragraph 63* provides that the definition of “sexual” in section 78 of the Sexual Offences Act 2003 does not apply to new section 15A of that Act as inserted by section 67.
372. *Paragraph 66* amends Schedule 3 to the Sexual Offences Act 2003 consequential on sections 67 and 69. The effect is to subject a person convicted of the offence of

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

sexual communication with a child or of possession of a paedophile manual to the notification requirements in Part 2 of the Sexual Offences Act 2003. In the latter case, the notification requirement will only be invoked if the offender was aged 18 or over when convicted or was sentenced to at least 12 months' imprisonment. The notification requirements are to notify the police of their name and address and any subsequent changes to that information (that is, sign on the "sex offenders' register").

373. *Paragraph 68(2)* adds the new offence of sexual communication with a child to the list of offences in Schedule 15 to the Criminal Justice Act 2003 which specifies offences for the purposes of Chapter 5 of Part 12 of that Act. That Chapter makes provision for extended determinate sentences for dangerous offenders.
374. *Paragraph 70(2) and (4)* adds the new offences of sexual communication with a child and possession of a paedophile manual to the list of offences in Schedule 34A to the Criminal Justice Act 2003 which specifies offences to which section 327A of that Act applies. That section provides for the disclosure of information about relevant previous convictions of child sex offenders in specified circumstances.
375. *Paragraphs 71 to 73* amend Chapter 3 of Part 2 of SOCPA as a consequence of the abolition of FROs by section 50.
376. *Paragraphs 76 to 82* make consequential amendments to the 2007 Act arising from the provisions in sections 46 to 50.
377. *Paragraph 76* makes an amendment to section 9 of the 2007 Act consequential upon section 49. Section 9 of the 2007 Act provides a safeguard where the making, variation or discharge of an SCPO 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. Section 9 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. The amendment made to section 9(4) by this paragraph extends that right to make representations where the Crown Court is considering an application (under new section 22E) to extend the duration of an SCPO pending the outcome of criminal proceedings where the subject of an order has been charged with a serious offence or an offence of breach of an SCPO.
378. *Paragraphs 77 to 80* amend sections 16, 19, 21 and 36 of the 2007 Act to take account of new section 22E, inserted by section 49, which disapplies in the circumstances specified in that new section the five year limit on the duration of an SCPO or on a provision in an SCPO.
379. *Paragraphs 81 and 82* make consequential amendments to the 2007 Act arising from section 45. *Paragraph 81(3)* adds the new participation offence as provided for in section 45 to the list of serious offences in Part 1 of Schedule 1 to the 2007 Act; this is the list of trigger offences for an SCPO in England and Wales. *Paragraph 82* adds the new participation offence to the "listed offences" in Part 2 of Schedule 3 to the 2007 Act; a person cannot be guilty of encouraging or assisting an offence under section 45 or 46 of that Act believing that one of the offences listed in Schedule 3 will happen.
380. *Paragraphs 83 to 85* make consequential amendments to Part 4 of the 2009 Act arising from section 51 to reflect the extension of gang injunctions to cover drug-dealing activity as well as gang-related violence. *Paragraph 86* makes a consequential repeal of section 34 of the Crime and Security Act 2010 which is now spent; that section amended section 34 of the 2009 Act so as to lower the minimum age for a gang injunction from 18 to 14 years.
381. *Paragraphs 87(2) and 88* amend Parts 1 and 3 of Schedule 1 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 to provide for legal aid to be made available for civil legal services, including certain advocacy services, provided in relation to FGM protection orders (as provided for in section 73).

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

382. *Paragraph 87(3) and (4)* makes consequential amendments to paragraph 38 of Schedule 1 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 which relates to the provision of civil legal aid in relation to gang injunctions.
383. *Paragraph 89* repeals consequential amendments made by the Prevention of Social Housing Fraud Act 2013 to sections 13 and 55 of POCA which are now spent as a result of the amendments to those sections by section 6 and paragraph 33 of Schedule 4.