



**Northern Ireland Assembly**

**Committee for Justice**

**Report on the Legislative Consent Motion – Home Office Serious  
Crime Bill [HL] 2014/15**

## Introduction

### 1. Powers;

The Committee for Justice is a Statutory Departmental Committee established in accordance with paragraphs 8 and 9 of the Belfast Agreement and section 29 of the Northern Ireland Act 1998. Under Standing Order 46 the Committee has power to:

- Consider and advise on Departmental budgets and annual plans in the context of the overall budget allocation;
- Consider relevant secondary legislation and take the Committee stage of primary legislation;
- Call for persons and papers;
- Initiate inquiries and make reports; and
- Consider and advise on any matters brought to the Committee by the Minister for Justice

## Background to the Bill

2. The Serious Crime Bill ('the Bill') was introduced in the House of Lords (HoL) on 5 June 2014 and the associated Legislative Consent Memorandum was laid before the Northern Ireland Assembly by the Minister of Justice under Standing Order 42A(2). The Bill has now completed passage through all HoL stages. The House of Commons (HoC) first reading stage took place on 6 November 2014 and the second HoC stage is due to be scheduled.
3. Organised Crime costs the United Kingdom at least £24 billion each year and as of December 2013 there were some 36,000 organised criminals in 5,300 groups operating in ways that directly affect the UK. The provisions of the Bill aim to combat these issues and are realised in the following six parts:

**Part 1** - makes provision in respect of the recovery of property derived from the proceeds of crime.

**Part 2** - makes amendments to the Computer Misuse Act 1990 to update the existing offences to cover importing tools for cyber-crime.

**Part 3** - principally provides for a new offence of participation in the activities of an organised crime group.

**Part 4** - provides for the seizure and forfeiture of substances used as drug-cutting agents.

**Part 5** - amends the criminal law in relation to the offences of child cruelty and female genital mutilation and provides for a new offence of possession of "paedophile manuals" for grooming children.

**Part 6** - provides for, or extends, extra-territorial jurisdiction in respect of the offences in sections 5 (preparation of terrorist acts) and 6 (training for terrorism) of the Terrorism Act 2006 and confers Parliamentary approval (as required by section 8 of the European Union

Act 2011) for two draft Council Decisions under Article 352 of the Treaty on the Functioning of the European Union ("TFEU").

## Purpose of the Legislation

4. The principal objective of the Bill is to ensure that law enforcement agencies have effective legal powers to deal with the threat from serious and organised crime.
5. Ultimately the proposed LCM will allow the Serious Crime Bill to encompass four particular areas which have been devolved to Northern Ireland (as amended and carried from the Third reading stage at the House of Lords);
  - a) **Proceeds of crime legislation** – the proposals do not provide for fundamental change but rather a tightening of aspects of the current system, particularly in regards to closing gaps within the Proceeds of Crime Act 2002 so that it operates as originally intended. The Department indicates that extension to Northern Ireland would ensure consistency in the operation of this complex legislation (chapters 3 and 4 of the Bill).
  - b) **Serious Crime Prevention Orders** – provides for consolidating the Financial Reporting Order within the Serious Crime Prevention Order (SCPO) and increasing the penalty for failure to comply; extending the time limit of a SCPO; and extending the SCPO range of serious offences (clauses 45-49 of the Bill).
  - c) **Female genital mutilation** – a number of additional and new offences have been created as part of a general move to try to address this crime across the United Kingdom (clauses 67-70 of the Bill).
  - d) **Paedophile manuals** – this new offence aims to criminalise the possession of material containing practical advice on how to commit a sexual offence against a child (clause 66 of the Bill).

## Committee Consideration

6. The Committee for Justice considered a written submission from the Department of Justice on 2 July 2014 and noted the approach proposed by the Minister for Justice to seek a LCM for the devolved aspects of the Bill (at appendix 4). It has been noted that since then some additional amendments have been introduced regarding asset recovery and offences relating to female genital mutilation. However such developments regarding existing clauses were considered minor and non-contentious.
7. The Committee considered the Legislative Consent Motion at its meeting on 19 November 2014 and agreed that it was content to support the Legislative Consent Motion.

## The Legislative Consent Motion

8. The LCM was laid in the Assembly on Monday 10 November. The draft motion, which will be tabled by the Minister of Justice, is:

*“That this Assembly endorses the principle of the extension to Northern Ireland of the provisions of the Serious Crime Bill, as introduced in the House of Commons on 6 November, dealing with: the Proceeds of Crime as contained in Chapters 3 and 4 of Part 1 of the Bill; proposed changes to the Serious Crime Act 2007 as contained in clauses 45-49; the possession of a paedophile manual in clause 66; and female genital mutilation in clauses 67-70; and agrees that the Westminster Parliament should consider amendments to the Bill to make explicit in statute common law safeguards (R v Waya [2012] UKSC 51) in relation to the exercise of confiscation order powers under the Proceeds of Crime Act 2002.”*

9. The Legislative Consent Memorandum provided a number of reasons for utilising a LCM instead of an Act of the Assembly:
- Cross-Jurisdictional - The crimes being addressed by the Bill are those which cross jurisdictions and therefore are best tackled in a consistent fashion across the United Kingdom. Paedophilia can be a similarly cross-jurisdictional crime. The proposals to tackle female genital mutilation (FGM) follow United Kingdom commitments given at the Girl Summit in July of this year and will ensure continuing consistency of approach.
  - Timing factors - The nature of the provisions is such that it would be important for judicial and law enforcement consistency that they should come into force as early as possible and at the same time. Given the current demands on the Assembly's legislative programme, the earliest an Assembly Bill could be introduced to achieve the same ends would be 2016.
  - Procedural advantages - There would be considerable complications in managing the combination of reserved and devolved measures in legislating at both Westminster and in the Assembly on the same general subject.

## Appendices

### 10. Appendix 1 - Copy of the Legislative Consent Motion

Appendix 2 - The Serious Crime Bill 2014/2015 as brought from the House of Lords Third reading

Appendix 3 - The Explanatory Notes as brought from the House of Lords on 6 November 2014

Appendix 4 - Copy of the briefing papers as provided by the Department of Justice (correspondence dated 25 June 2014 and considered at the Committee meeting held on 2 July 2014)

# LEGISLATIVE CONSENT MEMORANDUM

## SERIOUS CRIME BILL

### Draft legislative Consent Motion

1. The draft motion, which will be tabled by the Minister of Justice is:

*“That this Assembly endorses the principle of the extension to Northern Ireland of the provisions of the Serious Crime Bill, as amended at Third Reading in the House of Lords, dealing with: the Proceeds of Crime as contained in Chapters 3 and 4 of Part 1 of the Bill; proposed changes to the Serious Crime Act 2007 as contained in clauses 45-49; the possession of a paedophile manual in clause 66; and female genital mutilation in clauses 67-70.”*

### Background

2. This memorandum has been laid before the Assembly by the Minister of Justice under Standing Order 42A(2). The Serious Crime Bill (‘the Bill’) was introduced in the House of Lords on 5 June 2014. The latest version of the Bill can be found at:

<http://services.parliament.uk/bills/2014-15/seriouscrime.html>

### Summary of the Bill and its policy objectives

3. The principal objective of the Serious Crime Bill is to ensure that law enforcement agencies have effective legal powers to deal with the threat from serious and organised crime.

4. The Bill is in six Parts:

Part 1 makes provision in respect of the recovery of property derived from the proceeds of crime.

Part 2 makes amendments to the Computer Misuse Act 1990 to update the existing offences to cover importing tools for cyber crime (such as data programmes designed for unlawfully accessing a computer system).

Part 3 principally provides for a new offence of participation in the activities of an organised crime group.

Part 4 provides for the seizure and forfeiture of substances used as drug-cutting agents.

Part 5 amends the criminal law in relation to the offences of child cruelty and female genital mutilation (FGM) and provides for a new offence of possession of "paedophile manuals" for grooming children.

Part 6 provides for, or extends, extra-territorial jurisdiction in respect of the offences in sections 5 (preparation of terrorist acts) and 6 (training for terrorism) of the Terrorism Act 2006 and confers Parliamentary approval (as required by section 8 of the European Union Act 2011) for two draft Council Decisions under Article 352 of the Treaty on the Functioning of the European Union ("TFEU").

5. The Bill's proposals cover a range of areas with varying degrees of impact on Northern Ireland. A number of aspects are in the non-devolved arena and therefore do not require a Legislative Consent Motion, for example the amendments to the Computer Misuse Act 1990 and the amendments to the Terrorism Act 2006. There are, however, other proposals impacting on devolved areas which, if they are to continue to extend to Northern Ireland, will require the agreement of the Assembly to an appropriate Legislative Consent Motion.

### **Provisions which deal with a Devolution Matter and reasons for making the Provisions**

6. The devolved areas for which legislative consent is sought for Westminster to legislate on our behalf are:

- a) **Proceeds of crime legislation** – these proposals are not a fundamental change but rather a tightening of aspects of the current system so that it operates as originally intended. Extension to Northern Ireland would ensure consistency, as far as possible, in the operation of this complex legislation.
- b) **Serious Crime Prevention Orders** - Consolidating the Financial Reporting Order within the Serious Crime Prevention Order (SCPO) and increasing

the penalty for failure to comply; extending the time limit of a SCPO; and extending the SCPO range of serious offences.

- c) **Female genital mutilation** – a number of additional and new offences as part of a general move to try to address this crime across the United Kingdom.
- d) **Paedophile manuals** – this new offence aims to criminalise the possession of material containing practical advice on how to commit a sexual offence against a child.

These provisions are detailed in Annex A along with the reasons why they should be extended. For information the non-devolved areas of the Bill are detailed at Annex B.

### **Reasons for utilizing the Bill rather than an Act of the Assembly**

7. It is considered to be of significant benefit to have a number of the provisions enacted here without delay by means of this Bill based on a number of factors:

- a) First the crimes being addressed by the Bill are those which cross jurisdictions and therefore are best tackled in a consistent fashion across the United Kingdom. Organised crime knows no boundaries and matters such as drugs crime can only be addressed in a combined way. Paedophilia can be a similarly cross-jurisdictional crime. The proposals to tackle female genital mutilation (FGM) follow United Kingdom commitments given at the Girl Summit in July of this year and will ensure continuing consistency of approach.
- b) Secondly, and alongside those policy reasons, are timing factors. The nature of the provisions is such that it would be important for judicial and law enforcement consistency that they should come into force as early as possible and at the same time. Given the current demands on the Assembly's legislative programme, the earliest an Assembly Bill could be introduced to achieve the same ends would be 2016. It would therefore be to our great advantage if we were to bring forward these provisions in the timeliest fashion.
- c) Thirdly, there are procedural advantages. There would be considerable complications in managing the combination of reserved and devolved

measures in legislating at both Westminster and in the Assembly on the same general subject.

8. It is therefore suggested that the most appropriate approach is to request legislative consent from the Assembly for Westminster to legislate on our behalf in relation to the specific provisions of the Bill as set out in the attached Annex A.

### **Provisions not proposed for extension to Northern Ireland.**

9. There are a number of provisions which it is not proposed to extend to Northern Ireland. These include provisions which are building on legislation which currently exists in England and Wales but which does not exist locally and a number of less pressing matters which, if they were to be considered for Northern Ireland, would benefit from public consultation.

### **Consultation**

10. The Department of Justice carried out a consultation across the justice sector on the proposals related to asset recovery. The response was supportive. The Department also consulted with, and has support of, the Department of Finance and Personnel on proposals related to FGM. There was no consultation on the SCPO measures as they are minor in nature. In respect of Paedophile manuals both the Public Prosecution Service and PSNI were consulted and were supportive.

### **Human Rights and Equality**

11. The proposals are considered to be compliant with section 24 of the Northern Ireland Act 1998, including EU Law and Convention Rights as defined in the Human Rights Act 1998. An equality screening exercise was carried out and the proposals were not considered to require an equality impact assessment.

### **Financial Implications**

12. These are not significant and can be met from current budgets. It is expected that the POCA proposals will lead to an increase in assets recovery income which would offset any increased costs.

### **Summary of Regulatory Impact**



13. No regulatory impact

### **Engagement to date with the Committee for Justice**

14. The Justice Committee considered a written submission on the issue on 2 July and made no comment. Some additional amendments regarding asset recovery and female genital mutilation have been introduced since that time. The further amendments regarding asset recovery are minor developments of existing clauses and the further offences relating to female genital mutilation are considered to be non-contentious. The changes are clearly marked in bold font in the attached Annex A. They will be drawn to the Committee's attention as being additional when it is considering the LCM.

### **Conclusion**

15. The view of the Minister for Justice is that, in the interests of appropriate process and clear legislation, the Assembly should support the terms of the draft legislative consent motion as set out in paragraph 1 of this memorandum.

**Department of Justice**  
**10 November 2014**

## **Annex A**

### **Provisions which deal with a Devolution Matter and reasons for making the Provisions**

(Provisions in bold font are additional to those brought to the attention of the Committee for Justice in the Department's submission of 2 July 2014.)

#### **Additional provision in respect of the recovery of property derived from the proceeds of crime**

1. Asset recovery across the United Kingdom is legislated for through the Proceeds of Crime Act 2002 (POCA). While the geographic extent of the Act varies, with some clauses extending across the United Kingdom and others having limited jurisdiction, there is, at present, a high degree of parity across the United Kingdom in relation to asset recovery legislation. This parity is important in terms of the operation of what is complicated legislation, and because of the practicalities of dealing with cases which span jurisdictions or where an organisation spans jurisdictions.

2. POCA is under sustained legal challenge from criminals who are constantly seeking new ways to avoid its reach and frustrate asset recovery. A number of proposals have been developed to strengthen the legislation by, amongst other things, ensuring that criminal assets cannot be hidden with spouses, associates or other third parties; substantially strengthening the prison sentences for failing to pay confiscation orders; enabling assets to be frozen more quickly and earlier in investigations; significantly reducing the time that the courts can give offenders to pay confiscation orders; and extending the investigative powers in POCA so that they are available to trace assets once a confiscation order is made. The provisions in Part 1 of the Bill give effect to these. They also implement two recommendations on asset recovery made by the Joint Committee on the Draft Modern Slavery Bill in its April 2014 report on the draft Bill. Specifically, the Joint Committee recommended that the test for obtaining a restraint order be amended to make it less stringent (it is also proposed to make this amendment for search and seizure powers); and indicated that it would welcome stronger sanctions for non-payment of confiscation orders.

### **3. Proposed changes regarding confiscation arrangements in POCA Part 4 for Northern Ireland**

- Ensuring that criminal assets cannot be hidden with spouses, associates or other third parties.

- **Empowering the court to order a third party to provide any information the court needs to enable it to make such a determination.**
- Enabling Magistrates' Courts to order payment of funds held in a bank account that are subject to a determination by the court, towards the satisfaction of a confiscation order. This will enable funds held in a bank account to be confiscated rapidly where the account is not held in the sole name of the defendant. Any third parties affected would have the opportunity to make representations before such a determination is made. As mentioned above, the Bill already includes provisions designed to ensure that criminal assets cannot be hidden with spouses, associates or other third parties – this amendment is to allow their full utilisation.
- Reducing the maximum time to pay confiscation orders: to “immediately” in some instances; and reducing 12 to 6 months as the maximum in others.
- Providing the court with a new power to make such an order as it considers appropriate to ensure that a confiscation order is effective. The aim is to enable the court to impose, for instance, a travel ban where there is an unpaid confiscation order.
- Providing for a right of appeal to the Court of Appeal by the prosecutor against a decision by the Crown Court not to make a compliance order, or by the prosecutor or person affected by a compliance order against the decision to make a compliance order.
- **A right of appeal against a decision of the Crown Court to vary or discharge a compliance order.**
- Enabling an application to the court to write off unpaid confiscation orders where the defendant is deceased and it is not reasonable to try to recover the amount due under the order from the defendant's estate.
- Giving the prosecutor the power to apply to the court to vary orders down where the available amount is identified as insufficient to satisfy the order. These new powers to write off orders would extend to allow confiscation orders made not just under POCA, but also under the Criminal Justice Act 1988 (c. 33) and the Drug Trafficking Act 1994 (c. 37) to be written off.
- Enabling absconders convicted in their absence to be subject to confiscation orders.
- Strengthening maximum terms of imprisonment for failure to pay confiscation orders (from 5 to 7 years for orders of £500,000 - £1m and; from 10 to 14 years for orders above £1m).
- Taking a regulation-making power (subject to affirmative resolution) to provide for minimum default sentences in each band and otherwise modify the level of default sentences.
- Enabling assets to be restrained more quickly and earlier in investigations by lowering the test for grant of a restraint order at pre-arrest stage from

“reasonable cause to believe” to “reasonable grounds to suspect” that the person has benefited from criminal conduct.

- **POCA provides for search and seizure powers to prevent the dissipation of realisable property that may be used to satisfy a confiscation order. These powers are subject to the same test as for the making of a restraint order, namely that there is reasonable cause to believe that the person has benefited from conduct constituting the offence. This will therefore be brought into line with the change to restraint orders ie. by lowering the test for the grant of a restraint order from the court having “reasonable cause to believe that the alleged offender has benefited from his criminal conduct” to the court having “reasonable grounds to suspect that the alleged offender has benefited from his criminal conduct”.**
- Enabling restraint orders to be maintained in the event of a re-trial.
- Removing the necessity for a restraint order to be in place before magistrates’ courts can issue an order to a bank to pay over funds to satisfy a confiscation order.
- Defining ‘senior officer’ for NCA officers using search and seizure powers as at present there is no such definition. (This was an omission from the Crime and Courts Bill).

#### **4. Proposed changes to POCA part 8 - Investigations**

- Extending investigative powers so they are available to trace assets once a confiscation order is made. Currently the powers are only available to use in identifying the amount or its whereabouts – not for assisting in the enforcement of the confiscation order.

#### **5. Proposed changes to POCA part 11 – Co-operation**

- Adding pecuniary advantage to the aspects that can be covered in external orders (orders made by an overseas court regarding property linked to criminal activity and its recovery). This is a gap at present and the change would enable the United Kingdom to assist overseas authorities in cases where the criminal benefit is pecuniary advantage, as opposed to property. The intention is to improve assistance to other countries.

#### **6. Proposed changes to the Serious Organised Crime and Police Act 2005**

- The proposal is to remove the current £10,000 upper limit to enable any Magistrates’ Courts to make a confiscation order in a case where the conviction

is in that court. (The removal of the bar will be by secondary legislation but the power to make this legislation must first be amended in primary legislation as the Serious Organised Crime and Police Act 2005 currently limits the order making power to “under £10,000”.)

*(While Northern Ireland has an order making power allowing it to give Magistrates’ Courts the power to make confiscation orders, an Order has never been made. This proposal will amend the order making power so that any Order could specify a limit on the powers rather than be limited to £10,000.)*

## **7. Proposed changes to Part 1 of the Serious Crime Act - Reform of Serious Crime Prevention Orders (SCPOs)**

- Consolidating the Financial Reporting Order (FRO) within the SCPO, the effect being to streamline civil orders. The penalty for failure to comply would also be increased from one to five years.

FROs enable the court to require a person, who has been convicted of certain offences, to make reports to law enforcement agencies regarding their financial affairs. This can only happen where the court is satisfied that the risk of the defendant committing another such offence is "sufficiently high" so as to justify the making of an order. 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.

The Home Office notes that as at 31st March 2014, 119 FROs had been obtained. This is substantially less than the original expectation of some 1,500 a year and a number of deficiencies have been identified in the process. In particular, a 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.

- Extending the time limit of a SCPO beyond the current five year period by up to a further five years for breach of the original order or conviction of another serious crime.
- Extending the SCPO range of serious offences to include further firearms and computer misuse offences and cultivation of a cannabis plant.

Schedule 1 to the 2007 Act lists the serious offences which can trigger the making of a SCPO. *Subsections (1) to (4)* of this clause 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) to Part 1 of Schedule 1 (which relates to England and Wales) to that Act. *Subsections (5) to (8)* adds the equivalent offences to Part 2 of Schedule 1 to the 2007 Act (which relates to Northern Ireland).

## **Amendment to the criminal law in relation to the offence of female genital mutilation and to provide for a new offence of possession of "paedophile manuals"**

### **8. Offence of possession of a paedophile manual**

- A new offence of possession of a paedophile manual. The associated Schedule 3 relates to offences of possession of such prohibited items outside the United Kingdom by domestic internet service providers.

The provision aims to protect children by taking this step to address concerns about material designed to instruct paedophiles on how to groom and abuse potential victims.

The provision will ban the simple possession of material containing practical advice on how to commit a sexual offence against children – a provision which is not specifically covered in the present law. Although it may fall within other more general offences such as the current law on encouraging and assisting the commission of offences a more specific offence is felt necessary.

The type of material this would involve has been described by the Ministry of Justice as being highly detailed and intrusive in content – providing advice on how to entrap or groom a child, where to find a child, family involvement, and how to offend and escape capture. It also includes detailed pseudo-scientific advice, endorsing paedophilia as harmless and an “experience” to be enjoyed by victims.

#### *Extension to Northern Ireland*

There is already a well-developed legislative framework in Northern Ireland, and across the United Kingdom, around safeguarding and protecting children from sexual crime, but the Department recognises that it needs to respond to new developments. In this case, the Westminster Government has looked at how best to tackle paedophile material and has brought forward these proposals which we believe should extend to Northern Ireland. Both the

PSNI and PPS have been consulted on the proposals and would welcome extension of the provision to Northern Ireland, despite the fact that they have little evidence of such offences being committed here at present.

Children, as one of the most vulnerable groups in our society must be protected from such crimes, and the Department is keen to ensure that they are afforded the same level of protection, and at the same time, as their England and Wales counterparts.

## 9. Offence of female genital mutilation

- The Bill proposes:
  - a) an amendment to the Female Genital Mutilation Act 2003. The proposal is to extend extra-territorial jurisdiction for offences committed outside the United Kingdom to include people habitually resident in the United Kingdom, whether as a perpetrator or as a victim.

Currently, extra-territorial jurisdiction applies only to UK nationals or someone permanently resident in the United Kingdom. Permanent residence is a narrowly-defined term that does not include, for example, anyone living in the United Kingdom in breach of immigration laws, or subject to a restriction on the duration of their residence in the United Kingdom.

The amendment will replace permanent residence with habitual residence, which allows for more effective prosecution of a wider range of perpetrators, and more effective protection of potential victims. Offences under the Act will continue to apply to United Kingdom nationals.

**b) Granting victims of FGM lifelong anonymity from the time an allegation is made. The Prime Minister announced this at the Girl Summit in July this year as a means to encourage victims to report FGM to the authorities. Anonymity could be lifted by the Court or with the victim's consent. An offence would be triable summarily and attract a fine.**

**c) A new offence so that parents can be prosecuted if they fail to prevent their daughter being subject to FGM. Those with parental responsibility would have committed an offence if they knew or ought to have known that there was a significant risk of FGM and did not take reasonable**

steps to prevent it happening. The offence would be triable either way and conviction on indictment would be up to seven years imprisonment, an unlimited fine or both.

d) A new FGM Protection Order. The proposed new FGM Protection Order would be available to courts and designed to protect girls from FGM offences. It will be designed to secure the health, safety and well-being of the girl to be protected and can contain prohibitions, restrictions or requirements that the court considers appropriate which could include surrendering a passport or travel document. Breach of such an order could attract up to five years imprisonment on indictment or 12 months summarily. Powers of arrest and remand will also be available.



**Reserved/excepted areas which will automatically apply to Northern Ireland**

**Amendments to the Computer Misuse Act 1990**

**Proposed amendments to the Computer Misuse Act 1990, which applies in all parts of the United Kingdom.**

- The amendments will ensure compliance with the EU Directive on attacks against information systems by updating offences in the Computer Misuse Act 1990 to cover importing tools for cyber crime, such as data programmes designed for unlawfully accessing a computer system.

The Bill also proposes a new aggravated offence of impairing a computer in a way that causes, or has the potential to cause, serious damage of a material kind. Examples of serious damage of a material kind would include damage to human welfare, the environment, the economy or national security. A maximum sentence of life imprisonment may be given for actions presenting a threat to life, loss of life or damage to national security. Regarding damage to the economy or the environment, a maximum 14 year sentence may be imposed.

- *Comment - these amendments will apply across the United Kingdom. The subject matter deals primarily with internet services, which is a reserved matter. Part 2 of the Bill does not, therefore, require legislative consent, on Northern Ireland legislation.*

**Seizure and forfeiture of substances used as drug-cutting agents**

**Drug cutting agents - Misuse of Drugs Act**

- New powers to search for, seize and detain and destroy chemical substances that can be used as cutting agents for illegal drugs.

Certain chemical substances, some of which may also be used in the manufacture of medicinal products for human or veterinary use, can be used as cutting agents for bulking illegal drugs, thereby maximising criminal profit margins. The 'grey market' trade (that is, where it is unclear if there is an apparent legitimate end use) in these substances has become a significant element of the cocaine trade over the last five years. There are currently no laws or regulations that specifically target the domestic trade in cutting agents. This trade enables organised criminals to maximise their profits from the trade in illegal drugs and increases the risks posed to local communities.

*This would not involve an LCM or local legislation as this is a reserved matter which could be extended to Northern Ireland by Westminster. DHSSPS as policy leads in the area have been consulted on the proposals and are content.*

**Part 6 provides for or extends extra-territorial jurisdiction in respect of the offences in sections 5 (preparation of terrorist acts) and 6 (training for terrorism) of the Terrorism Act 2006 and confers parliamentary approval (as required by section 8 of the European Union Act 2011) for two draft Council Decisions under Article 352 of the Treaty on the Functioning of the European Union ("TFEU").**

*These are non-devolved matters.*

# Serious Crime Bill [HL]

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## EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Home Office, are published separately as Bill 116 – EN.

## EUROPEAN CONVENTION ON HUMAN RIGHTS

Secretary Theresa May has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Serious Crime Bill [HL] are compatible with the Convention rights.

# Serious Crime Bill [HL]

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- 67 Offence of female genital mutilation: extra-territorial acts
- 68 Anonymity for victims of female genital mutilation
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- 70 Female genital mutilation protection orders

**PART 6**

## MISCELLANEOUS AND GENERAL

*Miscellaneous*

- 71 Knives and offensive weapons in prisons
- 72 Preparation or training abroad for terrorism
- 73 Approval of draft decisions under Article 352 of TFEU relating to serious crime

*General*

- 74 Minor and consequential amendments
- 75 Transitional and saving provisions
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- 78 Short title

- 
- Schedule 1 – Amendments of Serious Crime Act 2007: Scotland
  - Schedule 2 – Execution of search and seizure warrants
  - Schedule 3 – Paedophile manuals: providers of information society services
  - Schedule 4 – Minor and consequential amendments

[NOTE: The words marked in bold type were inserted by the Lords to avoid questions of privilege.]

A  
**B I L L**

TO

Amend the Proceeds of Crime Act 2002, the Computer Misuse Act 1990, Part 4 of the Policing and Crime Act 2009, section 1 of the Children and Young Persons Act 1933, the Female Genital Mutilation Act 2003, the Prohibition of Female Genital Mutilation (Scotland) Act 2005 and the Terrorism Act 2006; to make provision about involvement in organised crime groups and about serious crime prevention orders; to make provision for the seizure and forfeiture of drug-cutting agents; to make it an offence to possess an item that contains advice or guidance about committing sexual offences against children; to make it an offence to possess a knife or offensive weapon inside a prison; to make provision approving for the purposes of section 8 of the European Union Act 2011 certain draft decisions under Article 352 of the Treaty on the Functioning of the European Union relating to serious crime; and for connected purposes.

**B**E IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

**PART 1**

PROCEEDS OF CRIME

**CHAPTER 1**

ENGLAND AND WALES

*Confiscation: assets held by defendant and other*

5

**1 Determination of extent of defendant’s interest in property**

After section 10 of the Proceeds of Crime Act 2002 insert—

**“10A Determination of extent of defendant’s interest in property**

(1) Where it appears to a court making a confiscation order that—



- (a) there is property held by the defendant that is likely to be realised or otherwise used to satisfy the order, and
  - (b) a person other than the defendant holds, or may hold, an interest in the property,

the court may, if it thinks it appropriate to do so, determine the extent (at the time the confiscation order is made) of the defendant's interest in the property. 5
- (2) The court must not exercise the power conferred by subsection (1) unless it gives to anyone who the court thinks is or may be a person holding an interest in the property a reasonable opportunity to make representations to it. 10
- (3) A determination under this section is conclusive in relation to any question as to the extent of the defendant's interest in the property that arises in connection with –
  - (a) the realisation of the property, or the transfer of an interest in the property, with a view to satisfying the confiscation order, or
  - (b) any action or proceedings taken for the purposes of any such realisation or transfer. 15
- (4) Subsection (3) –
  - (a) is subject to section 51(8B), and 20
  - (b) does not apply in relation to a question that arises in proceedings before the Court of Appeal or the Supreme Court.
- (5) In this Part, the “extent” of the defendant's interest in property means the proportion that the value of the defendant's interest in it bears to the value of the property itself.” 25

## 2 Provision of information

- (1) In section 16 of the Proceeds of Crime Act 2002 (statement of information), after subsection (6) insert –
  - “(6A) A statement of information (other than one to which subsection (6B) applies) must include any information known to the prosecutor which the prosecutor believes is or would be relevant for the purpose of enabling the court to decide –
    - (a) whether to make a determination under section 10A, or
    - (b) what determination to make (if the court decides to make one).
  - (6B) If the court has decided to make a determination under section 10A, a further statement of information under subsection (6)(b) must, if the court so orders, include specified information that is relevant to the determination.” 30
- (2) In section 18 of that Act (provision of information by defendant) –
  - (a) in subsection (2), after “functions” insert “(including functions under section 10A)”; 40
  - (b) in subsection (6)(b), for “deciding the available amount under section 9,” substitute “deciding –
    - (i) the available amount under section 9, or

- (ii) whether to make a determination under section 10A, or what determination to make (if the court decides to make one),”.

(3) After that section insert –

**“18A Provision of information as to defendant’s interest in property** 5

- (1) This section applies if the court –
  - (a) is considering whether to make a determination under section 10A of the extent of the defendant’s interest in any property, or
  - (b) is deciding what determination to make (if the court has decided to make a determination under that section). 10

In this section “interested person” means a person (other than the defendant) who the court thinks is or may be a person holding an interest in the property.
- (2) For the purpose of obtaining information to help it in carrying out its functions under section 10A the court may at any time order an interested person to give it information specified in the order. 15
- (3) An order under this section may require all or a specified part of the information to be given in a specified manner and before a specified date.
- (4) If an interested person fails without reasonable excuse to comply with an order under this section the court may draw such inference as it believes is appropriate. 20
- (5) Subsection (4) does not affect any power of the court to deal with the person in respect of a failure to comply with an order under this section.
- (6) If the prosecutor accepts to any extent an allegation made by an interested person – 25
  - (a) in giving information required by an order under this section, or
  - (b) in any other statement given to the court in relation to any matter relevant to a determination under section 10A, 30

the court may treat the acceptance as conclusive of the matters to which it relates.
- (7) For the purposes of this section an allegation may be accepted in a manner ordered by the court.
- (8) If the court makes an order under this section it may at any time vary it by making another one. 35
- (9) No information given by a person under this section is admissible in evidence in proceedings against that person for an offence.”

**3 Appeals**

- (1) In section 31 of the Proceeds of Crime Act 2002 (appeal to Court of Appeal), after subsection (3) insert – 40
  - “(4) An appeal lies to the Court of Appeal against a determination, under section 10A, of the extent of the defendant’s interest in property.

- (5) An appeal under subsection (4) lies at the instance of –
- (a) the prosecutor;
  - (b) a person who the Court of Appeal thinks is or may be a person holding an interest in the property, if subsection (6) or (7) applies. 5
- (6) This subsection applies if the person was not given a reasonable opportunity to make representations when the determination was made.
- (7) This subsection applies if it appears to the Court of Appeal to be arguable that giving effect to the determination would result in a serious risk of injustice to the person. 10
- (8) An appeal does not lie under subsection (4) where –
- (a) the Court of Appeal believes that an application under section 50 is to be made by the prosecutor for the appointment of a receiver, 15
  - (b) such an application has been made but has not yet been determined, or
  - (c) a receiver has been appointed under section 50.”
- (2) In section 32 of that Act (court’s powers on appeal), after subsection (2) insert –
- “(2A) On an appeal under section 31(4) the Court of Appeal may – 20
- (a) confirm the determination, or
  - (b) make such order as it believes is appropriate.”
- (3) In section 33 of that Act (appeal to Supreme Court) –
- (a) for subsection (2) substitute –
- “(2) An appeal under this section lies at the instance of – 25
- (a) the defendant or the prosecutor (except where paragraph (b) applies);
  - (b) if the proceedings in the Court of Appeal were proceedings on an appeal under section 31(4), any person who was a party to those proceedings.”; 30
- (b) after subsection (3) insert –
- “(3A) On an appeal under this section from a decision under section 32(2A) the Supreme Court may –
- (a) confirm the decision of the Court of Appeal, or
  - (b) make such order as it believes is appropriate.” 35

#### **4 Enforcement receivers**

In section 51 of the Proceeds of Crime Act 2002 (powers of receivers etc), after subsection (8A) insert –

- “(8B) Representations that a person is entitled to make by virtue of subsection (8) do not include representations that are inconsistent with a determination made under section 10A, unless – 40
- (a) the person was not given a reasonable opportunity to make representations when the determination was made and has not appealed against the determination, or

- (b) it appears to the court that there would be a serious risk of injustice to the person if the court was bound by the determination;  
and the determination does not bind the court if paragraph (a) or (b) applies.”

5

*Confiscation: other amendments*

**5 Time for payment**

- (1) For section 11 of the Proceeds of Crime Act 2002 substitute –

**“11 Time for payment**

- (1) Unless subsection (2) applies, the full amount ordered to be paid under a confiscation order must be paid on the day on which the order is made. 10
- (2) If the court making the confiscation order is satisfied that the defendant is unable to pay the full amount on that day, it may make an order requiring whatever cannot be paid on that day to be paid – 15
- (a) in a specified period, or
- (b) in specified periods each of which relates to a specified amount.
- (3) A specified period –
- (a) must start with the day on which the confiscation order is made, and 20
- (b) must not exceed three months.
- (4) If –
- (a) within any specified period the defendant applies to the Crown Court for that period to be extended, and
- (b) the court is satisfied that, despite having made all reasonable efforts, the defendant is unable to pay the amount to which the specified period relates within that period, 25
- the court may make an order extending the period (for all or any part or parts of the amount in question).
- (5) An extended period – 30
- (a) must start with the day on which the confiscation order is made, and
- (b) must not exceed six months.
- (6) An order under subsection (4) –
- (a) may be made after the end of the specified period to which it relates, but 35
- (b) must not be made after the end of the period of six months starting with the day on which the confiscation order is made.
- (7) Periods specified or extended under this section must be such that, where the court believes that a defendant will by a particular day be able – 40
- (a) to pay the amount remaining to be paid, or
- (b) to pay an amount towards what remains to be paid, that amount is required to be paid no later than that day.

- (8) The court must not make an order under subsection (2) or (4) unless it gives the prosecutor an opportunity to make representations.”
- (2) In section 12 of that Act (interest on unpaid sums), for subsection (3) substitute—
  - “(3) If— 5
    - (a) an application has been made under section 11(4) for a specified period to be extended,
    - (b) the application has not been determined by the court, and
    - (c) the period of six months starting with the day on which the confiscation order was made has not ended, 10

the amount on which interest is payable under this section does not include the amount to which the specified period relates.”
- (3) In section 87 of that Act (interpretation: confiscation orders), after subsection (1) insert—
  - “(1A) The “amount payable” under a confiscation order, where part of that amount has been paid, means the amount that remains to be paid.” 15

## **6 Confiscation and victim surcharge orders**

- (1) Section 13 of the Proceeds of Crime Act 2002 (effect of order on court’s other powers) is amended as follows.
- (2) In subsection (3), in paragraph (a), for the words from “an order under section 130” to the end substitute “a priority order”. 20
- (3) After subsection (3) insert—
  - “(3A) In this section “priority order” means any of the following—
    - (a) a compensation order under section 130 of the Sentencing Act;
    - (b) an order requiring payment of a surcharge under section 161A of the Criminal Justice Act 2003; 25
    - (c) an unlawful profit order under section 4 of the Prevention of Social Housing Fraud Act 2013.”
- (4) For subsection (5) substitute—
  - “(5) Subsection (6) applies if— 30
    - (a) the Crown Court makes both a confiscation order and one or more priority orders against the same person in the same proceedings, and
    - (b) the court believes the person will not have sufficient means to satisfy all those orders in full.” 35
- (5) In subsection (6), for “compensation or amount payable under the unlawful profit order (or both)” substitute “amount payable under the priority order (or orders)”.

## 7 Orders for securing compliance with confiscation order

After section 13 of the Proceeds of Crime Act 2002 insert –

### “13A Orders for securing compliance with confiscation order

- (1) This section applies where the court makes a confiscation order.
- (2) The court may make such order as it believes is appropriate for the purpose of ensuring that the confiscation order is effective (a “compliance order”). 5
- (3) The court must consider whether to make a compliance order –
  - (a) on the making of the confiscation order, and
  - (b) if it does not make a compliance order then, at any later time (while the confiscation order is still in effect) on the application of the prosecutor. 10
- (4) In considering whether to make a compliance order, the court must, in particular, consider whether any restriction or prohibition on the defendant’s travel outside the United Kingdom ought to be imposed for the purpose mentioned in subsection (2). 15
- (5) The court may discharge or vary a compliance order on an application made by –
  - (a) the prosecutor;
  - (b) any person affected by the order. 20

### 13B Appeals against orders under section 13A

- (1) If on an application under section 13A(3)(b) the Crown Court decides not to make a compliance order, the prosecutor may appeal to the Court of Appeal against the decision.
- (2) The following persons may appeal to the Court of Appeal in respect of the Crown Court’s decision to make, discharge or vary a compliance order – 25
  - (a) the prosecutor;
  - (b) any person affected by the order.
- (3) On an appeal under subsection (1) or (2) the Court of Appeal may – 30
  - (a) confirm the decision, or
  - (b) make such order as it believes is appropriate.
- (4) An appeal lies to the Supreme Court against a decision of the Court of Appeal under subsection (3).
- (5) An appeal under subsection (4) lies at the instance of any person who was a party to the proceedings before the Court of Appeal. 35
- (6) On an appeal under subsection (4) the Supreme Court may –
  - (a) confirm the decision of the Court of Appeal, or
  - (b) make such order as it believes is appropriate.
- (7) In this section “compliance order” means an order made under section 13A. 40

## 8 Variation or discharge

- (1) In section 23 of the Proceeds of Crime Act 2002 (inadequacy of available amount: variation of confiscation order), in subsection (1)(b), after “the defendant” insert “or the prosecutor”.
- (2) After section 25 of that Act insert – 5  

**“25A Recovery from estate of deceased defendant impractical: discharge of order**

  - (1) This section applies if –  
    - (a) a court has made a confiscation order,
    - (b) the defendant dies while the order is not satisfied, and 10
    - (c) the designated officer for a magistrates’ court applies to the Crown Court for the discharge of the order.
  - (2) The court may discharge the order if it appears to the court that –  
    - (a) it is not possible to recover anything from the estate of the deceased for the purpose of satisfying the order to any extent, or 15
    - (b) it would not be reasonable to make any attempt, or further attempt, to recover anything from the estate of the deceased for that purpose.”
- (3) Section 25A of that Act (inserted by subsection (2) above) applies to –  
  - (a) a confiscation order made under Part 6 of the Criminal Justice Act 1988, 20  
or
  - (b) a confiscation order made under the Drug Trafficking Act 1994,  
as it applies to a confiscation order made under the Proceeds of Crime Act 2002.

## 9 Absconding defendants

- (1) In section 27 of the Proceeds of Crime Act 2002 (absconding defendant convicted or committed), for subsection (2) substitute – 25  

“(2) The first condition is that a defendant falls within any of the following paragraphs –

  - (a) he absconds and, either before or after doing so, he is convicted of an offence or offences in proceedings before the Crown Court; 30
  - (b) he absconds after being committed to the Crown Court for sentence in respect of an offence or offences under section 3, 3A, 3B, 3C, 4, 4A or 6 of the Sentencing Act;
  - (c) he absconds after being committed to the Crown Court in respect of an offence or offences under section 70 below (committal with a view to a confiscation order being considered).” 35
- (2) For subsections (6) and (7) of that section substitute –  

“(6) Once the defendant ceases to be an absconder – 40

  - (a) section 19 has effect as if subsection (1) read –  

“(1) This section applies if –

    - (a) at a time when the first condition in section 27 was satisfied the court did not proceed under section 6,



- (b) before the end of the period of six years starting with the day when the defendant ceased to be an absconder, the prosecutor applies to the Crown Court to proceed under section 6, and
  - (c) the court believes it is appropriate for it to do so.”; 5
- (b) section 20 has effect as if subsection (4) read –
- “(4) The second condition is that –
- (a) before the end of the period of six years starting with the day when the defendant ceased to be an absconder, the prosecutor applies to the Crown Court to reconsider whether the defendant has benefited from his general or particular criminal conduct (as the case may be), and 10
  - (b) the court believes it is appropriate for it to do so.”;
- (c) section 21 has effect as if subsection (1) read – 15
- “(1) This section applies if –
- (a) a court has made a confiscation order,
  - (b) the prosecutor believes that if the court were to find the amount of the defendant’s benefit in pursuance of this section it would exceed the relevant amount, 20
  - (c) before the end of the period of six years starting with the day when the defendant ceased to be an absconder, the prosecutor applies to the Crown Court to proceed under this section, and
  - (d) the court believes it is appropriate for it to do so.”; 25
- (d) the modifications set out in subsection (5)(a) to (d) of this section do not apply to proceedings that take place by virtue of section 19, 20 or 21 (as applied by this subsection).”
- (3) In section 28 of that Act (absconding defendant neither convicted nor acquitted), in subsection (2)(c), for “two years” substitute “three months”. 30
- (4) For subsection (6) of that section substitute –
- “(6) Once the defendant has ceased to be an absconder –
- (a) section 21 has effect as if subsection (1) read –
  - “(1) This section applies if –
  - (a) a court has made a confiscation order, 35
    - (b) the prosecutor believes that if the court were to find the amount of the defendant’s benefit in pursuance of this section it would exceed the relevant amount,
    - (c) before the end of the period of six years starting with the day when the defendant ceased to be an absconder, the prosecutor applies to the Crown Court to proceed under this section, and 40
    - (d) the court believes it is appropriate for it to do so.”;
  - (b) the modifications set out in subsection (5)(a) to (d) of this section do not apply to proceedings that take place by virtue of section 21 (as applied by this subsection).” 45



## 10 Default sentences

- (1) In section 35 of the Proceeds of Crime Act 2002 (enforcement as fines), after subsection (2) insert—

“(2A) Where a court is fixing a term of imprisonment or detention under section 139(2) of the Sentencing Act (as applied by subsection (2) above) in respect of an amount ordered to be paid under a confiscation order, the maximum terms are those specified in the second column of the Table for amounts described in the corresponding entry in the first column.

5

TABLE

10

| <i>Amount</i>                                  | <i>Maximum term</i> |
|--|---------------------|
| £10,000 or less                                | 6 months            |
| More than £10,000 but no more than £500,000    | 5 years             |
| More than £500,000 but no more than £1 million | 7 years             |
| More than £1 million                           | 14 years            |

15

- (2B) In the application of subsection (9) of section 139 of the Sentencing Act by virtue of subsection (2) above, the reference to subsections (2) to (4) of that section is to be read as a reference to—

20

- (a) subsections (2) and (3) of that section, and
- (b) subsection (2A) above.

- (2C) The Secretary of State may by order —

- (a) amend subsection (2A) so as to provide for minimum terms of imprisonment or detention under section 139(2) of the Sentencing Act (as applied by subsection (2) above) in respect of amounts ordered to be paid under a confiscation order;

25

- (b) amend the Table in subsection (2A) so as to remove, alter or replace any entry (including an entry inserted by virtue of the power in paragraph (a) of this subsection) or to add any entry.”

30

- (2) In section 459(6)(a) of that Act (orders subject to affirmative resolution procedure), after “section” insert “35(2C),”.

- (3) In section 258 of the Criminal Justice Act 2003 (early release of fine defaulters etc), after subsection (2A) insert—

“(2B) Subsection (2) does not apply to a person within subsection (1)(a) if the sum in question is a sum of more than £10 million ordered to be paid under a confiscation order made under Part 2 of the Proceeds of Crime Act 2002.

35

- (2C) The Secretary of State may by order amend the amount for the time being specified in subsection (2B).”

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- (4) In section 330(5) of that Act (orders subject to affirmative resolution procedure), at the appropriate place in the list of provisions in paragraph (a) insert “section 258(2C),”.

## 11 Conditions for exercise of restraint order powers

- (1) In section 40 of the Proceeds of Crime Act 2002 (conditions for exercise of powers), in subsection (2)(b), for “is reasonable cause to believe” substitute “are reasonable grounds to suspect”.
- (2) In section 41 of that Act (restraint orders), after subsection (7) insert – 5
  - “(7A) Subsections (7B) and (7C) apply where the Crown Court makes a restraint order (by virtue of the first condition in section 40) as a result of a criminal investigation having been started in England and Wales with regard to an offence.
  - (7B) The court – 10
    - (a) must include in the order a requirement for the applicant for the order to report to the court on the progress of the investigation at such times and in such manner as the order may specify (a “reporting requirement”), and
    - (b) must discharge the order if proceedings for the offence are not started within a reasonable time (and this duty applies whether or not an application to discharge the order is made under section 42(3)). 15
  - (7C) The duty under subsection (7B)(a) does not apply if the court decides that, in the circumstances of the case, a reporting requirement should not be imposed, but the court – 20
    - (a) must give reasons for its decision, and
    - (b) may at any time vary the order so as to include a reporting requirement (and this power applies whether or not an application to vary the order is made under section 42(3)).” 25

## 12 Continuation of restraint order after quashed conviction

In section 42 of the Proceeds of Crime Act 2002 (application, discharge and variation of restraint orders), after subsection (6) insert –

- “(6A) The duty in subsection (6) to discharge a restraint order on the conclusion of proceedings does not apply where – 30
  - (a) the proceedings are concluded by reason of a defendant’s conviction for an offence being quashed,
  - (b) the order is in force at the time when the conviction is quashed, and
  - (c) the Court of Appeal has ordered the defendant to be retried for the offence or the prosecutor has applied for such an order to be made. 35
- (6B) But the court must discharge the restraint order –
  - (a) if the Court of Appeal declines to make an order for the defendant to be retried, 40
  - (b) if the Court of Appeal orders the defendant to be retried but proceedings for the retrial are not started within a reasonable time, or
  - (c) otherwise, on the conclusion of proceedings for the retrial of the defendant.” 45

### 13 Conditions for exercise of search and seizure powers

- (1) In section 47B of the Proceeds of Crime Act 2002 (conditions for exercise of powers), in subsection (2)(d), for “is reasonable cause to believe” substitute “are reasonable grounds to suspect”.
- (2) In section 47G of that Act (“appropriate approval”), before paragraph (b) of subsection (3) insert –
  - “(ab) in relation to the exercise of a power by a National Crime Agency officer, the Director General of the National Crime Agency or any other National Crime Agency officer authorised by the Director General (whether generally or specifically) for this purpose,”.

### 14 Seized money etc

- (1) In section 67 of the Proceeds of Crime Act 2002 (seized money), for subsections (4) and (5) substitute –
  - “(5) If –
    - (a) a confiscation order is made against a person holding money to which this section applies, and
    - (b) a receiver has not been appointed under section 50 in relation to the money,
 a magistrates’ court may order the bank or building society to pay the money to the designated officer for the court on account of the amount payable under the confiscation order.”
- (2) After subsection (5) of that section insert –
  - “(5A) A person applying for an order under subsection (5) must give notice of the application to the bank or building society with which the account is held.
  - (5B) In the case of money held in an account not maintained by the person against whom the confiscation order is made, a magistrates’ court –
    - (a) may make an order under subsection (5) only if the extent of the person’s interest in the money has been determined under section 10A, and
    - (b) must have regard to that determination in deciding what is the appropriate order to make.”
- (3) After subsection (7) of that section insert –
  - “(7A) The Secretary of State may by order amend this section so that it applies not only to money held in an account maintained with a bank or building society but also to –
    - (a) money held in an account maintained with a financial institution of a specified kind, or
    - (b) money that is represented by, or may be obtained from, a financial instrument or product of a specified kind.
  - (7B) An order under subsection (7A) may amend this section so that it makes provision about realising an instrument or product within subsection (7A)(b) or otherwise obtaining money from it.”
- (4) In section 67A of that Act (seized personal property), for subsections (2) and (3)

substitute—

- “(3) If—
- (a) a confiscation order is made against the person by whom the property is held, and
  - (b) a receiver has not been appointed under section 50 in relation to the property,
- a magistrates’ court may by order authorise an appropriate officer to realise the property.”
- (5) In section 459(6)(a) of that Act (orders subject to affirmative resolution procedure), before “75(7) or (8)” insert “67(7A),”.

## CHAPTER 2

### SCOTLAND

#### *Confiscation*

## 15 Restitution order and victim surcharge

- (1) In section 97 of the Proceeds of Crime Act 2002 (effect of order on court’s other powers), in subsection (3)(a), at the end insert “, a restitution order or a victim surcharge under section 253F(2) of the Procedure Act”.
- (2) After that section insert—
- “97A Application of receipts: restitution order and victim surcharge**
- (1) Subsection (2) applies if—
- (a) a court makes a confiscation order and a relevant order against the same person in the same proceedings, and
  - (b) the court believes that the person will not have sufficient means to satisfy both orders in full.
- (2) In such a case the court must direct that so much of the amount payable under the relevant order as it specifies is to be paid out of any sums recovered under the confiscation order.
- (3) Subsection (4) applies if—
- (a) a court makes a confiscation order, a compensation order under section 249 of the Procedure Act and a relevant order against the same person in the same proceedings, and
  - (b) the court believes that the person will not have sufficient means to satisfy all the orders in full.
- (4) In such a case the court must direct that so much of the compensation, and so much of the amount payable under the relevant order, as it specifies is to be paid out of any sums recovered under the confiscation order.
- (5) The amount a court specifies under subsection (2) or (4) must be the amount the court believes will not be recoverable because of the insufficiency of the person’s means.

- (6) Where the amount a court specifies in a direction under subsection (4) is sufficient to satisfy in full the compensation, the direction must provide for the compensation to be so satisfied before payment of the amount payable under the relevant order.
- (7) Where the amount a court specifies in a direction under subsection (4) is not sufficient to satisfy in full the compensation, the direction must provide for the compensation to be satisfied to the extent of the amount specified in the direction. 5
- (8) In this section, “relevant order” means – 10
  - (a) a restitution order, or
  - (b) a victim surcharge under section 253F(2) of the Procedure Act.
- (9) In this Part, “restitution order” is to be construed in accordance with section 253A(2) of the Procedure Act.”

## **16 Orders for securing compliance with confiscation order**

After section 97A of the Proceeds of Crime Act 2002 (inserted by section 15(2)) insert – 15

### **“97B Orders for securing compliance with confiscation order**

- (1) This section applies where the court makes a confiscation order.
- (2) The court may make such order in relation to the accused as it believes is appropriate for the purpose of ensuring that the confiscation order is effective (a “compliance order”). 20
- (3) The court must consider whether to make a compliance order – 25
  - (a) on the making of the confiscation order, and
  - (b) if it does not make a compliance order then, at any later time (while the confiscation order is still in effect) on the application of the prosecutor.
- (4) In considering whether to make a compliance order, the court must, in particular, consider whether any restriction or prohibition on the accused’s travel outside the United Kingdom ought to be imposed for the purpose mentioned in subsection (2). 30
- (5) The court may discharge or vary a compliance order on an application made by – 35
  - (a) the prosecutor;
  - (b) the accused.
- (6) For the purposes of any appeal or review, a compliance order is a sentence.

### **97C Breach of compliance order**

- (1) This section applies where – 40
  - (a) a compliance order has been made in relation to an accused, and
  - (b) it appears to the court that the accused has failed to comply with the compliance order.
- (2) The court may –
  - (a) issue a warrant for the accused’s arrest, or

- (b) issue a citation to the accused requiring the accused to appear before the court.
- (3) If the accused fails to appear as required by a citation issued under subsection (2)(b), the court may issue a warrant for the arrest of the accused. 5
- (4) The unified citation provisions (as defined in section 307(1) of the Procedure Act) apply in relation to a citation under subsection (2)(b).
- (5) The court must, before considering the alleged failure –
  - (a) provide the accused with written details of the alleged failure,
  - (b) inform the accused that the accused is entitled to be legally represented, and 10
  - (c) inform the accused that no answer need be given to the allegation before the accused –
    - (i) has been given an opportunity to take legal advice, or
    - (ii) has indicated that the accused does not wish to take legal advice. 15
- (6) If the court is satisfied that the accused has failed without reasonable excuse to comply with the compliance order, the court may –
  - (a) impose on the accused a fine not exceeding level 3 on the standard scale, 20
  - (b) revoke the compliance order and impose on the accused a sentence of imprisonment for a term not exceeding 3 months,
  - (c) vary the compliance order, or
  - (d) both impose a fine under paragraph (a) and vary the order under paragraph (c). 25
- (7) The court may vary the compliance order if the court is satisfied –
  - (a) that the accused has failed to comply with the order,
  - (b) that the accused had a reasonable excuse for the failure, and
  - (c) that, having regard to the circumstances which have arisen since the order was imposed, it is in the interests of justice to vary the order. 30
- (8) Evidence of one witness is sufficient for the purpose of establishing that an accused has failed without reasonable excuse to comply with a compliance order.
- 97D Appeals against variation or discharge of compliance orders** 35

The prosecutor or the accused may appeal against a decision of the court under section 97B(5) –

  - (a) to vary or refuse to vary a compliance order, or
  - (b) to discharge or refuse to discharge a compliance order.”
- 17 Compliance orders: appeals by prosecutor** 40
  - (1) The Criminal Procedure (Scotland) Act 1995 is amended as follows.
  - (2) In section 108 (Lord Advocate’s right of appeal in solemn proceedings) –

- (a) in subsection (1), after paragraph (cc) insert –  
 “(cd) a decision under section 97B(2) of the Proceeds of Crime Act 2002 to make or not to make a compliance order;”;
  - (b) in subsection (2)(b) –
    - (i) in sub-paragraph (ii), for “or (cc)” substitute “, (cc) or (cd)”;
    - (ii) in sub-paragraph (iii), after “paragraph” insert “(cd) or”.
- (3) In section 175 (right of appeal in summary proceedings) –
- (a) in subsection (4), after paragraph (cc) insert –  
 “(cd) a decision under section 97B(2) of the Proceeds of Crime Act 2002 to make or not to make a compliance order;”;
  - (b) in subsection (4A)(b) –
    - (i) in sub-paragraph (ii), for “or (cc)” substitute “, (cc) or (cd)”;
    - (ii) in sub-paragraph (iii), after “paragraph” insert “(cd) or”.

## 18 Accused persons unlawfully at large

- (1) In section 111 of the Proceeds of Crime Act 2002 (conviction or other disposal of accused), in subsection (1), for “after” substitute “and, either before or after he became unlawfully at large”.
- (2) For subsection (4) of that section substitute –
- “(4) Once the accused has ceased to be unlawfully at large –
- (a) section 104 has effect as if subsection (1) read –
    - “(1) This section applies if –
      - (a) in a case where section 111 applies the court did not proceed under section 92,
      - (b) before the end of the period of six years starting with the day when the accused ceased to be unlawfully at large, the prosecutor applies to the court to proceed under section 92, and
      - (c) the court thinks it is appropriate for it to do so.”;
  - (b) section 105 has effect as if subsection (3) read –
    - “(3) The second condition is that –
      - (a) before the end of the period of six years starting with the day when the accused ceased to be unlawfully at large, the prosecutor applies to the court to reconsider whether the accused has benefited from his general or particular criminal conduct (as the case may be), and
      - (b) the court thinks it is appropriate for it to do so.”;
  - (c) section 106 has effect as if subsection (1) read –
    - “(1) This section applies if –
      - (a) a court has made a confiscation order,
      - (b) the prosecutor believes that if the court were to find the amount of the accused’s benefit in pursuance of this section it would exceed the relevant amount,
      - (c) before the end of the period of six years starting with the day when the accused ceased to be unlawfully at large, the prosecutor applies to the court to proceed under this section, and



- (d) the court thinks it is appropriate for it to do so.”;
- (d) the modifications set out in subsection (3)(a) to (d) of this section do not apply to proceedings that take place by virtue of section 104, 105 or 106 (as applied by this subsection).”
- (3) In section 112 of that Act (accused neither convicted nor acquitted), in subsection (1)(c), for “two years” substitute “three months”. 5
- (4) For subsection (4) of that section substitute –
- “(4) Once the accused has ceased to be unlawfully at large –
- (a) section 106 has effect as if subsection (1) read –
- “(1) This section applies if – 10
- (a) a court has made a confiscation order,
- (b) the prosecutor believes that if the court were to find the amount of the accused’s benefit in pursuance of this section it would exceed the relevant amount,
- (c) before the end of the period of six years starting with the day when the accused ceased to be unlawfully at large, the prosecutor applies to the court to proceed under this section, and 15
- (d) the court thinks it is appropriate for it to do so.”;
- (b) the modifications set out in subsection (3)(a) to (d) of this section do not apply to proceedings that take place by virtue of section 106 (as applied by this subsection).” 20

## 19 Enforcement of confiscation orders

- (1) In section 118 of the Proceeds of Crime Act 2002 (application of provisions about fine enforcement in relation to confiscation orders) – 25
- (a) in subsection (2)(h), for “, except” substitute “(other than subsection (3) and as if the words “Subject to subsection (3) below,” were omitted); but that section does not apply”;
- (b) after subsection (2) insert –
- “(2A) In its application in relation to confiscation orders, subsection (2) of section 219 of the Procedure Act is to be read as if for the Table in that subsection there were substituted the following Table – 30

| <i>Amount to be Paid under<br/>Compensation Order</i> | <i>Maximum Period<br/>of Imprisonment</i> |    |
|---|---|----|
| £10,000 or less                                       | 6 months                                  |    |
| More than £10,000 but<br>no more than £500,000        | 5 years                                   |    |
| More than £500,000 but<br>no more than £1 million     | 7 years                                   | 40 |
| More than £1 million                                  | 14 years                                  |    |

- (2B) The Scottish Ministers may by order –



- 
- (a) amend section 219(2) of the Procedure Act (as applied by this section) so as to provide for minimum periods of imprisonment in respect of amounts ordered to be paid under a confiscation order;
    - (b) amend the Table in subsection (2A) so as to remove, alter or replace any entry (including an entry inserted by virtue of paragraph (a) of this subsection) or to add any entry; 5
    - (c) apply (with or without modifications) any provision of the Procedure Act relating to enforcement of fines in consequence of exercising the power in paragraph (a) or (b) (including modifying any such provision in its application in relation to confiscation orders by virtue of this section). 10
  - (2C) In its application in relation to a confiscation order under Part 2 of this Act, subsection (8) of section 222 of the Procedure Act is to be read as if, in relation to a transfer of fine order under section 90 of the Magistrates' Courts Act 1980, for "139 of the Powers of Criminal Courts (Sentencing) Act 2000" there were substituted "35(2A) of the Proceeds of Crime Act 2002". 15 20
  - (2D) In its application in relation to a confiscation order under Part 4 of this Act, subsection (8) of section 222 of the Procedure Act is to be read as if –
    - (a) before the words "section 90" there were inserted "section 35 of the Criminal Justice Act (Northern Ireland) 1945,"; 25
    - (b) in relation to a transfer of fine order under section 35 of that Act, for "139 of the Powers of Criminal Courts (Sentencing) Act 2000" there were substituted "185(2A) of the Proceeds of Crime Act 2002". 30
  - (2) In section 459 of that Act (orders and regulations) –
    - (a) after subsection (3) insert –
      - "(3A) Subsection (3) does not apply to the power of the Scottish Ministers to make an order under section 118(2B).";
    - (b) in subsection (5)(a), after "section" insert "118(2B)."; 35
    - (c) in subsection (6)(b), after "section" insert "118(2B).".
  - (3) In section 219 of the Criminal Procedure (Scotland) Act 1995 (fines: periods of imprisonment for non-payment), in subsection (8)(b), after "section 118(2)" insert ", (2A) and (2B)".
- 20 Conditions for exercise of restraint order powers 40**
- (1) In section 119 of the Proceeds of Crime Act 2002 (conditions for exercise of powers), in subsection (2)(b), for "is reasonable cause to believe" substitute "are reasonable grounds to suspect".
  - (2) In section 120 of that Act (restraint orders etc), after subsection (6) insert –
    - "(6A) Subsections (6B) and (6C) apply where the court makes a restraint order (by virtue of the first condition in section 119) as a result of a criminal 45

investigation having been instituted in Scotland with regard to an offence.

- (6B) The court—
- (a) must include in the order a requirement for the applicant for the order to report to the court on the progress of the investigation at such times and in such manner as the order may specify (a “reporting requirement”), and 5
  - (b) must recall the order if proceedings for the offence are not instituted within a reasonable time (and this duty applies whether or not an application to recall the order is made under section 121(5)). 10
- (6C) The duty under subsection (6B)(a) does not apply if the court decides that, in the circumstances of the case, a reporting requirement should not be imposed, but the court—
- (a) must give reasons for its decision, and 15
  - (b) may at any time vary the order so as to include a reporting requirement (and this power applies whether or not an application to vary the order is made under section 121(5)).”

## 21 Continuation of restraint order after conviction quashed or verdict set aside

In section 121 of the Proceeds of Crime Act 2002 (application, recall and variation), after subsection (8) insert— 20

- “(8A) The duty in subsection (8) to recall a restraint order on the conclusion of proceedings does not apply where—
- (a) the proceedings are concluded by reason of—
    - (i) an accused’s conviction for an offence being quashed under section 118(1)(c) of the Procedure Act, or 25
    - (ii) the setting aside of the verdict against the accused under section 183(1)(d) of the Procedure Act,
  - (b) the restraint order is in force at the time when the conviction is quashed or the verdict set aside (as the case may be), and 30
  - (c) the High Court of Justiciary has granted authority under section 118(1)(c) or 183(1)(d) of the Procedure Act to bring a new prosecution or the prosecutor has requested that the court grant such authority.
- (8B) But the court must recall the restraint order— 35
- (a) if the High Court of Justiciary refuses a request to grant authority under section 118(1)(c) or 183(1)(d) of the Procedure Act to bring a new prosecution,
  - (b) if the High Court of Justiciary has granted authority under section 118(1)(c) or 183(1)(d) of the Procedure Act to bring a new prosecution but no proceedings are commenced by the expiry of the time mentioned in section 119(5) or 185(5) of that Act (as the case may be), or 40
  - (c) otherwise, on the conclusion of the proceedings in the new prosecution of the accused under section 119 or 185 of the Procedure Act.” 45

## 22 Conditions for exercise of search and seizure powers

- (1) In section 127B of the Proceeds of Crime Act 2002 (conditions for exercise of powers), in subsection (2)(d), for “is reasonable cause to believe” substitute “are reasonable grounds to suspect”.
- (2) In section 127G of that Act (“appropriate approval”), before paragraph (b) of subsection (3) insert –
  - “(ab) in relation to the exercise of a power by a National Crime Agency officer, the Director General of the National Crime Agency or any other National Crime Agency officer authorised by the Director General (whether generally or specifically) for this purpose,”.

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### *Civil recovery*

## 23 Prohibitory property orders: PPO receivers

- (1) The Proceeds of Crime Act 2002 is amended as follows.
- (2) After section 255F insert –
 

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**“255G Receivers in connection with prohibitory property orders**

  - (1) Subsection (2) applies if –
    - (a) the Court of Session makes a prohibitory property order on an application by an enforcement authority, and
    - (b) the authority applies to the court to proceed under subsection (2) (whether as part of the application for the prohibitory property order or at any time afterwards).

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  - (2) The Court of Session may by order appoint a person (a “PPO receiver”) in respect of any property to which the prohibitory property order applies.
 

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  - (3) An application for an order under this section may be made without notice if the circumstances are such that notice of the application would prejudice any right of the enforcement authority to obtain a recovery order in respect of any property.
  - (4) In its application for an order under this section, the enforcement authority must nominate a suitably qualified person for appointment as a PPO receiver.
 

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  - (5) Such a person may be a member of staff of the enforcement authority.
  - (6) The enforcement authority may apply a sum received by it under section 280(2) in making payment of the remuneration and expenses of a PPO receiver appointed under this section.
 

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  - (7) Subsection (6) does not apply in relation to the remuneration of the PPO receiver if he is a member of the staff of the enforcement authority (but it does apply in relation to such remuneration if the PPO receiver is a person providing services under arrangements made by the enforcement authority).
 

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## **255H Powers of receivers appointed under section 255G**

- (1) If the Court of Session appoints a PPO receiver under section 255G on an application by an enforcement authority, the court may act under this section on the application of the authority.
- (2) The court may by order authorise or require the PPO receiver—
  - (a) to exercise any of the powers mentioned in paragraph 5 of Schedule 6 (management powers) in relation to any property in respect of which the PPO receiver is appointed,
  - (b) to take any other steps the court thinks appropriate in connection with the management of any such property (including securing the detention, custody or preservation of the property in order to manage it).
- (3) The court may by order require any person in respect of whose property the PPO receiver is appointed—
  - (a) to bring the property to a place in Scotland specified by the PPO receiver or to place it in the custody of the PPO receiver (if, in either case, he is able to do so),
  - (b) to do anything he is reasonably required to do by the PPO receiver for the preservation of the property.
- (4) The court may by order require any person in respect of whose property the PPO receiver is appointed to bring any documents relating to the property which are in his possession or control to a place in Scotland specified by the PPO receiver or to place them in the custody of the PPO receiver.
- (5) In subsection (4) “document” means anything in which information of any description is recorded.
- (6) Any prohibition on dealing with property imposed by a prohibitory property order does not prevent a person from complying with any requirements imposed by virtue of this section.
- (7) If—
  - (a) the PPO receiver deals with any property which is not property in respect of which he is appointed under section 255G, and
  - (b) at the time he deals with the property the PPO receiver believes on reasonable grounds that he is entitled to do so by virtue of his appointment,the PPO receiver is not liable to any person in respect of any loss or damage resulting from his dealing with the property except so far as the loss or damage is caused by his negligence.

## **255I Supervision of PPO receiver and variations**

- (1) Any of the following persons may at any time apply to the Court of Session for directions as to the exercise of the functions of a PPO receiver—
  - (a) the PPO receiver,
  - (b) any party to the proceedings for the appointment of the PPO receiver or the prohibitory property order concerned,
  - (c) any person affected by any action taken by the PPO receiver,

- 
- (d) any person who may be affected by any action proposed to be taken by the PPO receiver.
  - (2) Before giving any directions under subsection (1), the court must give an opportunity to be heard to –
    - (a) the PPO receiver, 5
    - (b) the parties to the proceedings for the appointment of the PPO receiver and for the prohibitory property order concerned,
    - (c) any person who may be interested in the application under subsection (1).
  - (3) The court may at any time vary or recall – 10
    - (a) an order appointing a PPO receiver,
    - (b) any order under section 255H, or
    - (c) any directions under this section.
  - (4) Before exercising any power under subsection (3), the court must give an opportunity to be heard to – 15
    - (a) the PPO receiver,
    - (b) the parties to the proceedings for –
      - (i) the appointment of the PPO receiver,
      - (ii) the order under section 255H, or
      - (iii) (as the case may be) the directions under this section, 20
    - (c) the parties to the proceedings for the prohibitory property order concerned,
    - (d) any person who may be affected by the court’s decision.”
  - (3) After section 282C insert –
    - “282CA Enforcement abroad before recovery order: PPO receiver 25**

(1) This section applies if –

      - (a) a prohibitory property order made by the Court of Session has effect in relation to property, and
      - (b) the PPO receiver appointed under section 255G in respect of the property believes that it is in a country outside the United Kingdom (the “receiving country”). 30
    - (2) The PPO receiver may send a request for assistance in relation to the property to the Secretary of State with a view to it being forwarded under this section.
    - (3) The Secretary of State must forward the request for assistance to the government of the receiving country. 35
    - (4) A request for assistance under this section is a request to the government of the receiving country –
      - (a) to secure that any person is prohibited from dealing with the property, 40
      - (b) for assistance in connection with the management of the property, including with securing its detention, custody or preservation.”

## CHAPTER 3

### NORTHERN IRELAND

#### *Confiscation: assets held by defendant and other*

#### **24 Determination of extent of defendant’s interest in property**

After section 160 of the Proceeds of Crime Act 2002 insert – 5

##### **“160A Determination of extent of defendant’s interest in property**

- (1) Where it appears to a court making a confiscation order that –
  - (a) there is property held by the defendant that is likely to be realised or otherwise used to satisfy the order, and
  - (b) a person other than the defendant holds, or may hold, an interest in the property, 10

the court may, if it thinks it appropriate to do so, determine the extent (at the time the confiscation order is made) of the defendant’s interest in the property.
- (2) The court must not exercise the power conferred by subsection (1) unless it gives to anyone who the court thinks is or may be a person holding an interest in the property a reasonable opportunity to make representations to it. 15
- (3) A determination under this section is conclusive in relation to any question as to the extent of the defendant’s interest in the property that arises in connection with – 20
  - (a) the realisation of the property, or the transfer of an interest in the property, with a view to satisfying the confiscation order, or
  - (b) any action or proceedings taken for the purposes of any such realisation or transfer. 25
- (4) Subsection (3) –
  - (a) is subject to section 199(8B), and
  - (b) does not apply in relation to a question that arises in proceedings before the Court of Appeal or the Supreme Court.
- (5) In this Part, the “extent” of the defendant’s interest in property means the proportion that the value of the defendant’s interest in it bears to the value of the property itself.” 30

#### **25 Provision of information**

- (1) In section 166 of the Proceeds of Crime Act 2002 (statement of information), after subsection (6) insert – 35

“(6A) A statement of information (other than one to which subsection (6B) applies) must include any information known to the prosecutor which the prosecutor believes is or would be relevant for the purpose of enabling the court to decide –

  - (a) whether to make a determination under section 160A, or
  - (b) what determination to make (if the court decides to make one). 40



- (6B) If the court has decided to make a determination under section 160A, a further statement of information under subsection (6)(b) must, if the court so orders, include specified information that is relevant to the determination.”
- (2) In section 168 of that Act (provision of information by defendant) – 5
- (a) in subsection (2), after “functions” insert “(including functions under section 160A)”;
- (b) in subsection (6)(b), for “deciding the available amount under section 159,” substitute “deciding –
- (i) the available amount under section 159, or 10
- (ii) whether to make a determination under section 160A, or what determination to make (if the court decides to make one),”.
- (3) After that section insert –
- “168A Provision of information as to defendant’s interest in property 15**
- (1) This section applies if the court –
- (a) is considering whether to make a determination under section 160A of the extent of the defendant’s interest in any property, or
- (b) is deciding what determination to make (if the court has decided to make a determination under that section). 20
- In this section “interested person” means a person (other than the defendant) who the court thinks is or may be a person holding an interest in the property.
- (2) For the purpose of obtaining information to help it in carrying out its functions under section 160A the court may at any time order an interested person to give it information specified in the order. 25
- (3) An order under this section may require all or a specified part of the information to be given in a specified manner and before a specified date.
- (4) If an interested person fails without reasonable excuse to comply with an order under this section the court may draw such inference as it believes is appropriate. 30
- (5) Subsection (4) does not affect any power of the court to deal with the person in respect of a failure to comply with an order under this section.
- (6) If the prosecutor accepts to any extent an allegation made by an interested person – 35
- (a) in giving information required by an order under this section, or
- (b) in any other statement given to the court in relation to any matter relevant to a determination under section 160A, 40
- the court may treat the acceptance as conclusive of the matters to which it relates.
- (7) For the purposes of this section an allegation may be accepted in a manner ordered by the court.
- (8) If the court makes an order under this section it may at any time vary it by making another one. 45

- (9) No information given by a person under this section is admissible in evidence in proceedings against that person for an offence.”

## 26 Appeals

- (1) In section 181 of the Proceeds of Crime Act 2002 (appeal to Court of Appeal), after subsection (3) insert – 5
- “(4) An appeal lies to the Court of Appeal against a determination, under section 160A, of the extent of the defendant’s interest in property.
- (5) An appeal under subsection (4) lies at the instance of –
- (a) the prosecutor;
  - (b) a person who the Court of Appeal thinks is or may be a person holding an interest in the property, if subsection (6) or (7) applies. 10
- (6) This subsection applies if the person was not given a reasonable opportunity to make representations when the determination was made. 15
- (7) This subsection applies if it appears to the Court of Appeal to be arguable that giving effect to the determination would result in a serious risk of injustice to the person.
- (8) An appeal does not lie under subsection (4) where –
- (a) the Court of Appeal believes that an application under section 198 is to be made by the prosecutor for the appointment of a receiver, 20
  - (b) such an application has been made but has not yet been determined, or
  - (c) a receiver has been appointed under section 198.” 25
- (2) In section 182 of that Act (court’s powers on appeal), after subsection (2) insert –
- “(2A) On an appeal under section 181(4) the Court of Appeal may –
- (a) confirm the determination, or
  - (b) make such order as it believes is appropriate.” 30
- (3) In section 183 of that Act (appeal to Supreme Court) –
- (a) for subsection (2) substitute –
- “(2) An appeal under this section lies at the instance of –
- (a) the defendant or the prosecutor (except where paragraph (b) applies); 35
  - (b) if the proceedings in the Court of Appeal were proceedings on an appeal under section 181(4), any person who was a party to those proceedings.”;
- (b) after subsection (3) insert –
- “(3A) On an appeal under this section from a decision under section 182(2A) the Supreme Court may – 40
- (a) confirm the decision of the Court of Appeal, or
  - (b) make such order as it believes is appropriate.”



## 27 Enforcement receivers

In section 199 of the Proceeds of Crime Act 2002 (powers of receivers etc), after subsection (8A) insert –

- “(8B) Representations that a person is entitled to make by virtue of subsection (8) do not include representations that are inconsistent with a determination made under section 160A, unless –
- (a) the person was not given a reasonable opportunity to make representations when the determination was made and has not appealed against the determination, or
  - (b) it appears to the court that there would be a serious risk of injustice to the person if the court was bound by the determination;
- and the determination does not bind the court if paragraph (a) or (b) applies.”

*Confiscation: other amendments* 15

## 28 Time for payment

- (1) For section 161 of the Proceeds of Crime Act 2002 substitute –

### “161 Time for payment

- (1) Unless subsection (2) applies, the full amount ordered to be paid under a confiscation order must be paid on the day on which the order is made. 20
- (2) If the court making the confiscation order is satisfied that the defendant is unable to pay the full amount on that day, it may make an order requiring whatever cannot be paid on that day to be paid –
  - (a) in a specified period, or 25
  - (b) in specified periods each of which relates to a specified amount.
- (3) A specified period –
  - (a) must start with the day on which the confiscation order is made, and
  - (b) must not exceed three months. 30
- (4) If –
  - (a) within any specified period the defendant applies to the Crown Court for that period to be extended, and
  - (b) the court is satisfied that, despite having made all reasonable efforts, the defendant is unable to pay the amount to which the specified period relates within that period, 35

the court may make an order extending the period (for all or any part or parts of the amount in question).
- (5) An extended period –
  - (a) must start with the day on which the confiscation order is made, and
  - (b) must not exceed six months. 40
- (6) An order under subsection (4) –

- (a) may be made after the end of the specified period to which it relates, but
  - (b) must not be made after the end of the period of six months starting with the day on which the confiscation order is made.
- (7) Periods specified or extended under this section must be such that, where the court believes that a defendant will by a particular day be able –
  - (a) to pay the amount remaining to be paid, or
  - (b) to pay an amount towards what remains to be paid, that amount is required to be paid no later than that day.
- (8) The court must not make an order under subsection (2) or (4) unless it gives the prosecutor an opportunity to make representations.”
- (2) In section 162 of that Act (interest on unpaid sums), for subsection (3) substitute –
  - “(3) If –
    - (a) an application has been made under section 161(4) for a specified period to be extended,
    - (b) the application has not been determined by the court, and
    - (c) the period of six months starting with the day on which the confiscation order was made has not ended,
the amount on which interest is payable under this section does not include the amount to which the specified period relates.”
- (3) In section 235 of that Act (interpretation: confiscation orders), after subsection (1) insert –
  - “(1A) The “amount payable” under a confiscation order, where part of that amount has been paid, means the amount that remains to be paid.”

## 29 Orders for securing compliance with confiscation order

After section 163 of the Proceeds of Crime Act 2002 insert –

### “163A Orders for securing compliance with confiscation order

- (1) This section applies where the court makes a confiscation order.
- (2) The court may make such order as it believes is appropriate for the purpose of ensuring that the confiscation order is effective (a “compliance order”).
- (3) The court must consider whether to make a compliance order –
  - (a) on the making of the confiscation order, and
  - (b) if it does not make a compliance order then, at any later time (while the confiscation order is still in effect) on the application of the prosecutor.
- (4) In considering whether to make a compliance order, the court must, in particular, consider whether any restriction or prohibition on the defendant’s travel outside the United Kingdom ought to be imposed for the purpose mentioned in subsection (2).

- (5) The court may discharge or vary a compliance order on an application made by –
  - (a) the prosecutor;
  - (b) any person affected by the order.

### **163B Appeals against orders under section 163A**

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- (1) If on an application under section 163A(3)(b) the Crown Court decides not to make a compliance order, the prosecutor may appeal to the Court of Appeal against the decision.
- (2) The following persons may appeal to the Court of Appeal in respect of the Crown Court’s decision to make, discharge or vary a compliance order –
  - (a) the prosecutor;
  - (b) any person affected by the order.
- (3) On an appeal under subsection (1) or (2) the Court of Appeal may –
  - (a) confirm the decision, or
  - (b) make such order as it believes is appropriate.
- (4) An appeal lies to the Supreme Court against a decision of the Court of Appeal under subsection (3).
- (5) An appeal under subsection (4) lies at the instance of any person who was a party to the proceedings before the Court of Appeal.
- (6) On an appeal under subsection (4) the Supreme Court may –
  - (a) confirm the decision of the Court of Appeal, or
  - (b) make such order as it believes is appropriate.
- (7) In this section “compliance order” means an order made under section 163A.”

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## **30 Variation or discharge**

- (1) In section 173 of the Proceeds of Crime Act 2002 (inadequacy of available amount: variation of confiscation order), in subsection (1)(b), after “the defendant” insert “or the prosecutor”.
- (2) After section 175 of that Act insert –

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### **“175A Recovery from estate of deceased defendant impractical: discharge of order**

- (1) This section applies if –
  - (a) a court has made a confiscation order,
  - (b) the defendant dies while the order is not satisfied, and
  - (c) the prosecutor applies to the Crown Court for the discharge of the order.
- (2) The court may discharge the order if it appears to the court that –
  - (a) it is not possible to recover anything from the estate of the deceased for the purpose of satisfying the order to any extent, or
  - (b) it would not be reasonable to make any attempt, or further attempt, to recover anything from the estate of the deceased for that purpose.”

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- (3) Section 175A of that Act (inserted by subsection (2) above) applies to –
- (a) a confiscation order made under the Criminal Justice (Confiscation) (Northern Ireland) Order 1990 (S.I. 1990/2588 (N.I. 17)), or
  - (b) a confiscation order made under Part 2 of the Proceeds of Crime (Northern Ireland) Order 1996 (S.I. 1996/1299 (N.I. 9)),
- as it applies to a confiscation order made under the Proceeds of Crime Act 2002. 5

### 31 Absconding defendants

- (1) In section 177 of the Proceeds of Crime Act 2002 (absconding defendant convicted or committed), for subsection (2) substitute –
- “(2) The first condition is that a defendant falls within either of the following paragraphs – 10
- (a) he absconds and, either before or after doing so, he is convicted of an offence or offences in proceedings before the Crown Court;
  - (b) he absconds after being committed to the Crown Court in respect of an offence or offences under section 218 below (committal with a view to a confiscation order being considered).” 15
- (2) For subsections (6) and (7) of that section substitute –
- “(6) Once the defendant ceases to be an absconder – 20
- (a) section 169 has effect as if subsection (1) read –
- “(1) This section applies if –
- (a) at a time when the first condition in section 177 was satisfied the court did not proceed under section 156,
  - (b) before the end of the period of six years starting with the day when the defendant ceased to be an absconder, the prosecutor applies to the Crown Court to proceed under section 156, and 25
  - (c) the court believes it is appropriate for it to do so.”;
- (b) section 170 has effect as if subsection (4) read – 30
- “(4) The second condition is that –
- (a) before the end of the period of six years starting with the day when the defendant ceased to be an absconder, the prosecutor applies to the Crown Court to reconsider whether the defendant has benefited from his general or particular criminal conduct (as the case may be), and
  - (b) the court believes it is appropriate for it to do so.”; 35
- (c) section 171 has effect as if subsection (1) read –
- “(1) This section applies if – 40
- (a) a court has made a confiscation order,
  - (b) the prosecutor believes that if the court were to find the amount of the defendant’s benefit in pursuance of this section it would exceed the relevant amount,
  - (c) before the end of the period of six years starting with the day when the defendant ceased to be an 45

- absconder, the prosecutor applies to the Crown Court to proceed under this section, and
- (d) the court believes it is appropriate for it to do so.”;
- (d) the modifications set out in subsection (5)(a) to (d) of this section do not apply to proceedings that take place by virtue of section 169, 170 or 171 (as applied by this subsection).” 5
- (3) In section 178 of that Act (absconding defendant neither convicted nor acquitted), in subsection (2)(c), for “two years” substitute “three months”.
- (4) For subsection (6) of that section substitute –
- “(6) Once the defendant has ceased to be an absconder – 10
- (a) section 171 has effect as if subsection (1) read –
- “(1) This section applies if –
- (a) a court has made a confiscation order,
- (b) the prosecutor believes that if the court were to find the amount of the defendant’s benefit in pursuance of this section it would exceed the relevant amount, 15
- (c) before the end of the period of six years starting with the day when the defendant ceased to be an absconder, the prosecutor applies to the Crown Court to proceed under this section, and 20
- (d) the court believes it is appropriate for it to do so.”;
- (b) the modifications set out in subsection (5)(a) to (d) of this section do not apply to proceedings that take place by virtue of section 171 (as applied by this subsection).”
- 32 Default sentences** 25
- (1) In section 185 of the Proceeds of Crime Act 2002 (enforcement as fines), after subsection (2) insert –
- “(2A) Where a court is fixing a term of imprisonment or detention under section 35(1)(c) of that Act (as applied by subsection (2) above) in respect of an amount ordered to be paid under a confiscation order, the maximum terms are those specified in the second column of the Table for amounts described in the corresponding entry in the first column. 30

TABLE

| <i>Amount</i>                                  | <i>Maximum term</i> |    |
|--|---------------------|----|
| £10,000 or less                                | 6 months            | 35 |
| More than £10,000 but no more than £500,000    | 5 years             |    |
| More than £500,000 but no more than £1 million | 7 years             |    |
| More than £1 million                           | 14 years            | 40 |

- (2B) The Department of Justice in Northern Ireland may by order –

- (a) amend subsection (2A) so as to provide for minimum terms of imprisonment or detention under section 35(1)(c) of that Act (as applied by subsection (2) above) in respect of amounts ordered to be paid under a confiscation order;
    - (b) amend the Table in subsection (2A) so as to remove, alter or replace any entry (including an entry inserted by virtue of the power in paragraph (a) of this subsection) or to add any entry.”
  - (2) In section 459(7B) of that Act (orders subject to affirmative resolution procedure), after “section” insert “185(2B),”.
- 33 Conditions for exercise of restraint order powers**
- (1) In section 189 of the Proceeds of Crime Act 2002 (conditions for exercise of powers), in subsection (2)(b), for “is reasonable cause to believe” substitute “are reasonable grounds to suspect”.
  - (2) In section 190 of that Act (restraint orders), after subsection (7) insert—
    - “(7A) Subsections (7B) and (7C) apply where the High Court makes a restraint order (by virtue of the first condition in section 189) as a result of a criminal investigation having been started in Northern Ireland with regard to an offence.
    - (7B) The court—
      - (a) must include in the order a requirement for the applicant for the order to report to the court on the progress of the investigation at such times and in such manner as the order may specify (a “reporting requirement”), and
      - (b) must discharge the order if proceedings for the offence are not started within a reasonable time (and this duty applies whether or not an application to discharge the order is made under section 191(3)).
    - (7C) The duty under subsection (7B)(a) does not apply if the court decides that, in the circumstances of the case, a reporting requirement should not be imposed, but the court—
      - (a) must give reasons for its decision, and
      - (b) may at any time vary the order so as to include a reporting requirement (and this power applies whether or not an application to vary the order is made under section 191(3)).”
- 34 Continuation of restraint order after quashed conviction**
- In section 191 of the Proceeds of Crime Act 2002 (application, discharge and variation of restraint orders), after subsection (6) insert—
  - “(6A) The duty in subsection (6) to discharge a restraint order on the conclusion of proceedings does not apply where—
    - (a) the proceedings are concluded by reason of a defendant’s conviction for an offence being quashed,
    - (b) the order is in force at the time when the conviction is quashed, and

- 
- (c) the Court of Appeal has ordered the defendant to be retried for the offence or the prosecutor has applied for such an order to be made.
    - (6B) But the court must discharge the restraint order –
      - (a) if the Court of Appeal declines to make an order for the defendant to be retried, 5
      - (b) if the Court of Appeal orders the defendant to be retried but proceedings for the retrial are not started within a reasonable time, or
      - (c) otherwise, on the conclusion of proceedings for the retrial of the defendant.” 10
- 35 Conditions for exercise of search and seizure powers**
- (1) In section 195B of the Proceeds of Crime Act 2002 (conditions for exercise of powers), in subsection (2)(d), for “is reasonable cause to believe” substitute “are reasonable grounds to suspect”. 15
  - (2) In section 195G of that Act (“appropriate approval”), before paragraph (b) of subsection (3) insert –
    - “(ab) in relation to the exercise of a power by a National Crime Agency officer, the Director General of the National Crime Agency or any other National Crime Agency officer authorised by the Director General (whether generally or specifically) for this purpose,”. 20
- 36 Seized money etc**
- (1) In section 215 of the Proceeds of Crime Act 2002 (seized money), for subsections (4) and (5) substitute – 25
    - “(5) If –
      - (a) a confiscation order is made against a person holding money to which this section applies, and
      - (b) a receiver has not been appointed under section 198 in relation to the money, 30
 a magistrates’ court may order the bank or building society to pay the money to the appropriate chief clerk on account of the amount payable under the confiscation order.”
  - (2) After subsection (5) of that section insert –
    - “(5A) A person applying for an order under subsection (5) must give notice of the application to the bank or building society with which the account is held. 35
    - (5B) In the case of money held in an account not maintained by the person against whom the confiscation order is made, a magistrates’ court –
      - (a) may make an order under subsection (5) only if the extent of the person’s interest in the money has been determined under section 160A, and 40
      - (b) must have regard to that determination in deciding what is the appropriate order to make.”



- (3) After subsection (7) of that section insert—
- “(7A) The Department of Justice in Northern Ireland may by order amend this section so that it applies not only to money held in an account maintained with a bank or building society but also to—
- (a) money held in an account maintained with a financial institution of a specified kind, or
- (b) money that is represented by, or may be obtained from, a financial instrument or product of a specified kind.
- (7B) An order under subsection (7A) may amend this section so that it makes provision about realising an instrument or product within subsection (7A)(b) or otherwise obtaining money from it.”
- (4) In section 215A of that Act (seized personal property), for subsections (2) and (3) substitute—
- “(3) If—
- (a) a confiscation order is made against the person by whom the property is held, and
- (b) a receiver has not been appointed under section 198 in relation to the property,
- a magistrates’ court may by order authorise an appropriate officer to realise the property.”
- (5) In section 459(7B) of that Act (orders subject to affirmative resolution procedure), before “223(7) or (8)” insert “215(7A),”.

## CHAPTER 4

### INVESTIGATIONS AND CO-OPERATION ETC

- 37 Confiscation investigations**
- (1) In section 341 of the Proceeds of Crime Act 2002, at the end of subsection (1) insert “, or
- (c) the extent or whereabouts of realisable property available for satisfying a confiscation order made in respect of him.”
- (2) In section 353 of that Act (requirements where production order not available), in subsection (6)(a), after “of his benefit from his criminal conduct” insert “or of realisable property available for satisfying a confiscation order made in respect of him”.
- (3) In section 388 of that Act (requirements where production order not available), in subsection (6)(a), after “of his benefit from his criminal conduct” insert “or of realisable property available for satisfying a confiscation order made in respect of him”.
- 38 External orders and investigations: meaning of “obtaining property”**
- In section 447 of the Proceeds of Crime Act 2002 (interpretation of Part 11 (co-operation)), after subsection (6) insert—
- “(6A) A person who obtains a pecuniary advantage as a result of or in connection with conduct is to be taken to obtain, as a result of or in



connection with the conduct, a sum of money equal to the value of the pecuniary advantage.

- (6B) References to property or a pecuniary advantage obtained in connection with conduct include references to property or a pecuniary advantage obtained both in that connection and some other.”

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### **39 Confiscation orders by magistrates’ courts**

- (1) The Serious Organised Crime and Police Act 2005 is amended as follows.
- (2) In section 97 (confiscation orders by magistrates’ courts), after subsection (1) insert –
  - “(1ZA) But an order under subsection (1) may not enable such a confiscation order to be made by any magistrates’ court in respect of an amount exceeding £10,000. 10
  - (1ZB) The Secretary of State may by order amend subsection (1ZA) so as to substitute a different amount.”
- (3) In subsection (2) of that section omit “(1) or”. 15
- (4) After that subsection insert –
  - “(2A) The Department of Justice may by order amend subsection (2) so as to substitute a different amount.”
- (5) In section 172 (orders etc) –
  - (a) in subsection (5) (orders made by Secretary of State that are subject to affirmative resolution procedure), in paragraph (i), after “section 97(1)” insert “or (1ZB)”; 20
  - (b) in subsection (13) (orders made by Department of Justice in Northern Ireland that are subject to affirmative resolution procedure), in paragraph (d), after “section 97(1A)” insert “or (2A)”. 25

## **PART 2**

### **COMPUTER MISUSE**

### **40 Unauthorised acts causing, or creating risk of, serious damage**

- (1) The Computer Misuse Act 1990 is amended as follows.
- (2) After section 3 insert – 30
 

**“3ZA Unauthorised acts causing, or creating risk of, serious damage**

  - (1) A person is guilty of an offence if –
    - (a) the person does any unauthorised act in relation to a computer;
    - (b) at the time of doing the act the person knows that it is unauthorised; 35
    - (c) the act causes, or creates a significant risk of, serious damage of a material kind; and
    - (d) the person intends by doing the act to cause serious damage of a material kind or is reckless as to whether such damage is caused. 40

- (2) Damage is of a “material kind” for the purposes of this section if it is –
    - (a) damage to human welfare in any place;
    - (b) damage to the environment of any place;
    - (c) damage to the economy of any country; or
    - (d) damage to the national security of any country. 5
  - (3) For the purposes of subsection (2)(a) an act causes damage to human welfare only if it causes –
    - (a) loss to human life;
    - (b) human illness or injury;
    - (c) disruption of a supply of money, food, water, energy or fuel; 10
    - (d) disruption of a system of communication;
    - (e) disruption of facilities for transport; or
    - (f) disruption of services relating to health.
  - (4) It is immaterial for the purposes of subsection (2) whether or not an act causing damage – 15
    - (a) does so directly;
    - (b) is the only or main cause of the damage.
  - (5) In this section –
    - (a) a reference to doing an act includes a reference to causing an act to be done; 20
    - (b) “act” includes a series of acts;
    - (c) a reference to a country includes a reference to a territory, and to any place in, or part or region of, a country or territory.
  - (6) A person guilty of an offence under this section is (unless subsection (7) applies) liable, on conviction on indictment, to imprisonment for a term not exceeding 14 years, or to a fine, or to both. 25
  - (7) Where an offence under this section is committed as a result of an act causing or creating a significant risk of –
    - (a) serious damage to human welfare of the kind mentioned in subsection (3)(a) or (3)(b), or 30
    - (b) serious damage to national security,a person guilty of the offence is liable, on conviction on indictment, to imprisonment for life, or to a fine, or to both.”

(3) In section 3A (making, supplying or obtaining articles for use in offences under section 1 or 3), in subsections (1), (2) and (3), for “section 1 or 3” substitute “section 1, 3 or 3ZA”. 35

#### 41 Obtaining articles for purposes relating to computer misuse

- In section 3A of the Computer Misuse Act 1990 (making, supplying or obtaining articles for use in offence under section 1 or 3), in subsection (3), for “article with a view to” substitute “article – 40
- (a) intending to use it to commit, or to assist in the commission of, an offence under section 1, 3 or 3ZA, or
  - (b) with a view to”.

## **42 Territorial scope of computer misuse offence**

- (1) The Computer Misuse Act 1990 is amended as follows.
- (2) In section 4 (territorial scope of offences), in subsection (1), for “section 1 or 3” substitute “section 1, 3 or 3ZA”.
- (3) After subsection (4) of that section insert— 5  

“(4A) It is immaterial for the purposes of an offence under section 3A whether the accused was in the home country concerned at the time of any act or other event proof of which is required for conviction of the offence if there is a significant link with domestic jurisdiction in relation to the offence.” 10
- (4) In section 5 (significant links with domestic jurisdiction), after subsection (1) insert—  

“(1A) In relation to an offence under section 1, 3, 3ZA or 3A, where the accused was in a country outside the United Kingdom at the time of the act constituting the offence there is a significant link with domestic jurisdiction if— 15

  - (a) the accused was a United Kingdom national at that time; and
  - (b) the act constituted an offence under the law of the country in which it occurred.

(1B) In subsection (1A)— 20  
“country” includes territory;  
“United Kingdom national” means an individual who is—

  - (a) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen;
  - (b) a person who under the British Nationality Act 1981 is a British subject; or
  - (c) a British protected person within the meaning of that Act.” 25
- (5) After subsection (3) of that section insert—  

“(3A) In relation to an offence under section 3ZA, any of the following is also a significant link with domestic jurisdiction— 30

  - (a) that the accused was in the home country concerned at the time when he did the unauthorised act (or caused it to be done);
  - (b) that the unauthorised act was done in relation to a computer in the home country concerned; 35
  - (c) that the unauthorised act caused, or created a significant risk of, serious damage of a material kind (within the meaning of that section) in the home country concerned.”
- (6) In section 13 (proceedings in Scotland), after subsection (2) insert—  

“(2A) A sheriff shall have jurisdiction in respect of an offence under section 3ZA above if— 40

  - (a) the accused was in the sheriffdom at the time when he did the unauthorised act (or caused it to be done), or
  - (b) the computer in relation to which the unauthorised act was done was in the sheriffdom at that time. 45

- (2B) A sheriff shall have jurisdiction in respect of an offence under section 3A above if—
- (a) the accused was in the sheriffdom at the time when—
    - (i) he made, adapted, supplied or offered to supply the article intending it to be used as mentioned in subsection (1) of that section, 5
    - (ii) he supplied or offered to supply the article believing that it would be used as mentioned in subsection (2) of that section, or
    - (iii) he obtained the article intending to use it, or with a view to its being supplied for use, as mentioned in subsection (3) of that section; or 10
  - (b) the offence related to the commission of an offence under section 1, 3 or 3ZA above (in the way described in subsections (1) to (3) of section 3A above) and any computer as mentioned in subsection (1)(b), (2)(b) or (2A)(b) of this section was in the sheriffdom at the time the accused carried out the act constituting the offence under section 3A above.” 15
- (7) After subsection (10) of that section insert—
- “(10A) Where an offence under section 1, 3, 3ZA or 3A above is committed outside Scotland, the person committing the offence may be prosecuted, tried and punished for the offence— 20
- (a) in any sheriff court district in Scotland in which the person is apprehended or is in custody, or
  - (b) in such sheriff court district as the Lord Advocate may direct, as if the offence had been committed in that district; and the offence is, for all purposes incidental to or consequential on the trial or punishment, deemed to have been committed in that district.” 25

### 43 Savings

- (1) The Computer Misuse Act 1990 is amended as follows. 30
- (2) In section 10 (saving for certain law enforcement powers)—
- (a) for “Section 1(1) above has” substitute “Sections 1 to 3A have”;
  - (b) in paragraph (a), after “seizure” insert “or of any other enactment by virtue of which the conduct in question is authorised or required”;
  - (c) in paragraph (b), after “seizure” insert “or of any other enactment or rule of law by virtue of which the conduct in question is authorised or required”; 35
  - (d) for “the said section 1(1)” substitute “any of those sections”;
  - (e) for “In this section “enforcement officer” means” substitute—
- “In this section— 40
- “enactment” means any enactment, whenever passed or made, contained in—
- (a) an Act of Parliament;
  - (b) an Act of the Scottish Parliament;
  - (c) a Measure or Act of the National Assembly for Wales; 45

- (d) an instrument made under any such Act or Measure;
- (e) any other subordinate legislation (within the meaning of the Interpretation Act 1978);
- “enforcement officer” means”. 5
- (3) In section 16 (application to Northern Ireland), after subsection (9) insert—
  - “(9A) In section 10 the definition of “enactment” shall be read as including a reference to an enactment, whenever passed or made, contained in Northern Ireland legislation or in an instrument made under such legislation.” 10

### PART 3

#### ORGANISED, SERIOUS AND GANG-RELATED CRIME

##### *Organised crime groups*

#### **44 Offence of participating in activities of organised crime group**

- (1) A person who participates in the criminal activities of an organised crime group commits an offence. 15
- (2) For this purpose, a person participates in the criminal activities of an organised crime group if the person takes part in any activities that the person knows or reasonably suspects—
  - (a) are criminal activities of an organised crime group, or 20
  - (b) will help an organised crime group to carry on criminal activities.
- (3) “Criminal activities” are activities within subsection (4) or (5) that are carried on with a view to obtaining (directly or indirectly) any gain or benefit.
- (4) Activities are within this subsection if—
  - (a) they are carried on in England or Wales, and 25
  - (b) they constitute an offence in England and Wales punishable on conviction on indictment with imprisonment for a term of 7 years or more.
- (5) Activities are within this subsection if—
  - (a) they are carried on outside England and Wales, 30
  - (b) they constitute an offence under the law in force of the country where they are carried on, and
  - (c) they would constitute an offence in England and Wales of the kind mentioned in subsection (4)(b) if the activities were carried on in England and Wales. 35
- (6) “Organised crime group” means a group that—
  - (a) has as its purpose, or as one of its purposes, the carrying on of criminal activities, and
  - (b) consists of three or more persons who act, or agree to act, together to further that purpose. 40
- (7) For a person to be guilty of an offence under this section it is not necessary—

- (a) for the person to know any of the persons who are members of the organised crime group,
  - (b) for all of the acts or omissions comprising participation in the group’s criminal activities to take place in England and Wales (so long as at least one of them does), or
  - (c) for the gain or benefit referred to in subsection (3) to be financial in nature.
- (8) It is a defence for a person charged with an offence under this section to prove that the person’s participation was necessary for a purpose related to the prevention or detection of crime.
- (9) A person guilty of an offence under this section is liable on conviction on indictment to imprisonment for a term not exceeding 5 years.

*Serious crime prevention orders*

**45 Extension of Part 1 of Serious Crime Act 2007 to Scotland**

Schedule 1 (amendments of Serious Crime Act 2007: Scotland) has effect.

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

- (1) Part 1 of Schedule 1 to the Serious Crime Act 2007 (serious offences in England and Wales) is amended as set out in subsections (2) to (4).
- (2) In paragraph 1 (drug trafficking), after paragraph (b) of sub-paragraph (1) insert –
  - “(ba) section 6 (restriction of cultivation of cannabis plant);”.
- (3) For paragraph 3 substitute –

*“Firearms offences*

- 3 (1) An offence under any of the following provisions of the Firearms Act 1968 –
  - (a) section 1(1) (possession etc of firearms or ammunition without certificate);
  - (b) section 2(1) (possession etc of shot gun without certificate);
  - (c) section 3(1) (dealing etc in firearms or ammunition by way of trade or business without being registered);
  - (d) section 5(1), (1A) or (2A) (possession, manufacture etc of prohibited weapons).
- (2) An offence under either of the following provisions of the Customs and Excise Management Act 1979 if it is committed in connection with a firearm or ammunition –
  - (a) section 68(2) (exportation of prohibited or restricted goods);
  - (b) section 170 (fraudulent evasion of duty etc).
- (3) In sub-paragraph (2) “firearm” and “ammunition” have the same meanings as in section 57 of the Firearms Act 1968.”

(4) After paragraph 11 insert –

*“Computer misuse*

- 11A An offence under any of the following provisions of the Computer Misuse Act 1990 –
- (a) section 1 (unauthorised access to computer material); 5
  - (b) section 2 (unauthorised access with intent to commit or facilitate commission of further offences);
  - (c) section 3 (unauthorised acts with intent to impair, or with recklessness as to impairing, operation of computer etc);
  - (d) section 3ZA (unauthorised acts causing, or creating risk of, serious damage to human welfare etc); 10
  - (e) section 3A (making, supplying or obtaining articles for use in offence under section 1 or 3).”

- (5) Part 2 of that Schedule (serious offences in Northern Ireland) is amended as set out in subsections (6) to (8). 15

- (6) In paragraph 17 (drug trafficking), after paragraph (b) of sub-paragraph (1) insert –

“(ba) section 6 (restriction of cultivation of cannabis plant);”.

- (7) In paragraph 19 (arms trafficking), for sub-paragraph (2) substitute –

- “(2) An offence under any of the following provisions of the Firearms (Northern Ireland) Order 2004 (S.I. 2004/702 (N.I. 3)) –
- (a) Article 3 (possession etc of firearms or ammunition without certificate);
  - (b) Article 24 (dealing etc in firearms or ammunition by way of trade or business without being registered); 25
  - (c) Article 45 (possession, manufacture etc of prohibited weapons.”

- (8) After paragraph 27 insert –

*“Computer misuse*

- 27A An offence under any of the following provisions of the Computer Misuse Act 1990 – 30
- (a) section 1 (unauthorised access to computer material);
  - (b) section 2 (unauthorised access with intent to commit or facilitate commission of further offences);
  - (c) section 3 (unauthorised acts with intent to impair, or with recklessness as to impairing, operation of computer etc); 35
  - (d) section 3ZA (unauthorised acts causing, or creating risk of, serious damage to human welfare etc);
  - (e) section 3A (making, supplying or obtaining articles for use in offence under section 1 or 3).” 40

#### 47 Powers of Crown Court to replace orders on breach

- (1) Section 21 of the Serious Crime Act 2007 (powers of Crown Court to vary orders on breach) is amended as follows.



- (2) In subsection (2) –
  - (a) after “vary” insert “or replace”;
  - (b) after “the order as varied” insert “, or the new order,”.
- (3) In subsection (4) –
  - (a) after “vary” insert “or replace”;
  - (b) after “the order as varied” insert “, or the new order,”.
- (4) In subsection (5), for “A variation under this section may be made” substitute “An order may be varied or replaced under this section”.
- (5) In subsection (6), after “variation” insert “or new order”.
- (6) After subsection (7) insert –
  - “(8) A reference in this section to replacing a serious crime prevention order is to making a new serious crime prevention order and discharging the existing one.”

#### 48 Extension of order where person charged

After section 22D of the Serious Crime Act 2007 (inserted by paragraph 17 of Schedule 1) insert –

*“Powers to extend orders where person charged*

##### 22E Extension of orders pending outcome of criminal proceedings

- (1) This section applies where a person subject to a serious crime prevention order is charged with –
  - (a) a serious offence, or
  - (b) an offence under section 25 of failing to comply with the serious crime prevention order.
- (2) The relevant applicant authority may make an application under this section to –
  - (a) the Crown Court in England and Wales, in the case of a serious crime prevention order in England and Wales;
  - (b) the High Court of Justiciary or the sheriff, in the case of a serious crime prevention order in Scotland;
  - (c) the Crown Court in Northern Ireland, in the case of a serious crime prevention order in Northern Ireland.
- (3) On an application under this section, the court or sheriff may vary the serious crime prevention order so that it continues in effect until one of the events listed in subsection (4) occurs (if the order would otherwise cease to have effect before then).
- (4) The events are –
  - (a) following the person’s conviction of the offence mentioned in subsection (1) –
    - (i) the order is varied under section 20 or 21, or under section 22B or 22C, by reference to the offence,
    - (ii) a new serious crime prevention order is made under section 19 or 21, or under section 22A or 22C, by reference to the offence, or



|   |           |
|---|-----------|
| <ul style="list-style-type: none"> <li> <ul style="list-style-type: none"> <li>(iii) the court or sheriff deals with the person for the offence without varying the order or making a new one;</li> </ul> </li> <li>(b) the person is acquitted of the offence;</li> <li>(c) the charge is withdrawn;</li> <li>(d) in the case of a serious crime prevention order in England and Wales or Northern Ireland – <ul style="list-style-type: none"> <li>(i) proceedings in respect of the charge are discontinued, or</li> <li>(ii) an order is made for the charge to lie on the file;</li> </ul> </li> <li>(e) in the case of a serious crime prevention order in Scotland – <ul style="list-style-type: none"> <li>(i) proceedings against the person are deserted <i>simpliciter</i>,</li> <li>(ii) proceedings against the person are deserted <i>pro loco et tempore</i> and no trial diet is appointed,</li> <li>(iii) the indictment or complaint relating to the person falls or for any other reason does not proceed to trial, or</li> <li>(iv) the diet not having been continued, adjourned or postponed, no further proceedings are in contemplation in relation to the person.</li> </ul> </li> </ul> | 5         |
| <ul style="list-style-type: none"> <li>(5) An order may be made under this section only if – <ul style="list-style-type: none"> <li>(a) the serious crime prevention order is still in force, and</li> <li>(b) the court or sheriff has reasonable grounds for believing that the order would protect the public by preventing, restricting or disrupting involvement by the person in serious crime.</li> </ul> </li> </ul>  | 20        |
| <ul style="list-style-type: none"> <li>(6) In subsection (5)(b) “serious crime” means – <ul style="list-style-type: none"> <li>(a) serious crime in England and Wales, in the case of a serious crime prevention order in England and Wales;</li> <li>(b) serious crime in Scotland, in the case of a serious crime prevention order in Scotland;</li> <li>(c) serious crime in Northern Ireland, in the case of a serious crime prevention order in Northern Ireland.”</li> </ul> </li> </ul>  | 25        |
| <b>49 Serious crime prevention orders and financial reporting etc</b>   | <b>30</b> |
| <ul style="list-style-type: none"> <li>(1) In Chapter 3 of Part 2 of the Serious Organised Crime and Police Act 2005 (financial reporting orders) – <ul style="list-style-type: none"> <li>(a) omit section 76 (making financial reporting orders in England and Wales);</li> <li>(b) omit section 77 (making financial reporting orders in Scotland);</li> <li>(c) omit section 78 (making financial reporting orders in Northern Ireland).</li> </ul> </li> </ul>   | 35        |
| <ul style="list-style-type: none"> <li>(2) In Part 1 of the Serious Crime Act 2007 (serious crime prevention orders), after section 5 insert –</li> </ul>   |           |
| <b>“5A Verification and disclosure of information</b>   | <b>40</b> |
| <ul style="list-style-type: none"> <li>(1) This section applies where information is provided to a law enforcement officer in response to an information requirement imposed by a serious crime prevention order.<br/>“Information requirement” means a requirement of the kind referred to in section 5(5)(a) or (b).</li> </ul>   | 45        |
| <ul style="list-style-type: none"> <li>(2) The law enforcement officer may, for the purpose of –</li> </ul>   |           |

- (a) checking the accuracy of the information, or
  - (b) discovering the true position,

disclose the information to any person who the officer reasonably believes may be able to contribute to doing either of those things.
- (3) Any other person may disclose information to – 5
  - (a) the law enforcement officer, or
  - (b) a person to whom the law enforcement officer has disclosed information under subsection (2),

for the purpose of contributing to doing either of the things mentioned in subsection (2)(a) and (b). 10
- (4) The law enforcement officer may also disclose the information referred to in subsection (1) for the purposes of –
  - (a) the prevention, detection, investigation or prosecution of criminal offences, whether in the United Kingdom or elsewhere, or 15
  - (b) the prevention, detection or investigation of conduct for which penalties other than criminal penalties are provided under the law of any part of the United Kingdom or of any country or territory outside the United Kingdom.
- (5) A disclosure under this section does not breach – 20
  - (a) any obligation of confidence owed by the person making the disclosure, or
  - (b) any other restriction on the disclosure of information (however imposed).
- (6) But nothing in this section authorises a disclosure, in contravention of any provisions of the Data Protection Act 1998, of personal data which are not exempt from those provisions.” 25

### *Gang injunctions*

## **50 Injunctions to prevent gang-related violence and drug-dealing activity**

In Part 4 of the Policing and Crime Act 2009 (injunctions: gang-related violence), for section 34 substitute – 30

### **“34 Injunctions to prevent gang-related violence and drug-dealing activity**

- (1) A court may grant an injunction under this section against a respondent aged 14 or over if the first and second conditions are met.
- (2) The first condition is that the court is satisfied on the balance of probabilities that the respondent has engaged in or has encouraged or assisted – 35
  - (a) gang-related violence, or
  - (b) gang-related drug-dealing activity.
- (3) The second condition is that the court thinks it is necessary to grant the injunction for either or both of the following purposes – 40
  - (a) to prevent the respondent from engaging in, or encouraging or assisting, gang-related violence or gang-related drug-dealing activity;

- (b) to protect the respondent from gang-related violence or gang-related drug-dealing activity.
- (4) An injunction under this section may (for either or both of those purposes) –
  - (a) prohibit the respondent from doing anything described in the injunction; 5
  - (b) require the respondent to do anything described in the injunction.
- (5) For the purposes of this section, something is “gang-related” if it occurs in the course of, or is otherwise related to, the activities of a group that – 10
  - (a) consists of at least three people, and
  - (b) has one or more characteristics that enable its members to be identified by others as a group.
- (6) In this section “violence” includes a threat of violence. 15
- (7) In this Part “drug-dealing activity” means the unlawful production, supply, importation or exportation of a controlled drug. “Production”, “supply” and “controlled drug” here have the meanings given by section 37(1) of the Misuse of Drugs Act 1971.

## PART 4 20

### SEIZURE AND FORFEITURE OF DRUG-CUTTING AGENTS

#### *Warrants*

#### 51 Applications for search and seizure warrants

- (1) A justice of the peace may issue a warrant (a “search and seizure warrant”) authorising a police or customs officer – 25
  - (a) to enter premises, and
  - (b) to search them for substances that appear to be intended for use as drug-cutting agents,
 if the justice is satisfied that there are reasonable grounds to suspect that a substance intended for such use is on the premises. 30
- (2) In this Part “police or customs officer” means –
  - (a) a constable,
  - (b) a National Crime Agency officer, or
  - (c) a person designated as a general customs official under section 3(1) of the Borders, Citizenship and Immigration Act 2009. 35
- (3) A search and seizure warrant may be either –
  - (a) a warrant that relates to any premises occupied or controlled by a person specified in the warrant (an “all-premises warrant”), or
  - (b) a warrant that relates only to premises specified in the warrant (a “specific-premises warrant”). 40
- (4) A search and seizure warrant may be issued only on the application of a police or customs officer.

- (5) The application may be made without notice being given to persons who might be affected by the warrant.
- (6) The application must be supported –
  - (a) in England and Wales, by an information in writing;
  - (b) in Scotland, by evidence on oath;
  - (c) in Northern Ireland, by a complaint on oath.
- (7) The police or customs officer must answer on oath any question that the justice of the peace hearing the application asks him or her.
- (8) A police or customs officer applying for a search and seizure warrant must –
  - (a) state that the application is made under this section;
  - (b) specify the premises or (as the case may be) each set of premises that it is desired to enter and search;
  - (c) state what are the grounds for suspecting that a substance intended for use as a drug-cutting agent is on the premises;
  - (d) identify, so far as is possible, the substance or substances to be sought.
- (9) If the police or customs officer is applying for a search and seizure warrant authorising entry and search on more than one occasion, the officer must also state –
  - (a) the ground on which the officer applies for such a warrant;
  - (b) whether the officer seeks a warrant authorising an unlimited number of entries, or (if not) the maximum number of entries desired.
- (10) If the police or customs officer is applying for an all-premises warrant, the officer must also specify –
  - (a) as many of the sets of premises that it is desired to enter and search as it is reasonably practicable to specify;
  - (b) the person who is in occupation or control of those premises and any others that it is desired to enter and search;
  - (c) why it is necessary to search more premises than those specified under paragraph (a);
  - (d) why it is not reasonably practicable to specify all the premises that it is desired to enter and search.

## 52 Further provisions about search and seizure warrants

- (1) A search and seizure warrant authorises entry on one occasion only, unless it specifies that it authorises multiple entries.  
If it specifies that it authorises multiple entries, it must also specify whether the number of entries authorised is unlimited, or limited to a specified maximum.
- (2) A search and seizure warrant must –
  - (a) specify the name of the person who applies for it;
  - (b) specify the date on which it is issued;
  - (c) state that the warrant is issued under section 51 of this Act;
  - (d) specify each set of premises to be searched, or (in the case of an all-premises warrant) the person who is in occupation or control of premises to be searched, together with any premises to be searched that are under the person’s occupation and can be specified;
  - (e) identify, so far as is possible, the substance or substances to be sought.

- (3) Two copies must be made of a search and seizure warrant that specifies only one set of premises and does not authorise multiple entries.
- (4) As many copies as are reasonably required may be made of any other kind of warrant.
- (5) The copies must be clearly certified as copies. 5

### 53 Execution of search and seizure warrants

- (1) Schedule 2 (execution of search and seizure warrants) has effect.
- (2) An entry on or search of premises under a search and seizure warrant is unlawful unless it complies with that Schedule.
- (3) A police or customs officer may use reasonable force, if necessary, for the purpose of entering premises under a search and seizure warrant. 10
- (4) An offence is committed by a person who without reasonable excuse obstructs a police or customs officer executing or seeking to execute a search and seizure warrant.
- (5) A person guilty of an offence under subsection (4) is liable on summary conviction to a fine not exceeding level 3 on the standard scale. 15

### *Seizure*

### 54 Seizure of substances under search and seizure warrant

A police or customs officer searching premises under a search and seizure warrant may seize any substance on the premises that the officer has reasonable grounds to suspect is intended for use as a drug-cutting agent. 20

### 55 Seizure of substances without search and seizure warrant

If a police or customs officer –

- (a) is lawfully on premises that are not subject to a search and seizure warrant, and
  - (b) finds a substance there that the officer has reasonable grounds to suspect is intended for use as a drug-cutting agent,
- the officer may seize the substance. 25

### 56 Notice to be given where substances seized

- (1) An officer who has seized a substance under section 54 or 55 must make reasonable efforts to give written notice – 30
  - (a) to the person from whom the substance was seized, and
  - (b) if the officer thinks that the substance may belong to a different person, to that person.
- (2) A notice under subsection (1) must explain the effect of sections 58, 59, 60 and 62. 35

## 57 Containers

- (1) An officer who seizes a substance under section 54 or 55 may also seize any container holding the substance.
- (2) If a container is seized under this section, reasonable efforts must be made to return it to –
  - (a) the person from whom it was seized, or
  - (b) (if different) a person to whom it belongs.5
- (3) Subsection (2) does not apply –
  - (a) if the container appears to be of negligible value,
  - (b) if it is not practicable for the container to be returned, or
  - (c) while the container is or may be needed for use as evidence at a trial for an offence.10

### *Retention of seized substances*

## 58 Initial retention of seized substances

- (1) Where –
  - (a) a substance has been seized under section 54 or 55, and
  - (b) there continue to be reasonable grounds to suspect that the substance was intended for use as a drug-cutting agent,it may be retained until the end of the 30th day after the date of seizure. 15
- (2) Where –
  - (a) a substance has been seized under another enactment and is lawfully in the possession of a police or customs officer,
  - (b) the period during which the substance may lawfully be retained under that enactment expires, and
  - (c) there are reasonable grounds to suspect that the substance was intended for use as a drug-cutting agent,it may be retained until the end of the 30th day after the period referred to in paragraph (b). 20

## 59 Continued retention or return of seized substances

- (1) On an application made by a police or customs officer, a magistrates' court or a justice of the peace may make an order extending the period for which a substance may be retained under section 58 if satisfied that –
  - (a) the condition in subsection (2) is met, or
  - (b) the condition in subsection (4) is met.30
- (2) The condition in this subsection is that the continued retention of the substance is justified –
  - (a) while its intended use is further investigated, or
  - (b) while consideration is given to bringing (in the United Kingdom or elsewhere) proceedings against any person for an offence with which the substance is connected.35
- (3) If the condition in subsection (2) is met, an order under this section may authorise the retention of the substance for a specified period ending no later than the 60th day after – 40

- (a) the date of seizure, in the case of a substance seized under section 54 or 55, or
  - (b) the end of the period referred to in section 58(2)(b), in any other case.
- (4) The condition in this subsection is that proceedings against any person for an offence with which the substance is connected have been started but have not been concluded. 5
- (5) If the condition in subsection (4) is met, an order under this section may authorise the retention of the substance until the proceedings are concluded.
- (6) If on the hearing of an application under this section the court or justice is not satisfied that the condition in subsection (2) or (4) is met, the court or justice must order the substance to be returned to a person entitled to it. 10
- (7) Where –
  - (a) an order is made under this section extending the period for which the substance may be retained, and
  - (b) no person entitled to the substance was present or represented at the hearing,
 a police or customs officer must make reasonable efforts to give written notice to the person from whom the substance was seized and, if the officer thinks that the substance may belong to a different person, to that person.
- (8) A notice under subsection (7) must explain – 20
  - (a) the effect of the court’s order, and
  - (b) the effect of section 62.
- (9) For the purposes of this Part, proceedings against a person for an offence are concluded when –
  - (a) the person is convicted or acquitted of the offence and either – 25
    - (i) the time allowed for making an appeal, or applying for permission to do so, has expired, or
    - (ii) if an appeal is made, the appeal is determined or otherwise dealt with;
  - (b) the charge is withdrawn; 30
  - (c) in England and Wales or Northern Ireland –
    - (i) proceedings in respect of the charge are discontinued, or
    - (ii) an order is made for the charge to lie on the file;
  - (d) in Scotland –
    - (i) proceedings against the person are deserted *simpliciter*, 35
    - (ii) proceedings against the person are deserted *pro loco et tempore* and no trial diet is appointed,
    - (iii) the indictment or complaint relating to the person falls or for any other reason does not proceed to trial, or
    - (iv) the diet not having been continued, adjourned or postponed, no further proceedings are in contemplation in relation to the person. 40

Paragraph (a) applies, where an appeal is made, with references to an appeal being read as references to any further appeal.



*Forfeiture etc or return of seized substances*

**60 Forfeiture and disposal, or return, of seized substances**

- (1) A police or customs officer may apply to a magistrates' court for the forfeiture of a substance retained under section 58.
- (2) Where an application for the forfeiture of a substance is made under this section, the substance is to be retained while proceedings on the application are in progress. 5
- (3) The court must order the forfeiture of the substance if satisfied that it was intended for use as a drug-cutting agent.
- (4) A substance ordered to be forfeited may be disposed of in whatever way the officer who applied for the order thinks is suitable. 10
- (5) A substance must not be disposed of under subsection (4) –
  - (a) before the end of the period within which an appeal under section 61 may be made, or
  - (b) if an appeal is made, before it is determined or otherwise dealt with. 15
- (6) The court must order the substance to be returned to a person entitled to it if not satisfied that the substance was intended for use as a drug-cutting agent.
- (7) If an order is made under subsection (6), the substance may nevertheless be retained –
  - (a) until the end of the period within which an appeal under section 61 may be made against the order, or
  - (b) if an appeal is made, until the time when it is determined or otherwise dealt with. 20

But if it is decided before the end of the period mentioned in paragraph (a) that there is to be no appeal, the substance must be returned as soon as possible after that decision is made. 25

**61 Appeal against decision under section 60**

- (1) A party to proceedings for an order under section 60, or a person entitled to the substance in question (if not a party to those proceedings), may appeal against an order under that section. 30
- (2) Where –
  - (a) a police or customs officer brings an appeal under this section, and
  - (b) no person entitled to the substance in question was a party to the original proceedings,

the officer must make reasonable efforts to give notice of the appeal to the person from whom the substance was seized and, if the officer thinks that the substance may belong to a different person, to that person. 35
- (3) An appeal under this section is to –
  - (a) the Crown Court, in England and Wales;
  - (b) the Sheriff Appeal Court, in Scotland;
  - (c) a county court, in Northern Ireland. 40
- (4) An appeal under this section must be made before the end of the period of 30 days starting with the date of the order appealed against.



- (5) Subject to subsections (6) and (7), the court hearing the appeal may make any order the court thinks appropriate.
- (6) If an appeal against an order for the return of the substance is allowed –
  - (a) the court must order the substance to be forfeited, and
  - (b) subsections (4) and (5) of section 60 apply with the necessary adaptations. 5
- (7) If an appeal against an order forfeiting the substance is allowed –
  - (a) the court must order the substance to be returned to a person entitled to it, and
  - (b) subsection (7) of section 60 applies with the necessary adaptations. 10

## **62 Return of substance to person entitled to it, or disposal if return impracticable**

- (1) Where the retention of a substance has been, but is no longer, authorised under this Part –
  - (a) the substance must (subject to subsection (4)) be returned to a person entitled to it; 15
  - (b) a magistrates’ court must, if asked to do so by a person entitled to the substance, order it to be returned to that person.
- (2) A person who claims to be entitled to a substance retained under this Part may apply to a magistrates’ court for an order under subsection (1)(b) or section 59(6) or 60(6) (as appropriate). 20
- (3) Where –
  - (a) a court makes an order under this Part requiring a substance to be returned to a particular person, and
  - (b) reasonable efforts have been made, without success, to find that person, or it is for some other reason impracticable to return the substance to that person, 25
 the order has effect as if it required the substance to be returned to any person entitled to it.
- (4) Where –
  - (a) a substance is required by a provision of this Part, or an order made under this Part, to be returned to a person entitled to it, and 30
  - (b) reasonable efforts have been made, without success, to find a person entitled to the substance, or it is for some other reason impracticable to return the substance to a person entitled to it, 35
 a police or customs officer may dispose of the substance in whatever way the officer thinks is suitable.

## *Supplementary*

## **63 Compensation**

- (1) If no forfeiture order is made in respect of a substance retained under this Part, the person to whom it belongs may make an application to a magistrates’ court for compensation. 40

- (2) If the court is satisfied that the applicant has suffered loss as a result of the retention of the substance, the court may order compensation to be paid to the applicant.
- (3) Subject to subsection (4), the amount of compensation to be paid is the relevant proportion of the value of the substance. 5  
For these purposes –
  - (a) the “relevant proportion” is whatever proportion (not exceeding 100%) the court thinks is reasonable;
  - (b) the “value” of the substance is the amount that it would cost the applicant to acquire the substance at the time when the court makes the order. 10
- (4) If the court thinks that, by reason of exceptional circumstances, the value of the substance would not be adequate compensation, it may order payment of whatever larger amount it thinks reasonable.
- (5) The fund from which, or person by whom, the compensation is to be paid depends on the person by whom the substance was seized, as follows – 15

| <i>Person by whom substance seized</i>  | <i>Fund from which or person by whom compensation payable</i>       |    |
|---|---|----|
| A constable of a police force maintained by a local policing body   | The police fund from which the expenses of the police force are met | 20 |
| A constable of the Police Service of Scotland   | The Scottish Police Authority                                       |    |
| A constable of the Police Service of Northern Ireland   | The Chief Constable of the Police Service of Northern Ireland       |    |
| A constable of the British Transport Police Force   | The Chief Constable of the British Transport Police Force           | 25 |
| A constable of the Ministry of Defence Police   | The Secretary of State  |    |
| A National Crime Agency officer   | The Director General of the National Crime Agency                   | 30 |
| A person designated as a general customs official under section 3(1) of the Borders, Citizenship and Immigration Act 2009 | The Secretary of State  |    |

## 64 Interpretation etc 35

- (1) For the purposes of this Part, a substance is used as a “drug-cutting agent” if it is added to a controlled drug in connection with the unlawful supply or exportation of the drug.
- (2) In this Part –
  - “controlled drug” has the same meaning as in the Misuse of Drugs Act 1971 (see section 2 of that Act); 40

- “enactment” includes –
- (a) an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978;
  - (b) an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament; 5
  - (c) an enactment contained in, or in an instrument made under, Northern Ireland legislation;
- “entitled”, in relation to a substance, is to be read in accordance with subsection (3);
- “police or customs officer” has the meaning given by section 51(2); 10
- “premises” includes any place and, in particular, includes –
- (a) any vehicle, vessel, aircraft or hovercraft;
  - (b) any offshore installation within the meaning given by section 1 of the Mineral Workings (Offshore Installations) Act 1971;
  - (c) any renewable energy installation within the meaning given by section 104 of the Energy Act 2004; 15
  - (d) any tent or movable structure;
- “search and seizure warrant” means a warrant under section 51;
- “supplying” includes distributing;
- “unlawful” means – 20
- (a) in relation to a supply, unlawful under section 4 of the Misuse of Drugs Act 1971;
  - (b) in relation to an exportation, prohibited under section 3 of that Act.
- (3) The persons “entitled” to a substance for the purposes of this Part are – 25
- (a) the person from whom it was seized;
  - (b) (if different) any person to whom it belongs.
- (4) Where a retrial is ordered on a person’s appeal against conviction for an offence, a reference in this Part to the determination of the appeal is a reference to the conclusion of proceedings for the offence on retrial. 30
- (5) In the application of this Part to Scotland, a reference to a magistrates’ court or to a justice of the peace is to be read as a reference to a sheriff.
- (6) In the application of this Part to Northern Ireland –
- (a) a reference to a justice of the peace in section 51 is to be read as a reference to a lay magistrate; 35
  - (b) a reference to a magistrates’ court or a justice of the peace in section 59, and any other reference to a magistrates’ court, is to be read as a reference to a court of summary jurisdiction.

## PART 5

### PROTECTION OF CHILDREN ETC 40

#### 65 Child cruelty offence

- (1) Section 1 of the Children and Young Persons Act 1933 (cruelty to persons under 16) is amended as follows.
- (2) In subsection (1) –

- (a) after “ill-treats” insert “(whether physically or otherwise)”;
    - (b) after “ill-treated” insert “(whether physically or otherwise)”.
  - (3) In that subsection, for the words from “(including” to “derangement)” substitute “(whether the suffering or injury is of a physical or a psychological nature)”. 5
  - (4) In that subsection, for “a misdemeanour” substitute “an offence”.
  - (5) In subsection (2), in paragraph (b) –
    - (a) after “to bed” insert “or at any later time before the suffocation”;
    - (b) after “drink” insert “or a prohibited drug”.
  - (6) After that subsection insert – 10
    - “(2A) The reference in subsection (2)(b) to the infant being “in bed” with another (“the adult”) includes a reference to the infant lying next to the adult in or on any kind of furniture or surface being used by the adult for the purpose of sleeping (and the reference to the time when the adult “went to bed” is to be read accordingly). 15
    - (2B) A drug is a prohibited drug for the purposes of subsection (2)(b) in relation to a person if the person’s possession of the drug immediately before taking it constituted an offence under section 5(2) of the Misuse of Drugs Act 1971.”
- 66 Possession of paedophile manual 20**
  - (1) It is an offence to be in possession of any item that contains advice or guidance about abusing children sexually.
  - (2) It is a defence for a person (D) charged with an offence under this section –
    - (a) to prove that D had a legitimate reason for being in possession of the item; 25
    - (b) to prove that –
      - (i) D had not read, viewed or (as appropriate) listened to the item, and
      - (ii) D did not know, and had no reason to suspect, that it contained advice or guidance about abusing children sexually; or 30
    - (c) to prove that –
      - (i) the item was sent to D without any request made by D or on D’s behalf, and
      - (ii) D did not keep it for an unreasonable time.
  - (3) A person guilty of an offence under this section is liable – 35
    - (a) on summary conviction in England and Wales, to imprisonment for a term not exceeding 12 months or to a fine, or to both;
    - (b) on summary conviction in Northern Ireland, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum, or to both; 40
    - (c) on conviction on indictment, to imprisonment for a term not exceeding 3 years or to a fine, or to both.
  - (4) Proceedings for an offence under this section may be brought –
    - (a) in England and Wales, only by or with the consent of the Director of Public Prosecutions; 45

- (b) in Northern Ireland, only by or with the consent of the Director of Public Prosecutions for Northern Ireland.
- (5) In England and Wales, the following provisions of the Protection of Children Act 1978 apply in relation to prohibited items as they apply in relation to indecent photographs of children (within the meaning of that Act) – 5
  - (a) section 4 (entry, search and seizure);
  - (b) the Schedule (forfeiture of photographs).
- (6) In Northern Ireland, the following provisions of the Protection of Children Act (Northern Ireland) Order 1978 (S.I. 1978/1047 (N.I. 17)) apply in relation to prohibited items as they apply in relation to indecent photographs of children (within the meaning of that Order) – 10
  - (a) Article 4 (entry, search and seizure);
  - (b) the Schedule (forfeiture of photographs).
- (7) Schedule 3 makes special provision in connection with the operation of subsection (1) in relation to persons providing information society services within the meaning of that Schedule. 15
- (8) In this section –
  - “abusing children sexually” means doing anything that constitutes –
    - (a) an offence under Part 1 of the Sexual Offences Act 2003, or under Part 2, 3 or 4 of the Sexual Offences (Northern Ireland) Order 2008 (S.I. 2008/1769 ((N.I. 2)), against a person under 16, or 20
    - (b) an offence under section 1 of the Protection of Children Act 1978, or under Article 3 of the Protection of Children Act (Northern Ireland) Order 1978, involving indecent photographs (but not pseudo-photographs), 25
  - or doing anything outside England and Wales or Northern Ireland that would constitute such an offence if done in England and Wales or Northern Ireland;
  - “item” includes anything in which information of any description is recorded; 30
  - “prohibited item” means an item within subsection (1).

## **67 Offence of female genital mutilation: extra-territorial acts**

- (1) The Female Genital Mutilation Act 2003 is amended as follows –
  - (a) in section 3 (offence of assisting non-UK person to mutilate overseas a girl’s genitalia), in subsections (1) and (2)(a) omit “permanent”; 35
  - (b) in section 4 (extension of sections 1 to 3 to extra-territorial acts), in subsection (1) omit “permanent”;
  - (c) in section 6 (definitions), for subsection (3) substitute –
    - “(3) A United Kingdom resident is an individual who is habitually resident in the United Kingdom.” 40
- (2) The Prohibition of Female Genital Mutilation (Scotland) Act 2005 is amended as follows –
  - (a) in section 3 (aiding and abetting female genital mutilation), in subsections (1)(c) and (2) omit “permanent”; 45

- (b) in section 4 (extension of sections 1 and 3 to extra-territorial acts), in subsection (1) omit “permanent”;
- (c) in section 6 (definitions), for the definition of “permanent United Kingdom resident” substitute—  
““United Kingdom resident” is an individual who is  
habitually resident in the United Kingdom.” 5

## 68 Anonymity for victims of female genital mutilation

- (1) After section 4 of the Female Genital Mutilation Act 2003 insert—

### “4A Anonymity of victims

Schedule 1 provides for the anonymity of persons against whom a female genital mutilation offence (as defined in that Schedule) is alleged to have been committed.” 10

- (2) Insert as Schedule 1 to that Act the following Schedule—

#### “SCHEDULE 1

#### ANONYMITY OF VICTIMS 15

#### *Prohibition on the identification of victims in publications*

- 1 (1) This paragraph applies where an allegation has been made that a female genital mutilation offence has been committed against a person.
- (2) No matter likely to lead members of the public to identify the person, as the person against whom the offence is alleged to have been committed, may be included in any publication during the person’s lifetime. 20
- (3) For the purposes of this Schedule, any consent of the person to an act giving rise to the alleged offence is not to be taken as preventing that person from being regarded as a person against whom the alleged offence was committed. 25
- (4) In any criminal proceedings before a court, the court may direct that the restriction imposed by sub-paragraph (2) is not to apply (whether at all in England and Wales and Northern Ireland, or to the extent specified in the direction) if the court is satisfied that either of the following conditions is met. 30
- (5) The first condition is that the conduct of a person’s defence at a trial of a female genital mutilation offence would be substantially prejudiced if the direction is not given. 35
- (6) The second condition is that—
  - (a) the effect of sub-paragraph (2) is to impose a substantial and unreasonable restriction on the reporting of the proceedings, and
  - (b) it is in the public interest to remove or relax the restriction. 40
- (7) A direction under sub-paragraph (4) does not affect the operation of sub-paragraph (2) at any time before the direction is given.

- (8) In this paragraph “the court” means—
- (a) in England and Wales, a magistrates’ court or the Crown Court;
  - (b) in Northern Ireland, a magistrates’ court, a county court or the Crown Court.

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*Penalty for breaching prohibition imposed by paragraph 1(2)*

- 2 (1) If anything is included in a publication in contravention of the prohibition imposed by paragraph 1(2), each of the persons responsible for the publication is guilty of an offence.
- (2) A person guilty of an offence under this paragraph is liable—
- (a) on summary conviction in England and Wales, to a fine;
  - (b) on summary conviction in Northern Ireland, to a fine not exceeding level 5 on the standard scale.
- (3) The persons responsible for a publication are as follows—

10

| <i>Type of publication</i>    | <i>Persons responsible</i>  | <i>15</i> |
|-------------------------------|---|-----------|
| Newspaper or other periodical | Any person who is a proprietor, editor or publisher of the newspaper or periodical.                       |           |
| Relevant programme            | Any person who—   |           |
|                               | (a) is a body corporate engaged in providing the programme service in which the programme is included, or | 20        |
|                               | (b) has functions in relation to the programme corresponding to those of an editor of a newspaper.        | 25        |
| Any other kind of publication | Any person who publishes the publication.   | 30        |

- (4) If an offence under this paragraph is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—
- (a) a senior officer of a body corporate, or
  - (b) a person purporting to act in such a capacity,
- the senior officer or person (as well as the body corporate) is guilty of the offence and liable to be proceeded against and punished accordingly.
- (5) “Senior officer”, in relation to a body corporate, means a director, manager, secretary or other similar officer of the body corporate; and for this purpose “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

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- (6) Proceedings for an offence under this paragraph –
  - (a) if alleged to have been committed in England and Wales, may not be instituted except by, or with the consent of, the Attorney General;
  - (b) if alleged to have been committed in Northern Ireland, may not be instituted except by, or with the consent of, the Director of Public Prosecutions for Northern Ireland. 5

*Offence under paragraph 2: defences*

- 3 (1) This paragraph applies where a person (“the defendant”) is charged with an offence under paragraph 2 as a result of the inclusion of any matter in a publication. 10
- (2) It is a defence for the defendant to prove that at the time of the alleged offence, the defendant was not aware, and did not suspect or have reason to suspect, that –
  - (a) the publication included the matter in question, or 15
  - (b) the allegation in question had been made.
- (3) It is a defence for the defendant to prove that the publication in which the matter appeared was one in respect of which the victim had given written consent to the appearance of matter of that description. 20
- (4) The defence in sub-paragraph (3) is not available if –
  - (a) the victim was under the age of 16 at the time when her consent was given, or
  - (b) a person interfered unreasonably with the peace and comfort of the victim with a view to obtaining her consent. 25
- (5) In this paragraph “the victim” means the person against whom the female genital mutilation offence in question is alleged to have been committed.

*Special rules for providers of information society services*

- 4 (1) Paragraph 2 applies to a domestic service provider who, in the course of providing information society services, publishes prohibited matter in an EEA state other than the United Kingdom (as well as to a person, of any description, who publishes prohibited matter in England and Wales or Northern Ireland). 30
- (2) Proceedings for an offence under paragraph 2, as it applies to a domestic service provider by virtue of sub-paragraph (1), may be taken at any place in England and Wales or Northern Ireland. 35  
The offence may for all incidental purposes be treated as having been committed at any place in England and Wales or Northern Ireland.
- (3) Nothing in this paragraph affects the operation of any of paragraphs 6 to 8. 40
- 5 (1) Proceedings for an offence under paragraph 2 may not be taken against a non-UK service provider in respect of anything done in the course of the provision of information society services unless the derogation condition is met. 45



- (2) The derogation condition is that taking proceedings –
      - (a) is necessary for the purposes of the public interest objective,
      - (b) relates to an information society service that prejudices that objective or presents a serious and grave risk of prejudice to that objective, and
      - (c) is proportionate to that objective.
    - (3) “The public interest objective” means the pursuit of public policy.
- 6
  - (1) A service provider does not commit an offence under paragraph 2 by providing access to a communication network or by transmitting, in a communication network, information provided by a recipient of the service, if the service provider does not –
    - (a) initiate the transmission,
    - (b) select the recipient of the transmission, or
    - (c) select or modify the information contained in the transmission.
  - (2) For the purposes of sub-paragraph (1) –
    - (a) providing access to a communication network, and
    - (b) transmitting information in a communication network,
 include the automatic, intermediate and transient storage of the information transmitted so far as the storage is solely for the purpose of carrying out the transmission in the network.
  - (3) Sub-paragraph (2) does not apply if the information is stored for longer than is reasonably necessary for the transmission.
- 7
  - (1) A service provider does not commit an offence under paragraph 2 by storing information provided by a recipient of the service for transmission in a communication network if the first and second conditions are met.
  - (2) The first condition is that the storage of the information –
    - (a) is automatic, intermediate and temporary, and
    - (b) is solely for the purpose of making more efficient the onward transmission of the information to other recipients of the service at their request.
  - (3) The second condition is that the service provider –
    - (a) does not modify the information,
    - (b) complies with any conditions attached to having access to the information, and
    - (c) if sub-paragraph (4) applies, promptly removes the information or disables access to it.
  - (4) This sub-paragraph applies if the service provider obtains actual knowledge that –
    - (a) the information at the initial source of the transmission has been removed from the network,
    - (b) access to it has been disabled, or
    - (c) a court or administrative authority has ordered the removal from the network of, or the disablement of access to, the information.

- 8 (1) A service provider does not commit an offence under paragraph 2 by storing information provided by a recipient of the service if –
- (a) the service provider had no actual knowledge when the information was provided that it was, or contained, a prohibited publication, or 5
  - (b) on obtaining actual knowledge that the information was, or contained, a prohibited publication, the service provider promptly removed the information or disabled access to it.
- (2) Sub-paragraph (1) does not apply if the recipient of the service is acting under the authority or control of the service provider. 10

### *Interpretation*

- 9 (1) In this Schedule –
- “domestic service provider” means a service provider established in England and Wales or Northern Ireland;
  - “the E-Commerce Directive” means 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); 15
  - “female genital mutilation offence” means – 20
    - (a) an offence under section 1, 2, 3 or 3A;
    - (b) an offence of attempt or conspiracy to commit any such offence;
    - (c) an offence under Part 2 of the Serious Crime Act 2007 (encouraging or assisting crime) in relation to any such offence; 25
  - “information society services” –
    - (a) has the meaning given in Article 2(a) of the E-Commerce Directive (which refers to Article 1(2) of Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations), and 30
    - (b) is summarised in recital 17 of the E-Commerce Directive as covering “any service normally provided for remuneration, at a distance, by means of electronic equipment for the processing (including digital compression) and storage of data, and at the individual request of a recipient of a service”; 35
  - “non-UK service provider” means a service provider established in an EEA state other than the United Kingdom; 40
  - “programme service” has the same meaning as in the Broadcasting Act 1990 (see section 201(1) of that Act);
  - “prohibited material” means any material the publication of which contravenes paragraph 1(2); 45
  - “publication” includes any speech, writing, relevant programme or other communication (in whatever form) which is addressed to, or is accessible by, the public at large or any section of the public;

- “recipient”, in relation to a service, means a person who, for professional ends or otherwise, uses an information society service, in particular for the purposes of seeking information or making it accessible;
- “relevant programme” means a programme included in a programme service; 5
- “service provider” means a person providing an information society service.
- (2) For the purposes of the definition of “publication” in sub-paragraph (1) – 10
- (a) an indictment or other document prepared for use in particular legal proceedings is not to be taken as coming within the definition;
- (b) every relevant programme is to be taken as addressed to the public at large or to a section of the public. 15
- (3) For the purposes of the definitions of “domestic service provider” and “non-UK service provider” in sub-paragraph (1) –
- (a) a service provider is established in a particular part of the United Kingdom, or in a particular EEA state, if the service provider – 20
- (i) effectively pursues an economic activity using a fixed establishment in that part of the United Kingdom, or that EEA state, for an indefinite period, and
- (ii) is a national of an EEA state or a company or firm mentioned in Article 54 of the Treaty on the Functioning of the European Union; 25
- (b) the presence or use in a particular place of equipment or other technical means of providing an information society service does not, of itself, constitute the establishment of a service provider; 30
- (c) where it cannot be determined from which of a number of establishments a given information society service is provided, that service is to be regarded as provided from the establishment at the centre of the service provider’s activities relating to that service.” 35

## 69 Offence of failing to protect girl from risk of genital mutilation

- (1) The Female Genital Mutilation Act 2003 is amended as follows.
- (2) After section 3 insert –

### “3A Offence of failing to protect girl from risk of genital mutilation

- (1) If a genital mutilation offence is committed against a girl under the age of 16, each person who is responsible for the girl at the relevant time is guilty of an offence. 40  
This is subject to subsection (5).
- (2) For the purposes of this section a person is “responsible” for a girl in the following two cases. 45
- (3) The first case is where the person –

- (a) has parental responsibility for the girl, and
  - (b) has frequent contact with her.
- (4) The second case is where the person –
  - (a) is aged 18 or over, and
  - (b) has assumed (and not relinquished) responsibility for caring for the girl in the manner of a parent. 5
- (5) It is a defence for the defendant to show that –
  - (a) at the relevant time, the defendant did not think that there was a significant risk of a genital mutilation offence being committed against the girl, and could not reasonably have been expected to be aware that there was any such risk, or 10
  - (b) the defendant took such steps as he or she could reasonably have been expected to take to protect the girl from being the victim of a genital mutilation offence.
- (6) A person is taken to have shown the fact mentioned in subsection (5)(a) or (b) if – 15
  - (a) sufficient evidence of the fact is adduced to raise an issue with respect to it, and
  - (b) the contrary is not proved beyond reasonable doubt.
- (7) For the purposes of subsection (3)(b), where a person has frequent contact with a girl which is interrupted by her going to stay somewhere temporarily, that contact is treated as continuing during her stay there. 20
- (8) In this section –
  - “genital mutilation offence” means an offence under section 1, 2 or 3 (and for the purposes of subsection (1) the prosecution does not have to prove which section it is); 25
  - “parental responsibility” –
    - (a) in England Wales, has the same meaning as in the Children Act 1989;
    - (b) in Northern Ireland, has the same meaning as in the Children (Northern Ireland) Order 1995 (S.I. 1995/755 (N.I. 2)); 30
  - “the relevant time” means the time when the mutilation takes place.”
- (3) In section 4 (extension of sections 1 to 3 to extra-territorial acts) – 35
  - (a) in the heading, for “3” substitute “3A” and after “acts” insert “or omissions”;
  - (b) after subsection (1) insert –
    - “(1A) An offence under section 3A can be committed wholly or partly outside the United Kingdom by a person who is a United Kingdom national or a United Kingdom resident.” 40
- (4) In section 5 (penalties for offences) –
  - (a) for “A person guilty of an offence under this Act” substitute –
    - “(1) A person guilty of an offence under section 1, 2 or 3”;
  - (b) at the end insert – 45
    - “(2) A person guilty of an offence under section 3A is liable –

- (a) on conviction on indictment, to imprisonment for a term not exceeding seven years or a fine (or both),
- (b) on summary conviction in England and Wales, to imprisonment for a term not exceeding 12 months or a fine (or both), 5
- (c) on summary conviction in Northern Ireland, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum (or both)."

## 70 Female genital mutilation protection orders

- (1) After section 5 of the Female Genital Mutilation Act 2003 insert – 10

### “5A Female genital mutilation protection orders

- (1) Schedule 2 provides for the making of female genital mutilation protection orders.
- (2) In that Schedule –
  - (a) Part 1 makes provision about powers of courts in England and Wales to make female genital mutilation protection orders; 15
  - (b) Part 2 makes provision about powers of courts in Northern Ireland to make such orders.”
- (2) After Schedule 1 to that Act (inserted by section 68(2)) insert –

“SCHEDULE 2 20

#### FEMALE GENITAL MUTILATION PROTECTION ORDERS

#### PART 1

#### ENGLAND AND WALES

#### *Power to make FGM protection order*

- 1 (1) The court in England and Wales may make an order (an “FGM protection order”) for the purposes of – 25
  - (a) protecting a girl against the commission of a genital mutilation offence, or
  - (b) protecting a girl against whom any such offence has been committed. 30
- (2) In deciding whether to exercise its powers under this paragraph and, if so, in what manner, the court must have regard to all the circumstances, including the need to secure the health, safety and well-being of the girl to be protected.
- (3) An FGM protection order may contain – 35
  - (a) such prohibitions, restrictions or requirements, and
  - (b) such other terms,
 as the court considers appropriate for the purposes of the order.
- (4) The terms of an FGM protection order may, in particular, relate to – 40
  - (a) conduct outside England and Wales as well as (or instead of) conduct within England and Wales;

- (b) respondents who are, or may become, involved in other respects as well as (or instead of) respondents who commit or attempt to commit, or may commit or attempt to commit, a genital mutilation offence against a girl;
  - (c) other persons who are, or may become, involved in other respects as well as respondents of any kind. 5
- (5) For the purposes of sub-paragraph (4) examples of involvement in other respects are –
  - (a) aiding, abetting, counselling, procuring, encouraging or assisting another person to commit, or attempt to commit, a genital mutilation offence against a girl; 10
  - (b) conspiring to commit, or to attempt to commit, such an offence.
- (6) An FGM protection order may be made for a specified period or until varied or discharged (see paragraph 6). 15

*Applications and other occasions for making orders*

- 2 (1) The court may make an FGM protection order –
  - (a) on an application being made to it, or
  - (b) without an application being made to it but in the circumstances mentioned in sub-paragraph (6). 20
- (2) An application may be made by –
  - (a) the girl who is to be protected by the order, or
  - (b) a relevant third party.
- (3) An application may be made by any other person with the leave of the court. 25
- (4) In deciding whether to grant leave, the court must have regard to all the circumstances including –
  - (a) the applicant’s connection with the girl to be protected;
  - (b) the applicant’s knowledge of the circumstances of the girl.
- (5) An application under this paragraph may be made in other family proceedings or without any other family proceedings being instituted. 30
- (6) The circumstances in which the court may make an order without an application being made are where –
  - (a) any other family proceedings are before the court (“the current proceedings”), 35
  - (b) the court considers that an FGM protection order should be made to protect a girl (whether or not a party to the proceedings), and
  - (c) a person who would be a respondent to any proceedings for an FGM protection order is a party to the current proceedings. 40
- (7) In this paragraph –
  - “family proceedings” has the same meaning as in Part 4 of the Family Law Act 1996 (see section 63(1) and (2) of that Act), but also includes – 45

- (a) proceedings under the inherent jurisdiction of the High Court in relation to adults,
  - (b) proceedings in which the court has made an emergency protection order under section 44 of the Children Act 1989 which includes an exclusion requirement (as defined in section 44A(3) of that Act), and 5
  - (c) proceedings in which the court has made an order under section 50 of the Children Act 1989 (recovery of abducted children etc); 10
- “relevant third party” means a person specified, or falling within a description of persons specified, by regulations made by the Lord Chancellor (and such regulations may, in particular, specify the Secretary of State).
- (8) Regulations under sub-paragraph (7) are to be made by statutory instrument, and any such instrument is subject to annulment in pursuance of a resolution of either House of Parliament. 15

*Power to make order in criminal proceedings*

- 3 The court before which there are criminal proceedings in England and Wales for a genital mutilation offence may make an FGM protection order (without an application being made to it) if – 20
- (a) the court considers that an FGM protection order should be made to protect a girl (whether or not the victim of the offence in relation to the criminal proceedings), and
  - (b) a person who would be a respondent to any proceedings for an FGM protection order is a defendant in the criminal proceedings. 25

*Offence of breaching order*

- 4 (1) A person who without reasonable excuse does anything that the person is prohibited from doing by an FGM protection order is guilty of an offence. 30
- (2) In the case of an FGM protection order made by virtue of paragraph 5(1), a person can be guilty of an offence under this paragraph only in respect of conduct engaged in at a time when the person was aware of the existence of the order. 35
- (3) Where a person is convicted of an offence under this paragraph in respect of any conduct, the conduct is not punishable as a contempt of court.
- (4) A person cannot be convicted of an offence under this paragraph in respect of any conduct which has been punished as a contempt of court. 40
- (5) A person guilty of an offence under this paragraph is liable –
- (a) on conviction on indictment, to imprisonment for a term not exceeding five years, or a fine, or both;
  - (b) on summary conviction, to imprisonment for a term not exceeding 12 months, or a fine, or both. 45



- (6) A reference in any enactment to proceedings under this Part of this Schedule, or to an order under this Part of this Schedule, does not include a reference to proceedings for an offence under this paragraph or to an order made in proceedings for such an offence.
- (7) “Enactment” includes an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978. 5

*Ex parte orders*

- 5 (1) The court may, in any case where it is just and convenient to do so, make an FGM protection order even though the respondent has not been given such notice of the proceedings as would otherwise be required by rules of court. 10
- (2) In deciding whether to exercise its powers under sub-paragraph (1), the court must have regard to all the circumstances including—
  - (a) the risk to the girl, or to another person, of becoming a victim of a genital mutilation offence if the order is not made immediately, 15
  - (b) whether it is likely that an applicant will be deterred or prevented from pursuing an application if an order is not made immediately, and
  - (c) whether there is reason to believe that— 20
    - (i) the respondent is aware of the proceedings but is deliberately evading service, and
    - (ii) the delay involved in effecting substituted service will cause serious prejudice to the girl to be protected or (if different) an applicant. 25
- (3) The court must give the respondent an opportunity to make representations about an order made by virtue of sub-paragraph (1).
- (4) The opportunity must be—
  - (a) as soon as just and convenient, and
  - (b) at a hearing of which notice has been given to all the parties in accordance with rules of court. 30

*Variation and discharge of orders*

- 6 (1) The court may vary or discharge an FGM protection order on an application by—
  - (a) any party to the proceedings for the order, 35
  - (b) the girl being protected by the order (if not a party to the proceedings for the order), or
  - (c) any person affected by the order.
- (2) In the case of an order made in criminal proceedings under paragraph 3, the reference in sub-paragraph (1)(a) to a party to the proceedings for the order is to be read as a reference to the prosecution and the defendant. 40
- (3) In addition, the court may vary or discharge an FGM protection order made by virtue of paragraph 2(1)(b) or 3 even though no



application under sub-paragraph (1) above has been made to the court.

- (4) Paragraph 5 applies to a variation of an FGM protection order as it applies to the making of such an order (and references in that paragraph to the making of an FGM protection order are to be read accordingly). 5

*Arrest under warrant*

- 7 (1) An interested party may apply to the relevant judge for the issue of a warrant for the arrest of a person if the interested party considers that the person has failed to comply with an FGM protection order or is otherwise in contempt of court in relation to such an order. 10
- (2) The relevant judge must not issue a warrant on an application under sub-paragraph (1) unless –
- (a) the application is substantiated on oath, and
  - (b) the relevant judge has reasonable grounds for believing that the person to be arrested has failed to comply with the order or is otherwise in contempt of court in relation to the order. 15
- (3) In this paragraph “interested party”, in relation to an FGM protection order, means –
- (a) the girl being protected by the order, 20
  - (b) (if a different person) the person who applied for the order, or
  - (c) any other person;
- but no application may be made under sub-paragraph (1) by a person falling within paragraph (c) without leave of the relevant judge. 25

*Remand: general*

- 8 (1) The court before which an arrested person is brought by virtue of a warrant under paragraph 7 may, if the matter is not then disposed of immediately, remand the person concerned.
- (2) Paragraphs 9 to 14 contain further provision about the powers of a court to remand under this paragraph. 30
- (3) Sub-paragraph (4) applies if a person remanded under this paragraph is granted bail under paragraphs 10 to 14.
- (4) The person may be required by the relevant judge to comply, before release on bail or later, with such requirements as appear to the judge to be necessary to secure that the person does not interfere with witnesses or otherwise obstruct the course of justice. 35

*Remand: medical examination and report*

- 9 (1) Any power to remand a person under paragraph 8(1) may be exercised for the purpose of enabling a medical examination and report to be made if the relevant judge has reason to consider that a medical report will be required. 40

- (2) If such a power is so exercised, the adjournment must not be for more than four weeks at a time unless the relevant judge remands the accused in custody.
  - (3) If the relevant judge remands the accused in custody, the adjournment must not be for more than three weeks at a time. 5
  - (4) Sub-paragraph (5) applies if there is reason to suspect that a person who has been arrested under a warrant issued on an application under paragraph 7(1) is suffering from mental disorder within the meaning of the Mental Health Act 1983.
  - (5) The relevant judge has the same power to make an order under section 35 of the Mental Health Act 1983 (remand for report on accused's mental condition) as the Crown Court has under section 35 of that Act in the case of an accused person within the meaning of that section. 10
- Remand: further provision* 15
- 10
  - (1) Where a court has power to remand a person under paragraph 8, the court may remand the person in custody or on bail.
  - (2) If remanded in custody, the person is to be committed to custody to be brought before the court –
    - (a) at the end of the period of remand, or 20
    - (b) at such earlier time as the court may require.
  - (3) The court may remand a person on bail –
    - (a) by taking from the person a recognizance (with or without sureties) conditioned as provided in paragraph 11, or
    - (b) by fixing the amount of the recognizances with a view to their being taken subsequently in accordance with paragraph 14 and, in the meantime, committing the person to custody as mentioned in sub-paragraph (2) above. 25
  - (4) Where a person is brought before the court after remand the court may further remand the person. 30
  - (5) In this paragraph and in paragraphs 11 to 14, references to “the court” includes a reference to a judge of the court or, in the case of proceedings in a magistrates’ court, a justice of the peace.
- 11
  - (1) Where a person is remanded on bail, the court may direct that the person’s recognizance be conditioned for his or her appearance – 35
    - (a) before the court at the end of the period of remand, or
    - (b) at every time and place to which during the course of the proceedings the hearing may from time to time be adjourned.
  - (2) Where a recognizance is conditioned for a person’s appearance as mentioned in sub-paragraph (1), the fixing of any time for the person next to appear is to be treated as a remand. 40
  - (3) Nothing in this paragraph deprives the court of power at any subsequent hearing to remand a person afresh.
- 12
  - (1) The court may not remand a person for a period exceeding 8 clear days unless – 45

- (a) the court adjourns a case under paragraph 9(1), or
  - (b) the person is remanded on bail and both that person and the other party to the proceedings (or, in the case of criminal proceedings, the prosecution) consent.
- (2) If sub-paragraph (1)(a) applies, the person may be remanded for the period of the adjournment. 5
- (3) Where the court has power to remand a person in custody, the person may be committed to the custody of a constable if the remand is for a period not exceeding 3 clear days.
- 13 (1) If the court is satisfied that a person who has been remanded is unable by reason of illness or accident to appear before the court at the end of the period of remand, the court may further remand the person in his or her absence. 10
- (2) The power in sub-paragraph (1) may, in the case of a person who was remanded on bail, be exercised by enlarging the person's recognizance and those of any sureties to a later time. 15
- (3) Where a person remanded on bail is bound to appear before the court at any time and the court has no power to remand the person under sub-paragraph (1), the court may, in the person's absence, enlarge the person's recognizance and those of any sureties for the person to a later time. 20
- (4) The enlargement of a person's recognizance is to be treated as a further remand.
- (5) Paragraph 12(1) (limit of remand) does not apply to the exercise of the powers conferred by this paragraph. 25
- 14 (1) This paragraph applies where under paragraph 10(3)(b) the court fixes the amount in which the principal and the sureties (if any) are to be bound.
- (2) The recognizance may afterwards be taken by a person prescribed by rules of court (with the same consequences as if it had been entered into before the court). 30

#### *Contempt proceedings*

- 15 The powers of the court in relation to contempt of court arising out of a person's failure to comply with an FGM protection order, or otherwise in connection with such an order, may be exercised by the relevant judge. 35

#### *Other protection or assistance against female genital mutilation*

- 16 (1) Nothing in this Part of this Schedule affects any other protection or assistance available to a girl who is or may become the victim of a genital mutilation offence. 40
- (2) In particular, it does not affect –
  - (a) the inherent jurisdiction of the High Court;
  - (b) any criminal liability;

- (c) any civil remedies under the Protection from Harassment Act 1997;
- (d) any right to an occupation order or a non-molestation order under Part 4 of the Family Law Act 1996;
- (e) any right to a forced marriage protection order under Part 4A of that Act; 5
- (f) any protection or assistance under the Children Act 1989;
- (g) any claim in tort.

### *Interpretation*

- 17 (1) In this Part of this Schedule – 10
- “the court”, except as provided in sub-paragraph (2), means the High Court, or the family court, in England and Wales;
- “FGM protection order” means an order under paragraph 1;
- “genital mutilation offence” means an offence under section 1, 2 or 3; 15
- “the relevant judge”, in relation to an FGM protection order, means –
- (a) where the order was made by the High Court, a judge of that court;
  - (b) where the order was made by the family court, a judge of that court; 20
  - (c) where the order was made by a court in criminal proceedings under paragraph 3 –
    - (i) a judge of that court, or
    - (ii) a judge of the High Court or of the family court. 25
- (2) Where the power to make an FGM protection order is exercisable by a court in criminal proceedings under paragraph 3, references in this Part of this Schedule to “the court” (other than in paragraph 2) are to be read as references to that court. 30
- (3) In paragraph (c)(i) of the definition of “relevant judge” in sub-paragraph (1), the reference to a judge of the court that made the order includes, in the case of criminal proceedings in a magistrates’ court, a reference to a justice of the peace.

## PART 2 35

### NORTHERN IRELAND

#### *Power to make FGM protection order*

- 18 (1) The court in Northern Ireland may make an order (an “FGM protection order”) for the purposes of –
- (a) protecting a girl against the commission of a genital mutilation offence, or 40
  - (b) protecting a girl against whom any such offence has been committed.
- (2) In deciding whether to exercise its powers under this paragraph and, if so, in what manner, the court must have regard to all the 45

circumstances, including the need to secure the health, safety and well-being of the girl to be protected.

- (3) An FGM protection order may contain –
  - (a) such prohibitions, restrictions or requirements, and
  - (b) such other terms,
 as the court considers appropriate for the purposes of the order. 5
- (4) The terms of an FGM protection order may, in particular, relate to –
  - (a) conduct outside Northern Ireland as well as (or instead of) conduct within Northern Ireland;
  - (b) respondents who are, or may become, involved in other respects as well as (or instead of) respondents who commit or attempt to commit, or may commit or attempt to commit, a genital mutilation offence against a girl; 10
  - (c) other persons who are, or may become, involved in other respects as well as respondents of any kind. 15
- (5) For the purposes of sub-paragraph (4) examples of involvement in other respects are –
  - (a) aiding, abetting, counselling, procuring, encouraging or assisting another person to commit, or attempt to commit, a genital mutilation offence against a girl; 20
  - (b) conspiring to commit, or to attempt to commit, such an offence.
- (6) An FGM protection order may be made for a specified period or until varied or discharged (see paragraph 23).

*Applications and other occasions for making orders* 25

- 19 (1) The court may make an FGM protection order –
  - (a) on an application being made to it, or
  - (b) without an application being made to it but in the circumstances mentioned in sub-paragraph (6).
- (2) An application may be made by – 30
  - (a) the girl who is to be protected by the order, or
  - (b) a relevant third party.
- (3) An application may be made by any other person with the leave of the court.
- (4) In deciding whether to grant leave, the court must have regard to all the circumstances including – 35
  - (a) the applicant’s connection with the girl to be protected;
  - (b) the applicant’s knowledge of the circumstances of the girl.
- (5) An application under this paragraph may be made in family proceedings or without any family proceedings being instituted. 40
- (6) The circumstances in which the court may make an order without an application being made are where –
  - (a) any family proceedings are before the court (“the current proceedings”),

- (b) the court considers that an FGM protection order should be made to protect a girl (whether or not a party to the proceedings), and
  - (c) a person who would be a respondent to any proceedings for an FGM protection order is a party to the current proceedings. 5
- (7) In this paragraph—
- “family proceedings” has the same meaning as in the Family Homes and Domestic Violence (Northern Ireland) Order 1998 (S.I. 1998/1071 (N.I. 6)) (see Article 2(2) and (3) of that Order), but also includes—
    - (a) proceedings under the inherent jurisdiction of the High Court in relation to adults,
    - (b) proceedings in which the court has made an emergency protection order under Article 63 of the Children (Northern Ireland) Order 1995 (S.I. 1995/755 (N.I. 2)) which includes an exclusion requirement (as defined in Article 63A of that Order), and 15
    - (c) proceedings in which the court has made an order under Article 69 of the 1995 Order (recovery of abducted children etc); 20
  - “relevant third party” means a person specified, or falling within a description of persons specified, by order made by the Department of Finance and Personnel (and any such order may, in particular, specify that Department). 25

*Power to make order in criminal proceedings*

- 20 The court before which there are criminal proceedings in Northern Ireland for a genital mutilation offence may make an FGM protection order (without an application being made to it) if—
- (a) the court considers that an FGM protection order should be made to protect a girl (whether or not the victim of the offence in relation to the criminal proceedings), and 30
  - (b) a person who would be a respondent to any proceedings for an FGM protection order is a defendant in the criminal proceedings. 35

*Offence of breaching order*

- 21 (1) A person who without reasonable excuse does anything that the person is prohibited from doing by an FGM protection order is guilty of an offence.
- (2) A person guilty of an offence under this paragraph is liable— 40
- (a) on conviction on indictment, to imprisonment for a term not exceeding five years, or a fine, or both;
  - (b) on summary conviction, to imprisonment for a term not exceeding 6 months, or a fine not exceeding the statutory maximum, or both. 45

*Ex parte orders*

- 22 (1) The court may, in any case where it is just and convenient to do so, make an FGM protection order even though the respondent has not been given such notice of the proceedings as would otherwise be required by rules of court. 5
- (2) In deciding whether to exercise its powers under sub-paragraph (1), the court must have regard to all the circumstances including –
- (a) the risk to the girl, or to another person, of becoming a victim of a genital mutilation offence if the order is not made immediately, 10
  - (b) whether it is likely that an applicant will be deterred or prevented from pursuing an application if an order is not made immediately, and
  - (c) whether there is reason to believe that –
    - (i) the respondent is aware of the proceedings but is deliberately evading service, and 15
    - (ii) the delay involved in effecting substituted service will cause serious prejudice to the girl to be protected or (if different) an applicant.
- (3) If the court makes an order by virtue of sub-paragraph (1), it must specify a date for a full hearing. 20
- (4) In sub-paragraph (3), “full hearing” means a hearing of which notice has been given to all the parties in accordance with rules of court.

*Variation and discharge of orders*

- 23 (1) The court may vary or discharge an FGM protection order on an application by – 25
- (a) any party to the proceedings for the order,
  - (b) the girl being protected by the order (if not a party to the proceedings for the order), or
  - (c) any person affected by the order. 30
- (2) In the case of an order made in criminal proceedings under paragraph 20, the reference in sub-paragraph (1)(a) to a party to the proceedings for the order is to be read as a reference to the prosecution and the defendant.
- (3) In addition, the court may vary or discharge an FGM protection order made by virtue of paragraph 19(1)(b) or 20 even though no application under sub-paragraph (1) above has been made to the court. 35
- (4) Paragraph 22 applies to a variation of an FGM protection order as it applies to the making of such an order (and references in that paragraph to the making of an FGM protection order are to be read accordingly). 40

*Jurisdiction of courts*

- 24 (1) For the purposes of this Part of this Schedule, “the court” means the High Court, or a county court, in Northern Ireland. 45



- (2) Sub-paragraph (1) is subject to –
  - (a) sub-paragraph (3), and
  - (b) any provision made by virtue of sub-paragraph (4) or (5).
- (3) Where the power to make an FGM protection order is exercisable by a court in criminal proceedings under paragraph 20, references in this Part of this Schedule to “the court” (other than in paragraph 19) are to be read as references to that court. 5
- (4) Article 34(3) to (10) of the Family Homes and Domestic Violence (Northern Ireland) Order 1998 (S.I. 1998/1071 (N.I. 6)) (allocation of proceedings to courts etc) applies for the purposes of this Part of this Schedule as it applies for the purposes of that Order but as if the following modification were made. 10
- (5) The modification is that Article 34(8) is to be read as if there were substituted for it –
  - “(8) For the purposes of paragraphs (3), (4) and (5), there are two levels of court –
    - (a) the High Court; and
    - (b) a county court.”

*Power to extend jurisdiction to courts of summary jurisdiction*

- 25 (1) The Department of Justice in Northern Ireland may, after consulting the Lord Chief Justice, by order provide for courts of summary jurisdiction to be included among the courts who may hear proceedings under this Part of this Schedule. 20
- (2) An order under sub-paragraph (1) may, in particular, make any provision in relation to courts of summary jurisdiction which corresponds to provision made in relation to such courts by or under the Family Homes and Domestic Violence (Northern Ireland) Order 1998 (S.I. 1998/1071 (N.I. 6)). 25
- (3) Any power to make an order under this paragraph (including the power as extended by paragraph 29(1)) may, in particular, be exercised by amending, repealing, revoking or otherwise modifying any provision made by or under this Part of this Schedule or any other enactment. 30
- (4) In sub-paragraph (3) “enactment” includes Northern Ireland legislation. 35
- (5) The Lord Chief Justice may nominate any of the following to exercise the Lord Chief Justice’s functions under this Part of this Schedule –
  - (a) the holder of one of the offices listed in Schedule 1 to the Justice (Northern Ireland) Act 2002;
  - (b) a Lord Justice of Appeal (as defined by section 88 of that Act). 40

*Contempt proceedings*

- 26 The powers of the court in relation to contempt of court arising out of a person’s failure to comply with an FGM protection order, or otherwise in connection with such an order, may be exercised by the relevant judge. 45



*Appeals from county courts*

- 27 (1) An appeal lies to the High Court against—
- (a) the making by a county court of any order under this Part of this Schedule, or
  - (b) any refusal by a county court to make such an order, 5
- as if the decision had been made in the exercise of the jurisdiction conferred by Part 3 of the County Courts (Northern Ireland) Order 1980 (S.I. 1980/397 (N.I. 3)) (original civil jurisdiction) and the appeal were brought under Article 60 of that Order (ordinary appeals in civil cases). 10
- (2) But an appeal does not lie to the High Court under sub-paragraph (1) where the county court is a divorce county court exercising jurisdiction under the Matrimonial Causes (Northern Ireland) Order 1978 (S.I. 1978/1045 (N.I. 15)) in the same proceedings.
- (3) Provision must be made by rules of court for an appeal to lie (upon a point of law, a question of fact or the admission or rejection of any evidence) to the Court of Appeal against— 15
- (a) the making of any order under this Part of this Schedule, or
  - (b) any refusal to make such an order,
- by a county court of the type referred to in sub-paragraph (2). 20
- (4) Sub-paragraph (3) is without prejudice to Article 61 of the County Courts (Northern Ireland) Order 1980 (S.I. 1980/397 (N.I. 3)) (cases stated).
- (5) On an appeal under sub-paragraph (1), the High Court may make such orders as may be necessary to give effect to its determination of the appeal. 25
- (6) Where an order is made under sub-paragraph (5), the High Court may also make such incidental or consequential orders as appear to it to be just.
- (7) Any order of the High Court made on an appeal under sub-paragraph (1) (other than one directing that an application be reheard by the county court) is to be treated, for the purposes of— 30
- (a) the enforcement of the order, and
  - (b) any power to vary, revive or discharge orders,
- as if it were an order of the county court from which the appeal was brought and not an order of the High Court. 35
- (8) This paragraph is subject to paragraph 28.

*Appeals: transfers and proposed transfers*

- 28 (1) The Department of Justice in Northern Ireland may, after consulting the Lord Chief Justice, by order make provision as to the 40
- circumstances in which appeals may be made against decisions taken by courts on questions arising in connection with the transfer, or proposed transfer, of proceedings by virtue of an order made under Article 34(5) of the Family Homes and Domestic Violence (Northern Ireland) Order 1998 (S.I. 1998/1071 (N.I. 6)) as applied by paragraph 24(4) and (5) above. 45

- (2) Except so far as provided for in any order made under sub-paragraph (1), no appeal may be made against any decision of a kind mentioned in that sub-paragraph.
- (3) The Lord Chief Justice may nominate any of the following to exercise the Lord Chief Justice’s functions under this paragraph— 5
  - (a) the holder of one of the offices listed in Schedule 1 to the Justice (Northern Ireland) Act 2002;
  - (b) a Lord Justice of Appeal (as defined in section 88 of that Act).

*Orders*

- 29 (1) An order made under or by virtue of paragraph 19(7), 24(4) and (5), 25(1) or 28(1) — 10
  - (a) may make different provision for different purposes;
  - (b) may contain incidental, supplemental, consequential, transitional, transitory or saving provision;
  - (c) is to be made by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)). 15
- (2) An order made under or by virtue of paragraph 19(7), 24(4) and (5) or 28(1) is subject to negative resolution (within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954 (c. 33 (N.I.))). 20
- (3) An order under paragraph 25(1) may not be made unless a draft of the order has been laid before, and approved by a resolution of, the Northern Ireland Assembly.
- (4) Section 41(3) of the Interpretation Act (Northern Ireland) 1954 (c. 33 (N.I.)) applies for the purposes of sub-paragraph (3) in relation to the laying of a draft as it applies in relation to the laying of a statutory document under an enactment. 25

*Other protection or assistance against female genital mutilation*

- 30 (1) Nothing in this Part of this Schedule affects any other protection or assistance available to a girl who is or may become the victim of a genital mutilation offence. 30
- (2) In particular, it does not affect —
  - (a) the inherent jurisdiction of the High Court;
  - (b) any criminal liability; 35
  - (c) any right to an occupation order or a non-molestation order under the Family Homes and Domestic Violence (Northern Ireland) Order 1998 (S.I. 1998/1071 (N.I. 6));
  - (d) any civil remedies under the Protection from Harassment (Northern Ireland) Order 1997 (S.I. 1997/1180 (N.I. 9)); 40
  - (e) any protection or assistance under the Children (Northern Ireland) Order 1995 (S.I. 1995/755 (N.I. 2));
  - (f) any right to a forced marriage protection order under Schedule 1 to the Forced Marriage (Civil Protection) Act 2007;
  - (g) any claim in tort. 45

### Interpretation

- 31 In this Part of this Schedule –
- “the court” is to be read in accordance with paragraph 24;
  - “FGM protection order” means an order under paragraph 18;
  - “genital mutilation offence” means an offence under section 1, 2 or 3; 5
  - “the relevant judge”, in relation to an FGM protection order, means –
    - (a) where the order was made by the High Court, a judge of that court; 10
    - (b) where the order was made by a county court, a judge or district judge of that or any other county court;
    - (c) where the order was made by a court in criminal proceedings under paragraph 20 –
      - (i) a judge of that court, or 15
      - (ii) a judge of the High Court or a judge or district judge of a county court.”

## PART 6

### MISCELLANEOUS AND GENERAL

#### Miscellaneous 20

## 71 Knives and offensive weapons in prisons

After section 40C of the Prison Act 1952 insert –

### “40CA Unauthorised possession in prison of knife or offensive weapon

- (1) A person who, without authorisation, is in possession of an article specified in subsection (2) inside a prison is guilty of an offence. 25
- (2) The articles referred to in subsection (1) are –
  - (a) any article that has a blade or is sharply pointed;
  - (b) any other offensive weapon (as defined in section 1(9) of the Police and Criminal Evidence Act 1984).
- (3) In proceedings for an offence under this section it is a defence for the accused to show that –
  - (a) he reasonably believed that he had authorisation to be in possession of the article in question, or
  - (b) in all the circumstances there was an overriding public interest which justified his being in possession of the article. 30
- (4) A person guilty of an offence under this section is liable –
  - (a) on conviction on indictment, to imprisonment for a term not exceeding four years or to a fine (or both);
  - (b) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine (or both). 35
- (5) In this section “authorisation” means authorisation given for the purposes of this section; and subsections (1) to (3) of section 40E apply 40

in relation to authorisations so given as they apply to authorisations given for the purposes of section 40D.”

## 72 Preparation or training abroad for terrorism

In section 17 of the Terrorism Act 2006 (commission of offences abroad), in subsection (2)(b), after “an offence under” insert “section 5 or 6 or”. 5

## 73 Approval of draft decisions under Article 352 of TFEU relating to serious crime

- (1) This section has effect for the purposes of section 8 of the European Union Act 2011 (decisions under Article 352 of TFEU).
- (2) The following draft decisions of the Council of the European Union under Article 352 of TFEU are approved – 10
  - (a) the draft decision to repeal Council Decision 2007/124/EC, Euratom establishing for the period 2007 to 2013, as part of General Programme on Security and Safeguarding Liberties, the Specific Programme “Prevention, Preparedness and Consequence Management of Terrorism and other Security related risks” (document number 15187/13); 15
  - (b) the draft decision to adopt the Council Regulation extending to the non-participating member States the application of Regulation (EU) No 331/2014 establishing an exchange, assistance and training programme for the protection of the euro against counterfeiting (the “Pericles 2020” programme) (document number 16616/13). 20
- (3) In this section “TFEU” means the Treaty on the Functioning of the European Union.

*General* 25

## 74 Minor and consequential amendments

- (1) Schedule 4 (minor and consequential amendments) has effect.
- (2) The Secretary of State may by regulations make provision that is consequential on any provision of this Act.
- (3) The power to make regulations under this section – 30
  - (a) is exercisable by statutory instrument;
  - (b) includes power to make transitional, transitory or saving provision;
  - (c) may, in particular, be exercised by amending, repealing, revoking or otherwise modifying any provision made by or under primary legislation passed before this Act or in the same Session. 35
- (4) Before making regulations under this section the Secretary of State must –
  - (a) if the regulations contain provision that would fall within the legislative competence of the Scottish Parliament if included in an Act of that Parliament, consult the Scottish Ministers;
  - (b) if the regulations contain provision that would fall within the legislative competence of the Northern Ireland Assembly if included in an Act of that Assembly, consult the Department of Justice in Northern Ireland. 40

- (5) A statutory instrument containing regulations under this section that amend, repeal, revoke or otherwise modify any provision of primary legislation is not to be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (6) Any other statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of either House of Parliament. 5
- (7) In this section “primary legislation” means –
  - (a) an Act of Parliament;
  - (b) an Act of the Scottish Parliament; 10
  - (c) a Measure or Act of the National Assembly for Wales;
  - (d) Northern Ireland legislation.

## **75 Transitional and saving provisions**

- (1) An order under section 13A of the Proceeds of Crime Act 2002 (inserted by section 7) may be made in respect of any confiscation order (within the meaning of Part 2 of that Act) that is made on or after the day on which section 7 comes into force. 15
- (2) The amendment made by subsection (3) of section 10 has effect in relation to a default of payment of a sum payable under a confiscation order only if the default occurs on or after the date on which that subsection comes into force. 20
- (3) An order under section 97B(2) of the Proceeds of Crime Act 2002 (inserted by section 16) may be made in respect of any confiscation order (within the meaning of Part 3 of that Act) that is made on or after the day on which section 16 comes into force.
- (4) An order under section 163A of the Proceeds of Crime Act 2002 (inserted by section 29) may be made in respect of any confiscation order (within the meaning of Part 4 of that Act) that is made on or after the day on which section 29 comes into force. 25
- (5) An offence is not committed under section 3A(3) of the Computer Misuse Act 1990 by virtue of the amendment made by section 41 unless every act or other event proof of which is required for conviction of the offence takes place after section 41 comes into force. 30
- (6) The amendments made by paragraph 9 of Schedule 4 apply, in relation to any offence of conspiracy to commit an offence under the Computer Misuse Act 1990 or of attempting to commit such an offence, only where every act or other event proof of which is required for conviction of the conspiracy or attempt offence takes place after section 42 comes into force. 35
- (7) The repeals by this Act of –
  - (a) section 76 of the Serious Organised Crime and Police Act 2005 (“the 2005 Act”), and
  - (b) sections 79 to 81 of the 2005 Act so far as they extend to England and Wales,
 do not apply in the case of a financial reporting order made before section 49(1)(a) above comes into force. 40
- (8) The repeals by this Act of –
  - (a) section 77 of the 2005 Act, and45

- (b) sections 79 to 81 of the 2005 Act so far as they extend to Scotland, do not apply in the case of a financial reporting order made before section 49(1)(b) above comes into force.
  - (9) The repeals by this Act of –
    - (a) section 78 of the 2005 Act, and 5
    - (b) sections 79 to 81 of the 2005 Act so far as they extend to Northern Ireland, do not apply in the case of a financial reporting order made before section 49(1)(c) above comes into force.
  - (10) The amendments made by a section listed below apply only in cases where every act or other event proof of which is required for conviction of the offence in question takes place after the provision comes into force – 10
    - (a) section 42;
    - (b) section 65;
    - (c) section 67; 15
    - (d) section 72.
  - (11) Before the day on which section 103 of the Courts Reform (Scotland) Act 2014 (abolition of appeal from a sheriff to the sheriff principal) comes into force –
    - (a) the reference to the Sheriff Appeal Court in subsection (3)(b) of section 61 is to be read as a reference to the sheriff principal; 20
    - (b) the references to the court in subsections (5) to (7) of that section are to be read as including references to the sheriff principal.
  - (12) In relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003, a reference to 12 months in the following provisions is to be read as a reference to 6 months – 25
    - (a) section 66(3)(a);
    - (b) in the Prison Act 1952, subsection (4)(b) of the section 40CA inserted by section 71 above;
    - (c) in the Female Genital Mutilation Act 2003, paragraph (b) of the subsection (2) inserted in section 5 by section 69(4)(b) above; 30
    - (d) paragraph 4(5)(b) of the Schedule inserted in that Act by section 70(2) above.
  - (13) The reference to an offence under section 1, 2 or 3 of the Female Genital Mutilation Act 2003 in section 3A(8) of that Act does not include such an offence committed before the coming into force of section 69 above (which inserts section 3A in that Act). 35
  - (14) In proceedings under section 3A of that Act, a defence under subsection (5)(b) of that section may not be negated by reference to steps that the defendant could have taken (but did not) before the coming into force of section 69 above.
- 76 Extent** 40
- (1) The following provisions extend to England and Wales only –
    - (a) Chapter 1 of Part 1;
    - (b) section 44;
    - (c) section 50;
    - (d) section 65; 45
    - (e) section 71.



- (2) The following provisions extend to England and Wales and Northern Ireland (but not Scotland) –
  - (a) section 37(2);
  - (b) section 39;
  - (c) section 66 and Schedule 3; 5
  - (d) section 67(1);
  - (e) sections 68 to 70.
- (3) The following provisions extend to Scotland only –
  - (a) sections 15 to 22;
  - (b) section 37(3); 10
  - (c) section 42(6) and (7);
  - (d) section 67(2).
- (4) Chapter 3 of Part 1 extends to Northern Ireland only.
- (5) An amendment or repeal made by Schedule 4 has the same extent as the relevant part of the Act amended or repealed. 15
- (6) The other provisions of this Act extend to England and Wales, Scotland and Northern Ireland.

## 77 Commencement

- (1) This Act, except for the provisions referred to in subsections (2) to (5), comes into force on whatever day or days the Secretary of State appoints by regulations made by statutory instrument. 20
- (2) The following provisions come into force on whatever day or days the Scottish Ministers appoint by regulations after consulting the Secretary of State –
  - (a) sections 15 to 22;
  - (b) section 37(3); 25
  - (c) paragraphs 16 and 32 to 41 of Schedule 4 (and section 74(1) so far as relating to those paragraphs).
- (3) The following provisions come into force on whatever day or days the Department of Justice in Northern Ireland appoints by regulations after consulting the Secretary of State –
  - (a) Chapter 3 of Part 1;
  - (b) paragraphs 3, 42 to 46 and 55(3) of Schedule 4 (and section 74(1) so far as relating to those paragraphs). 30
- (4) The following provisions come into force at the end of the period of two months beginning with the day on which this Act is passed –
  - (a) sections 67 to 69;
  - (b) section 72 and paragraph 60 of Schedule 4 (and section 74(1) so far as relating to that paragraph). 35
- (5) The following provisions come into force on the day on which this Act is passed –
  - (a) section 73;
  - (b) section 74(2) to (7);
  - (c) sections 75 to 78. 40

- (6) No regulations may be made under subsection (1) bringing into force any of the following provisions, so far as they extend to Scotland, unless the Secretary of State has consulted the Scottish Ministers –
  - (a) section 23;
  - (b) section 37(1);
  - (c) Part 2;
  - (d) section 45 and Schedule 1;
  - (e) sections 46 to 49.
- (7) No regulations may be made under subsection (1) bringing into force any of the following provisions, so far as they extend to Northern Ireland, unless the Secretary of State has consulted the Department of Justice in Northern Ireland –
  - (a) section 37(1) and (2);
  - (b) section 39;
  - (c) sections 46 to 49;
  - (d) section 66 and Schedule 3;
  - (e) section 70.
- (8) A power to make regulations under this section includes powers to make saving, transitional or transitory provision.
- (9) The power of the Department of Justice in Northern Ireland to make regulations under subsection (3) is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)).

## 78 Short title

- (1) This Act may be cited as the Serious Crime Act 2014.
- (2) **Nothing in this Act shall impose any charge on the people or on public funds, or vary the amount or incidence of or otherwise alter any such charge in any manner, or affect the assessment, levying, administration or application of any money raised by any such charge.**



## SCHEDULES

### SCHEDULE 1

Section 45

#### AMENDMENTS OF SERIOUS CRIME ACT 2007: SCOTLAND

- 1       The Serious Crime Act 2007 is amended as set out in this Schedule.
- 2       (1) Section 1 (serious crime prevention orders) is amended as follows. 5
  - (2) After subsection (1) insert –
    - “(1A) The appropriate court in Scotland may make an order if –
      - (a) it is satisfied that a person has been involved in serious crime (whether in Scotland or elsewhere); and
      - (b) it has reasonable grounds to believe that the order would protect the public by preventing, restricting or disrupting involvement by the person in serious crime in Scotland.” 10
  - (3) In subsection (3), after “England and Wales” insert “, Scotland”.
  - (4) For subsection (5) substitute –
    - “(5) In this Part – 15
      - “appropriate court” means the Court of Session or sheriff;
      - “serious crime prevention order” means –
        - (a) an order under this section;
        - (b) an order under section 19 (corresponding order of the Crown Court on conviction); or 20
        - (c) an order under section 22A (corresponding order of the High Court of Justiciary or sheriff on conviction).”
  - 3       In section 2 (involvement in serious crime: England and Wales orders), in subsection (6) – 25
    - (a) for “test in section” substitute “tests in sections 2A(1) and”;
    - (b) after “serious crime in” insert “Scotland or (as the case may be)”.
  - 4       After section 2 insert –
    - “2A Involvement in serious crime: Scotland orders**
      - (1) For the purposes of this Part, a person has been involved in serious crime in Scotland if he – 30
        - (a) has committed a serious offence in Scotland;
        - (b) has facilitated the commission by another person of a serious offence in Scotland; or
        - (c) has conducted himself in a way that was likely to facilitate the commission by himself or another person of a serious offence in Scotland (whether or not such an offence was committed). 35

- (2) In this Part “a serious offence in Scotland” means an offence under the law of Scotland which, at the time when the court is considering the application or matter in question –
    - (a) is specified, or falls within a description specified, in Part 1A of Schedule 1; or 5
    - (b) is one which, in the particular circumstances of the case, the court considers to be sufficiently serious to be treated for the purposes of the application or matter as if it were so specified.
  - (3) For the purposes of this Part, involvement in serious crime in Scotland is any one or more of the following – 10
    - (a) the commission of a serious offence in Scotland;
    - (b) conduct which facilitates the commission by another person of a serious offence in Scotland;
    - (c) 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). 15
  - (4) For the purposes of section 1(1A)(a), a person has been involved in serious crime elsewhere than in Scotland if he – 20
    - (a) has committed a serious offence in a country outside Scotland;
    - (b) has facilitated the commission by another person of a serious offence in a country outside Scotland; or
    - (c) has conducted himself in a way that was likely to facilitate the commission by himself or another person of a serious offence in a country outside Scotland (whether or not such an offence was committed). 25
  - (5) In subsection (4) “a serious offence in a country outside Scotland” means an offence under the law of a country outside Scotland which, at the time when the court is considering the application or matter in question – 30
    - (a) would be an offence under the law of Scotland if committed in or as regards Scotland; and
    - (b) either –
      - (i) would be an offence which is specified, or falls within a description specified, in Part 1A of Schedule 1 if committed in or as regards Scotland; or 35
      - (ii) is conduct which, in the particular circumstances of the case, the court considers to be sufficiently serious to be treated for the purposes of the application or matter as if it meets the test in sub-paragraph (i). 40
  - (6) The test in subsection (4) is to be used instead of the tests in sections 2(1) and 3(1) in deciding for the purposes of section 1(1A)(a) whether a person has been involved in serious crime in England and Wales or (as the case may be) Northern Ireland. 45
  - (7) An act punishable under the law of a country outside the United Kingdom constitutes an offence under that law for the purposes of subsection (5), however it is described in that law.”

|    |   |    |
|----|---|----|
| 5  | In section 3 (involvement in serious crime: Northern Ireland orders), in subsection (6) –   |    |
|    | (a) for “test in section 2(1)” substitute “tests in sections 2(1) and 2A(1)”;<br>(b) at the end insert “or (as the case may be) Scotland”.  |    |
| 6  | In section 4 (involvement in serious crime: supplementary), after subsection (4) insert –   | 5  |
|    | “(4A) The Scottish Ministers may by order amend Part 1A of Schedule 1.<br>(4B) The Scottish Ministers may not exercise the power conferred by subsection (4A) in relation to an offence which relates to a reserved matter (within the meaning of the Scotland Act 1998) without the consent of the Secretary of State.”  | 10 |
| 7  | In section 5 (type of provision that may be made by orders), in subsection (2), after “England and Wales”, in both places, insert “, Scotland”.   |    |
| 8  | In section 7 (other exceptions), after subsection (1) insert –  |    |
|    | “(1A) A person may not be made the subject of a serious crime prevention order in Scotland if the person falls within a description specified by order of the Scottish Ministers.”  | 15 |
| 9  | In section 8 (limited class of applicants for making of orders) –   |    |
|    | (a) omit the word “and” at the end of paragraph (a);<br>(b) after that paragraph insert –   | 20 |
|    | “(aa) in the case of an order in Scotland, the Lord Advocate;”.   |    |
| 10 | (1) Section 9 (right of third parties to make representations) is amended as follows.   |    |
|    | (2) In each of subsections (1) to (3), after “High Court” insert “or (in Scotland) the appropriate court”.  | 25 |
|    | (3) After subsection (4) insert –   |    |
|    | “(4A) The High Court of Justiciary must, on an application by a person, give the person an opportunity to make representations in proceedings before it arising by virtue of section 24B(3) if it considers that the making or variation of the serious crime prevention order concerned (or a decision not to vary it) would be likely to have a significant adverse effect on that person.” | 30 |
| 11 | In section 10 (notice requirements in relation to orders), in subsection (4) –  |    |
|    | (a) omit the word “and” at the end of paragraph (a);<br>(b) after that paragraph insert –   | 35 |
|    | “(aa) in relation to a serious crime prevention order in Scotland, the Lord Advocate;”.   |    |
| 12 | (1) Section 12 (restrictions for legal professional privilege) is amended as follows.   | 40 |
|    | (2) In subsection (1), after “order” insert “in England and Wales or Northern Ireland”.   |    |

- (3) After subsection (4) insert –
- “(4A) A serious crime prevention order in Scotland may not require a person to breach any duty of confidentiality of communications which the person could not be required to breach in proceedings before the appropriate court.” 5
- (4) In subsection (5), for “subsection (1) does not” substitute “subsections (1) and (4A) do not”.
- 13 In section 13 (restrictions on excluded material and banking information), in subsection (1) –
- (a) omit the word “and” at the end of paragraph (a); 10
- (b) after that paragraph insert –
- “(aa) in the case of an order in Scotland, any excluded material (as defined by that section (except that “enactment” in subsection (2)(b) of that section is to be taken to include an Act of the Scottish Parliament or an instrument made under such an Act));” 15
- 14 (1) Section 17 (variation of orders) is amended as follows.
- (2) After subsection (1) insert –
- “(1A) The appropriate court in Scotland may, on an application under this section, vary a serious crime prevention order in Scotland if it has reasonable grounds to believe that the terms of the order as varied would protect the public by preventing, restricting or disrupting involvement, by the person who is the subject of the order, in serious crime in Scotland.” 20
- (3) In each of subsections (6)(a) and (7)(a), after “High Court” insert “, the appropriate court”. 25
- 15 (1) Section 18 (discharge of orders) is amended as follows.
- (2) In subsection (1) –
- (a) omit the word “and” at the end of paragraph (a);
- (b) after that paragraph insert – 30
- “(aa) the appropriate court in Scotland may discharge a serious crime prevention order in Scotland;”.
- (3) In each of subsections (5)(a) and (6)(a), after “High Court” insert “, the appropriate court”.
- 16 In section 22 (inter-relationship between different types of order), at the end of the heading insert “**in England and Wales or Northern Ireland**”. 35
- 17 After that section insert –

*“Extension of jurisdiction: Scotland*

**22A Orders by High Court of Justiciary and sheriff on conviction**

- (1) Subsection (2) applies where – 40
- (a) the High Court of Justiciary (the “High Court”) is dealing with a person who –

- 
- (i) has been convicted by or before the High Court of having committed a serious offence in Scotland, or
    - (ii) has been convicted by or before the sheriff of having committed a serious offence in Scotland and by virtue of section 195 of the Criminal Procedure (Scotland) Act 1995 has been remitted by the sheriff to the High Court for sentencing; or

5
  - (b) the sheriff is dealing with a person who has been convicted by or before the sheriff of having committed a serious offence in Scotland. 10
  - (2) The High Court or (as the case may be) the sheriff may, in addition to dealing with the person in relation to the offence, make an order if the High Court or (as the case may be) the sheriff has reasonable grounds to believe that the order would protect the public by preventing, restricting or disrupting involvement by the person in serious crime in Scotland. 15
  - (3) The High Court or sheriff making an order by virtue of subsection (2) in the case of a person who is already the subject of a serious crime prevention order in Scotland must discharge the existing order.
  - (4) An order under this section may contain – 20
    - (a) such prohibitions, restrictions or requirements; and
    - (b) such other terms;

as the High Court or (as the case may be) the sheriff considers appropriate for the purpose of protecting the public by preventing, restricting or disrupting involvement by the person concerned in serious crime in Scotland. 25
  - (5) The powers of the High Court and the sheriff in respect of an order under this section are subject to sections 6 to 15 (safeguards).
  - (6) An order must not be made under this section except – 30
    - (a) in addition to a sentence imposed in respect of the offence concerned; or
    - (b) in addition to an order discharging the person absolutely.
  - (7) An order under this section is also called a serious crime prevention order.
  - 22B Powers of High Court of Justiciary and sheriff to vary orders on conviction** 35
  - (1) Subsection (2) applies where –
    - (a) the High Court of Justiciary (the “High Court”) is dealing with a person who –
      - (i) has been convicted by or before the High Court of having committed a serious offence in Scotland, or 40
      - (ii) has been convicted by or before the sheriff of having committed a serious offence in Scotland and by virtue of section 195 of the Criminal Procedure (Scotland) Act 1995 has been remitted by the sheriff to the High Court for sentencing; or 45

- (b) the sheriff is dealing with a person who has been convicted by or before the sheriff of having committed a serious offence in Scotland.
        - (2) The High Court or (as the case may be) the sheriff may –
          - (a) in the case of a person who is the subject of a serious crime prevention order in Scotland; and 5
          - (b) in addition to dealing with the person in relation to the offence,  
vary the order if the High Court or (as the case may be) the sheriff has reasonable grounds to believe that the terms of the order as varied would protect the public by preventing, restricting or disrupting involvement by the person in serious crime in Scotland. 10
        - (3) A variation under this section may be made only on an application by the Lord Advocate.
        - (4) A variation must not be made except – 15
          - (a) in addition to a sentence imposed in respect of the offence concerned; or
          - (b) in addition to an order discharging the person absolutely.
        - (5) A variation may include an extension of the period during which the order, or any provision of it, is in force (subject to the original limits imposed on the order by section 16(2) and (4)(b)). 20
- 22C Powers of High Court of Justiciary and sheriff to vary or replace orders on breach**
- (1) Subsection (2) applies where –
    - (a) the High Court of Justiciary (the “High Court”) is dealing with a person who – 25
      - (i) has been convicted by or before the sheriff of having committed an offence under section 25 in relation to a serious crime prevention order and has been remitted to the High Court to be dealt with, or 30
      - (ii) has been convicted by or before the High Court of having committed an offence under section 25 in relation to a serious crime prevention order; or
    - (b) the sheriff is dealing with a person who has been convicted by or before the sheriff of having committed an offence under section 25 in relation to a serious crime prevention order. 35
  - (2) The High Court or (as the case may be) the sheriff may –
    - (a) in the case of an order in Scotland; and
    - (b) in addition to dealing with the person in relation to the offence; 40

vary or replace the order if the High Court or (as the case may be) the sheriff has reasonable grounds to believe that the terms of the order as varied, or the new order, would protect the public by preventing, restricting or disrupting involvement by the person in serious crime in Scotland. 45
  - (3) An order may be varied or replaced under this section only on an application by the Lord Advocate.

- (4) A variation or new order must not be made except –
  - (a) in addition to a sentence imposed in respect of the offence concerned; or
  - (b) in addition to an order discharging the person absolutely.
- (5) A variation may include an extension of the period during which the order, or any provision of it, is in force (subject to the original limits imposed on the order by section 16(2) and (4)(b)). 5
- (6) A reference in this section to replacing a serious crime prevention order is to making a new serious crime prevention order and discharging the existing one. 10

## **22D Inter-relationship between different types of orders in Scotland**

- (1) A serious crime prevention order made under section 1(1A) or varied under section 17(1A) may be varied under section 22B(2) or 22C(2).
- (2) The fact that a serious crime prevention order made under section 1(1A) or varied under section 17(1A) has been varied under section 22B(2) or 22C(2) does not prevent it from being varied or discharged by the appropriate court. 15
- (3) A decision by the High Court of Justiciary or (as the case may be) the sheriff not to make an order under section 22A does not prevent a subsequent application to the appropriate court for an order under section 1(1A) in consequence of the same offence. 20
- (4) Where a serious crime prevention order is made under section 1(1A) or varied under section 17(1A), a decision by the High Court of Justiciary or (as the case may be) the sheriff not to vary the order under section 22B(2) or 22C(2) does not prevent a subsequent application under section 17(1A) for a variation of the order in consequence of the same offence.” 25

18 After section 24 insert –

## **“24A Additional right of appeal from Court of Session 30**

- (1) An appeal may be made to the Inner House of the Court of Session in relation to a decision of the Outer House of the Court of Session –
  - (a) to make a serious crime prevention order;
  - (b) to vary, or not to vary, such an order; or
  - (c) to discharge or not to discharge such an order; 35
 by any person who was given an opportunity to make representations in the proceedings concerned by virtue of section 9(1), (2) or (as the case may be) (3).
- (2) Subsection (1) is without prejudice to the rights of the person who is the subject of the order and the Lord Advocate to make appeals, under section 28 of the Court of Session Act 1988, in relation to any judgments or orders of the Outer House of the Court of Session about serious crime prevention orders. 40



## **24B Appeals from High Court of Justiciary and sheriff**

- (1) The following are to be taken to be a sentence for the purpose of an appeal –
    - (a) a serious crime prevention order made under section 22A;
    - (b) the variation under section 22B or 22C of an order made under section 22A;
    - (c) the discharge of an order made under section 22A.
  - (2) If the Lord Advocate considers that a decision of the High Court of Justiciary or the sheriff under section 22A not to make a serious crime prevention order was inappropriate, the Lord Advocate may appeal against the decision.
  - (3) In addition, an appeal may be made in relation to a decision of the High Court of Justiciary or the sheriff –
    - (a) to make a serious crime prevention order under section 22A; or
    - (b) to vary, or not to vary, such an order under section 22B or 22C;
 by any person who was given an opportunity to make representations in the proceedings concerned by virtue of section 9(4A).”
- 19 (1) Section 27 (powers to wind up companies etc: England and Wales and Scotland) is amended as follows.
- (2) In the heading, omit the words “**and Scotland**”.
  - (3) In subsection (12), omit the words “or Scotland” –
    - (a) in paragraph (a) of the definition of “company”;
    - (b) in the definition of “the court”.
- 20 After section 27 insert –

## **“27A Powers to wind up companies etc: Scotland**

- (1) The Scottish Ministers may present a petition to the court for the winding up of a company or relevant body, or the dissolution of a partnership, if –
  - (a) the company, relevant body or partnership has been convicted of an offence under section 25 in relation to a serious crime prevention order; and
  - (b) the Scottish Ministers consider that it would be in the public interest for the company or (as the case may be) relevant body to be wound up or the partnership to be dissolved.
- (2) The Insolvency Act 1986 applies in relation to –
  - (a) a petition under this section for the winding up of a company; and
  - (b) the company’s winding up;
 as it applies in relation to a petition under section 124A of the Act of 1986 for the winding up of a company and the company’s winding up (winding up on grounds of public interest) but subject to the modifications in subsections (3) and (4).



- 
- (3) Section 124(4)(b) of the Act of 1986 (application for winding up) applies in relation to a petition under this section as if it permits the petition to be presented by the Scottish Ministers.
- (4) The court may make an order under section 125 of the Act of 1986 (powers of court on hearing of petition) to wind up the company only if—
- (a) the company has been convicted of an offence under section 25 in relation to a serious crime prevention order; and
  - (b) the court considers that it is just and equitable for the company to be wound up.
- (5) Where a petition is made to the court under this section for the dissolution of a partnership, the court may make an order to dissolve the partnership only if—
- (a) the partnership has been convicted of an offence under section 25 in relation to a serious crime prevention order; and
  - (b) the court considers that it is just and equitable for the partnership to be dissolved.
- (6) Where the court makes an order to dissolve a partnership under this section, the Partnership Act 1890 applies in respect of the dissolution as if it were a dissolution under section 35 of that Act.
- (7) The appropriate Minister may by order provide for the Act of 1986 to apply, with such modifications as that person considers appropriate, in relation to a petition under this section for the winding up of a relevant body and the relevant body’s winding up.
- (8) An order made by virtue of subsection (7) must ensure that the court may make an order to wind up the relevant body only if—
- (a) the relevant body has been convicted of an offence under section 25 in relation to a serious crime prevention order; and
  - (b) the court considers that it is just and equitable for the relevant body to be wound up.
- (9) No petition may be presented, or order to wind up or dissolve made, by virtue of this section if—
- (a) an appeal against conviction for the offence concerned has been made and not finally determined; or
  - (b) the period during which such an appeal may be made has not expired.
- (10) No petition may be presented, or order to wind up or dissolve made, by virtue of this section if—
- (a) the company or relevant body is already being wound up by the court, or
  - (b) the partnership is already being dissolved by the court.
- (11) In deciding for the purposes of subsection (9) whether an appeal is finally determined or whether the period during which an appeal may be made has expired, any power to appeal out of time is to be ignored.
- (12) In this section—  
“appropriate Minister” means—

- (a) in relation to a relevant body falling within paragraphs (a) to (c) of the definition of “relevant body” below, the Treasury; and
  - (b) in relation to any other relevant body, the Scottish Ministers; 5
- “company” means –
  - (a) a company registered under the Companies Act 2006 in Scotland, or
  - (b) an unregistered company within the meaning of Part 5 of the Insolvency Act 1986 (see section 220 of that Act), 10
- but does not include a relevant body;
- “the court”, in relation to a company, means a court in Scotland having jurisdiction to wind up the company;
- “partnership” does not include a relevant body; and 15
- “relevant body” means –
  - (a) a building society (within the meaning of the Building Societies Act 1986);
  - (b) an incorporated friendly society (within the meaning of the Friendly Societies Act 1992); 20
  - (c) a registered society within the meaning of the Co-operative and Community Benefit Societies Act 2014;
  - (d) a limited liability partnership; or
  - (e) such other description of person as may be specified by order made by the Scottish Ministers; 25
- and the references to sections 124 to 125 of the Insolvency Act 1986 include references to those sections as applied by section 221(1) of that Act (unregistered companies).”
- 21 (1) Section 29 (powers to wind up: supplementary) is amended as follows.
- (2) After subsection (1) insert – 30
  - “(1ZA) The Scottish Ministers may by order make such modifications as they consider appropriate to the application of the Insolvency Act 1986 by virtue of section 27A(2).”
- (3) In subsection (2) –
  - (a) after “subsection (1)” insert “, (1ZA)”; 35
  - (b) after “section 27(3) and (4)” insert “, 27A(3) and (4)”.
- (4) After subsection (3) insert –
  - “(3ZA) The Scottish Ministers may by order make such consequential or supplementary provision, applying with or without modifications any provision made by or under an enactment including an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament, as they consider appropriate in connection with section 27A(2) to (4).” 40
- (5) In subsection (4) –
  - (a) after “section 27(5) or (6)” insert “, 27A(7)”; 45
  - (b) after “subsection (1)” insert “, (1ZA)”;

- (c) after “enactment” insert “including, in the case of an order made by virtue of section 27A(7) or subsection (1ZA) above, an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament.”
- 22 (1) Section 31 (other partnerships) is amended as follows. 5
- (2) In subsection (3), after “England and Wales”, in both places, insert “, Scotland,”.
- (3) In subsection (6)(b), omit sub-paragraph (ii).
- 23 In section 32 (unincorporated associations), omit sub-paragraph (ii) of subsection (5)(b). 10
- 24 In section 34 (providers of information society services), in subsection (2)(a) –
- (a) omit the word “and” at the end of after sub-paragraph (i);
- (b) after that sub-paragraph insert –
- “(ia) in the case of an order in Scotland, serious crime in Scotland;”.
- 15
- 25 After section 36 insert –
- “36A Proceedings in the High Court of Justiciary and sheriff court**
- (1) Proceedings before the High Court of Justiciary (the “High Court”) or the sheriff arising by virtue of section 22A, 22B, 22C or 22E are civil proceedings. 20
- (2) One consequence of this is that the standard of proof to be applied by the High Court or (as the case may be) the sheriff in such proceedings is the civil standard of proof.
- (3) Two other consequences of this are that the High Court or (as the case may be) the sheriff – 25
- (a) is not restricted to considering evidence that would have been admissible in the criminal proceedings in which the person concerned was convicted; and
- (b) may adjourn any proceedings in relation to a serious crime prevention order even after sentencing the person concerned. 30
- (4) Despite subsection (1), an Act of Adjournal under section 305 of the Criminal Procedure (Scotland) Act 1995 (Acts of Adjournal) may be made in relation to proceedings before the High Court or the sheriff arising by virtue of section 22A, 22B, 22C or 22E. 35
- (5) A serious crime prevention order may be made as mentioned in section 22A(6)(b) in spite of anything in sections 246 and 247 of the Criminal Procedure (Scotland) Act 1995 (which relate to orders discharging a person absolutely and their effect).
- (6) A variation of a serious crime prevention order may be made as mentioned in section 22B(4)(b), or (as the case may be) a variation of or a new serious crime prevention order may be made as mentioned in section 22C(4)(b), in spite of anything in sections 246 and 247 of the Criminal Procedure (Scotland) Act 1995.” 40
- 26 In section 39 (compliance with orders: authorised monitors), in the 45

- definition of “law enforcement agency” in subsection (10), after paragraph (zc) insert –  
“(zd) the chief constable of the Police Service of Scotland;”.
- 27 (1) Section 40 (costs in relation to authorised monitors) is amended as follows.
- (2) In subsection (5), for “recoverable as if” substitute “recoverable – 5  
(a) in England and Wales and Northern Ireland, as if”.
- (3) At the end of that subsection insert –  
“(b) in Scotland, in like manner as an extract registered decree arbitral bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland.” 10
- (4) After subsection (6) insert –  
“(6A) Where any amounts required to be paid by virtue of section 39(4) and (5) are, in the case of a serious crime prevention order made under section 22A, not paid within a required period, the unpaid balance from time to time carries interest at the rate payable under a decree of the Court of Session.” 15
- (5) In subsection (9), after paragraph (a) insert –  
“(aa) in relation to serious crime prevention orders in Scotland, the Scottish Ministers;”.
- 28 In section 43 (index of defined expressions), at the appropriate places insert – 20
- |                    |                |
|--------------------|----------------|
| “appropriate court | section 1(5)”; |
|--------------------|----------------|
- |  |                            |
|--|----------------------------|
| “involvement in serious crime: Scotland orders | sections 2A, 4 and 31(3)”; |
|--|----------------------------|
- |                              |                 |
|------------------------------|-----------------|
| “serious offence in Scotland | section 2A(2)”. |
|------------------------------|-----------------|
- 25
- 29 In section 89 (orders) –
- (a) in subsection (1), for “, the Treasury or the Scottish Ministers” substitute “or the Treasury”;
- (b) in subsection (2) – 30
- (i) for “or the Treasury” substitute “, the Treasury or the Scottish Ministers”;
- (ii) at the end insert “or the Scottish Ministers consider appropriate.”;
- (c) in subsection (6) – 35
- (i) for “statutory instrument” substitute “the Secretary of State or the Treasury”;
- (ii) after “27(6) or (12),” insert “, 27A(7)”;

|    |   |    |
|----|---|----|
|    | (d) after subsection (6) insert –   |    |
|    | “(6A) An order under section 4(4A) is subject to the affirmative procedure.   |    |
|    | (6B) An order made by the Scottish Ministers under section 7(1A), 27A(7) or (12), 29(1ZA) or (3ZA) or 40 is subject to the negative procedure.”   | 5  |
| 30 | In section 93 (extent), in subsection (2) (provisions that extend to England and Wales and Northern Ireland only) omit paragraph (a).   |    |
| 31 | In Schedule 1 (serious offences), after Part 1 insert –   |    |
|    | “PART 1A  | 10 |
|    | SERIOUS OFFENCES IN SCOTLAND  |    |
|    | <i>Drug trafficking</i>   |    |
|    | 16A (1) An offence under any of the following provisions of the Misuse of Drugs Act 1971 –  |    |
|    | (a) section 4(2) or (3) (unlawful production or supply of controlled drugs);  | 15 |
|    | (b) section 5(3) (possession of controlled drug with intent to supply);   |    |
|    | (c) section 6 (restriction of cultivation of cannabis plant);   |    |
|    | (d) section 8 (permitting etc certain activities relating to controlled drugs);   | 20 |
|    | (e) section 20 (assisting in or inducing the commission outside the United Kingdom of an offence punishable under a corresponding law).   |    |
|    | (2) An offence under any of the following provisions of the Customs and Excise Management Act 1979 if it is committed in connection with a prohibition or restriction on importation or exportation which has effect by virtue of section 3 of the Misuse of Drugs Act 1971 – | 25 |
|    | (a) section 50(2) or (3) (improper importation of goods);   | 30 |
|    | (b) section 68(2) (exportation of prohibited or restricted goods);  |    |
|    | (c) section 170 (fraudulent evasion of duty etc).   |    |
|    | (3) An offence under either of the following provisions of the Criminal Justice (International Co-operation) Act 1990 –   | 35 |
|    | (a) section 12 (manufacture or supply of a substance for the time being specified in Schedule 2 to that Act);   |    |
|    | (b) section 19 (using a ship for illicit traffic in controlled drugs).  |    |
|    | <i>People trafficking</i>   | 40 |
|    | 16B (4) An offence under section 25, 25A or 25B of the Immigration Act 1971 (assisting unlawful immigration etc).   |    |

- (5) An offence under section 4 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (trafficking people for exploitation).

*Firearms offences*

- 16C (1) An offence under any of the following provisions of the Firearms Act 1968 – 5
- (a) section 1(1) (possession etc of firearms or ammunition without certificate);
  - (b) section 2(1) (possession etc of shot gun without certificate);
  - (c) section 3(1) (dealing etc in firearms or ammunition by way of trade or business without being registered); 10
  - (d) section 5(1), (1A) or (2A) (possession, manufacture etc of prohibited weapons).
- (2) An offence under either of the following provisions of the Customs and Excise Management Act 1979 if it is committed in connection with a firearm or ammunition – 15
- (a) section 68(2) (exportation of prohibited or restricted goods);
  - (b) section 170 (fraudulent evasion of duty etc).
- (3) In sub-paragraph (2) “firearm” and “ammunition” have the same meanings as in section 57 of the Firearms Act 1968. 20

*Prostitution, child sex and pornography*

- 16D (1) An offence under any of the following provisions of the Criminal Law Consolidation (Scotland) Act 1995 –
- (a) section 11(1) (living on earnings of prostitution or soliciting for immoral purposes); 25
  - (b) section 11(4) (aiding, abetting or compelling prostitution for gain);
  - (c) section 11(5) (running of brothels).
- (2) An offence under section 22 of the Criminal Justice (Scotland) Act 2003 (traffic in prostitution etc). 30
- (3) An offence under any of the following provisions of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 –
- (a) section 10 (causing or inciting provision by child of sexual services or child pornography); 35
  - (b) section 11 (controlling a child providing sexual services or involved in pornography);
  - (c) section 12 (arranging or facilitating provision by child of sexual services or child pornography). 40
- (4) An offence under section 51(2) of the Civic Government (Scotland) Act 1982 (obscene material).

*Serious organised crime*

- 16E (1) An offence under any of the following provisions of the Criminal Justice and Licensing (Scotland) Act 2010 –
- (a) section 28(1) (involvement in serious organised crime);
  - (b) section 30(1) or (2) (directing serious organised crime). 5
- (2) An offence aggravated by a connection with serious organised crime as mentioned in section 29(1) of the Criminal Justice and Licensing (Scotland) Act 2010 (offences aggravated by connection with serious organised crime).

*Money laundering* 10

- 16F An offence under any of the following provisions of the Proceeds of Crime Act 2002 –
- (a) section 327 (concealing etc criminal property);
  - (b) section 328 (facilitating the acquisition etc of criminal property by or on behalf of another); 15
  - (c) section 329 (acquisition, use and possession of criminal property).

*Offences in relation to public revenue*

- 16G (1) An offence under section 170 of the Customs and Excise Management Act 1979 (fraudulent evasion of duty etc) so far as not falling within paragraph 16A(2)(c) or 16C(2)(b) above. 20
- (2) An offence under section 72 of the Value Added Tax Act 1994 (fraudulent evasion of VAT etc).
- (3) An offence under section 106A of the Taxes Management Act 1970 (fraudulent evasion of income tax). 25
- (4) An offence under section 35 of the Tax Credits Act 2002 (tax credit fraud).

*Bribery*

- 16H An offence under any of the following provisions of the Bribery Act 2010 – 30
- (a) section 1 (offences of bribing another person);
  - (b) section 2 (offences relating to being bribed);
  - (c) section 6 (bribery of foreign public officials).

*Counterfeiting*

- 16I An offence under any of the following provisions of the Forgery and Counterfeiting Act 1981 – 35
- (a) section 14 (making counterfeit notes or coins);
  - (b) section 15 (passing etc counterfeit notes or coins);
  - (c) section 16 (having custody or control of counterfeit notes or coins); 40



- (d) section 17 (making or having custody or control of counterfeiting materials or implements).

*Fraud etc*

- 16J (1) An offence under section 12(1) or (2) of the Gangmasters (Licensing) Act 2004 (acting as a gangmaster other than under the authority of a licence, possession of false documents, etc). 5
- (2) Fraud.
- (3) Conspiracy to defraud.
- (4) Theft.
- (5) Extortion. 10
- (6) Assault and robbery.

*Computer misuse*

- 16K An offence under any of the following provisions of the Computer Misuse Act 1990 –
- (a) section 1 (unauthorised access to computer material); 15
- (b) section 2 (unauthorised access with intent to commit or facilitate commission of further offences);
- (c) section 3 (unauthorised acts with intent to impair, or with recklessness as to impairing, operation of computer etc);
- (d) section 3ZA (unauthorised acts causing, or creating risk of, serious damage to human welfare etc)); 20
- (e) section 3A (making, supplying or obtaining articles for use in offence under section 1 or 3).

*Intellectual property*

- 16L (1) An offence under section 297A of the Copyright, Designs and Patents Act 1988 (making or dealing etc in unauthorised decoders). 25
- (2) An offence under section 92(1), (2) or (3) of the Trade Marks Act 1994 (unauthorised use of trade mark etc).

*Environment* 30

- 16M(1) An offence under any of the following provisions of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 –
- (a) section 1 (fishing for salmon: methods);
- (b) section 2 (fishing for freshwater fish: methods);
- (c) section 5 (using explosive or other noxious substances for taking or destruction of fish etc). 35
- (2) An offence under section 14 of the Wildlife and Countryside Act 1981 (introduction of new species etc).

- |     |  |   |
|-----|--|---|
| (3) | An offence under section 33 of the Environmental Protection Act 1990 (prohibition on unauthorised or harmful deposit, treatment or disposal etc of waste).   |   |
| (4) | An offence under regulation 8 of the Control of Trade in Endangered Species (Enforcement) Regulations 1997 (S.I. 1997/1372) (purchase and sale etc of endangered species and provision of false statement and certificates). | 5 |

*Inchoate offences*

- |     |   |    |
|-----|---|----|
| 16N | An offence of attempting or conspiring to commit an offence specified or described in this Part of this Schedule. | 10 |
|-----|---|----|

*Earlier offences*

- |     |   |    |
|-----|---|----|
| 16O | This Part of this Schedule has effect, in its application to conduct before the coming into force of this Part, as if the offences specified or described in this Part included any corresponding offences under the law in force at the time of the conduct. | 15 |
|-----|---|----|

*Scope of offences*

- |     |  |    |
|-----|--|----|
| 16P | Where this Part of this Schedule refers to offences which are offences under the law of Scotland and another country, the reference is to be read as limited to the offences so far as they are offences under the law of Scotland.” | 20 |
|-----|--|----|

## SCHEDULE 2

Section 53

### EXECUTION OF SEARCH AND SEIZURE WARRANTS

*Persons who may execute warrant*

- |   |  |    |
|---|--|----|
| 1 | (1) A search and seizure warrant may be executed by any police or customs officer.   | 25 |
|   | (2) A search and seizure warrant may authorise persons to accompany any police or customs officer who is executing it.                         |    |
|   | (3) A person authorised under sub-paragraph (2) has the same powers as the police or customs officer whom he or she accompanies in respect of— |    |
|   | (a) the execution of the warrant;  | 30 |
|   | (b) the seizure of anything to which the warrant relates.  |    |
|   | But the person may exercise those powers only in the company, and under the supervision, of a police or customs officer.                       |    |

*Warrant to be executed within 3 months*

- |   |   |    |
|---|---|----|
| 2 | Entry and search under a search and seizure warrant must be within 3 months from the date of its issue. | 35 |
|---|---|----|

*All-premises warrants*

- 3 In the case of an all-premises warrant, premises that are not specified in the warrant may be entered and searched only if a senior officer has authorised them to be entered.

*Search of premises more than once*

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- 4 Premises may be entered or searched for the second or any subsequent time under a search and seizure warrant authorising multiple entries only if a senior officer has authorised that entry to the premises.

*Time of search*

- 5 Entry and search under a search and seizure warrant must be at a reasonable hour unless it appears to the police or customs officer executing it that the purpose of a search may be frustrated on an entry at a reasonable hour. 10

*Evidence of authority etc*

- 6 (1) Where the occupier of premises to be entered and searched under a search and seizure warrant is present at the time when a police or customs officer seeks to execute the warrant, the police or customs officer – 15
- (a) must identify himself or herself to the occupier and, if not a constable in uniform, must produce to the occupier documentary evidence that he or she is a police or customs officer;
  - (b) must produce the warrant to the occupier; 20
  - (c) must supply the occupier with a copy of it.
- (2) Where the occupier of premises to be entered and searched under a search and seizure warrant is not present at the time when a police or customs officer seeks to execute the warrant –
- (a) if some other person who appears to the officer to be in charge of the premises is present, sub-paragraph (1) has effect as if a reference to the occupier were a reference to that other person; 25
  - (b) if not, the officer must leave a copy of the warrant in a prominent place on the premises.

*Extent of search*

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- 7 A search under a search and seizure warrant may only be a search to the extent required for the purpose for which the warrant was issued.

*Inspection of substances*

- 8 Where a police or customs officer has power under section 56 to seize a substance from premises, the officer or a person authorised under paragraph 1(2) may inspect or test the substance on the premises with a view to establishing whether or not it is a substance that is suitable for use as a drug-cutting agent. 35

### *Securing premises after entry*

- 9      A police or customs officer who enters premises under a search and seizure warrant must take reasonable steps to ensure that when the officer leaves the premises they are as secure as they were before he or she entered.

### *Endorsement of warrant*

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- 10    (1) A police or customs officer executing a search and seizure warrant must make an endorsement on it—
- (a) describing the substances, and any containers, that were seized, or
  - (b) stating that no substances were seized.
- (2) Unless the warrant specifies one set of premises only, there must be a separate endorsement under this paragraph identifying each set of premises entered and searched.

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### *Return and retention of warrant*

- 11    (1) A search and seizure warrant must be returned to the appropriate person (see sub-paragraph (2))—
- (a) when the warrant has been executed, or
  - (b) on or before the expiry of the period of 3 months from the date of its issue, if the warrant is—
    - (i) a specific-premises warrant that has not been executed,
    - (ii) an all-premises warrant, or
    - (iii) a warrant authorising multiple entries.
- (2) The appropriate person is—
- (a) in the case of a warrant issued in England and Wales, the designated officer for the local justice area in which the justice of the peace was acting when issuing the warrant;
  - (b) in the case of a warrant issued in Scotland, the sheriff clerk for the sheriff court in which the sheriff was sitting when the sheriff issued the warrant;
  - (c) in the case of a warrant issued in Northern Ireland, the clerk of petty sessions for the petty sessions district in which the lay magistrate was acting when he or she issued the warrant.
- (3) The appropriate person must retain a search and seizure warrant returned under sub-paragraph (1) for 12 months from the date of its return.
- (4) If during that period the occupier of premises to which the search and seizure warrant relates asks to inspect it, he or she must be allowed to do so.

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### *Interpretation etc*

- 12    (1) In this Schedule—
- “all-premises warrant” and “specific-premises warrant” have the meaning given in section 51(3);
  - “senior officer” means—
    - (a) a police officer of at least the rank of inspector;
    - (b) a National Crime Agency officer of grade 3 or above.

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- (2) An authorisation under paragraph 3 or 4 must be in writing.

## SCHEDULE 3

Section 66

### PAEDOPHILE MANUALS: PROVIDERS OF INFORMATION SOCIETY SERVICES

#### *Interpretation of this Schedule*

- |   |  |    |
|---|--|----|
| 1 | (1) “Prohibited item” means an item within section 66(1).  | 5  |
|   | (2) “Information society services” –   |    |
|   | (a) has the meaning given in Article 2(a) of the E-Commerce Directive (which refers to Article 1(2) of Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations), and   | 10 |
|   | (b) is summarised in recital 17 of the E-Commerce Directive as covering “any service normally provided for remuneration, at a distance, by means of electronic equipment for the processing (including digital compression) and storage of data, and at the individual request of a recipient of a service”. | 15 |
|   | (3) “The E-Commerce Directive” means 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).                               | 20 |
|   | (4) “Recipient”, in relation to a service, means a person who, for professional ends or otherwise, uses an information society service, in particular for the purposes of seeking information or making it accessible.   |    |
|   | (5) “Service provider” means a person providing an information society service.  |    |
|   | (6) “Domestic service provider” means a service provider established in England and Wales or Northern Ireland.   | 25 |
|   | (7) “Non-UK service provider” means a service provider established in an EEA state other than the United Kingdom.  |    |
|   | (8) For the purposes of sub-paragraphs (6) and (7) –   |    |
|   | (a) a service provider is established in a particular part of the United Kingdom, or in a particular EEA state, if the service provider –  | 30 |
|   | (i) effectively pursues an economic activity using a fixed establishment in that part of the United Kingdom, or that EEA state, for an indefinite period, and  |    |
|   | (ii) is a national of an EEA state or a company or firm mentioned in Article 54 of the Treaty on the Functioning of the European Union;  | 35 |
|   | (b) the presence or use in a particular place of equipment or other technical means of providing an information society service does not, of itself, constitute the establishment of a service provider;   | 40 |
|   | (c) where it cannot be determined from which of a number of establishments a given information society service is provided, that   |    |

service is to be regarded as provided from the establishment at the centre of the service provider’s activities relating to that service.

*Domestic service providers: extension of liability*

- 2 (1) Section 66(1) applies to a domestic service provider who, in the course of providing information society services, is in possession of a prohibited item in an EEA state other than the United Kingdom (as well as to a person, of any description, who is in possession of a prohibited item in England and Wales or Northern Ireland). 5
- (2) Proceedings for an offence under section 66(1), as it applies to a domestic service provider by virtue of sub-paragraph (1), may be taken at any place in England and Wales or Northern Ireland. 10  
The offence may for all incidental purposes be treated as having been committed at any place in England and Wales or Northern Ireland.
- (3) Nothing in this paragraph affects the operation of any of paragraphs 4 to 6.

*Non-UK service providers: restriction on institution of proceedings* 15

- 3 (1) Proceedings for an offence under section 66(1) may not be taken against a non-UK service provider in respect of anything done in the course of the provision of information society services unless the derogation condition is met.
- (2) The derogation condition is that taking proceedings – 20
  - (a) is necessary for the purposes of the public interest objective,
  - (b) relates to an information society service that prejudices that objective or presents a serious and grave risk of prejudice to that objective, and
  - (c) is proportionate to that objective.
- (3) “The public interest objective” means the pursuit of public policy. 25

*Exception for mere conduits*

- 4 (1) A service provider does not commit an offence under section 66(1) by providing access to a communication network or by transmitting, in a communication network, information provided by a recipient of the service, if the service provider does not – 30
  - (a) initiate the transmission,
  - (b) select the recipient of the transmission, or
  - (c) select or modify the information contained in the transmission.
- (2) For the purposes of sub-paragraph (1) – 35
  - (a) providing access to a communication network, and
  - (b) transmitting information in a communication network,
 include the automatic, intermediate and transient storage of the information transmitted so far as the storage is solely for the purpose of carrying out the transmission in the network.
- (3) Sub-paragraph (2) does not apply if the information is stored for longer than is reasonably necessary for the transmission. 40

*Exception for caching*

- 5 (1) A service provider does not commit an offence under section 66(1) by storing information provided by a recipient of the service for transmission in a communication network if the first and second conditions are met.
- (2) The first condition is that the storage of the information – 5
  - (a) is automatic, intermediate and temporary, and
  - (b) is solely for the purpose of making more efficient the onward transmission of the information to other recipients of the service at their request.
- (3) The second condition is that the service provider – 10
  - (a) does not modify the information,
  - (b) complies with any conditions attached to having access to the information, and
  - (c) if sub-paragraph (4) applies, promptly removes the information or disables access to it. 15
- (4) This sub-paragraph applies if the service provider obtains actual knowledge that –
  - (a) the information at the initial source of the transmission has been removed from the network,
  - (b) access to it has been disabled, or 20
  - (c) a court or administrative authority has ordered the removal from the network of, or the disablement of access to, the information.

*Exception for hosting*

- 6 (1) A service provider does not commit an offence under section 66(1) by storing information provided by a recipient of the service if – 25
  - (a) the service provider had no actual knowledge when the information was provided that it was, or contained, a prohibited item, or
  - (b) on obtaining actual knowledge that the information was, or contained, a prohibited item, the service provider promptly removed the information or disabled access to it. 30
- (2) Sub-paragraph (1) does not apply if the recipient of the service is acting under the authority or control of the service provider.

SCHEDULE 4

Section 74

MINOR AND CONSEQUENTIAL AMENDMENTS

*Visiting Forces Act 1952 (c. 67)* 35

- 1 In the Schedule to the Visiting Forces Act 1952 (offences referred to in section 3), in paragraph 1(b)(xi), before “the Female Genital Mutilation Act 2003” insert “sections 1 to 3 of”.



*Criminal Appeal Act 1968 (c. 19)*

- 2 In section 50 of the Criminal Appeal Act 1968 (meaning of “sentence”), in subsection (1), at the end of paragraph (ca) insert “(but not a determination under section 10A of that Act)”.

*Criminal Appeal (Northern Ireland) Act 1980 (c. 47)*

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- 3 In section 30(3) of the Criminal Appeal (Northern Ireland) Act 1980 (meaning of “sentence”), at the end of paragraph (d) insert “(but not a determination under section 160A of that Act)”.

*Senior Courts Act 1981 (c. 54)*

- 4 In paragraph 3 of Schedule 1 to the Senior Courts Act 1981 (distribution of business to the family division of the High Court), after paragraph (h) insert –
- “(ha) all proceedings under Part 1 of Schedule 2 to the Female Genital Mutilation Act 2003;”.

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*Civil Jurisdiction and Judgments Act 1982 (c. 27)*

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- 5 (1) In section 18 of the Civil Jurisdiction and Judgments Act 1982 (enforcement of United Kingdom judgments in other parts of the United Kingdom), after paragraph (c) of subsection (6A) insert –
- “(d) an order under section 255G or 255H of that Act (order relating to PPO receivers in connection with prohibitory property order).”
- (2) The power conferred by section 52(2) of that Act (power to extend to Channel Islands, Isle of Man and British overseas territories) is exercisable in relation to the amendment of that Act made by sub-paragraph (1).

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*Computer Misuse Act 1990 (c. 18)*

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- 6 In each of the following provisions of the Computer Misuse Act 1990, for “six” substitute “12” –
- (a) section 1(3)(b);
  - (b) section 2(5)(b);
  - (c) section 3(6)(b);
  - (d) section 3A(5)(b).
- 7 In section 3A of that Act (making, supplying or obtaining articles for use in an offence under section 1 or 3), in the heading, for “**section 1 or 3**” substitute “**section 1, 3 or 3ZA**”.
- 8 In section 4 of that Act (territorial scope of offences), in the heading, for “**sections 1 to 3**” substitute “**this Act**”.
- 9 (1) Section 6 of that Act (territorial scope of inchoate offences) is amended as follows.
- (2) In the heading, for “**sections 1 to 3**” substitute “**this Act**”.
- (3) In subsection (1), for “section 1, 2 or 3 above” substitute “this Act”.

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- (4) In subsection (2), for “section 3 above” substitute “this Act”.
- 10 (1) Section 9 of that Act (British citizenship immaterial) is amended as follows.
  - (2) In subsection (1), at the beginning insert “Except as provided by section 5(1A),”.
  - (3) In subsection (2)(a), for “section 1, 2 or 3 above” substitute “this Act”. 5
  - (4) In subsection (2)(c), for “section 3 above” substitute “this Act”.
- 11 In section 10 of that Act, for the heading substitute “**Savings**”.

*Courts and Legal Services Act 1990 (c. 41)*

- 12 In section 58A of the Courts and Legal Services Act 1990 (conditional fee agreements: supplementary), in subsection (2), after paragraph (f) insert – 10
  - “(fza) Part 1 of Schedule 2 to the Female Genital Mutilation Act 2003;”.

*Criminal Procedure (Scotland) Act 1995 (c. 46)*

- 13 In section 108 of the Criminal Procedure (Scotland) Act 1995 (Lord Advocate’s right of appeal against disposal), after paragraph (ca) of subsection (1) insert – 15
  - “(cb) a decision under section 22A of the Serious Crime Act 2007 not to make a serious crime prevention order;”.
- 14 (1) Section 175 of that Act (right of appeal from summary proceedings) is amended as follows. 20
  - (2) In subsection (4), after paragraph (ca) insert –
    - “(cb) a decision under section 22A of the Serious Crime Act 2007 not to make a serious crime prevention order;”.
  - (3) In subsection (4A)(b)(ii), for “or (ca)” substitute “, (ca) or (cb)”.
- 15 In section 222 of that Act (transfer of fine orders), in subsection (8), for “section 31 of the Powers of Criminal Courts Act 1973” substitute “section 139 of the Powers of Criminal Courts (Sentencing) Act 2000”. 25

*Family Law Act 1996 (c. 27)*

- 16 In section 63 of the Family Law Act 1996 (interpretation of Part 4), in subsection (2), after paragraph (i) insert – 30
  - “(ia) Part 1 of Schedule 2 to the Female Genital Mutilation Act 2003, other than paragraph 3 of that Schedule;”.

*Proceeds of Crime Act 2002 (c. 29)*

- 17 In section 12 of the Proceeds of Crime Act 2002 (interest on unpaid sums), in subsection (1) – 35
  - (a) for “the amount required to be paid” substitute “any amount required to be paid”;
  - (b) for “must pay interest on the amount” substitute “must pay interest on that amount”.

- |    |   |               |
|----|---|---------------|
| 18 | <p>In section 14 of that Act (postponement), after paragraph (c) of subsection (12) insert—</p> <p style="padding-left: 40px;">“(ca) made an order under section 161A of the Criminal Justice Act 2003 (orders requiring payment of surcharge);”.</p>   | 5             |
| 19 | <p>(1) Section 15 of that Act (effect of postponement) is amended as follows.</p> <p>(2) In subsection (2) —</p> <p style="padding-left: 40px;">(a) at the end of paragraph (c) omit “or”;</p> <p style="padding-left: 40px;">(b) after that paragraph insert—</p> <p style="padding-left: 80px;">“(ca) make an order for the payment of a surcharge under section 161A of the Criminal Justice Act 2003, or”.</p> <p>(3) In subsection (3) —</p> <p style="padding-left: 40px;">(a) at the end of paragraph (c) omit “or”;</p> <p style="padding-left: 40px;">(b) after that paragraph insert—</p> <p style="padding-left: 80px;">“(ca) making an order for the payment of a surcharge under section 161A of the Criminal Justice Act 2003, or”.</p> | 5<br>10<br>15 |
| 20 | <p>(1) Section 19 of that Act (no order made: reconsideration of case) is amended as follows.</p> <p>(2) In subsection (7), after paragraph (d) insert—</p> <p style="padding-left: 40px;">“(da) any order which has been made against the defendant in respect of the offence (or any of the offences) concerned under section 161A of the Criminal Justice Act 2003 (orders requiring payment of surcharge);”.</p> <p>(3) In subsection (8), after “Sentencing Act” insert “, a surcharge under section 161A of the Criminal Justice Act 2003”.</p>   | 20<br>25      |
| 21 | <p>(1) Section 20 of that Act (no order made: reconsideration of benefit) is amended as follows.</p> <p>(2) In subsection (11), after paragraph (d) insert—</p> <p style="padding-left: 40px;">“(da) any order which has been made against the defendant in respect of the offence (or any of the offences) concerned under section 161A of the Criminal Justice Act 2003 (orders requiring payment of surcharge);”.</p> <p>(3) In subsection (12), after “Sentencing Act” insert “, a surcharge under section 161A of the Criminal Justice Act 2003”.</p>  | 30            |
| 22 | <p>(1) Section 21 of that Act (order made: reconsideration of benefit) is amended as follows.</p> <p>(2) In subsection (9), after paragraph (c) insert—</p> <p style="padding-left: 40px;">“(ca) any order which has been made against the defendant in respect of the offence (or any of the offences) concerned under section 161A of the Criminal Justice Act 2003 (orders requiring payment of surcharge);”.</p> <p>(3) In subsection (10), after “(9)(c)” insert “, (ca)”.</p>   | 35<br>40      |
| 23 | <p>(1) Section 22 of that Act (order made: reconsideration of available amount) is amended as follows.</p>  |               |

- (2) In subsection (5), after paragraph (c) insert –
    - “(d) any order which has been made against the defendant in respect of the offence (or any of the offences) concerned under section 161A of the Criminal Justice Act 2003 (orders requiring payment of surcharge).”
  - (3) In subsection (6), after “(5)(c)” insert “or (d).”
- 24 (1) Section 31 of that Act (appeal to Court of Appeal) is amended as follows.
  - (2) In the heading, after “**prosecutor**” insert “**etc**”.
  - (3) In subsection (3), after “by virtue of section” insert “10A,”.
- 25 In section 32 of that Act (Court of Appeal’s powers on appeal), in subsection (7), after “(compensation orders)” insert “, section 161A of the Criminal Justice Act 2003 (orders requiring payment of surcharge)”. 10
- 26 In section 33 of that Act (appeal to Supreme Court), in subsection (9), after “(compensation orders)” insert “, section 161A of the Criminal Justice Act 2003 (orders requiring payment of surcharge)”. 15
- 27 In section 35 of that Act (enforcement as fines), in subsection (2), for “139(2) to (4)” substitute “139(2), (3)”. 15
- 28 In section 41 of that Act (restraint orders), after subsection 7C (inserted by section 11 above) insert –
  - “(7D) In considering whether to make an order under subsection (7), the court must, in particular, consider whether any restriction or prohibition on the defendant’s travel outside the United Kingdom ought to be imposed for the purpose mentioned in that subsection.” 20
- 29 (1) Section 42 of that Act (application, discharge and variation of restraint orders) is amended as follows. 25
  - (2) In subsection (4), for “(7)” substitute “(8)”.
  - (3) For subsection (7) substitute –
    - “(7) If the condition in section 40 which was satisfied was that an investigation was started –
      - (a) the court must discharge the order if within a reasonable time proceedings for the offence are not started;
      - (b) otherwise, the court must discharge the order on the conclusion of the proceedings.
    - (8) If the condition in section 40 which was satisfied was that an application was to be made –
      - (a) the court must discharge the order if within a reasonable time the application is not made;
      - (b) otherwise, the court must discharge the order on the conclusion of the application.”
- 30 In section 55 of that Act (sums received by designated officer), in subsection (5), for “an amount of compensation or all or part of an amount payable under an unlawful profit order” substitute “an amount payable under a priority order (or orders)”. 40
- 31 In section 89 of that Act (procedure on appeal to the Court of Appeal), in

- subsection (4), before paragraph (a) insert –  
 “(za) section 31(4) (appeals against determinations under section 10A),”.
- 32 In section 99 of that Act (postponement), after paragraph (c) of subsection (11) insert – 5  
 “(d) made a restitution order;  
 (e) ordered the accused under section 253F(2) of the Procedure Act to pay a victim surcharge.”
- 33 (1) Section 100 of that Act (effect of postponement) is amended as follows.  
 (2) In subsection (3) – 10  
 (a) at the end of paragraph (b) omit “or”;  
 (b) after paragraph (c) insert –  
 “(d) make a restitution order, or  
 (e) order the accused under section 253F(2) of the Procedure Act to pay a victim surcharge.” 15
- (3) In subsection (4) –  
 (a) at the end of paragraph (b) omit “or”;  
 (b) after paragraph (c) insert –  
 “(d) making a restitution order, or  
 (e) ordering the accused under section 253F(2) of the Procedure Act to pay a victim surcharge.” 20
- 34 (1) Section 104 of that Act (no order made: reconsideration of case) is amended as follows.  
 (2) In subsection (7), after paragraph (d) insert –  
 “(e) any restitution order which has been made against the accused in respect of the offence (or any of the offences) concerned; 25  
 (f) any order under section 253F(2) of the Procedure Act requiring the accused to pay a victim surcharge in respect of the offence (or any of the offences) concerned.” 30
- (3) After subsection (8) insert –  
 “(8A) If a restitution order or an order under section 253F(2) of the Procedure Act has been made against the accused in respect of the offence or offences concerned, section 97A(2) and (4) does not apply.” 35
- 35 (1) Section 105 of that Act (no order made: reconsideration of benefit) is amended as follows.  
 (2) In subsection (10), after paragraph (d) insert –  
 “(e) any restitution order which has been made against the accused in respect of the offence (or any of the offences) concerned; 40  
 (f) any order under section 253F(2) of the Procedure Act requiring the accused to pay a victim surcharge in respect of the offence (or any of the offences) concerned.”

- (3) After subsection (11) insert –
- “(11A) If a restitution order or an order under section 253F(2) of the Procedure Act has been made against the accused in respect of the offence or offences concerned, section 97A(2) and (4) does not apply.” 5
- 36 (1) Section 106 of that Act (order made: reconsideration of benefit) is amended as follows.
- (2) In subsection (8), after paragraph (c) insert –
- “(d) any restitution order which has been made against the accused in respect of the offence (or any of the offences) concerned; 10
- (e) any order under section 253F(2) of the Procedure Act requiring the accused to pay a victim surcharge in respect of the offence (or any of the offences) concerned.”
- (3) In subsection (9) – 15
- (a) for “the court must not” substitute “the court –
- (a) must not”;
- (b) at the end insert –
- “(b) must not have regard to an order falling within subsection (8)(d) or (e) if a court has made a direction under section 97A(2) or (4).” 20
- 37 (1) Section 107 of that Act (order made: reconsideration of available amount) is amended as follows.
- (2) In subsection (4), after paragraph (c) insert –
- “(d) any restitution order which has been made against the accused in respect of the offence (or any of the offences) concerned; 25
- (e) any order under section 253F(2) of the Procedure Act requiring the accused to pay a victim surcharge in respect of the offence (or any of the offences) concerned.” 30
- (3) In subsection (5) –
- (a) for “the court must not” substitute “the court –
- (a) must not”;
- (b) at the end insert –
- “(b) must not have regard to an order falling within subsection (4)(d) or (e) if a court has made a direction under section 97A(2) or (4).” 35
- 38 In section 118 of that Act (application of provisions about fine enforcement), in subsection (2) omit paragraph (k).
- 39 (1) Section 121 of that Act (application, recall and variation) is amended as follows. 40
- (2) In subsection (5), for “(9)” substitute “(10)”.
- (3) For subsection (9) substitute –
- “(9) In the case of a restraint order, if the condition in section 119 which was satisfied was that an investigation was instituted – 45

- 
- (a) the court must discharge the order if within a reasonable time proceedings for the offence are not instituted;
    - (b) otherwise, the court must recall the order on the conclusion of the proceedings.
  - (10) In the case of a restraint order, if the condition in section 119 which was satisfied was that an application was to be made –
    - (a) the court must discharge the order if within a reasonable time the application is not made;
    - (b) otherwise, the court must recall the order on the conclusion of the application.”
  - 40 In section 131 of that Act (sums received by clerk of court) –
    - (a) in subsection (6), after “97(6)” insert “or 97A(4)”;
    - (b) after that subsection insert –
      - “(6A) If a direction was made under section 97A(2) or (4) for an amount payable under a restitution order or a victim surcharge under section 253F(2) of the Procedure Act to be paid out of sums recovered under the confiscation order, the clerk of court must next apply the sums in payment of that amount.”
  - 41 In section 153 of that Act (satisfaction of confiscation orders), in subsection (1) omit paragraph (b).
  - 42 In section 162 of that Act (interest on unpaid sums), in subsection (1) –
    - (a) for “the amount required to be paid” substitute “any amount required to be paid”;
    - (b) for “must pay interest on the amount” substitute “must pay interest on that amount”.
  - 43 (1) Section 181 of that Act (appeal to Court of Appeal) is amended as follows.
    - (2) In the heading, after “**prosecutor**” insert “**etc**”.
    - (3) In subsection (3), after “by virtue of section” insert “160A,”.
  - 44 In section 185 of that Act (enforcement as fines) –
    - (a) in subsection (2) omit “(2),”;
    - (b) in subsection (3), after “Criminal Justice” insert “(Children)”.
  - 45 In section 190 of that Act (restraint orders), after subsection 7C (inserted by section 33 above) insert –
    - “(7D) In considering whether to make an order under subsection (7), the court must, in particular, consider whether any restriction or prohibition on the defendant’s travel outside the United Kingdom ought to be imposed for the purpose mentioned in that subsection.”
  - 46 (1) Section 191 of that Act (application, discharge and variation of restraint orders) is amended as follows.
    - (2) In subsection (4), for “(7)” substitute “(8)”.
    - (3) For subsection (7) substitute –
      - “(7) If the condition in section 189 which was satisfied was that an investigation was started –



- (a) the court must discharge the order if within a reasonable time proceedings for the offence are not started;
    - (b) otherwise, the court must discharge the order on the conclusion of the proceedings.
  - (8) If the condition in section 189 which was satisfied was that an application was to be made –
    - (a) the court must discharge the order if within a reasonable time the application is not made;
    - (b) otherwise, the court must discharge the order on the conclusion of the application.”
- 47 In section 273 of that Act (payments in respect of rights under pension schemes), in subsection (4)(b), after “section 245E,” insert “PPO receiver,”.
- 48 In section 277 of that Act (consent orders: pensions), in subsection (7)(b), after “section 245E,” insert “PPO receiver,”.
- 49 In section 316 of that Act (Part 5: general interpretation), in subsection (1), at the appropriate place insert –  
““PPO receiver” has the meaning given by section 255G(2);”.
- 50 In section 341 of that Act (investigations), in subsection (1) omit “or” at the end of paragraph (a).
- 51 In section 416 of that Act (other interpretative provisions), after subsection (3) insert –  
“(3A) The expressions “realisable property” and “confiscation order” –
  - (a) in the application of this Part to England and Wales, have the same meanings as in Part 2;
  - (b) in the application of this Part to Scotland, have the same meanings as in Part 3;
  - (c) in the application of this Part to Northern Ireland, have the same meanings as in Part 4.”
- 52 (1) Section 459 of that Act (orders and regulations) is amended as follows.
  - (2) In subsection (4)(a) –
    - (a) after “section” insert “35(2C),”;
    - (b) before “75(7) or (8)” insert “67(7A),”.
  - (3) In subsection (7A) –
    - (a) after “section” insert “185(2B),”;
    - (b) before “223(7) or (8)” insert “215(7A),”.
- 53 In Schedule 10 to that Act, in paragraph 1 (disapplication of special income tax and capital gains tax rules for receivers), after paragraph (d) insert –  
“(da) a PPO receiver appointed under section 255G;”.

*Courts Act 2003 (c. 39)*

- 54 In Schedule 8 to the Courts Act 2003, omit paragraph 409 (which is spent as a result of the amendment made by section 14(1)).

*Sexual Offences Act 2003 (c. 42)*

- 55 (1) Schedule 3 to the Sexual Offences Act 2003 (sexual offences for purposes of Part 2 (notification requirements etc)) is amended as follows.
- (2) After paragraph 35B insert –
- “35C An offence under section 66 of the Serious Crime Act 2014 (possession of paedophile manual) if the offender –
- (a) was 18 or over, or
- (b) is sentenced in respect of the offence to imprisonment for a term of at least 12 months.”
- (3) After paragraph 92X insert –
- “92Y An offence under section 66 of the Serious Crime Act 2014 (possession of paedophile manual) if the offender –
- (a) was 18 or over, or
- (b) is sentenced in respect of the offence to imprisonment for a term of at least 12 months.”

*Criminal Justice Act 2003 (c. 44)*

- 56 In Schedule 3 to the Criminal Justice Act 2003, omit paragraph 75(3) (which is spent as a result of the amendment made by section 9(1)).

*Serious Organised Crime and Police Act 2005 (c. 15)*

- 57 In the Serious Organised Crime and Police Act 2005 omit sections 79 to 81 (financial reporting orders).
- 58 In section 175 of that Act (penalties for offences: transitional modification for England and Wales), in the table in subsection (3) omit the entry for section 79(10)(a)(i).
- 59 (1) Section 179 of that Act (extent etc) is amended as follows.
- (2) In subsection (3)(b), for “79” substitute “82.”
- (3) In subsection (4)(a) omit “77 and”.
- (4) In subsection (5)(b), for “79” substitute “82”.
- (5) In subsection (6) omit paragraph (b).

*Terrorism Act 2006 (c. 11)*

- 60 In section 17 of the Terrorism Act 2006 (commission of offences abroad), in subsection (2)(a) –
- (a) omit “or 6”;
- (b) omit “, instruction or training”.

*Armed Forces Act 2006 (c. 52)*

- 61 In Schedule 2 to the Armed Forces Act 2006 (which lists serious offences the possible commission of which, if suspected, must be referred to a service police force), in paragraph 12 –

- (a) after paragraph (ak) insert –
  - “(aka) an offence under section 3ZA of the Computer Misuse Act 1990 (unauthorised acts causing, or creating risk of, serious damage);”;
- (b) at the end insert –
  - “(ax) an offence under section 66 of the Serious Crime Act 2014 (possession of paedophile manual).”

5

*Serious Crime Act 2007 (c. 27)*

- 62 In section 9 of the Serious Crime Act 2007 (right of third parties to make representations), in subsection (4), for “or 21” substitute “, 21 or 22E”. 10
- 63 In section 16 of that Act (duration of orders), at the end insert –
  - “(7) Subsections (2) and (4)(b) have effect subject to section 22E.”
- 64 (1) Section 19 of that Act (orders by Crown Court on conviction) is amended as follows.
  - (2) After subsection (2) insert – 15
    - “(2A) A court that makes an order by virtue of subsection (2) in the case of a person who is already the subject of a serious crime prevention order in England and Wales must discharge the existing order.”
  - (3) After subsection (4) insert –
    - “(4A) A court that makes an order by virtue of subsection (4) in the case of a person who is already the subject of a serious crime prevention order in Northern Ireland must discharge the existing order.” 20
- 65 In section 21 of that Act (powers of Crown Court to vary orders on breach), in the heading, after “vary” insert “or replace”.
- 66 In section 36 of that Act (proceedings in the Crown Court), in subsection (1), for “or 21” substitute “, 21 or 22E”. 25
- 67 (1) Schedule 1 to that Act (serious offences) is amended as follows.
  - (2) In Part 1 (serious offences in England and Wales), after paragraph 13 insert –
    - “*Organised crime* 30
    - 13A An offence under section 44 of the Serious Crime Act 2014 (participating in activities of organised crime group).”
  - (3) In Part 2 (serious offences in Northern Ireland), for the heading before paragraph 19 substitute –
    - “*Firearms offences*”. 35
- 68 In Part 2 of Schedule 3 to that Act (offences under particular enactments:

England and Wales), after paragraph 38 insert –

“*Serious Crime Act 2014*

38A     An offence under section 44 of the Serious Crime Act 2014 (participating in activities of organised crime group).”

*Policing and Crime Act 2009 (c. 26)*

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69     In the Policing and Crime Act 2009, in the heading of Part 4, after “VIOLENCE” insert “AND DRUG-DEALING ACTIVITY”.

70     In section 35 (contents of injunctions), in subsection (2)(e), after “violence” insert “or drug-dealing activity”.

71     In section 49 (interpretation), at the appropriate place in subsection (1) insert –  
                  ““drug-dealing activity” has the meaning given by section 34(7);”.

10

*Crime and Security Act 2010 (c. 17)*

72     In the Crime and Security Act 2010 omit section 34 (which is spent as a result of the amendment made by section 50 above).

15

*Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10)*

73     (1) Schedule 1 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (civil legal services) is amended as follows.

(2) In the heading before paragraph 38, after “*violence*” insert “*and drug-dealing activity*”.

20

(3) In sub-paragraph (1) of that paragraph, after “*violence*” insert “*and drug-dealing activity*”.

*Prevention of Social Housing Fraud Act 2013 (c. 3)*

74     In the Schedule to the Prevention of Social Housing Fraud Act 2013 (consequential amendments), omit paragraphs 14 and 22 (which are spent as a result of the amendments made by section 6 and paragraph 30 above).

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# Serious Crime Bill [HL]

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## B I L L

To amend the Proceeds of Crime Act 2002, the Computer Misuse Act 1990, Part 4 of the Policing and Crime Act 2009, section 1 of the Children and Young Persons Act 1933, the Female Genital Mutilation Act 2003, the Prohibition of Female Genital Mutilation (Scotland) Act 2005 and the Terrorism Act 2006; to make provision about involvement in organised crime groups and about serious crime prevention orders; to make provision for the seizure and forfeiture of drug-cutting agents; to make it an offence to possess an item that contains advice or guidance about committing sexual offences against children; to make it an offence to possess a knife or offensive weapon inside a prison; to make provision approving for the purposes of section 8 of the European Union Act 2011 certain draft decisions under Article 352 of the Treaty on the Functioning of the European Union relating to serious crime; and for connected purposes.

*Brought from the Lords, 6 November 2014.*

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*Ordered to be Printed, 6 November 2014.*

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Bill 116

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# **SERIOUS CRIME BILL [HL]**

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These Explanatory Notes relate to the Serious Crime Bill as brought from the House of Lords on 6th November 2014. They have been prepared by the Home Office in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
2. The Notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.
3. A glossary of abbreviations and terms used in these Explanatory Notes is contained in Annex A to these Notes.

### **OVERVIEW**

4. Serious and organised crime includes drug trafficking, human trafficking, organised illegal immigration, child sexual exploitation, high value fraud and other financial crime, counterfeiting, organised acquisitive crime and cyber crime. Organised crime costs the United Kingdom at least £24 billion each year. As at December 2013, there are some 36,600 organised criminals in 5,300 groups currently operating in ways that directly affect the UK<sup>1</sup>. In October 2013, the Government published its Serious and Organised Crime Strategy (Cm 8715)<sup>2</sup>. The aim of the strategy is to reduce substantially the level of serious and organised crime affecting the UK and its interests. The strategy has four components: prosecuting and disrupting people engaging in serious and organised crime (Pursue); preventing people from engaging in such activity (Prevent); increasing protection against serious and

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<sup>1</sup> National Strategic Assessment of Serious and Organised Crime 2014, National Crime Agency, 1 May 2014 (<http://www.nationalcrimeagency.gov.uk/publications/207-nca-strategic-assessment-of-serious-and-organised-crime/file>)

<sup>2</sup> <http://www.official-documents.gov.uk/document/cm87/8715/8715.pdf>

organised crime (Protect); and reducing the impact of such criminality where it takes place (Prepare). Under the Pursue strand of the strategy, the document set out proposals to:

- Strengthen the operation of the asset recovery process by closing loopholes in the Proceeds of Crime Act 2002;
- Better tackle people who actively support, and benefit from, participating in organised crime;
- Create new powers to seize and detain chemical substances suspected of being used as cutting agents for illegal drugs; and
- Amend the Computer Misuse Act 1990 to update the existing offences to cover importing tools for cyber crime (such as data programmes designed for unlawfully accessing a computer system).

5. The principal objective of the Bill is to ensure that law enforcement agencies have effective legal powers to deal with the threat from serious and organised crime. In particular, it gives effect to the above proposals in the Serious and Organised Crime Strategy.

6. The Bill is in six Parts. Part 1 makes further provision in respect of the recovery of property derived from the proceeds of crime. Part 2 makes amendments to the Computer Misuse Act 1990. Part 3 provides for a new offence of participating in the activities of an organised crime group and strengthens the arrangements for protecting the public from serious crime and gang-related activity provided for in Part 1 of the Serious Crime Act 2007 and Part 4 of the Policing and Crime Act 2009 respectively. Part 4 provides for the seizure and forfeiture of substances used as drug-cutting agents. Part 5 amends the criminal law in relation to the offence of child cruelty, makes further provision for combating female genital mutilation and provides for a new offence of possession of “paedophile manuals”. Part 6 provides for a new offence of possession of a knife or other offensive weapon in prison, provides for or extends extra-territorial jurisdiction in respect of the offences in sections 5 (preparation of terrorist acts) and 6 (training for terrorism) of the Terrorism Act 2006 and confers parliamentary approval (as required by section 8 of the European Union Act 2011) for two draft Council Decisions under Article 352 of the Treaty on the Functioning of the European Union (“TFEU”). Part 6 also contains minor and consequential amendments to other enactments and general provisions, including provisions about territorial application and commencement.

7. This Bill updates existing law dealing with proceeds of crime, cyber crime, serious crime prevention orders, gang injunctions, child cruelty, female genital mutilation and the commission of certain terrorism offences abroad. The main Acts affected by the Bill are:



*These notes refer to the Serious Crime Bill as brought from the House of Lords on 6 November 2014 (Bill 116)*

- Section 1 of the Children and Young Persons Act 1933 (cruelty to persons under sixteen);
- Prison Act 1952;
- Computer Misuse Act 1990;
- Proceeds of Crime Act 2002 (“POCA”);
- Female Genital Mutilation Act 2003 and the Prohibition of Female Genital Mutilation (Scotland) Act 2005;
- Chapter 3 of Part 2 of the Serious Organised Crime and Police Act 2005 (“SOCPA”) (financial reporting orders (“FROs”));
- Section 17 of the Terrorism Act 2006 (commission of terrorism offences abroad);
- Part 1 of the Serious Crime Act 2007 (serious crime prevention orders (“SCPOs”)); and
- Part 4 of the Policing and Crime Act 2009 (injunctions: gang-related violence).

## **TERRITORIAL EXTENT**

8. Subject to certain exceptions as described below, the provisions of the Bill extend to England and Wales. In addition, the amendments to Parts 5 (Civil Recovery of the Proceeds etc of Unlawful Conduct), 8 (Investigations) and 11 (Co-operation) of POCA (clauses 23, 37(1) and 38), the provisions in respect of computer misuse (Part 2), serious crime prevention orders (clauses 45 to 49 and Schedule 1), drug-cutting agents (Part 4), the extension of extra-territorial jurisdiction in respect of the offences in sections 5 and 6 of the Terrorism Act 2006 (clause 72) and the approval of two draft Council Decisions under Article 352 of TFEU (clause 73) extend to the whole of the United Kingdom. The amendments to Part 3 (Confiscation: Scotland) and Chapter 3 of Part 8 (Investigations) of POCA, to section 13 of the Computer Misuse Act 1990 and to the Prohibition of Female Genital Mutilation (Scotland) Act 2005 made by clauses 15 to 22, 37(3), 42(6) and (7) and 67(2) apply to Scotland only, whilst those to Part 4 of POCA (Confiscation: Northern Ireland) made by Chapter 3 of Part 1 apply to Northern Ireland only. The new offence of possession of “paedophile manuals” (clause 66 and Schedule 3) and the amendments made to the Female Genital Mutilation Act 2003 by clause 67(1), 68, 69 and 70 extend to England and Wales and Northern Ireland.

9. The Scottish Parliament’s consent is being sought for the provisions in the Bill that trigger the Sewel Convention. Those provisions relate to the extension to Scotland of aspects of the provisions of the Serious Crime Act 2007 in respect of SCPOs, the repeal of some of the provisions relating to FROs in Chapter 3 of Part 2 of the SOCPA and the amendments to the Prohibition of Female Genital Mutilation

*These notes refer to the Serious Crime Bill as brought from the House of Lords on 6 November 2014 (Bill 116)*

(Scotland) Act 2005, together with aspects of the amendments to POCA and the Computer Misuse Act 1990. The Sewel Convention provides that Westminster will not normally legislate with regard to devolved matters in Scotland without the consent of the Scottish Parliament. If there are amendments relating to such matters which trigger the Convention, the consent of the Scottish Parliament will be sought for them.

10. The provisions in the Bill in respect of drug-cutting agents (Part 4), the amendments to the Terrorism Act 2006 (clause 72) and that conferring parliamentary approval for the two draft EU Council Decisions (clause 73) also extend to Scotland but relate to reserved matters.

11. In relation to Wales all the provisions of the Bill relate to non-devolved matters.

12. The following provisions of the Bill extend to Northern Ireland and relate, in whole or in part, to transferred matters:

- the amendments to Parts 4, 8 and 11 of POCA;
- the provisions in respect of SCPOs and the repeal of provisions relating to FROs;
- the new offence of possession of paedophile manuals; and
- the amendments to the Female Genital Mutilation Act 2003.

The Northern Ireland Assembly's consent is being sought for the provisions in the Bill that relate to transferred matters. If amendments are made to the Bill that further trigger a requirement for a legislative consent motion, the consent of the Northern Ireland Assembly will be sought for them.

13. The provisions in the Bill in respect of amendments to the Computer Misuse Act 1990 (Part 2), drug-cutting agents (Part 4), the amendments to the Terrorism Act 2006 (clause 72) and that conferring parliamentary approval for the two draft EU Council Decisions (clause 73) also extend to Northern Ireland but relate solely to excepted or reserved matters.

## **PART 1: PROCEEDS OF CRIME**

### **SUMMARY AND BACKGROUND**

14. POCA provides for four different routes for the recovery of assets acquired as a result of criminal activity, as follows:

- Confiscation orders – following conviction for an offence. Part 2 of POCA

makes provision for confiscation in England and Wales, whilst Parts 3 and 4 make broadly analogous provisions for Scotland and Northern Ireland respectively.

- Civil recovery - this is a form of non-conviction based asset recovery that allows for the recovery of property which is, or represents, property obtained through unlawful conduct. A civil recovery order is not a conviction or a sentence, and the action is taken against the property rather than the person. Civil recovery is used when a prosecution is not possible, for example if there is insufficient evidence to create a realistic prospect of a conviction, or there is no identifiable living suspect. Part 5 of POCA provides for a UK-wide civil recovery regime.
- Seizure and forfeiture of cash - this is a non-conviction based procedure for recovering cash which is the proceeds of, or intended for use in, crime of sums of not less than £1,000. Chapter 3 of Part 5 of POCA provides for a UK-wide regime for the recovery of cash in summary proceedings.
- Criminal Taxation – also a non-conviction based power, but does not result in property being recovered – instead it allows tax to be charged on a person’s income, profits or gains where there are reasonable grounds to suspect that they arise or accrue from criminal conduct on the part of that person or another. Only the National Crime Agency (“NCA”) can exercise the criminal taxation powers under Part 6 of POCA, but Her Majesty’s Revenue and Customs retains all its usual powers in respect of taxation.

15. Confiscation orders are the principal method used by law enforcement agencies for the recovery of assets. Annex B provides an overview of how the confiscation regime operates.

16. £190 million was recovered under POCA in 2013/14.

17. The Serious and Organised Crime Strategy explained that POCA is under sustained legal challenge from criminals who are constantly seeking new ways to avoid its reach and frustrate asset recovery. The Strategy sets out a number of proposals to: strengthen the legislation by, amongst other things, ensuring that criminal assets cannot be hidden with spouses, associates or other third parties; substantially strengthen the prison sentences for failing to pay confiscation orders; enable assets to be frozen more quickly and earlier in investigations; significantly reduce the time that the courts can give offenders to pay confiscation orders; and extend the investigative powers in POCA so that they are available to trace assets once a confiscation order is made. The provisions in Part 1 of the Bill give effect to these and other changes to POCA. In doing so, they also implement two recommendations on asset recovery made by the Joint Committee on the Draft

Modern Slavery Bill in their April 2014 report on the draft Bill<sup>3</sup>. Specifically, the Joint Committee recommended that the test for obtaining a restraint order be amended to make it less stringent and indicated that it would welcome stronger sanctions for non-payment of confiscation orders.

## **COMMENTARY ON CLAUSES**

### **Chapter 1: England and Wales**

#### **Confiscation: assets held by defendant and other**

##### **Clause 1: Determination of extent of defendant's interest in property**

18. This clause, together with clauses 2 to 4, amends the provisions in Part 2 of POCA in respect of third party interests in assets that may be realised to discharge a confiscation order. Under Part 2 of POCA a confiscation order is made against the defendant for a particular amount, and not against any particular assets held by the defendant, although the court may take into account property held by the defendant when determining the amount of the confiscation order. It is open to the defendant to pay off the order out of whatever assets he or she has available. As such, Part 2 of POCA makes no express provision for the court to deal with any third party interests in any of the property which the court takes account of when determining the amount of a confiscation order.

19. Part 2 of POCA does however make provision for third parties to make representations where they have been affected by the exercise of powers under that Part. In particular, when they have been affected by a restraint order made under section 41 of POCA, or an order for the further detention of property under section 47M of POCA (the latter section is not yet in force).

20. Third parties also have the right to make representations under Part 2 of POCA when an enforcement receiver is appointed by the Crown Court under section 50 of the Act to enforce an unpaid confiscation order. The court must give anyone with an interest in the realisable property of the defendant a reasonable opportunity to make representations before the receiver may exercise their powers under section 51(2) of POCA to manage, deal or realise that property, or under section 51(6) to order the third party to make a payment to the receiver in respect of the defendant's beneficial interest in the property.

21. In general, it is most appropriate for third party interests to be dealt with substantively at the enforcement stage of a confiscation order given that the existence of such interests only crystallises against specific property at that stage. However, in

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<sup>3</sup> <http://www.parliament.uk/business/committees/committees-a-z/joint-select/draft-modern-slavery-bill/>

some cases waiting until enforcement to determine the extent of a third party's interest in the defendant's property can complicate, lengthen and otherwise frustrate the confiscation process. Clauses 1 to 4 seek to give effect to the commitment in the Serious and Organised Crime Strategy to strengthen POCA by "ensuring that criminal assets cannot be hidden with spouses, associates or other third parties".

22. This clause inserts a new section 10A into POCA to confer on the Crown Court, when making a confiscation order, a power to make a determination as to the extent of the defendant's interest in particular property (new section 10A(1) and (5)). Given that a consequence of making such a determination will be to determine the extent, if any, of any third party interest in the property, new section 10A(2) affords third parties who have, or may have, an interest in the property the right to make representations to the court about the extent of their interest. The right to make representations also extends to the defendant. Subject to two exceptions, any determination as to the extent of the defendant's interest in particular property is binding on any court or other person involved in the enforcement of the confiscation order (new section 10A(3)). The exceptions are where it is open to a court which has appointed an enforcement receiver to hear representations (see clause 4) or in proceedings before the Court of Appeal or Supreme Court (new section 10A(4)).

23. It is envisaged that the Crown Court would only make such determinations in relatively straightforward cases, that is where the court considers that it can, without too much difficulty, determine the defendant's interest in particular property. In deciding whether to make a determination in any particular case, it is expected that judges will exercise this power to determine the defendant's interest in property only in those cases where their experience (including in respect of matters as regards to property law), the nature of the property, and the likely number and/or complexity of any third party interests allows them to do so.

## **Clause 2: Provision of information**

24. *Subsection (1)* amends section 16 of POCA, which requires the prosecutor to give the court "a statement of information" detailing the defendant's benefit from criminal conduct. New section 16(6A) requires such statements of information to include any information available to the prosecutor that would be relevant to the court's consideration of whether to make a determination under new section 10A and, if so, the terms of such a determination. Such information may include evidence of the defendant's and any third parties' interest in relevant property. New section 16(6B) empowers the court to require the prosecutor to provide further specified information relevant to the making of a determination. In order to fulfil such a requirement, it may be necessary for the prosecutor to obtain further information. Under section 17 of POCA, the court may require the defendant to respond to every allegation in the statement of information and to indicate to what extent each allegation is accepted. Where an allegation is disputed, the defendant must provide full details of any matters relied on.

25. *Subsection (2)* amends section 18 of POCA, which empowers the court to

order the defendant to provide any information it needs to enable it to carry out its confiscation functions. *Subsection (2)(a)* amends section 18(2) to make it clear that the court's confiscation functions include functions under the new section 10A. *Subsection (2)(b)* amends section 18(6) so as to provide that where the prosecution accepts any allegation contained in the information provided by the defendant, the court may treat the acceptance as conclusive for the purpose of deciding whether to make a determination under new section 10A and, if it decides to make such a determination, the form of that determination.

26. *Subsection (3)* inserts new section 18A into POCA. New section 18A empowers the court to order any third party who may have an interest in the defendant's property to provide any information it needs to enable it to carry out its functions in connection with the making of a determination under the new section 10A of POCA. A similar power to order the defendant to provide information to the court is contained in section 18 of POCA. The court might use this power where, for example, the defendant alleges that a third party owns a part share in particular property and the court considers that it requires more information from the relevant third party to verify that claim.

27. Where the interested person fails to comply with the court's order without reasonable excuse, new section 18A(4) allows the court to draw any inference that it believes appropriate. However, new section 18A(5) provides that new section 18A(4) does not detract from any other power the court has to deal with the interested person, in particular the power to punish the interested person for contempt of court for failure to comply with the order.

28. New section 18A(9) provides that no information provided by an interested person in response to a court order is admissible in any criminal proceedings. This protects the interested person against self incrimination. However, it does not prevent an interested person being prosecuted for an offence using evidence which may come to light as a result of any information provided to the court under new section 18A.

### **Clause 3: Appeals**

29. *Subsection (1)* inserts new subsections (4) to (8) into section 31 of POCA (which confers a right of appeal on prosecutors against any confiscation order made by the Crown Court). New subsections (4) to (8) enable the prosecutor, the defendant or a third party to appeal to the Court of Appeal against a determination made under new section 10A. The defendant or a third party may only appeal a determination if it appears to the court that the person is, or may be, a person holding an interest in the property affected by the determination. In the case of the defendant or a third party, the right of appeal then only arises in one of two circumstances, namely where a person with an interest in relevant property was not given a reasonable opportunity to make representations to the Crown Court before it made its determination (new section 31(6)), or where the Court of Appeal considers that the determination made under new section 10A would result in a serious risk of injustice to the appellant (new section 31(7)). This does not impact on the defendant's existing right to appeal a

confiscation order to the Court of Appeal.

30. The rights of appeal conferred by new section 31(4) are negated where the conditions in new section 31(8) apply. Those conditions are where a receiver has been appointed under section 50 of POCA or where an application has been made by the prosecution for the appointment of a receiver but that application has not been determined, or where the Court of Appeal believes that such an application is to be made. No right of appeal is provided for in such circumstances given that the court appointing a receiver will be able to reconsider interests in relevant property where there would be a serious risk of injustice if the Crown Court's determination under new section 10A were to be adhered to (see clause 4). Moreover, in cases where the receiver is bound by a Crown Court's determination as to the extent of a defendant's interest in particular property, any person affected by an enforcement order in relation to the property, that is an order to sell it to help satisfy the defendant's confiscation order, would be able to appeal to the Court of Appeal (under section 65 of POCA). When considering any such appeal, the Court of Appeal would not be bound by the Crown Court's determination (see new section 10A(4)(b)).

31. *Subsection (2)* inserts new subsection (2A) into section 32 of POCA, which provides that in determining an appeal under new section 31(4) the Court of Appeal may either confirm the original determination made by the Crown Court under new section 10A or make any other order it considers appropriate (including an order quashing the original determination). This affords the Court of Appeal the power to make a different determination from that made by the Crown Court as to the extent of the defendant's interest in relevant property.

32. *Subsection (3)* amends section 33, which provides for further appeals to the Supreme Court. *Subsection (3)(a)* enables any party to proceedings in the Court of Appeal on an appeal under new section 31(4) to appeal the outcome to the Supreme Court. *Subsection (3)(b)* inserts new subsection (3A) into section 33 which confers on the Supreme Court broad powers to confirm, quash or vary the decision made by the Court of Appeal.

#### **Clause 4: Enforcement receivers**

33. This clause amends section 51 of POCA, which sets out the powers a court can confer on an enforcement receiver. Such powers include the power to realise property, but this is accompanied by a requirement to afford persons with an interest in the property a reasonable opportunity to make representations to the court. New section 51(8B) extends this right on third parties to make representations to the court in certain circumstances where a determination has been made under new section 10A. Given that interested third parties will generally have been afforded an opportunity to make representations to the court prior to it making a determination under new section 10A, the amendments to section 51 of POCA do not, as a rule, allow further representations to be made at the enforcement stage. However, new section 51(8B) enables an affected person to make representations to the court which appointed the receiver where he or she was not given a reasonable opportunity to make



representations to the Crown Court before it made its determination, or where the court considers that the determination made under new section 10A would result in a serious risk of injustice to the person. This provision affords an opportunity for an interested third party to make representations in circumstances where their interest in the property only came to light after the Crown Court had made its original determination under new section 10A. Subject to the court's consideration of any such representations and to the outcome of any appeal (as provided for in clause 3), a determination made by the court under new section 10A is binding on a receiver.

## **Confiscation: other amendments**

### **Clause 5: Time for payment**

34. *Subsection (1)* substitutes a new section 11 of POCA, which makes provision for the court to determine how long the defendant has to pay the amount due under a confiscation order. Section 11 currently provides that the amount is to be paid immediately, unless the defendant can demonstrate to the court that he or she needs more time to pay. If the court is satisfied that time to pay is required, it may allow up to six months to pay, and up to a further six months on a later occasion if there are exceptional reasons justifying the extension. In no case, however, will more than 12 months be granted from the day on which the confiscation order is made. The prosecution has the right to make representations to the court before any order extending the time available to pay a compensation order is made. The substituted section 11 seeks to give effect to the commitment in the Serious and Organised Crime Strategy to strengthen POCA by “significantly reducing the time that the courts can give offenders to pay confiscation orders”.

35. New section 11(1) expressly provides that the full amount payable under a confiscation order must be paid once the order is made (unless the court provides otherwise); the existing section 11(1) simply refers to “the amount”, albeit that the effect is that the full amount must be paid on the day the confiscation order is made.

36. New section 11(2) provides that the court may only extend the time to make full payment of the confiscation order if the court is satisfied that the defendant is unable to pay the full amount on the date the order is made. The existing section 11(2) gives the court a wider discretion to make an order providing more time to pay a confiscation order “if the defendant shows that he needs time to pay the amount ordered to be paid”. The new section 11(2) also provides that the court may require different amounts of time for payment (the “specified period”) of different parts of the amount ordered to be paid. For example, if the full amount is £1 million, the court might order £500,000 to be paid immediately (if the defendant has that amount available in cash), £200,000 within 28 days (if the defendant has shares worth that amount) and £300,000 within three months (if the defendant has property worth that amount).

37. New section 11(3) defines the specified period for the purpose of subsection (2). Whereas the existing section 11(3) sets the maximum length of the specified

period at six months, the new section 11(3) reduces this to three months.

38. New section 11(4) enables the court, on application by the defendant, to extend, by order, the specified period (“the extended period”). At present, the court may make such an order if it “believes there are exceptional circumstances”. The new test is that the defendant is unable to pay the amount required within the specified period “despite having made all reasonable efforts”. Where the court is satisfied that this test is met, it has the discretion to specify different time periods for payment of the outstanding sums. So, for example, if the defendant had been ordered to pay £150,000 within 14 days and makes an application to the court for extending that time period, the court may order that £50,000 be paid immediately, provide a further seven days for another £50,000 to be paid over and a further 14 days for the remaining £50,000 to be paid over. Any application by the defendant must be made before the expiry of the specified period.

39. New section 11(5) defines the extended period for the purpose of subsection (4) and, by extension, the maximum duration of the specified period and the extended period when aggregated together. Whereas the existing section 11(5) sets this maximum aggregated period at 12 months, the new section 11(5) reduces this to six months. As now, it would be possible for the court to grant an extended period for payment after the expiry of the specified period, but may not do so more than six months (currently 12 months) after the confiscation order was made (new section 11(6)).

40. New section 11(7) provides that any specified period or extended period must be as short as it can be. There is currently no equivalent provision in the existing section 11.

41. New section 11(8) replicates the existing ability of the prosecution to make representations before any order under new section 11(2) or (4) is made.

42. *Subsection (2)* substitutes a new subsection (3) in section 12 of POCA. Section 12 provides that the defendant must pay interest on a confiscation order that is not paid in full by the time allowed. The rate of interest is that specified in section 17 of the Judgments Act 1838, namely 8%. Any interest due forms part of the amount payable under a confiscation order. At present, interest is not payable during any period where the defendant has made an application to the court under section 11(4) of POCA to further extend the time allowed for payment and that application has not been determined by the court (provided that 12 months has not elapsed since the making of the order). Under the substituted section 12(3), this maximum period of grace where interest is not payable pending a court’s determination of an application under section 11(4) is reduced from 12 months to six months, in line with new section 11(5). In addition, new section 12(3) makes it clear that whilst interest is not payable on the amount in relation to which the defendant has an outstanding application for an extended period, interest would still be payable on any amounts due in respect of an expired specified period, that are not part of the outstanding application for an

extended period.

43. *Subsection (3)* makes a consequential amendment to section 87 of POCA which defines when confiscation orders are satisfied and when they are subject to appeal. Subsection (3) inserts a new subsection (1A) into section 87 for the purpose of defining the term “amount payable”. This term is used in a number of places in Part 2 of POCA. As section 11 of POCA is currently drafted, the scheme as set out in Part 2 assumes that the amount ordered to be paid would be paid in full at some point, rather than in instalments. Against this background, the term “amount payable” should be read as a reference to the full amount. The definition in new section 87(1A) makes it clear that this term should be read as the amount that remains payable.

#### **Clause 6: Confiscation and victims surcharge orders**

44. This clause amends section 13 of POCA, which makes provision in relation to the effect of a confiscation order on the court’s other sentencing powers to make financial orders against the defendant. In particular, it requires a court that has made a confiscation order against a defendant to take account of that order before it imposes a fine or makes a specified financial order against the defendant. The specified financial orders are set out in section 13(3) and expressly exclude a compensation order made under section 130 of the Powers of Criminal Courts (Sentencing) Act 2000 (that is, an order requiring the offender to pay compensation to the victim of the crime) and an unlawful profits order under section 4 of the Prevention of Social Housing Fraud Act 2013 (that is, an order requiring the offender to pay the landlord an amount representing the profit made by the offender as a result of the conduct that constituted the offence of unlawful sub-letting under section 1 or 2 of that Act).

45. Section 13(5) and (6) of POCA provide that where a defendant has either or both of a compensation order and an unlawful profit order made against him or her, in addition to a confiscation order, and the court believes the defendant will not have sufficient means to satisfy all the orders in full, the court must direct that the compensation and/or amount payable under the unlawful profit order (or both) be paid out of any sums recovered under the confiscation order, with the amount paid being the amount the court believes will not be recoverable because of the insufficiency of the defendant's means. The intention of these provisions is to ensure that, should the defendant have insufficient means to satisfy all the orders against him or her in full, any amounts owed to the victims of crime will take priority over the amounts owed to the government.

46. Section 161A of the Criminal Justice Act 2003 places an obligation on the court sentencing a defendant to order that defendant to pay a surcharge (“the victim surcharge”). The monies raised by this surcharge are used to fund victim services through the Victim and Witness General Fund. Section 161A(3) provides that where a court dealing with an offender considers it to be appropriate to make a compensation order or an unlawful profit order (or both), but is of the view that the defendant has insufficient means to pay both the victim surcharge and the amounts due under such orders, the court must reduce the surcharge accordingly (if necessary to nil). As with

section 13(5) and (6) of POCA, the intention is that any amounts owed to the victims of crime will take priority over the amounts owed to the government – even if the money owed to the government is used to support victim services.

47. Whilst section 13(5) and (6) of POCA ensures that compensation orders and unlawful profit orders take priority over a confiscation order when the court believes the defendant will not have sufficient means to satisfy all the orders in full, the confiscation order still currently takes priority over any amounts ordered to be paid as a victim surcharge. The amendments made to section 13 of POCA provide that the victim surcharge is to be treated in the same way as compensation orders and unlawful profit orders, and is therefore to take priority over a confiscation order when the court believes the defendant will not have sufficient means to satisfy all the orders in full. *Subsections (2) to (4)* achieve this by introducing into section 13 the concept of a “priority order” and defining this term so as to include either a compensation order or the victim surcharge or an unlawful profits order.

#### **Clause 7: Orders for securing compliance with confiscation order**

48. This clause inserts new sections 13A and 13B into POCA. Section 41(7) of POCA confers on the Crown Court, when making a restraint order, the power to make such order as it believes appropriate for the purposes of ensuring that a restraint order is effective. Such a power has been used to, amongst other things, impose an overseas travel ban on the person subject to a restraint order. New section 13A confers a similar power on the Crown Court to make a “compliance order” when making a confiscation order. The Court is at liberty to impose any restrictions, prohibitions or requirements as part of a compliance order provided they are considered appropriate for the purpose of securing that the confiscation order is effective, but it must consider whether to impose a ban on the defendant’s travel outside the UK (new section 13A(4)). If the court thinks that imposing a travel ban would help in ensuring that the confiscation order is effective then it might, for example, impose a requirement on the defendant to surrender his or her passport. Whilst the duty on the court to consider the imposition of a travel ban only applies to the defendant, it is open to the court to impose a prohibition or restriction on a third party when this is considered appropriate to make the confiscation order effective. Any person affected by a compliance order, that is the defendant or a third party, together with the prosecutor may apply to the court to vary or discharge a compliance order (new section 13A(5)).

49. New section 13B provides for a right of appeal to the Court of Appeal and subsequently to the Supreme Court, by the prosecutor against a decision by the Crown Court not to make a compliance order, or by the prosecutor or person affected by a compliance order against the decision to make, vary or discharge a compliance order (including the terms of such an order as made or varied). These rights of appeal mirror those in sections 43 and 44 of POCA in respect of restraint orders.

#### **Clause 8: Variation or discharge**

50. This clause makes further provision for the discharge of confiscation orders. POCA provides for the writing off of confiscation orders in two circumstances. First,

section 24 makes provision for an application to the Crown Court by a designated officer in a magistrates' court to have a confiscation order written off if the outstanding amount is under £1,000 and the outstanding amount is a consequence of exchange rate fluctuations or any other reason specified in an order made by the Secretary of State (this order-making power has not been exercised). Second, section 25 provides for an application to the Crown Court to have a confiscation order written off if the outstanding amount is less than £50.

51. *Subsection (2)* inserts new section 25A into POCA to enable the writing off of confiscation orders in a third set of circumstances, namely where the subject of the order has died. When the subject of an order has died, it is still possible to apply to the court to appoint an enforcement receiver under section 50 of POCA to enforce the order against the estate of the defendant. However, there may be cases where the estate has insufficient funds or where the cost of appointing a receiver exceeds the value of the assets that could potentially be recovered. New section 25A(2) enables the court to write off the confiscation order in such cases.

52. *Subsection (3)* provides for new section 25A of POCA to operate not only in relation to confiscation orders made under POCA but those made under the precursor confiscation regimes in the Drug Trafficking Act 1994 and the Criminal Justice Act 1998.

53. Section 23 of POCA enables the defendant or a receiver appointed under section 50 to apply to the Crown Court to vary the terms of a confiscation order where it can be shown that there are insufficient assets to satisfy the order. In the majority of cases no receiver is appointed, accordingly if the defendant dies there is no one who is eligible to apply to vary a confiscation order. *Subsection (1)* amends section 23 so as to add the prosecutor to the list of parties with the power to apply to the court to vary orders.

#### **Clause 9: Absconding defendants**

54. This clause amends sections 27 and 28 of POCA, which make provision for the making of confiscation orders where the defendant has absconded. Section 28 of POCA applies where a defendant absconds after proceedings for an offence or offences are started against that defendant, but before such proceedings are concluded. Section 27 applies where defendant absconds after he or she —

- is convicted of an offence or offences in proceedings before the Crown Court,
- is committed by a magistrates' court to the Crown Court for sentence in respect of an offence or offences under the provisions of the Powers of Criminal Court (Sentencing) Act 2000 ("the 2000 Act"), or
- is committed to the Crown Court in respect of an offence or offences under section 70 of POCA (which provides for an offender to be committed to the Crown Court for confiscation proceedings following a conviction of an offence in the magistrates' court).

55. These provisions do not, however, expressly cover the situation where a defendant absconds shortly before the conclusion of their trial. In such circumstances it may be possible to complete the trial notwithstanding the absence of the defendant, provided that the defendant's counsel's instructions were sufficient to see the trial through to its conclusion. If the defendant was convicted in his or her absence in such a case, the legislation is unclear as to whether it would be possible to make a confiscation order against that defendant under section 27 or 28. Section 27(2)(a) currently makes it clear that section 27 applies where the defendant absconds after being convicted of an offence, but in this scenario the defendant would have absconded prior to conviction. There has also been uncertainty as to whether section 28 would apply as section 28(2)(a) specifies that one of the necessary conditions for that section to apply is that "proceedings for an offence or offences are started against a defendant but are not concluded". However, in May 2014 the Court of Appeal held, in the case of *R v. Charles Okedare* [2014] EWCA Crim 1173, "that an individual who has absconded and subsequently is convicted of a criminal offence in his absence can subsequently be made subject to a confiscation order under POCA at a hearing which he has not attended due to continuation of his absconding. The appropriate provision being section 6 as applied by section 28 of the Act." This clause makes the position explicit on the face of POCA.

56. *Subsection (1)* substitutes a new subsection (2) of section 27 of POCA so as to provide expressly that a confiscation order may be made against a person who absconds before the conclusion of his or her trial and is subsequently convicted in his or her absence. The new section 27(2) preserves the other circumstances in which a confiscation order may currently be made against a person who absconds post conviction.

57. *Subsection (2)* substitutes a new subsection (6) of section 27 for the existing subsections (6) and (7). New subsection (6) adapts the operation of sections 19 to 21 in relation to a recaptured absconder. Those sections provide for the reconsideration of a decision by a court not to make a confiscation order or, where an order has been made, for the amount payable under the order to be increased. The principle underlying these sections is that the earlier decision of the court should only be open to reconsideration where new evidence comes to light (see sections 19(1)(a), 20(4)(a) and 21(1)(b)). The effect of new subsection (6)(a), (b) and (c) is to make sections 19, 20 and 21 respectively apply, in the case of a recaptured absconder, without the requirement for new evidence.

58. *Subsection (3)* amends section 28 of POCA which deals with absconders who abscond prior to conviction. Section 28(2)(c) provides that the prosecutor must wait for a period of two years from the date that the court believes that the defendant has absconded before they can apply for a confiscation order against that defendant. The original intention of this provision was to provide a reasonable opportunity for the defendant to be found or reappear before a confiscation order could be made against him or her. The amendment reduces the period of time in section 28(2)(c) from two

years to three months.

59. *Subsection (4)* substitutes a new subsection (6) of section 28 of POCA so as to further modify the application of section 21 of that Act where a recaptured absconder is dealt with under section 28. The modification of section 21 is along similar lines to that made by subsection (2)(c) of the clause.

**Clause 10: Default sentences**

60. This clause gives effect to the commitment in the Serious and Organised Crime Strategy to strengthen POCA by “substantially strengthening the prison sentences for failing to pay confiscation orders so as to prevent offenders choosing to serve prison sentences rather than pay confiscation orders”.

61. *Subsection (1)* amends section 35 of POCA, which enables the Crown Court to set a default sentence for the defendant to serve if he or she fails to pay the amount due under the confiscation order. Section 35 of POCA achieves this outcome by treating an unpaid confiscation order as if it were an unpaid fine thereby attracting the fine enforcement provisions in the 2000 Act and Part 3 of the Magistrates’ Courts Act 1980. The 2000 Act makes provision for the court to fix a term of imprisonment (or detention where the defendant is under 18) for an individual if any sum for which he or she is liable to pay as a fine is not duly paid (a “default sentence”). The maximum default term applicable to a particular confiscation order is determined by a sliding scale based on the amount of the outstanding sum payable, varying from seven days imprisonment for an amount not exceeding £200 to ten years’ imprisonment for an amount exceeding £1 million (as set out in section 139(4) of the 2000 Act). Unlike a fine, serving a default sentence for failure to pay a confiscation order does not relieve the defendant of the obligation to pay the full amount due under the order, plus any interest that has accrued on that amount.



**Default sentences: sliding scale under section 139(4) of the 2000 Act**

|   |           |
|---|-----------|
| An amount not exceeding £200                              | 7 days    |
| An amount exceeding £200 but not exceeding £500           | 14 days   |
| An amount exceeding £500 but not exceeding £1,000         | 28 days   |
| An amount exceeding £1,000 but not exceeding £2,500       | 45 days   |
| An amount exceeding £2,500 but not exceeding £5,000       | 3 months  |
| An amount exceeding £5,000 but not exceeding £10,000      | 6 months  |
| An amount exceeding £10,000 but not exceeding £20,000     | 12 months |
| An amount exceeding £20,000 but not exceeding £50,000     | 18 months |
| An amount exceeding £50,000 but not exceeding £100,000    | 2 years   |
| An amount exceeding £100,000 but not exceeding £250,000   | 3 years   |
| An amount exceeding £250,000 but not exceeding £1 million | 5 years   |
| An amount exceeding £1 million                            | 10 years  |

62. Subsection (1) amends section 35 of POCA so as to disapply section 139(4) of the 2000 Act insofar as it relates to confiscation orders and to insert a new subsection (2A) containing a bespoke sliding scale of default sentences applicable to such orders. In providing for a new sliding scale of default sentences, new section 35(2A) makes two substantive changes to the sliding scale provided for in section 139(4) of the 2000 Act.

63. The first change is to simplify the sliding scale, replacing the existing 12 tiers as provided for in section 139(4) of the 2000 Act with four tiers.

64. The second change is to increase the maximum period of imprisonment for defaulting on a confiscation order for an amount exceeding £500,000 but not more than £1 million from five to seven years and for an amount exceeding £1 million from ten to 14 years.

65. New section 35(2C) confers power on the Secretary of State, by order, to amend the table in new section 35(2A) so as to provide for both minimum and

maximum terms of imprisonment, to vary any minimum sentences so introduced, to vary the maximum sentences and to modify the tiers, for example by introducing additional tiers. As a result of the amendments made to section 459 of POCA by *subsection (2)* this order-making power is subject to the affirmative procedure.

66. *Subsection (3)* inserts new subsections (2B) and (2C) into section 258 of the Criminal Justice Act 2003, which governs the release of persons serving a default sentence under POCA. By virtue of section 258(2) of the Criminal Justice Act 2003 persons serving a default sentence are automatically eligible for release at the half way point of the default sentence. New subsection (2B) of section 258 of the Criminal Justice Act 2003 disapplies subsection (2) of that section where the default sentence relates to the non-payment of a confiscation order of more than £10 million. In such cases, therefore, the person would be required to serve the full default sentence until such time as the confiscation order is discharged on full payment. New subsection (2C) of section 258 of the Criminal Justice Act 2003 confers a power to vary the £10 million figure by order. As a result of the amendments made to section 330 of the Criminal Justice Act 2003 by *subsection (4)*, this order-making power is subject to the affirmative procedure.

67. As a result of the changes made by this clause, the maximum custodial period that may be served by an offender who defaults on payment of a confiscation order over £10 million will increase from five years (that is, half of the current maximum 10 year sentence) to 14 years.

#### **Clause 11: Conditions for exercise of restraint order powers**

68. This clause amends sections 40 and 41 of POCA, which set out the circumstances under which a restraint order may be made by the Crown Court. A restraint order has the effect of freezing property that may be liable to confiscation following the trial and the making of a confiscation order; breach of a restraint order constitutes a contempt of court. The clause gives effect to the commitment in the Serious and Organised Crime Strategy to strengthen POCA by “enabling assets to be frozen more quickly and earlier in investigations”.

69. Section 40 of POCA sets out a number of alternative conditions for making a restraint order. The intention is that a restraint order should be available at any time after a criminal investigation has started to minimise the risk of the accused being able to dissipate his or her assets beyond the reach of law enforcement agencies. Section 40(2) of POCA sets out the test in the first condition in the following terms –

- (a) a criminal investigation has been started in England and Wales with regard to an offence, and
- (b) there is reasonable cause to believe that the alleged offender has benefited from his criminal conduct.

The phrase “reasonable cause to believe” in this context is taken to mean that the court thinks that, on the available evidence, it is more likely than not that the defendant has benefited from criminal conduct. This contrasts with the test for the

arrest of a person, namely that there is “reasonable grounds for suspecting” that the person is guilty of an offence that had been or is being committed (see section 24 of the Police and Criminal Evidence Act 1984). The term “suspicion” denotes a degree of satisfaction, not amounting to belief, but at least extending beyond speculation. A test based on suspicion can therefore be more easily satisfied than one based on belief. *Subsection (1)* accordingly amends section 40(2) of POCA so that it provides that a Crown Court may make a restraint order where -

- (a) a criminal investigation has been started in England and Wales with regard to an offence, and
- (b) there *are reasonable grounds to suspect* that the alleged offender has benefited from his criminal conduct.

An advantage of aligning the test for making an arrest and that for the making of a restraint order is that it would be open to the relevant law enforcement agency to apply to the Crown Court for the making of a restraint order and for this to be served in parallel with affecting the arrest of the defendant.

70. *Subsection (2)* inserts new subsections (7A) to (7C) in section 41 of POCA which enable the court to monitor progress with the investigation and, if a decision to charge is not made within a reasonable time, the court may then discharge the restraint order. This safeguard ensures that a defendant does not have his or her assets frozen indefinitely where it becomes evident to the court that insufficient progress is being made with the criminal investigation. What constitutes a “reasonable time” is a matter for the court to determine on the facts of the case. Under section 41, as amended, the court must impose a reporting requirement at the time of making the restraint order (new subsections (7A) and (7B)(a)) unless the court decides not to do so and gives reasons for that decision (new subsection (7C)(a)). The court may decide not to impose a reporting requirement where, for example, the law enforcement agency has informed the court that the suspect is to be arrested and charged within a short period. If a reporting requirement is imposed, the court may, on its own motion, discharge the restraint order (new subsection (7B)(b)). If a reporting requirement has not been imposed, the court may, on its own motion, subsequently impose one (new subsection (7C)(b)) and in such a case the court may, again on its own motion, discharge the restraint order (new subsection (7B)(b)).

#### **Clause 12: Continuation of restraint order after quashed conviction**

71. This clause inserts new subsections (6A) and (6B) into section 42 of POCA to provide for the continuation of a restraint order following the quashing of a conviction but before the start of proceedings for a retrial, so that the defendant is not afforded the opportunity to dissipate any assets that are subject to the restraint order during this interregnum.

72. Section 40 of POCA sets out the conditions that must be satisfied for the Crown Court to make a restraint order. The second condition for making a restraint order (section 40(3) of POCA) is that –

(a) proceedings for an offence have been started in England and Wales and not concluded, and

(b) there is reasonable cause to believe that the defendant has benefited from his criminal conduct.

The court is required to discharge any restraint order made in pursuance of this condition at the conclusion of the proceedings (section 42(6) of POCA). Where a person is convicted of an offence and the conviction is subsequently quashed on appeal, the proceedings are deemed to have concluded at the point at which the conviction is quashed (section 85(4) of POCA). These provisions when taken together require any restraint order to be discharged once the conviction has been quashed, irrespective of whether the prosecution intends to re-try the defendant for the offence(s) in question. The prosecution will not be able to apply for a fresh restraint order until the proceedings for the retrial have been commenced.

73. New section 42(6A) of POCA switches off the duty to discharge a restraint order and instead provides for an existing restraint order to continue in force where a conviction has been quashed and either the Court of Appeal has ordered a retrial or the prosecution has applied to the court for the case to be retried. New section 42(6B) provides for the subsequent discharge of such a restraint order if any of three scenarios apply:

- The Court of Appeal refuses to make an order for a retrial following an application by the prosecution;
- The Court of Appeal has made an order for a retrial but there is an undue delay in starting proceedings (under section 8(1) of the Criminal Appeals Act 1968 the proceedings must usually be started within two months, although the Court of Appeal may extend this period); or
- The proceedings for the retrial of the defendant have concluded either as a result of those proceedings being discontinued or as a result of the conviction or acquittal of the defendant following the retrial. Where the retrial results in a conviction, the restraint order can be replaced by a confiscation order.

### **Clause 13: Conditions for exercise of search and seizure powers**

74. Sections 47A to 47S of POCA (as inserted by section 55 of the Policing and Crime Act 2009) provide for search and seizure powers in England and Wales to prevent the dissipation of realisable property that may be used to satisfy a confiscation order. The property may be seized in anticipation of a confiscation order being made. The seizure power is subject to judicial oversight. If a confiscation order is made, the property may be sold in order to satisfy the order. These sections are not yet in force. Section 47A sets out who may exercise the powers. These are an officer of Revenue and Customs, a constable and an accredited financial investigator. There are a number of pre-conditions for the exercise of these powers. In relation to the power to seize property (in section 47C), these pre-conditions are set out in section 47B and cover the situation where an individual is arrested or proceedings are begun against him or

her for an indictable offence and there is reasonable cause to believe that he or she has benefited from the offence. In line with the change to the test for the grant of a restraint order made by clause 11, *subsection (1)* of clause 13 replaces the “reasonable cause to believe” test with a “reasonable grounds to suspect” test.

75. The seizure powers (in section 47C) and the search powers (in sections 47D to 47F) may only be exercised with the ‘appropriate approval’ described in section 47G unless, in the circumstances, it is not practicable to obtain such approval in advance. Sections 47G to 47I make provision in relation to this appropriate approval. Appropriate approval is the prior approval of a justice of the peace or, if that is not practicable, that of a senior officer, as defined in new section 47G(3). NCA officers designated with the powers of a constable, in accordance with the provisions in Schedule 5 to the Crime and Courts Act 2013, may exercise the powers in sections 47A to 47S of POCA.

76. *Subsection (2)* amends section 47G(3) to provide for the Director General of the NCA, or any other NCA officer authorised by the Director General, to confer the appropriate approval where the search or seizure powers are exercised by a designated NCA officer and it is not practicable to get prior approval from a justice of the peace.

#### **Clause 14: Seized money etc**

77. This clause primarily amends section 67 of POCA, which provides magistrates’ courts with a power to order any realisable property in the form of money in a bank or building society account to be paid to the designated officer of the court in satisfaction of a confiscation order. The clause gives effect to the commitment in the Serious and Organised Crime Strategy to strengthen POCA by providing for the “rapid confiscation of cash held in bank accounts”.

78. *Subsections (1) and (2)* inserts new subsections (5) to (5B) into section 67 of POCA in substitution for the existing subsections (4) and (5). New section 67(5) has the effect of narrowing the conditions that must be satisfied before money may be seized from a bank or building society account under section 67. There are currently four such conditions:

- a) a restraint order has effect in relation to money to which section 67 of POCA applies;
- b) a confiscation order is made against the person by whom the money is held;
- c) an enforcement receiver has not been appointed under section 50 of POCA in relation to the money;
- d) any period allowed under section 11 for payment of the amount ordered to be paid under the confiscation order has ended (see clause 5 above).

The new section 67(5) replicates the second and third of these conditions only. The first and fourth conditions are considered unnecessary. New section 67(5A) introduces a requirement whereby the authority making an application to a magistrates’ court for a seizure order under section 67 of POCA must serve notice of the application on the

bank or building society that holds the funds to which the application relates.

79. New section 67(5B) takes account of the provisions in new section 10A of POCA, as inserted by clause 1 of the Bill, which enable a court to make a determination as to the extent of the defendant's interest in property. New section 67(5B) will enable a magistrates' court to order the payment of funds, held in a bank or building society account of a third party (or parties) and subject to a determination by the court under new section 10A, towards the satisfaction of a confiscation order. This will enable funds held in a bank or building society account to be confiscated more rapidly where the account is not held in the name of the defendant, for example a company account. Any third parties affected would have the opportunity to make representations before such a determination is made.

80. *Subsection (4)* makes a similar amendment to section 67A of POCA to that made to section 67 by subsection (1). Section 67A provides that personal property (for example, a car or jewellery) that has been seized by an appropriate officer (for example, a constable or NCA officer) under a relevant seizure power (namely the seizure powers in POCA or PACE), or which has been produced to such an officer in compliance with a production order under section 345 of POCA, may be sold, on the authority of an order made by a magistrates' court, to meet a confiscation order in certain circumstances. Those circumstances currently mirror conditions (b) to (d) set out in paragraph 78. New section 67A(3) omits the last of these conditions. Section 67A is not yet in force.

81. *Subsection (3)* inserts new subsections (7A) and (7B) into section 67 which confer a power on the Secretary of State to amend, by order, section 67 so as to apply the money seizure power to money held by other financial institutions or other realisable cash or cash-like instruments or products, for example share accounts, pension accounts or "bitcoins". As section 67 currently only applies to money, any extension of the power in this section to cover a financial instrument or product may need to modify the section to provide for the instrument or product to be realised into cash; new subsection (7B) enables an order to be made to this end. As a result of the amendment made to section 459 of POCA by *subsection (5)*, this order-making power is subject to the affirmative procedure.

## **Chapter 2: Scotland**

### **Confiscation**

#### **Clause 15: Restitution order and victim surcharge**

82. This clause makes similar provision for Scotland in Part 3 of POCA to that made for England and Wales by the amendments to section 13 of POCA by clause 6. The effect is to provide for the payment of the victim surcharge and the amount due under a restitution order to have priority call on monies paid under a confiscation order. A restitution order can be made under section 253A of the Criminal Procedure (Scotland) Act 1995 (this section is not yet in force) by the criminal courts in Scotland

when a person has been convicted of an offence under section 90(1) of the Police and Fire Reform (Scotland) Act 2012 (police assaults etc) and the court considers it is appropriate that the accused pays a sum into a Restitution Fund (which is used to provide support services to the victims of this particular offence). A victim surcharge order is made under section 253F of the Criminal Procedure Act 1995 by the criminal courts in Scotland in certain circumstances and requires the accused to pay an amount into the Victim Surcharge Fund (which is used to provide support services to the victims of crime). The intention of these provisions is to ensure that, should the accused have insufficient means to satisfy all the financial orders against him or her in full, any amounts owed to the victims of crime will take priority over the amounts owed to the government.

**Clause 16: Orders for securing compliance with confiscation order**

83. This clause inserts new sections 97B to 97D into Part 3 of POCA which make similar provision in respect of Scotland for the making of “compliance orders” by the courts for securing compliance with confiscation orders to that contained in new sections 13A and 13B, as inserted by clause 7, in relation to England and Wales. The criminal courts in Scotland will only be able to impose a compliance order on an accused person and will not be able to impose such an order on third parties. New section 97B(6) of POCA provides that for the purposes of any appeal or review, a compliance order in Scotland will be treated as a sentence.

**Clause 17: Compliance orders: appeals by prosecutor**

84. This clause makes amendments to the Criminal Procedure (Scotland) Act 1995 consequential on the provisions in clause 16. The amendments confer on the Lord Advocate and procurator fiscal (as the prosecutor) a right of appeal against the decision of a court to make or not to make a compliance order and a right of appeal against the terms of a compliance order if these are considered to be too lenient.

**Clause 18: Accused persons unlawfully at large**

85. This clause amends sections 111 and 112 of POCA which make similar provision for Scotland in respect of the making of confiscation orders where the defendant has absconded to that contained in sections 27 and 28 of POCA in relation to England and Wales. The amendments to section 111 and 112 have similar effect to those made to sections 27 and 28 by clause 9 of the Bill.

**Clause 19: Enforcement of confiscation orders**

86. Section 118 of POCA makes similar provision for Scotland in relation to default sentences as section 35 does for England and Wales. Section 118 enables a court (the High Court of Justiciary or the sheriff) to set a default sentence for the accused to serve if he or she fails to pay the amount due under the confiscation order. It achieves this outcome by treating an unpaid confiscation order as if it were an unpaid fine and applying the fine enforcement provisions in section 221 of the Criminal Procedure (Scotland) Act 1995. Section 221(3) of that Act makes a fine unenforceable once a default sentence has been served. This provision does not apply when an administrator is appointed in relation to a confiscation. Consequently, where a person serves a default sentence following his or her failure to pay the

amount due under a confiscation order the offender's liability to pay this amount is extinguished; this contrasts with the position in England and Wales. *Subsection (1)(a)* amends section 118(2)(h) of POCA so as to disapply section 221(3) of the Criminal Procedure (Scotland) Act 1995. As a result an offender will be required to pay the amount due under a confiscation order if he or she defaults on payment and serves a default sentence. Accordingly, the liability of the accused to pay the amount due under a confiscation order will no longer be extinguished by serving a prison sentence for defaulting on payment.

87. *Paragraph 38 of Schedule 4* makes a consequential repeal of section 118(2)(k) of POCA so as to disapply section 224 of the Criminal Procedure (Scotland) Act 1995. That section requires warrants of imprisonment for non-payment of a fine to specify a date for the discharge of the liability to pay the fine (in practice once the default sentence has been served) notwithstanding the fact that it has not been paid. That requirement will no longer operate in relation to default sentences for the non-payment of a confiscation order. *Paragraph 41 of Schedule 4* makes a further consequential repeal of section 153(1)(b) of POCA, which provides that a confiscation order is satisfied where the accused against whom it was made has served a default sentence for non payment of the order.

88. *Subsection (1)(b)* makes similar amendments to section 118 of POCA in relation to default sentences to that made to the England and Wales provision in section 35 of POCA by clause 10(1) and (2) (see new section 118(2A) and (2B)). *Subsection (1)(b)* also inserts new subsections (2C) and (2D) into section 118 to provide that where a confiscation order is made by a court in England and Wales or in Northern Ireland but falls to be enforced in Scotland, the criminal courts in Scotland, when sentencing the person for non payment of the confiscation order, would apply the respective default sentences set out in new sections 35(2A) and 185(2A) of POCA (as inserted by clauses 10 and 32).

89. *Subsection (2)* makes consequential amendments to section 459 of POCA as a result of the new order-making power provided for in new section 118(2B) of POCA as inserted by subsection (1)(b). Paragraph (a) disapplies, for the purposes of the new order-making power, section 459(3) of POCA which provides for any power under POCA to make subordinate legislation to be exercisable by statutory instrument. The power conferred on the Scottish Ministers to make an order under new section 118(2B) will be exercisable by Scottish statutory instrument in accordance with the provisions of the Interpretative and Legislative Reform (Scotland) Act 2010. Paragraphs (b) and (c) amend section 459 of POCA so as to provide that the new order-making power is subject to the affirmative procedure in the Scottish Parliament.

90. *Subsection (3)* makes a consequential amendment to section 219(8) of the Criminal Procedure (Scotland) Act 1995 which requires a sheriff to remit a case to the High Court for sentencing where he or she considers that the default sentence appropriate for that case is beyond his or her normal sentencing powers (namely, a



maximum sentence of five years' imprisonment).

**Clause 20: Conditions for exercise of restraint order powers**

91. This clause makes parallel amendments to sections 119 and 120 of POCA, which set out the circumstances under which a restraint order may be made in Scotland, to those made by clause 11 to sections 40 and 41 of POCA, which set out the circumstances under which a restraint order may be made in England and Wales.

**Clause 21: Continuation of restraint order after quashed conviction**

92. This clause makes a similar amendment to section 121 of POCA to that made to section 42 of that Act by clause 12 to provide for the continuation of a restraint order following the quashing of a conviction until the start of proceedings for a retrial.

**Clause 22: Conditions for exercise of search and seizure powers**

93. This clause makes similar amendments to the search and seizure powers in sections 127B and 127G of POCA to those made by clause 13 to sections 47B and 47G of that Act.

**Civil recovery**

**Clause 23: Prohibitory property orders: PPO receivers**

94. This clause amends POCA to provide, in relation to Scotland, for a new type of management receiver (a "PPO receiver") in civil recovery proceedings whose only function will be to manage property subject to a prohibitory property order ("PPO"). This is distinct from the role of an interim administrator (provided for in sections 256 to 265 of POCA) who has the additional roles of carrying out an investigation of the property which he or she manages and reporting findings to the enforcement authority and the court. The new PPO receiver will have no investigation function and so will have no influence on the progress or final outcome of the case. Accordingly, the role does not need to be independent and therefore can be performed by a member of staff of the enforcement authority that is pursuing the civil recovery case. The provisions in new sections 255G to 255I of POCA, inserted by *subsection (2)*, which provide for PPO receivers broadly mirror those in sections 245E to 245G of POCA (inserted by section 83 of the Serious Crime Act 2007) which make provisions for management receivers in respect of property freezing orders in England and Wales and Northern Ireland.

95. New section 255G of POCA confers on the Court of Session a discretionary power, exercisable on application by the enforcement authority (namely the Crown Office on behalf of the Scottish Ministers), to appoint a PPO receiver in respect of any property to which a PPO applies. Whilst the enforcement authority will generally give notice of an application, new section 255G(3) enables it to make an application without having to give notice in certain circumstances. Such a notice is called an *ex parte* application. An *ex parte* application may be appropriate where management powers are to be sought from the outset of the investigation, where the initial application for the PPO can be heard *ex parte* in chambers to avoid alerting potential

parties who might then seek to conceal or dispose of the relevant property. The enforcement authority must nominate, in its application, a suitably qualified person for appointment as a PPO receiver (new section 255G(4)).

96. New section 255H provides for the powers of PPO receivers. Such powers will be determined by the court on a case by case basis, but will generally be any of the powers in paragraph 5 of Schedule 6 to POCA, namely:

“(1) Power to manage any property to which the order applies.

(2) Managing property includes—

- (a) selling or otherwise disposing of assets comprised in the property which are perishable or which ought to be disposed of before their value diminishes,
- (b) where the property comprises assets of a trade or business, carrying on, or arranging for another to carry on, the trade or business,
- (c) incurring capital expenditure in respect of the property.”

In addition, the Court of Session has the discretionary power to authorise or require a PPO receiver to take whatever other steps the court considers to be appropriate in connection with the management of the property (new section 255I(2)(b)).

97. New section 255I confers on the Court of Session a discretionary power to give directions as to the exercise of the functions of a PPO receiver (new section 255I(1)) having heard any representations by the persons set out in new section 255I(2). The Court of Session may also vary or recall (that is revoke) any order or directions made under new sections 255G to 255I after again having heard any representations by the persons set out in new section 255I(4).

98. *Subsection (3)* inserts new section 282CA into POCA which makes analogous provision for PPO receivers to that contained in section 282C of that Act. Section 282C of POCA (inserted by paragraph 6 of Schedule 18 to the Crime and Courts Act 2013) makes provision for the enforcement of property freezing orders, interim receiving orders and interim administration orders which have effect in relation to property overseas. In particular, section 282C provides that, where a property freezing order made by the High Court of England and Wales or of Northern Ireland has effect in relation to property, the appointed management receiver may send a request to the Secretary of State for assistance abroad if he or she believes that the property is in a country outside the UK.

### **Chapter 3: Northern Ireland**

#### **Clauses 24 to 27: Confiscation: assets held by defendant and other**

99. Clauses 24 to 27 amend the provisions in Part 4 of POCA in respect of third party interests in assets that may be realised to discharge a confiscation order. These clauses make parallel amendments to Part 4 to those made to Part 2 of POCA by

clauses 1 to 4 of the Bill.

**Clause 28: Time for payment**

100. Section 161 of POCA makes similar provision in relation to the time allowed to pay the amount due under a confiscation order in Northern Ireland to that contained in section 11 in relation to England and Wales. This clause makes parallel amendments to section 161 of POCA to those made to section 11 by clause 5 of the Bill.

**Clause 29: Orders for securing compliance with confiscation order**

101. This clause inserts new sections 163A and 163B into Part 4 of POCA which make parallel provision in respect of Northern Ireland for the making of “compliance orders” by the courts for securing compliance with confiscation orders to that contained in new sections 13A and 13B, as inserted by clause 7, in relation to England and Wales.

**Clause 30: Variation and discharge**

102. This clause makes broadly analogous provision in relation to Northern Ireland for the discharge of confiscation orders where the defendant has died to that contained in clause 8 in respect of England and Wales. Whereas, under clause 8, an application to the Crown Court for the discharge of a confiscation order is made by the designated officer for a magistrates’ court, under this clause such application will be made by the prosecutor.

**Clause 31: Absconding defendants**

103. This clause amends sections 177 and 178 of POCA which make similar provision for Northern Ireland in respect of the making of confiscation orders where the defendant has absconded to that contained in sections 27 and 28 of POCA in relation to England and Wales. The amendments to section 177 and 178 mirror those made to sections 27 and 28 by clause 9 of the Bill.

**Clause 32: Default sentences**

104. This clause makes a parallel amendment to section 185 of POCA in relation to default sentences where a defendant fails to pay the amount due under a confiscation order to that made to the England and Wales provision in section 35 of POCA by clause 10(1) and (2). There is no equivalent in this clause to the provisions in subsections (3) and (4) of clause 10 as such provision is unnecessary in the Northern Ireland context. In Northern Ireland section 13 of the Prison Act (Northern Ireland) 1953 enables prison rules to be made to allow for the early release of a person serving a sentence on grounds of good conduct. Rule 30 of the Prison and Young Offenders Centres Rules (Northern Ireland) 1995 then provides for early release on such grounds. The maximum remission that may be granted under Rule 30 is 50% of the actual term. The Department of Justice in Northern Ireland can exercise the rule-making power in section 13 of the Prison Act (Northern Ireland) 1953 so as to remove the eligibility for early release in cases where a person is serving a default sentence for non-payment of a confiscation order over £10 million. In this way, the same

outcome can be achieved as that provided for by clause 10(3) in relation to England and Wales.

**Clause 33: Conditions for exercise of restraint order powers**

105. This clause amends sections 189 and 190 of POCA which make similar provision for Northern Ireland in respect of the conditions for making restraint orders to that contained in sections 40 and 41 of POCA in relation to England and Wales. The amendments to sections 189 and 190 mirror those made to sections 40 and 41 by clause 11 of the Bill.

**Clause 34: Continuation of restraint order after quashed conviction**

106. This clause makes a similar amendment to section 191 of POCA to that made to section 42 of that Act by clause 12 to provide for the continuation of a restraint order following the quashing of a conviction until the start of proceedings for a retrial.

**Clause 35: Conditions for exercise of search and seizure powers**

107. This clause makes similar amendments to the search and seizure powers in sections 195B and 195G of POCA to those made by clause 13 to sections 47B and 47G of that Act.

**Clause 36: Seized money**

108. This clause makes parallel amendments to sections 215 and 215A of POCA to those made to sections 67 and 67A of that Act by clause 14 in respect of magistrates' courts powers to order any realisable property in the form of money in a bank or building society account to be paid to the designated officer of the court in satisfaction of a confiscation order.

**Chapter 4: Investigations and co-operation etc**

**Clause 37: Confiscation investigations**

109. This clause broadens the definition of a "confiscation investigation" for the purposes of Part 8 of POCA to include investigations after a confiscation order has been made into the extent and whereabouts of property that might be realised to satisfy the order. The clause gives effect to the commitment in the Serious and Organised Crime Strategy to strengthen POCA by "extending the investigative powers in POCA so that they are available to trace assets once the confiscation order is made (at the moment those powers fall away once the order is made)".

110. Part 8 of POCA makes provision in relation to investigations under that Act. Section 341 of POCA sets out five different types of investigations in relation to which Part 8 powers might be available. One such type of investigation is a confiscation investigation, which is defined in section 341(1) of POCA as an investigation into:

- a) whether a person has benefitted from his criminal conduct, or
- b) the extent or whereabouts of his benefit from his criminal conduct.

A confiscation investigation enables an appropriate officer, as defined in section 378(1) of POCA (for example, an NCA officer or a constable), to apply to the court for various orders to help achieve the goals of the investigation. These include a production order, an order to grant entry, a search and seizure warrant, a disclosure order, a customer information order and an account monitoring order.

111. In case of *R (Horne & Ors)* [2012] EWHC 1350 (Admin), the court explored the extent of such powers. It confirmed that in principle the powers could still be exercised after a confiscation order has been made – there is nothing in POCA restricting an investigation into the whereabouts of a person's benefit in the period up to the making of the confiscation order. The court also confirmed however, that the investigative powers available after a confiscation order has been made may be deployed only for the purposes of identifying the amount and whereabouts of benefit and not for the purpose of assisting in the satisfaction of a confiscation order once benefit has been identified and calculated.

112. The absence of investigatory powers for the purpose of assisting in the satisfaction of a confiscation order adversely impacts on law enforcement agencies' ability to enforce a confiscation order. Where the defendant has assets that are beyond the reach of the enforcement powers at the time the order is made, for example where they are in another jurisdiction, law enforcement agencies are currently unable to use any of the investigative powers in Part 8 after the confiscation order is made to determine whether any of the assets may subsequently have come within a UK jurisdiction.

113. *Subsection (1)* broadens the definition of “confiscation investigation” in section 341 of POCA so that the investigative powers under Part 8 are exercisable after a confiscation order has been made for the purposes of identifying the extent and whereabouts of realisable property available to help satisfy the order.

114. *Subsection (2) and (3)* makes consequential amendments to sections 353 (which applies to England, Wales and Northern Ireland) and 388 (which applies to Scotland) of POCA. These sections set out conditions for issuing a search and seizure warrant, including warrants issued as part of a confiscation investigation, in the absence of a production order. On occasions a production order will not be a suitable tool and so an application for a search and seizure warrant is made instead. This may occur, for example, where the person controlling the required material may be uncontactable or the investigation would be seriously prejudiced if access to the material was not obtained immediately. An individual served with a production order is generally given seven days to provide the requested material.

**Clause 38: External orders and investigations: meaning of “obtaining property”**

115. This clause amends section 447 of POCA which is the interpretation section for Part 11 of that Act; Part 11 of POCA makes provision for co-operation between jurisdictions in relation to freezing and confiscating the proceeds of crime.

116. Part 11 of POCA enables, among other things, requests and orders made by

courts in other jurisdictions to be given effect in the United Kingdom. One such type of order is an “external order”, defined in section 447(2) as –

“an order which -

- a) is made by an overseas court where property is found or believed to have been obtained as a result of or in connection with criminal conduct, and
- b) is for the recovery of specified property or a specified sum of money.”

117. In limiting the scope of an external order to the recovery of specified property or a specified sum of money, Part 11 as enacted reflected the scope of the then international agreements under which orders could be sent from a foreign court were similarly limited. For example, Article 5(1)(a) of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 requires State parties to “adopt such measures as may be necessary to enable confiscation of... proceeds derived from [specified] offences... or property the value of which corresponds to that of such proceeds”.

118. Domestic law, by contrast, recognises that the proceeds of crime can include not just specified money or property, but also a pecuniary advantage, such as not paying tax that is lawfully due. For example, in the context of confiscation orders made under Part 2 of POCA, section 76(5) of POCA provides that, for the purpose of determining a person’s criminal benefit, a person who obtains a pecuniary advantage as a result of or in connection with criminal conduct, is to be taken as obtaining a sum of money equal to the value of the pecuniary advantage.

119. In recent years, the international law relating to the confiscation of the proceeds of crime has adopted a broader approach to what such proceeds might be. For example, the 2005 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime and on the Financing of Terrorism defines “proceeds” as any economic advantage, derived from or obtained, directly or indirectly, from criminal offences.

120. New subsection (6A) of section 447 of POCA provides that the value of any pecuniary advantage obtained as a result of criminal conduct is to be treated as if it were a sum of money to the same value. The effect is to enable external orders to be used for the recovery of a pecuniary advantage obtained by criminal conduct in the same way as such orders can currently be used to recover property or sums of money. Part 11 also provides for “external investigations”, defined in section 447(3) as –

“an investigation by an overseas authority into –

- (a) whether property has been obtained as a result of or in connection with criminal conduct,
- (aa) the extent or whereabouts of property obtained as a result of or in connection with criminal conduct, or
- (b) whether a money laundering offence has been committed.”

New section 447(6A) will also bite on external investigations, accordingly such an investigation could be for the purpose of ascertaining whether any pecuniary advantage has been obtained from criminal conduct and, if so, the extent of such advantage.

**Clause 39: Confiscation orders by magistrates' courts**

121. Section 97(1) of SOCPA confers on the Secretary of State power by order (subject to the affirmative procedure) to make provision to allow magistrates' courts to make confiscation orders under Part 2 of POCA. A similar power is conferred on the Northern Ireland Department of Justice in respect of Part 4 of POCA. Section 97(2) of SOCPA provides that the power for magistrates' courts to make a confiscation order is subject to a restriction that the amount does not exceed £10,000. Confiscation orders above this amount could only be made in a Crown Court, as now. The intention behind this restriction is that magistrates' courts should be empowered to make confiscation orders only in less serious cases. No order under section 97(1) of SOCPA has yet been made.

122. *Subsections (2) to (4)* amend section 97 of SOCPA so as to confer power on the Secretary of State and the Department of Justice in Northern Ireland to vary, by order, the £10,000 limit. As a result of the amendment made to section 172 of SOCPA by *subsection (5)*, any such order is subject to the affirmative procedure.

**PART 2: COMPUTER MISUSE**

**SUMMARY AND BACKGROUND**

123. Sections 1 to 3A of the Computer Misuse Act 1990 ("the 1990 Act") provides for a number of criminal offences to tackle cyber crime, as follows:

- Section 1 - unauthorised access to computer material or data (commonly known as "hacking");
- Section 2 - unauthorised access with intent to commit or facilitate commission of further offences;
- Section 3 - unauthorised acts with intent to impair the operation of a computer (this offence includes circulating viruses, deleting files and inserting a "Trojan Horse" to steal data as well as effectively criminalising all forms of denial of service attacks in which the attacker denies the victim(s) access to a particular resource, typically by preventing legitimate users of a service accessing that service, for example by overloading an Internet Service Provider of a website with actions, such as emails);
- Section 3A - making, adapting, supplying or offering to supply an article ("hacker tools") intending it to be used to commit, or to assist in the commission of, an offence under sections 1 or 3; supplying or offering to supply an article believing that it is likely to be used in this way; and obtaining an article with a view to its being supplied for use in this way.

Other provisions of the 1990 Act make limited provision for extra-territorial jurisdiction and a saving for certain law enforcement powers so that relevant conduct by law enforcement agencies does not fall within the section 1 offence.

124. The Government's UK Cyber Security Strategy<sup>4</sup> included a commitment to "review existing legislation, for example the 1990 Act, to ensure that it remains relevant and effective". Following that review, this Part introduces a new offence in respect of unauthorised acts in relation to computers causing serious damage.

125. On 12 August 2013, the European Parliament and European Council adopted Directive 2013/40/EU on attacks against information systems<sup>5</sup> ("the Directive") and replacing Council Framework Decision 2005/222/JHA. The Bill makes two amendments to the 1990 Act to ensure that the UK law is fully compliant with the Directive. The Government announced that it intended to opt in to the Directive in an oral statement on 3 February 2011 (Official Report, House of Commons, columns 1051 to 1058).

## COMMENTARY ON CLAUSES

### **Clause 40: Unauthorised acts causing, or creating risk of, serious damage**

126. *Subsection (2)* inserts new section 3ZA into the 1990 Act which creates a new offence of impairing a computer such as to cause serious damage. The existing offence of impairing a computer under section 3 of the 1990 Act carries a maximum penalty of ten years' imprisonment. This maximum penalty is not considered adequate by the Government in those cases where the impact of the action is to cause serious damage, for example to critical national infrastructure. The new offence addresses that gap in the criminal law.

127. New section 3ZA(1) sets out the elements of the offence. The *actus reus* (or conduct element) is that the accused undertakes an unauthorised act in relation to a computer (as in section 3(1)(a) of the 1990 Act) and that act causes, or creates a significant risk of causing, serious damage of a material kind. The *mens rea* (namely the mental elements of the offence) is that the accused, at the time of committing the act, knows that it is unauthorised (as in section 3(1)(b) of the 1990 Act) and intends the act to cause serious damage of a material kind or is reckless as to whether such damage is caused. An unauthorised act is defined in section 17(8) of the 1990 Act as an act where the person doing the act does not have responsibility for the computer in question, which would thereby entitle him or her to determine whether the act is undertaken, and does not have the consent of the person responsible for the computer to commit the act.

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<sup>4</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/60961/uk-cyber-security-strategy-final.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/60961/uk-cyber-security-strategy-final.pdf)

<sup>5</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:218:0008:0014:EN:PDF>



128. The term “material kind” is defined in new section 3ZA(2), read with new section 3ZA(3) to (5), as damage to human welfare, the environment, the economy or national security. The other terms used in the definition of a material kind take their normal everyday meaning. It would, in the normal way, be for the jury to determine whether, for example, there had been damage to national security and whether that damage was serious.

129. The offence will be triable on indictment only. As a result of new section 3ZA(6) and (7) the maximum penalty is life imprisonment in respect of threat to life, loss of life or damage to national security. In respect of damage to the economy or environment, it will be 14 years’ imprisonment.

130. *Subsection (3)* amends section 3A of the 1990 Act. The amendment ensures that the offence provided for in section 3A also applies to the making etc of hacker tools intended to be used to commit the new section 3ZA offence.

**Clause 41: Obtaining articles for purposes relating to computer misuse**

131. Article 7 of the Directive requires Member States to criminalise certain activities in relation to the commission of the substantive offences at Articles 3 to 6 of the Directive (those Articles relate to illegal access to information systems, illegal system interference, illegal data interference and illegal interception). It provides as follows:

**“Tools used for committing offences**

Member States shall take the necessary measures to ensure that the intentional production, sale, procurement for use, import, distribution or otherwise making available, of one of the following tools, without right and with the intention that it be used to commit any of the offences referred to in Articles 3 to 6, is punishable as a criminal offence, at least for cases which are not minor:

(a) a computer programme, designed or adapted primarily for the purpose of committing any of the offences referred to in Articles 3 to 6;

(b) a computer password, access code, or similar data by which the whole or any part of an information system is capable of being accessed.”

132. Section 3A of the 1990 Act, in conjunction with sections 1 to 3 of that Act, meets the requirements of Article 7 save in one respect, namely the “procurement for use” of tools used for committing the Article 3 to 6 offences. Under the existing offence, the prosecution is required to show that the individual obtained the tool with a view to its being *supplied* for use to commit, or assist in the commission of an offence under section 1 or 3 of the Act. This clause extends subsection (3) of section 3A of the 1990 Act to include an offence of obtaining a tool for use to commit a Computer Misuse Act offence (including one under the new section 3ZA inserted by clause 40) *regardless of an intention to supply* that tool. As amended, that subsection would provide that (additions shown in italics):

“A person is guilty of an offence if he obtains any ~~article with a view to article~~

—  
(a) *intending to use it to commit, or assist in the commission of, an offence under section 1, 3 or 3ZA, or*

(b) *with a view to its being supplied for use to commit, or assist in the commission of, an offence under section 1 or 3.”*

**Clause 42: Territorial scope of computer misuse offence**

133. Article 12 of Directive provides as follows:

**“Jurisdiction**

1. Member States shall establish their jurisdiction with regard to the offences referred to in Articles 3 to 8 where the offence has been committed:

(a) in whole or in part within their territory; or

(b) by one of their nationals, at least in cases where the act is an offence where it was committed.

2. When establishing jurisdiction in accordance with point (a) of paragraph 1, a Member State shall ensure that it has jurisdiction where:

(a) the offender commits the offence when physically present on its territory, whether or not the offence is against an information system on its territory; or

(b) the offence is against an information system on its territory, whether or not the offender commits the offence when physically present on its territory.....”

134. Sections 4 and 5 of the 1990 Act already provide for limited extra-territorial jurisdiction in relation to the offences in sections 1 and 3 of that Act. Under those provisions, it is possible to prosecute a person in this country for an act committed abroad which would constitute an offence under section 1 or 3 provided that there was a “significant link” to the appropriate jurisdiction in the UK. *Subsection (2)* amends section 4 of the 1990 Act to apply such extra-territorial jurisdiction to the offence in new section 3ZA inserted by clause 40; *subsection (5)* amends section 5 of the 1990 Act to define what constitutes a “significant link” in the context of the new offence. A significant link is established if the accused was in the UK at the time of the offence, or if the affected computer or the intended affected computer was in the UK. Accordingly, it would, for example, be possible under the current law to prosecute a French national resident in England and Wales who hacked into a computer system in France or a UK national who hacked into a computer system in the UK whilst temporarily resident in France (but who subsequently returned to the UK). *Subsection (3)* inserts new subsection (4A) into section 4 of the 1990 Act, the effect of which is to apply extra-territorial jurisdiction to the offence under section 3A of the 1990 Act. *Subsection (4)* amends section 5 of the 1990 Act to extend the current extra-territorial jurisdiction in order to fully comply with Article 12; the effect of new section 5(1A) and (1B) is to permit prosecutions of a UK national for all offences under the 1990 Act even where the conduct concerned has no other significant link to the UK,

provided also that the offence was an offence in the country where it took place.

135. *Subsections (6) and (7)* amend section 13 of the 1990 Act. Subsection (6) sets out the criteria for when a sheriff court in Scotland will have jurisdiction to try an offence under sections 3ZA and 3A of the 1990 Act. A sheriff court will have jurisdiction if a person who commits an offence under section 3ZA is in the sheriffdom at the time they carry out any of the unauthorised act, or if the computer in relation to which the offence was carried out was located in the sheriffdom at the time of the offence. A sheriff court will have jurisdiction if a person who commits an offence under section 3A is in the sheriffdom at the time they carry out any of the acts set out in section 13(2B)(a). If a person was not in the sheriffdom, new section 13(2B)(b) provides the sheriff court will have jurisdiction to try the offence if the computer in relation to which the offence was carried out was located in the sheriffdom at the time of the offence. Subsection (7) provides that where a person commits an offence under section 1, 3, 3ZA or 3A of the 1990 Act outwith Scotland, he or she may be tried in any sheriff court district in which the person is apprehended or in custody, or in such sheriff court district as the Lord Advocate may direct, as if the offence had been committed there.

#### **Clause 43: Savings**

136. Section 10 of the 1990 Act contains a saving provision. It provides that the offence at section 1(1) of the 1990 Act has effect without prejudice to the operation in England and Wales of any enactment relating to powers of inspection, search or seizure; and in Scotland of any enactment or rule of law relating to powers of examination, search or seizure. The amendment to section 10 of the 1990 Act made by this clause is a clarifying amendment. It is designed to remove any ambiguity over the interaction between the lawful exercise of powers (wherever exercised) conferred under or by virtue of any enactment (and in Scotland, rule of law) and the offence provisions. “Enactment” is expressly defined to provide certainty as to what this term includes. The title of section 10 of the 1990 Act has also been changed to remove the reference to “certain law enforcement powers” (see paragraph 7 of Schedule 4). This is to avoid any ambiguity between the title and the substance of that section.

### **PART 3: ORGANISED, SERIOUS AND GANG-RELATED CRIME**

#### **SUMMARY AND BACKGROUND**

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

137. 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>6</sup>” (paragraph 4.60).

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<sup>6</sup> Legislative Guide for the United Nations Convention against Transnational Organized Crime and the

138. In 2006, the UK ratified the UN Convention against Transnational Organised Crime<sup>7</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.”

139. 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 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

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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>7</sup> <http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf>

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.”

140. 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>8</sup> provide for an offence of conspiracy and of participation in a criminal organisation.

141. 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.

142. 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**

143. 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.

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<sup>8</sup> <http://www.irishstatutebook.ie/2006/en/act/pub/0026/index.html>

144. 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 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. Clause 46 extends the list of trigger offences in Schedule 1 to the 2007 Act.

145. 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.

146. 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.

147. 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>9</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>10</sup>.

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<sup>9</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>10</sup> <http://www.official-documents.gov.uk/document/cm85/8502/8502.pdf>

148. 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>11</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>12</sup>. The Scottish Government published its response to the consultation on 4 April 2014<sup>13</sup>, and has 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. Clause 45 and Schedule 1 make the necessary amendments to the 2007 Act to this end.

149. 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 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.

150. 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.

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<sup>11</sup> The Scottish Parliament adopted a legislative consent motion in relation to this aspect of the Bill on 8 March 2007 - <http://www.scottish.parliament.uk/parliamentarybusiness/Bills/16199.aspx>

<sup>12</sup> <http://www.scotland.gov.uk/Publications/2013/09/9917/downloads>

<sup>13</sup> <http://www.scotland.gov.uk/Resource/0044/00447665.pdf>

## **Gang injunctions**

151. 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>14</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.

152. The 25 out of then 33 Ending Gang and Youth Violence priority areas<sup>15</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.

153. 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>16</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. Clause 50 makes resulting changes to Part 4 of the 2009 Act.

## **COMMENTARY ON CLAUSES**

### **Clause 44: Offence of participating in activities of organised crime group**

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

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<sup>14</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>15</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>16</sup> <https://www.gov.uk/government/publications/review-of-the-operation-of-injunctions-to-prevent-gang-related-violence>



155. 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)*).

156. *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.

#### **Clause 45 and Schedule 1: Extension of Part 1 of Serious Crime Act 2007 to Scotland**

157. Clause 45 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.

158. *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.

159. *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.

160. *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.

161. 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 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”.

162. 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.

163. 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).

164. 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.

165. 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.

166. 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.

167. 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).

168. *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.

169. *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.”

170. *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.

171. *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.

172. *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.

173. *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.

174. *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”.

175. *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.

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.

176. *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.

177. *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.

178. *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.

179. *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.

180. 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.

181. 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.

182. 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.

183. 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.

184. 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 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.

185. 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.

186. 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.

187. *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.

188. 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.

189. 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.

190. *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.

191. 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.

192. 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) 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.

193. New section 27A(5) and (6) taps into the power to dissolve a partnership in the Partnership Act 1890.

194. 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.

195. 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)).

196. 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.

197. *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.

198. *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.

199. 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 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.

200. *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.

201. *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.

202. *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.

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

204. *Paragraph 28* inserts appropriate additions to the index of defined expressions in Part 1 of the 2007 Act.

205. *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.

206. *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.

#### **Clause 46: Serious crime prevention orders: meaning of “serious offence”**

207. 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 clause 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).

#### **Clause 47: Powers of Crown Court to replace orders on breach**

208. 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 clause 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.

**Clause 48: Extension of order where person charged**

209. This clause 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 clause 44. The court to whom a relevant applicant authority applies to is set out in new section 22E(2).

**Clause 49: Serious crime prevention orders and financial reporting etc**

210. *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.

211. *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.

**Clause 50: Injunctions to prevent gang-related violence and drug-dealing activity**

212. This clause 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.”

213. 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:

- 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)).

214. 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.

215. 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.

## **PART 4: SEIZURE AND FORFEITURE OF DRUG-CUTTING AGENTS**

### **BACKGROUND**

216. Certain chemical substances, some of which may also be used in the manufacture of medicinal products for human or veterinary use, can be used as cutting agents for bulking illegal drugs, thereby maximising criminal profit margins. The 'grey market' trade (that is, where it is unclear if there is an apparent legitimate end use) in these substances has become a significant element of the domestic cocaine trade over the last five years, but there are currently no laws or regulations that specifically target the domestic trade in cutting agents. This trade impacts across the UK enabling organised criminals to maximise their profits from the trade in illegal drugs and increases the risks posed to local communities.

217. In the UK, benzocaine, lidocaine and phenacetin are the most common chemicals used to 'cut' illegal drugs, especially cocaine. This is because these chemicals mimic some of the effects, as well as resembling the drug in appearance, allowing a significant increase in adulteration of the illicit drug than would be possible with an inert substance such as glucose.

218. In 2013, there were over 75 border seizures of chemicals such as benzocaine, lidocaine and phenacetin, totalling over 2 tonnes. Law enforcement agencies used existing customs or policing powers to seize cutting agents in these cases, such as where the substances are linked to an ongoing criminal investigation or the substances were imported under false labelling. However, since the current powers do not explicitly target cutting agents, loopholes exist which means that law enforcement agencies cannot always seize suspected cutting agents. The new powers are designed to address this problem.

219. The majority of cocaine available at street level contains one or more adulterants, some of the most common being benzocaine and phenacetin. In 2013, 63% of street level seizures of cocaine hydrochloride (powder cocaine) contained benzocaine, while 91% of street level base cocaine seizures (the majority of which is 'crack cocaine') contained phenacetin. Much of this adulteration occurs within the

UK; in 2013, the quarterly average purity of cocaine hydrochloride at importation level ranged from 69-71%, while the average purity at user level ranged from 32-38%<sup>17</sup>. Importing a kilogram of high-quality cocaine may cost around £45,000, while a kilogram of benzocaine can be bought for £300. It is common for cocaine to be mixed at an initial 1:1 ratio with benzocaine, allowing the resulting product potentially to be sold for £90,000. Cutting agents can therefore significantly increase the criminals' profits from drug trafficking.

220. The new powers will allow law enforcement agencies to seize any substances reasonably suspected of being intended for use as a cutting agent. These are commonly legal to import and sell as bulk chemicals. For example, benzocaine and lidocaine are used within the pharmaceutical industry as active substances in a number of medicinal products. However, they have limited legitimate use in the UK in raw powder form, requiring laboratory processes and licensing for manufacturing into an administrable form. Phenacetin, also legal to import and sell, is an analgesic that is no longer used in legitimate business because of its carcinogenic properties.

221. The Government's Drug Strategy 2010<sup>18</sup> included a commitment to develop a robust approach to stop criminals profiting from the trade in cutting agents, working with production countries, the legitimate trade and international partners. In May 2013, the Home Office published the consultation document "Introduction of new powers to allow law enforcement agencies to seize and detain chemical substances suspected of being used as drug cutting agents". The response to the consultation was published on 31 March 2014<sup>19</sup>. Part 4 of the Bill confers new powers on law enforcement agencies to seize, detain and destroy chemical substances reasonably suspected of being used as cutting agents for illegal drugs. The provisions are modelled on the police entry, search and seizure powers in Part 2 of Police and Criminal Evidence Act 1984 ("PACE") and the cash seizure and forfeiture powers in Chapter 3 of Part 5 of POCA. The provisions in Part 4 of the Bill will be supported by court procedural rules to be made (in the case of magistrates' court rules in England and Wales) by the Lord Chancellor under sections 144 and 145 of the Magistrates' Court Act 1980. Such rules will be analogous to those that apply to the cash seizure and forfeiture powers in Chapter 3 of Part 5 of POCA, namely the Magistrates' Court (Detention and Forfeiture of Cash) Rules 2002 (SI 2002/2998), as amended.

## **COMMENTARY ON CLAUSES**

### **Clause 51: Application for search and seizure warrants**

222. This clause provides for prior judicial authorisation for powers to search premises for drug-cutting agents and to seize any such agents found on the premises.

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<sup>17</sup> 'Average' here refers to weighted mean purity. For further details see the NCA ENDORSE 2013 Annual Report

<sup>18</sup> <https://www.gov.uk/government/publications/drug-strategy-2010--2>

<sup>19</sup> <https://www.gov.uk/government/consultations/cutting-agents-consultation>

The term “drug-cutting agent” is defined in clause 64(1). The definition is such as to cover any substance that may be used to adulterate a controlled drug in connection with the unlawful supply or exportation of the drug. Accordingly, the definition will cover not only the substances most commonly used as cutting agents – namely, benzocaine, lidocaine and phenacetin – but any substance intended for use in this way which may, potentially, be any powder of a similar colour and consistency as the drug in question. *Subsection (1)* provides for a justice of the peace (or, in Scotland, a sheriff – see clause 61(5)), on an application of a police or customs officer (*subsection (4)*), to issue a search and seizure warrant. Such a warrant confers authority on a police or customs officer to enter the premises specified in the warrant and search them for substances that appear to be intended for use as drug-cutting agents. To grant such a warrant, the justice of the peace must be satisfied that there are reasonable grounds to suspect that a substance intended for use as a cutting agent is on the relevant premises. In coming to such a judgement, the magistrate would weigh up the information supplied in the application (*subsection (6)*) or in oral evidence (*subsection (7)*). The “reasonable grounds to suspect” test is directed solely to the likely presence on the premises and use of the substance as a drug-cutting agent and not to any specific suspected criminal offence. In determining whether the test is satisfied, the court will apply the civil standard of proof, namely on the balance of probabilities. A police or customs officer is defined in *subsection (2)* and includes an NCA officer.

223. Applications for a warrant may be made without notice to any affected person (for example, the owner or occupier of the premises or the owner of the substances in question) to avoid forewarning such a person of the impending search thereby affording an opportunity to remove or otherwise hide the substances (*subsection (5)*).

224. As with the provision for search warrants in section 15 of PACE, an application under this clause may be for a warrant in relation to a single set of premises (a “specific-premises warrant” - see *subsection (3)(b)* - or for an “all-premises warrant” - see *subsection (3)(a)* - where it is necessary to search all premises occupied or controlled by an individual, but it is not reasonably practicable to specify all such premises at the time of applying for the warrant. An all-premises warrant will allow access to all premises occupied or controlled by that person, both those which are specified on the application, and those which are not (*subsection (10)*). An application for a warrant must also specify whether the applicant is seeking authorisation for a single entry or multiple entries into the relevant premises (*subsection (9)*). The warrant may authorise entry to and search of premises on more than one occasion if, on the application, the justice of the peace is satisfied that it is necessary to authorise multiple entries in order to achieve the purpose for which he issues the warrant, for example in the case of the search of a large warehouse.

#### **Clause 52: Further provisions about search and seizure warrants**

225. *Subsections (1) and (2)* set out the information that must be contained in a search and seizure warrant. *Subsections (3) to (5)* provide for the making of copies. These provisions are analogous to those in section 15(5) to (8) of PACE.

**Clause 53: Execution of search and seizure warrants**

226. *Subsection (1)* gives effect to Schedule 2 which sets out conditions for the search and seizure of premises in pursuance of a warrant. Failure to comply with such conditions would render the entry and search of premises unlawful (*subsection (2)*). *Subsection (3)* enables a police or customs officer to use reasonable force to enter premises. It is an offence to obstruct an officer executing a warrant (*subsection (4)*); the maximum penalty on conviction for such an offence is a level 3 fine (currently £1,000) (*subsection (5)*).

**Schedule 2: Execution of search and seizure warrants**

227. This Schedule makes further provision for the execution of warrants and is based on analogous provisions in section 16 of PACE.

228. *Paragraph 1* enables persons to accompany a police or customs officer when executing a warrant. Such a person, for example, a Police Community Support Officer, has the same powers as those the warrant confers on a police or customs officer.

229. Where premises are entered and searched in pursuance of a warrant and such premises are not specified in the warrant, entry must be authorised by a senior officer (*paragraph 3*). Where a warrant authorises multiple entries into a set of premises, any second or subsequent entry must be similarly authorised (*paragraph 4*). A senior officer is defined in *paragraph 12(1)*.

230. *Paragraph 8* confers a power to inspect and test substances found on the premises. The ability to test such a substance, for example to determine whether it is benzocaine, lidocaine or phenacetin, will help avoid unnecessary seizures.

231. *Paragraph 9* requires premises to be made secure on completion of the search. This obligation will be particularly relevant where a police or customs officer has had to force entry onto the premises.

**Clause 54: Seizure of substances under search and seizure warrant**

232. This clause enables a police or customs officer searching premises in pursuance of a clause 48 warrant to seize any substance found there which is reasonably suspected as being intended for use as a drug-cutting agent.

**Clause 55: Seizure of substances without search and seizure warrant**

233. This clause contains a free-standing power to seize, without warrant, a substance reasonably suspected as being intended for use as a drug-cutting agent. This will enable a police or customs officer to seize such substances when they are lawfully on premises for some other purpose, for example, a customs officer undertaking a search for prohibited or restricted goods when operating at port or where an officer is executing a warrant issued under PACE in relation to a non-drug related offence and discovers substances suspected of being used as a drug-cutting



agent in the course of the search. The subsequent provisions of this Part in respect of retention and forfeiture will apply in equal measure to substances seized under a search and seizure warrant and to those seized under this free standing power.

**Clause 56: Notice to be given when substances seized**

234. This clause makes provision for the issue of a notice, where any substance is seized in accordance with clauses 54 or 55, to the person from whom it was seized and, if the officer thinks that the substance may belong to a different person, to that person also. This is to ensure that all persons with an interest in the substance are properly informed.

**Clause 57: Containers**

235. This clause contains an ancillary power to seize any containers in which substances reasonably suspected of being used as drug-cutting agents are stored. As most cutting agents are in powder form, they are likely to be stored in some kind of container.

**Clause 58: Initial retention of seized substances**

236. *Subsection (1)* enables any suspected drug-cutting agents seized under clause 54 or 55 to be retained for an initial period of 30 days. This period affords the law enforcement agency which seized the substance and the owner of the substance adequate time to gather evidence to support continued detention or to demonstrate that the substance is held legitimately.

237. *Subsection (2)* provides for the detention for up to 30 days of suspected drug-cutting agents where the substance was originally seized under powers conferred under another enactment and the power to retain the substance under that enactment has lapsed. For example, a police officer has a general power of seizure under section 19 of PACE where he or she has reasonable grounds for believing that the thing seized has been obtained in consequence of the commission of an offence or that it is evidence in relation to an offence which he or she is investigating or any other offence. If it is subsequently decided that there is to be no, or no further, criminal investigation, the substance could no longer be retained under PACE. Subsection (2) would allow the substance to be retained for up to 30 days following the decision to discontinue the criminal investigation.

**Clause 59: Continued retention or return of seized substances**

238. This clause enables a police or customs officer to apply for an order authorising the continued retention of the suspected drug-cutting agents. The order can be made by a magistrates' court or a justice of the peace (in England and Wales), a sheriff (in Scotland) or a court of summary jurisdiction (in Northern Ireland). The court, justice or sheriff may make such an order if satisfied that continued retention of the substance is justified whilst its intended use is further investigated. An order can also be made for continued retention if consideration is being given to the bringing of criminal proceedings, or if such proceedings have been commenced and not concluded. Where criminal proceedings have been initiated an order may authorise

continued retention until the conclusion of the proceedings, otherwise the maximum period of retention is 60 days (this includes the initial 30 day period provided for in clause 58).

239. Where the court, justice or sheriff concludes that none of the grounds for continued retention of the substance have been satisfied, the substance must be returned to the person from whom it was seized or, if different, the owner. Where an order is made under this clause and no person entitled to the substance was present or represented at the hearing then the responsible officer must make reasonable efforts to give written notice to the person from whom the substance was seized and, if the officer thinks that it may belong to a different person, to that person also. This is to ensure that all persons with an interest in the substance are properly informed.

#### **Clause 60: Forfeiture and disposal, or return, of seized substances**

240. This clause enables a magistrates' court (in England and Wales), a sheriff (in Scotland) or a court of summary jurisdiction (in Northern Ireland), on application by a police or customs officer (*subsection (1)*) to order the forfeiture of a substance if the court is satisfied that it is intended for use as a drug-cutting agent (*subsection (3)*). The civil standard of proof, namely on the balance of probabilities, will apply to such proceedings. It is expected that court procedure rules would provide that it is open to both the applicant and any person with an interest in the substance to make oral representations to the court at a forfeiture hearing. Where the court is so satisfied it is for the applicant to arrange for the disposal of the forfeited substance (*subsection (4)*), although any action to dispose of the substance is to be stayed pending the outcome of any appeal (*subsection (5)*). The clause also makes further provision authorising the continued retention of a substance pending the outcome of an application for forfeiture or any appeal against a decision by the court to order the substance to be returned to the person from whom it was seized or the owner of the substance (*subsections (2) and (7)*).

#### **Clause 61: Appeal against decision under section 60**

241. This clause confers a right of appeal (see *subsection (3)* as to the appropriate higher court in each jurisdiction) against a decision under clause 60 either to order the forfeiture of a substance or to order its return to the person entitled to it. Where an appeal is brought under this clause and no person entitled to the substance was a party to the original proceedings then the responsible office must make reasonable efforts to give written notice to the person from whom it was seized and, if the officer thinks that the substance may belong to a different person, to that person also (*sub-section (2)*). This is to ensure that all persons with an interest in the substance are properly informed. An appeal must be lodged within 30 days of the decision by the lower court (*subsection (4)*). The parties to the original proceedings and any person entitled to the substance – if not present or represented at the original hearing – will be entitled to be heard at the appeal. On hearing the appeal, the court will determine the question afresh.

**Clause 62: Return of substance to person entitled to it, or disposal if return impracticable**

242. Where a court determines that the seized substance is not intended for use as a drug-cutting agent, this clause provides for the return of the substance to the person entitled to it; if necessary the relevant court (or the sheriff) may make an order to this end (*subsection (1)(b)*). In any case where it proves impossible to find the owner, or impracticable for some reason to return the substance (for example, because the owner refuses to accept receipt), *subsection (4)* allows for the substance to be disposed of by the police or customs officer.

**Clause 63: Compensation**

243. This clause provides that where no forfeiture order is made following the seizure of a suspected drug-cutting agent, the owner of the substance may apply to the relevant court (or the sheriff) for compensation. There is no right for the person from whom the substance was seized – where that person is different from the owner – to claim compensation. Compensation is only payable where the court is satisfied that the applicant has suffered loss during the period the substance was held by the relevant law enforcement agency. Normally, the level of compensation would be less than the market value of the substance (*subsection (3)*), although the amount may be higher in exceptional circumstances (*subsection (4)*). Compensation may be payable, for example, if the owner lost a contract as a result of the seizure and retention of the substance. The rule requiring that the amount of compensation should normally be less than 100% of the value of the substance is predicated on the fact that once the substance is returned to the owner it may continue to have some value which could then be realised by the owner.

**Clause 64: Interpretation**

244. This clause defines terms used in Part 4 of the Bill.

**PART 5: PROTECTION OF CHILDREN ETC**

**BACKGROUND**

245. Section 1 of the Children and Young Persons Act 1933 (“the 1933 Act”) provides for an offence of child cruelty. The offence is committed where a person over the age of 16, who has responsibility for a child under that age, wilfully assaults, ill-treats, abandons, exposes or neglects that child, in a manner likely to cause unnecessary suffering or injury to health.

246. In April 2012 the charity, Action for Children, launched a campaign calling for a reform of section 1 of the 1933 Act. It published a report, ‘Keeping children safe: The case for reforming the law on child neglect’<sup>20</sup>, which argued that the criminal law on child cruelty was out of date and failed adequately to protect children.

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<sup>20</sup> <http://resourcecentre.savethechildren.se/sites/default/files/documents/5896.pdf>

In particular, Action for Children argued that the existing offence, as interpreted by front line professionals, only covered physical and not psychological harm.

247. In support of the campaign, the late Paul Goggins MP tabled a new clause for debate at Committee stage of the Crime and Courts Bill on 12 February 2013 (Public Bill Committee, Official Report, column 444 to 456). In response to that debate, the then Minister for Policing and Criminal Justice, Damian Green MP, undertook to consider evidence that the current law is not working. Subsequent to this, Mark Williams MP introduced a Private Member's Bill – the Child Maltreatment Bill<sup>21</sup> – in June 2013, but the Bill made no further progress. In October 2013, the Ministry of Justice undertook a targeted engagement exercise seeking views from a range of professionals. In the light of that exercise, the Government accepts that the offence could be more clearly expressed so as to include psychological suffering or injury. Clause 65 amends section 1 of the 1933 Act to this end. Following the debate on this clause at Committee stage in the House of Lords, the clause also updates the deeming provision in section 1(2) of the 1933 Act which relates to the suffocation of an infant under three years when the child is in bed with a drunken person.

248. The Female Genital Mutilation Act 2003 (“the 2003 Act”), which extends to England and Wales and Northern Ireland, and the Prohibition of Female Genital Mutilation (Scotland) Act 2005, which extends to Scotland, and before them the Prohibition of Female Circumcision Act 1985, provide for an offence of female genital mutilation (“FGM”). FGM involves procedures which include the partial or total removal of the external female genital organs for non-medical reasons. The practice is medically unnecessary, extremely painful and has serious health consequences, both at the time when the mutilation is carried out, and in later life. Section 4 of the 2003 Act provides that the section 1 offence of FGM (and the related offences, in sections 2 and 3 of the 2003 Act, of helping a girl to perform FGM on herself and of assisting a non-UK person to perform FGM overseas) extend to acts done outside of the UK by UK nationals or permanent UK residents. On 21 March 2014, the Director of Public Prosecutions announced the first prosecution for FGM<sup>22</sup>.

249. On 18 December 2013, the Home Affairs Select Committee launched an inquiry into FGM, including the effectiveness of the current legislative framework. The Committee published the written evidence it had received on 25 February 2014<sup>23</sup>. That evidence included separate submissions from the Director of Public Prosecutions, Association of Chief Police Officers and Metropolitan Police which

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<sup>21</sup> <http://services.parliament.uk/bills/2013-14/childmaltreatment.html>

<sup>22</sup> [http://cps.gov.uk/news/latest\\_news/first\\_prosecutions\\_for\\_female\\_genital\\_mutilation/index.html](http://cps.gov.uk/news/latest_news/first_prosecutions_for_female_genital_mutilation/index.html)

<sup>23</sup> <http://www.parliament.uk/business/committees/committees-a-z/commons-select/home-affairs-committee/news/140225-fgm-memos/>. The Home Affairs Select Committee subsequently published its report on the conclusion of its inquiry – “Female genital mutilation: the case for a national action plan”, Second Report of Session 2014-15 (HC 201).

argued for, amongst other things, a change in the law to enable prosecutions under the 2003 Act of non-permanent UK residents.

250. On 6 February 2014, the Government announced a range of measures to combat FGM to mark the International Day of Zero Tolerance<sup>24</sup>. Those measures included a commitment to consider any recommendation from the Crown Prosecution Service to strengthen the criminal law on FGM. Clause 67 amends the 2003 Act (and the Prohibition of Female Genital Mutilation (Scotland) Act 2005) to extend extra-territorial jurisdiction for the offences under that Act to persons habitually resident in the UK.

251. The Government announced further measures to tackle FGM at the “Girl Summit” on 22 July 2014, including granting victims of FGM lifelong anonymity from the time an allegation is made, a new offence so that parents can be prosecuted if they fail to prevent them being subjected to FGM and, subject to consultation, a new civil protection order. The Ministry of Justice launched a consultation on the day of the Girl Summit on whether and how a civil protection order could work alongside the criminal legislation to protect potential victims of FGM. The consultation closed on 19 August 2014; 88 responses were received<sup>25</sup>. Clauses 67 to 69 give effect to these three further provisions.

## **COMMENTARY ON CLAUSES**

### **Clause 65: Child cruelty offence**

252. This clause makes four changes to the offence of child cruelty in section 1 of the 1933 Act.

253. *Subsection (2)* clarifies that the ill-treatment limb of the offence is engaged whether the ill-treatment is physical or non-physical in nature.

254. *Subsection (3)* makes it explicit on the face of section 1 what is already implicit, namely that the section 1 offence applies regardless of whether the suffering or injury caused to a child as a result of one or more acts of abuse or neglect was physical or psychological in nature. At the same time, the amendment made by this subsection removes the non-exhaustive list of the type of injury which the conduct must be likely to cause (on the grounds that “injury to or loss of sight, or hearing, or limb, or organ of the body” all self-evidently amount to physical harm) and the reference to “mental derangement” (on the grounds that the term is archaic and rendered redundant by the express reference to psychological suffering or injury).

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[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/295056/HMG\\_FGM\\_Declaration.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/295056/HMG_FGM_Declaration.pdf)

<sup>25</sup> The consultation and summary of responses is available at: [https://consult.justice.gov.uk/digital-communications/female-genital-mutilation-proposal-to-introduce-a/consult\\_view](https://consult.justice.gov.uk/digital-communications/female-genital-mutilation-proposal-to-introduce-a/consult_view)

255. *Subsection (4)* replaces the outdated reference in section 1(1) of the 1933 Act to “a misdemeanour” with a reference to “an offence”; section 1 of the Criminal Law Act 1967 abolished the then distinction between a felony (a term applied to more serious crimes) and a misdemeanour.

256. *Subsection (5)* amends subsection (2)(b) of section 1 of the 1933 Act, which deals with the suffocation of a child under three years when the child is in bed with a drunken person. The origin of subsection (2)(b) was concern about mothers becoming drunk on gin. Where it is proved that a child has died of suffocation whilst sharing a bed with a person who went to bed under the influence of drink, subsection (2)(b) deems that person to have neglected the child in a manner likely to cause injury to its health under subsection (1). Subsection (5) amends section 1(2)(b) of the 1933 Act to extend the circumstances under which the death of an infant under three occurs so that the deeming provision also applies where the infant was sleeping with a person aged 16 or over who was under the influence of a prohibited drug. New subsection (2B) of section 1 of the 1933 Act (as inserted by *subsection (6)*) defines a prohibited drug as a drug the possession of which immediately before taking it constituted an offence under section 5(2) of the Misuse of Drugs Act 1971 (“the 1971 Act”); that provision makes it an offence for a person to have a controlled drug in their possession, subject to any defence in section 28 of the 1971 Act or exceptions prescribed in regulations made under section 7 of that Act. The Misuse of Drugs Regulations 2001 (SI 2001/3998) provide, amongst other things, that a person may lawfully possess a controlled drug for administration for medical, dental or veterinary purposes in accordance with the directions of the prescriber (unless the drug was obtained by fraud). Accordingly, the modified deeming provision would not apply where a person had taken prescribed medication in accordance with his or her doctor’s instructions.

257. Subsections (5) and (6) also amend section 1(2)(b) of the 1933 Act so that it covers circumstances where an infant suffocates whilst an adult is lying next to him or her on any kind of furniture or surface being used for the purpose of sleeping. It also has effect where the adult in question went to sleep under the influence of the relevant substance (drink or a prohibited drug) irrespective of the state the adult was in when they and the child first occupied the furniture or other location where they were sleeping together.

258. Section 1 of the 1933 Act as amended will read as follows (additions in italics)

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“(1) If any person who has attained the age of sixteen years and has responsibility for any child or young person under that age, wilfully assaults, ill-treats (*whether physically or otherwise*), neglects, abandons, or exposes him, or causes or procures him to be assaulted, ill-treated (*whether physically or otherwise*), neglected, abandoned, or exposed, in a manner likely to cause him unnecessary suffering or injury to health (~~including injury to or loss of sight, or hearing, or limb, or organ of the body, and any mental derangement~~) (*whether the suffering or injury is of a physical or psychological nature*), that person shall be guilty of a ~~misdemeanour~~ *an offence*, and shall be liable—

- (a) on conviction on indictment, to a fine or alternatively, or in addition thereto, to imprisonment for any term not exceeding ten years;
- (b) on summary conviction, to a fine not exceeding the prescribed sum, or alternatively, or in addition thereto, to imprisonment for any term not exceeding six months.

(2) For the purposes of this section—

- (a) a parent or other person legally liable to maintain a child or young person, or the legal guardian of a child or young person, shall be deemed to have neglected him in a manner likely to cause injury to his health if he has failed to provide adequate food, clothing, medical aid or lodging for him, or if, having been unable otherwise to provide such food, clothing, medical aid or lodging, he has failed to take steps to procure it to be provided under the enactments applicable in that behalf;
- (b) where it is proved that the death of an infant under three years of age was caused by suffocation (not being suffocation caused by disease or the presence of any foreign body in the throat or air passages of the infant) while the infant was in bed with some other person who has attained the age of sixteen years, that other person shall, if he was, when he went to bed *or at any later time before the suffocation*, under the influence of drink *or a prohibited drug*, be deemed to have neglected the infant in a manner likely to cause injury to its health.

*(2A) The reference in subsection (2)(b) to the infant being “in bed” with another (“the adult”) includes a reference to the infant lying next to the adult in or on any kind of furniture or surface being used by the adult for the purpose of sleeping (and the reference to the time when the adult “went to bed” is to be read accordingly).*

*(2B) A drug is a prohibited drug for the purposes of subsection (2)(b) in relation to a person if the person’s possession of the drug immediately before taking it constituted an offence under section 5(2) of the Misuse of Drugs Act 1971.*

(3) A person may be convicted of an offence under this section—

- (a) notwithstanding that actual suffering or injury to health, or the likelihood of actual suffering or injury to health, was obviated by the action of another person;
- (b) notwithstanding the death of the child or young person in question.”

**Clause 66 and Schedule 3: Possession of paedophile manual**

259. This clause creates a new offence of possession of a paedophile manual, that is any item containing advice or guidance about abusing children sexually (*subsection (1)*). There are already a number of criminal offences that seek to prevent the

possession, creation and distribution of indecent images of children, and the dissemination of obscene material. In particular:

- section 2 of the Obscene Publications Act 1959 makes it an offence to publish (for gain or otherwise) or to possess for publication for gain an obscene article;
- section 1 of the Protection of Children Act 1978 makes it an offence for a person to take, permit to be taken, make, distribute or show, or have in his or her possession with a view to showing or distributing any indecent photograph or pseudo-photograph of a child;
- section 160 of the Criminal Justice Act 1988 makes it an offence to possess an indecent photograph or pseudo-photograph of a child;
- section 63 of the Criminal Justice and Immigration Act 2008 makes it an offence to possess extreme pornographic images; and
- section 62 of the Coroners and Justice Act 2009 makes it an offence to possess a prohibited image of a child.

These existing offences do not criminalise mere possession of material containing advice and guidance about grooming and abusing a child sexually. The new offence plugs this gap in the law.

260. *Subsection (8)* defines the terms “item”, “prohibited item” and “abusing children sexually”. The term “item” has a wide meaning and includes both physical and electronic documents (for example, emails or information downloaded to a computer).

261. *Subsection (2)* sets out a series of defences to the offence of possession of a paedophile manual. They are the same as for other comparable offences, for example, the possession of indecent images of children under section 160(2) of the Criminal Justice Act 1988 and for the possession of extreme pornographic images under section 63 of the Criminal Justice and Immigration Act 2008 (see section 65 of that Act). They are:

- that the person had a legitimate reason for being in possession of the item; this would be a question of fact for the jury to decide on the individual circumstances of a case. It could cover, for example, those who can demonstrate that they have a legitimate work reason for possessing the item;
- that the person had not seen (or listened to) the item in his or her possession and therefore neither knew, nor had cause to suspect, that it contained advice or guidance about abusing children sexually; and
- that the person had not asked for the item - it having been sent without request - and that he or she had not kept it for an unreasonable period of time; this will cover those who are sent unsolicited material and who act quickly to delete it or otherwise get rid of it.

The standard of proof in making out the defence is the balance of probabilities.



262. As a result of *subsection (3)* and the transitional provision in clause 74(11), the maximum penalty on summary conviction of the offence in England and Wales and Northern Ireland will be six months' imprisonment. On the commencement of section 154(1) of the Criminal Justice Act 2003, the maximum sentence on summary conviction in England and Wales will rise to 12 months. On conviction on indictment, the maximum sentence is three years' imprisonment.

263. *Subsection (4)* requires proceedings to be instituted by or with the consent of the Director of Public Prosecutions.

264. *Subsection (5)* applies, in relation to England and Wales, the entry, search, seizure and forfeiture powers in section 4 of and the Schedule to the Protection of Children Act 1978 to paedophile manuals. *Subsection (6)* makes equivalent provision for Northern Ireland.

265. *Subsection (7)* introduces *Schedule 3* to the Bill which is designed to ensure that the provisions outlined above which make it an offence to possess a paedophile manual are consistent with the UK's obligations under the E-Commerce Directive<sup>26</sup>.

266. Under *Schedule 3* providers of information society services who are established in England and Wales or Northern Ireland are covered by the new offence even when they are operating in other European Economic Area states. Paragraphs 3 to 5 of the Schedule provide exemptions for internet service providers from the offence of possession of a paedophile manual in limited circumstances, such as where they are acting as mere conduits for such material or are storing it as caches or hosts.

#### **Clause 67: Offence of female genital mutilation: extra-territorial acts**

267. Section 3 of the 2003 Act provides that aiding, abetting, counselling or procuring a person who is not a UK national or permanent UK resident to do a relevant act of female genital mutilation outside the UK in relation to a UK national or permanent resident is an offence. Section 4 of the 2003 Act provides that sections 1 to 3 extend to acts done outside the UK by UK nationals or permanent UK residents.

268. Section 6(3) of the 2003 Act defines a "permanent UK resident" as an individual who is settled in the UK within the meaning of the Immigration Act 1971. Section 33(2A) of the Immigration Act 1971 provides for when a person is to be regarded as settled in the UK. It states:

"Subject to section 8(5) above, references to a person being settled in the United Kingdom are references to his being ordinarily resident there without being subject under the immigration laws to any restriction on the period for which he may remain."

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<sup>26</sup> [http://ec.europa.eu/internal\\_market/e-commerce/directive/index\\_en.htm](http://ec.europa.eu/internal_market/e-commerce/directive/index_en.htm)

Section 33(2) explains when a person is to be treated as ordinarily resident and states that:

“Except as otherwise provided a person is not to be treated for the purposes of any provision of this Act as ordinarily resident in the United Kingdom or in any of the Islands at a time when he is there in breach of the immigration laws.”

269. *Subsection (1)(a) and (b)* amends both sections 3 and 4 of the 2003 Act so that they apply to UK nationals and residents rather than, as now UK nationals and permanent UK residents. *Subsection (1)(c)* replaces the definition of a permanent UK resident in section 6(3) of the 2003 Act with a definition of a UK resident; that definition provides that a UK resident is someone who is habitually resident in the UK. The term habitually resident covers a person’s ordinary residence, as opposed to a short, temporary stay in a country. To be habitually resident in the UK it may not be necessary for all, or any, of the period of residence here to be lawful<sup>27</sup>. Whether a person is habitually resident in the UK will be determined on the facts of a given case. Taken together, paragraphs (a) to (c) of subsection (1) have the effect of broadening the extra-territorial jurisdiction provided for in the 2003 Act so that it will now be possible to prosecute a non-UK national for an offence under sections 1 to 3 of that Act where that person is habitually resident in this country, rather than permanently resident as now. Correspondingly, the section 3 offence will now cover situations where the victim of the FGM procedure is habitually resident. All the offences will continue to apply to UK nationals as is currently the case.

270. The Prohibition of Female Genital Mutilation (Scotland) Act 2005 makes similar provision to the 2003 Act. *Subsection (2)* makes similar amendments as subsection (1) to sections 3, 4 and 6 of that Act.

#### **Clause 68: Anonymity for victims of female genital mutilation**

271. This clause inserts a new section 4A and Schedule 1 into the 2003 Act which make provision for the anonymity of victims of FGM. The provisions are modelled on those in the Sexual Offences (Amendment) Act 1992 which provides for a scheme to protect the anonymity of victims of certain sexual offences, such as rape. Paragraph 1 of new Schedule 1 to the 2003 Act prohibits the publication of any matter that would be likely to lead members of the public to identify a person as the alleged victim of an offence under the 2003 Act (including the new offence provided for in clause 69, as well as aiding, abetting, counselling and procuring the ‘principal offence’). The prohibition lasts for the lifetime of the alleged victim. The prohibition covers not just more immediate identifying information, such as the name and address or a photograph of the alleged victim, but any other information which, whether on its own or pieced together with other information, would help identify the alleged victim.

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<sup>27</sup> See *Mark v Mark* [2005] UKHL 42

“Publication” is given a broad meaning (see paragraph 9(1) of new Schedule 1) and would include traditional print media, broadcasting and social media such as Twitter or Facebook.

272. Paragraph 1(4) to (8) of new Schedule 1 makes provision for a trial judge to disapply the restrictions on publication. The power to waive the restrictions is limited, in effect, to the circumstances necessary to allow a court to ensure that a defendant receives a fair trial in accordance with Article 6 of the ECHR or to safeguard freedom of expression in accordance with Article 10 of the ECHR.

273. Paragraph 2 of new Schedule 1 makes it a summary offence to contravene the prohibition on publication. The maximum penalty in England and Wales is an unlimited fine (or a level 5 fine (currently £5,000) in Northern Ireland). This is a strict liability offence so it will not be necessary for the prosecution to show that the defendant intended to identify the victim. In relation to newspapers or other periodicals (whether in print form or online editions) and radio and television programmes, the offence is directed at proprietors, editors, publishers or broadcasters rather than individual journalists. Any prosecution for the offence requires the consent of the Attorney General or the Director of Public Prosecutions for Northern Ireland as the case may be.

274. Paragraph 3 of new Schedule 1 provides for two defences. The first is where the defendant had no knowledge of the content of the publication or of the allegation. The second is where the victim (where aged 16 or over) had freely given written consent to the publication. These defences impose a reverse burden on the defendant, that is, it is for the defendant to prove that the defence is made out on a balance of probabilities, rather than imposing a requirement on the prosecution to show, beyond reasonable doubt, that the defence does not apply. The policy aim behind the offence is to encourage victims to report FGM offences committed against them, and to increase the number of prosecutions for FGM, by helping to ensure the victim feels safe in their anonymity if they report a crime against them. There is a strong public interest in achieving this. The reverse burden imposed invites the defendant in a particular case to justify their publication of matter identifying the alleged victim of FGM on the basis that they were not aware and did not suspect or have reason to suspect that an allegation had been made or that the publication contained matter likely to lead members of the public to identify the alleged victim. These matters to be proved on the balance of probabilities are matters within the knowledge of the defendant.

275. Paragraphs 4 to 8 of new Schedule 1 are designed to ensure that the offence provided for in paragraph 2 of the Schedule is consistent with the UK’s obligations under the E-Commerce Directive<sup>28</sup>. Under paragraphs 4 to 8 providers of information society services who are established in England and Wales or Northern Ireland are covered by the new offence even when they are operating in other European Economic

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<sup>28</sup> [http://ec.europa.eu/internal\\_market/e-commerce/directive/index\\_en.htm](http://ec.europa.eu/internal_market/e-commerce/directive/index_en.htm)

Area states. Paragraphs 6 to 8 of the new Schedule provide exemptions for internet service providers from the offence in limited circumstances, such as where they are acting as mere conduits for prohibited material or are storing it as caches or hosts.

**Clause 69: Offence of failing to protect girl from risk of genital mutilation**

276. *Subsection (2)* inserts a new section 3A into the 2003 Act which creates a new offence of failing to protect a girl under the age of 16 from risk of genital mutilation. A person is liable for the offence if they are responsible for a girl at the time when an offence under section 1, 2 or 3 of the 2003 Act is committed against the girl (and genital mutilation has actually occurred) (new section 3A(1)). The term “responsible” is defined in new section 3A(2) to (4) and (7). It covers two classes of person. First, a person who has parental responsibility for the girl and has frequent contact with her. Parental responsibility is defined in section 2 of the Children Act 1989 (in the case of England and Wales) and includes the mother and father of a child where they were married at the time of the child’s birth, the mother of a child where she was not married to the father at the time of the child’s birth, and the father of a child where he was not married to the mother at the time of the child’s birth but had subsequently acquired parental responsibility in accordance with the provisions of the Children Act 1989. More than one person may have parental responsibility for the same child at any one time so, for example, both birth parents could be liable for the offence. A person with parental responsibility for a girl would not be liable for the offence if that person did not have frequent contact with the girl. So, for example, where the parents of a girl were separated and lived apart with one parent having little or no contact with the daughter, that parent would not be liable for the offence. It would be for the courts to determine on the facts of the case whether the level of contact amounted to “frequent contact”.

277. The second class of person who may be held to be responsible for a girl who has been subject to genital mutilation is any adult who has assumed responsibility for caring for the girl in the manner of a parent. This might include, for example, grandparents where the girl has gone to stay with them for an extended summer holiday. In such circumstances those persons with parental responsibility for the girl would continue to be liable for the offence as a result of new section 3A(7). Conversely, a babysitter who was looking after a girl overnight could not be said to have assumed responsibility for the girl in the manner of a parent.

278. New section 3A(5) and (6) provide for two defences. The first defence is that the defendant did not think that there was a significant risk of the girl being subject to FGM and could not reasonably have been expected to be aware that there was any such risk. What constitutes a “significant” risk will take its ordinary meaning. The second defence is that the defendant took reasonable steps to protect the girl from being the victim of FGM. What would constitute reasonable steps would depend on the circumstances of the case. It would be for the magistrate or the jury to decide, as the case may be, whether the risk was “significant” or whether any steps taken to prevent FGM taking place were reasonable. The evidential burden will apply to the defence, that is, it will be enough for a defendant to produce sufficient evidence for the matter to be considered by the jury; it would then be for the prosecution to

demonstrate to the criminal standard of proof, namely beyond reasonable doubt, that the defence has not been made out.

279. *Subsection (3)* amends section 4 of the 2003 Act so that the new offence has extra-territorial application.

280. *Subsection (4)* amends section 5 of the 2003 Act so as to provide for the penalties for the new offence. The new offence will be triable either way. As a result of new section 5(2) of the 2003 Act and the transitional provision in clause 74(12), the maximum penalty on summary conviction of the offence in England and Wales and Northern Ireland will be six months' imprisonment. On the commencement of section 154(1) of the Criminal Justice Act 2003, the maximum sentence on summary conviction in England and Wales will rise to 12 months. On conviction on indictment, the maximum sentence is seven years' imprisonment.

#### **Clause 70: Female genital mutilation protection orders**

281. *Subsection (1)* inserts new section 5A into the 2003 Act which introduces new Schedule 2 to the 2003 Act (as provided for in *subsection (2)*) which makes provision for FGM protection orders in England and Wales (Part 1 of new Schedule 2) and Northern Ireland (Part 2 of new Schedule 2).

282. Paragraph 1(1) of new Schedule 2 to the 2003 Act provides that the High Court or the family court in England and Wales may make an order (an "FGM protection order") for the purposes of protecting a girl against the commission of a genital mutilation offence (that is, an offence under sections 1 to 3 of the 2003 Act) or protecting a girl against whom such an offence has been committed (sub-paragraph (1)). Accordingly FGM protection orders are able to cover both victims and potential victims of FGM. In deciding whether to make an order the court must have regard to all the circumstances including the need to secure the health, safety, and well being of the girl to be protected (sub-paragraph (2)). A 'girl' is defined in section 6(1) of the 2003 Act to include a woman.

283. An FGM protection order may contain such prohibitions, restrictions or requirements and such other terms as the court considers appropriate to protect the girl in question (sub-paragraph (3)). This would ensure that the power to make an FGM protection order is broad and flexible and enables the court to include whatever terms it considers necessary to protect the girl. Such terms might include, for example, provisions requiring a person to surrender his or her passport or any other travel document and/or the passport of the girl the order is intended to protect, and prohibiting specified persons from entering into any arrangements, in the UK or abroad, for FGM to be performed on the person to be protected. Such terms may relate to: conduct within and outside England and Wales; to respondents who commit or attempt to commit an FGM offence against a girl; and to others who may become involved in other respects (sub-paragraph (4)). Paragraph 1(5) provides examples of involvement in other respects to include aiding, abetting, counselling, procuring, encouraging or assisting another person to commit, or attempt to commit, a genital

mutilation offence or conspiring to commit or attempt to commit such as offence.

284. Paragraph 1(6) provides that an FGM protection order may be made for a specified period or to continue indefinitely until varied or discharged (in accordance with the provisions in paragraph 6). This would help to ensure that long-term protection from mutilation remains in place, for example, where the girl to be protected is very young.

285. Paragraph 2 provides that the court may make an FGM protection order on an application by the person to be protected (the victim), a “relevant third party” (specified by regulations (subject to the negative resolution procedure), or in a class specified, by the Lord Chancellor) without needing the leave of the court. The court may also make an FGM protection order on an application by ‘any other person’ with the leave of the court. This paragraph also provides for the court to make an order without an application being made to it, in certain other family proceedings before that court.

286. Paragraph 3 makes provision for a court before which there are criminal proceedings for a genital mutilation offence to make an FGM protection order, without an application being made to it, if a person who would be a respondent to any proceedings for an FGM protection order is a defendant in the criminal proceedings. This would ensure protection for a victim or potential victim of FGM where a defendant is not convicted of the offence but it has emerged that there is a risk of action by the defendant to carry out, procure, abet or assist FGM against the victim (or a person other than the victim); or the defendant is convicted and there is such a risk. An FGM protection order can be made in criminal proceedings to protect a girl at risk, whether or not the girl is the victim of the offence in relation to the criminal proceedings. For example, the younger sister of the victim of a genital mutilation offence could also be protected by the court in criminal proceedings.

287. Paragraph 4 provides that breach of an FGM protection order would be a criminal offence subject to a maximum penalty of five years’ imprisonment on conviction on indictment or a maximum of six months’ imprisonment on summary conviction (rising to 12 months’ imprisonment on commencement of section 154(1) of the Criminal Justice Act 2003 (see the transitional provision in clause 74(12)). As an alternative to a prosecution, a breach of an FGM protection order may be dealt with by the civil route as a contempt of court punishable by up to two years’ imprisonment (sub-paragraph (4)).

288. Paragraph 5 provides for ex-parte orders so to allow for the making of an FGM protection order without notice of the proceedings having been given to the respondent, where the courts considers it just and convenient to do so. Such an order without notice may be appropriate where there is reason to believe that a respondent may seek to harm a potential victim or remove her from the jurisdiction if given notice of such a hearing or before an on notice hearing could be listed. If an order is made without notice, the respondent must be given an opportunity as soon as just and convenient, to make representations about the order at a return hearing on notice.

289. Paragraph 6 makes provision for the variation and discharge of FGM protection orders. An order may be varied or discharged on an application by any party to the order; the girl being protected by the order; or any other person affected by the order. The court may also vary or discharge an order on its own initiative.

290. Paragraph 7 makes provisions for arrest under warrant. It provides for an interested party to apply to the relevant judge (as defined in paragraph 17(1)) for the issue of a warrant for the arrest of the person if the interested party considers that the person has failed to comply with an FGM protection order; or is otherwise in contempt of court in relation to such an order. This paragraph defines an interested party as the girl being protected by the order; the person who applied for the order or any other person (with leave).

291. Paragraph 8 makes provision about remand of someone arrested as described in paragraph 7. Paragraph 9 makes provision about medical examination and report under remand of such a person. Paragraphs 10 to 14 make further provision for remand.

292. Paragraph 15 provides that the powers of the court in relation to contempt of court arising out of a person's failure to comply with an FGM protection order, or otherwise in connection with such an order, may be exercised by the relevant judge (defined in paragraph 17(1)).

293. Paragraph 16 makes it clear that nothing in Part 1 of new Schedule 2 to the 2003 Act affects any other protection or assistance available to a girl who is or may become a victim of an FGM offence. For example, there will be occasions where it is appropriate to have prohibited steps orders, non-molestation orders or other protective orders in relation to children in place, alongside FGM protection orders.

294. Paragraph 17 deals with interpretation of the terms in relation to FGM protection orders.

295. Part 2 of new Schedule 2 to the 2003 Act makes equivalent provision, with appropriate modifications, for FGM protection orders in Northern Ireland. In Northern Ireland, the relevant court for making FGM protection orders is either the High Court or a county court (paragraph 24(1)). This is subject to any provision made by virtue of sub-paragraphs (4) or (5) of paragraph 24. Those sub-paragraphs apply, with modifications, the provisions of Article 34(3) to (10) of the Family Homes and Domestic Violence (Northern Ireland) Order 1998 (SI 1998/1071) which enable the Department of Justice in Northern Ireland, after consultation with the Lord Chief Justice, to specify, by order (subject to the negative resolution procedure), proceedings which may only be commenced in a specified level of court, a court which falls within a specified class of court, or a particular court determined in accordance with, or specified in, the order. This order-making power would therefore enable the Department of Justice to ensure that proceedings in relation to FGM protection orders are heard in the most appropriate court.

296. Paragraph 25(1) confers a power on the Department of Justice in Northern Ireland, after consultation with the Lord Chief Justice, to enable courts of summary jurisdiction to hear proceedings in respect of FGM protection orders. An order made under paragraph 25(1) may, in particular, make provision in relation to courts of summary jurisdiction corresponding to that made in the Family Homes and Domestic Violence (Northern Ireland) Order 1998, where courts of summary jurisdiction are relevant courts for the purposes of proceedings under that Order (see paragraph 25(2)). Paragraph 25(3) of new Schedule 2 enables an order to make necessary modifications to Part 2 of new Schedule 2 or any other enactment as a consequence of conferring jurisdiction on courts of summary jurisdiction. The order-making power is subject to the affirmative procedure (see paragraph 29(3)).

297. Paragraph 27 makes provision for appeals from the county courts to the High Court. Paragraph 28 confers an order-making power (subject to the negative procedure) on the Department of Justice, after consultation with the Lord Chief Justice, to specify the circumstances in which appeals may be made against decisions to transfer, or propose to transfer, proceedings as a result of an order made under Article 34(5) of the Family Homes and Domestic Violence (Northern Ireland) Order 1998, as applied by paragraph 24(4) and (5) of new Schedule 2 to the 2003 Act.

## **PART 6: MISCELLANEOUS AND GENERAL**

### **COMMENTARY ON CLAUSES**

#### **Clause 71: Knives and offensive weapons in prison**

298. It is not currently a criminal offence to possess an offensive weapon within prison. The offence of having an article with blade or point (or offensive weapon) in section 1 of the Prevention of Crime Act 1953 and section 139 and 139A of the Criminal Justice Act 1988 is confined to public places or schools. The term “public place” is defined in section 1(4) of the Prevention of Crime Act 1953 and section 139(7) of the Criminal Justice Act 1988 to include any place to which the public have, or are permitted to have access. A prison does not fall within the definition of a public place and possession of a weapon there is not therefore a criminal offence.

299. Whilst the possession offence for an offensive weapon is currently dealt with as a disciplinary offence within prison (for possession of an unauthorised article – see Rule 51(12)(a) of the Prison Rules 1999 (SI 1999/728)) the maximum penalty for the internal disciplinary offence is 42 added days served in prison (Rule 55(1) of the Prison Rules 1999) compared to the four years’ maximum for the equivalent offence in the community.

300. This clause inserts a new section 40CA into the Prison Act 1952 to provide for a new offence of unauthorised possession in prison of a knife or any other offensive weapon. Liability for the offence arises where a person has in his or her possession any article in prison that has a blade or is sharply pointed or any other



offensive weapon (as defined in section 1(9) of the Police and Criminal Evidence Act 1984, namely any article made or adapted for causing injury to persons or intended by the person having it with him for such use by him or some other person). The term “possession” goes wider than a person having a relevant prohibited article with him or her, and also covers, for example, circumstances where a prisoner has hidden a knife in his or her cell. As a result of section 43(5) and (5A) of the Prison Act 1952, the offence also applies to possession of such articles in a young offender institution or secure training centre.

301. Under subsection (1) of new section 40CA, the offence is only committed where a person possesses a knife or other offensive weapon “without authorisation”. New section 40CA(5) applies the provisions in section 40E(1) to (3) of the Prison Act 1952 which defines “authorisation” for the purposes of the offences relating to prison security in section 40D of that Act. Section 40E(1) to (3) of the Prison Act 1952 provides that authorisation for the purposes of section 40D means authorisation given in relation to all prisons or prisons of a specified description by Prison Rules or administratively the Secretary of State or, in relation to a particular prison, by the Secretary of State or the governor, director of the prison or by a person authorised by the governor or director for this purpose. No provision in respect of authorisations under section 40E is currently made in Prison Rules. Annex 2 to Prison Service Instruction 10/2012<sup>29</sup> sets out authorisations given by the Secretary of State under sections 40B (which relates to the conveyance of unauthorised articles into and out of prison) and 40E of the Prison Act 1952. In relation to the conveyance of offensive weapons into and out of prison, Annex 2 authorises, amongst other things, Sikh members of the Chaplaincy carrying the Kirpan and police officers carrying extendable batons. It is envisaged that a Prison Service Instruction will authorise the possession of knives and other sharply pointed articles in a limited range of circumstances, including for the preparation of food and for use in workshops.

302. New section 40CA(3) provides for a defence where the accused individual reasonably believes that he or she had authorisation to possess the article or that there was an overriding public interest which justified possession of the article; the latter defence would cover, for example, where a prisoner takes a knife from a fellow inmate to prevent him or her using it.

303. New section 40CA(4) provides for the maximum penalty for the offence, namely four years’ imprisonment or a fine, or both, on conviction on indictment and 12 months’ imprisonment or a fine, or both, on summary conviction. Clause 74(12) reduces the maximum custodial sentence available on summary conviction to six months’ imprisonment until such time as magistrates’ courts sentencing powers are increased on the coming into force of section 154(1) of the Criminal Justice Act 2003.

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<sup>29</sup> <http://www.justice.gov.uk/downloads/offenders/psipso/psi-2012/psi-10-2012-conveyance-prohibited.doc>

**Clause 72: Preparation or training abroad for terrorism**

304. Section 5 of the 2006 Act makes it an offence to engage in any conduct in preparation for giving effect to an intention to commit, or assist another to commit, one or more acts of terrorism. Section 6 of the 2006 Act makes it an offence to provide or receive training for terrorism. The maximum penalty for these offences is life imprisonment and 10 years imprisonment respectively<sup>30</sup>. Section 17 of the 2006 Act provides for extra-territorial jurisdiction (that is, the offence may be tried in this country in respect of acts committed abroad) in respect of certain other offences under that Act, namely the offences in sections 1 (encouragement of terrorism), 6 (training for terrorism), 8 (attendance at a place used for terrorism training) and 9 to 11 (offences involving radioactive devices and materials and nuclear facilities) of the 2006 Act, and sections 11 (membership of proscribed organisations) and 54 (weapons training) of the Terrorism Act 2000. However, in the case of the section 1 and 6 offences, the extra-territoriality is limited in that it only applies insofar as those offences are committed in relation to the commission, preparation, or instigation of one or more “Convention offences”. “Convention offences” are those to which EU Member States are required to extend extra-territorial jurisdiction as a result of Article 14 of the EU Convention on the Prevention of Terrorism (May 2005); the relevant offences are set out in Schedule 1 to the 2006 Act. In the case of the section 5 offence, there is no extra-territorial jurisdiction.

305. This clause (together with the consequential amendment in paragraph 60 of Schedule 4) amends section 17(2) to provide for extra-territorial jurisdiction for the section 5 offence and to extend the existing extra-territorial jurisdiction for the section 6 offence. As a result, a person who does anything outside of the UK which would constitute an offence under section 5 or 6 (whether in relation to a Convention offence or terrorism more widely) could be tried in the UK courts were they to return to this country. Extra-territorial jurisdiction is appropriate for these offences because the places where training or preparation for terrorism are taking place are increasingly likely to be located abroad. Extending the territorial jurisdiction in respect of these offences may allow for prosecutions of people preparing or training more generally for terrorism who have, for example, travelled from the UK to fight in Syria, where various terrorist groups, including Al-Qaida affiliated groups, are involved in the conflict.

**Clause 73: Approval of draft decisions under Article 352 of TFEU relating to serious crime**

306. This clause provides, for the purposes of section 8 of the European Union Act 2011, for the approval of two draft Decisions of the Council of the European Union under Article 352 of the Treaty on the Functioning of the European Union (“TFEU”).

307. Section 8 of the European Union Act 2011 sets out that a Minister of the Crown may not support an Article 352 Decision unless one of subsections (3) to (5) is

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<sup>30</sup> Clause 1(3) of the Criminal Justice and Courts Bill increases the maximum penalty for the offence in section 6 of the 2006 Act to life imprisonment.

complied with in relation to the draft Decision. Subsection (3) is complied with if the draft Decision is approved by Act of Parliament. Neither subsection (4) (urgent approval) nor (5) (exempt purposes) is applicable to the draft Decisions which are the subject of this clause. Therefore, an Act of Parliament is required before the UK may vote in favour of either Decision in the Council of the European Union. Article 352 of the TFEU is a legal base for measures that are in line with the objectives set out in the Treaties, but for which the Treaties have not explicitly provided the necessary powers. Article 352 requires unanimity in the Council of the European Council and the consent of the European Parliament.

308. Subsection (2)(a) provides for the approval of the draft Decision to repeal Council Decision 2007/124/EC, Euratom<sup>31</sup> (“the 2007 Decision”). The 2007 Decision established, for the period 2007 to 2013, an EU funding programme to protect people and critical infrastructure against terrorist attacks and other security-related incidents. As the period covered by this programme has now expired, the 2007 Decision is due to be repealed; it is the draft Council Decision<sup>32</sup> effecting that repeal which is the subject of subsection (2)(a). The funding programme provided for by the 2007 Decision has been replaced by the Internal Security Fund (Police)<sup>33</sup>. The Internal Security Fund (Police) will continue to fund many of the activities foreseen by the 2007 Decision including the protection of people and critical infrastructure and the management of security-related risks and crises. The UK has not opted in to the Internal Security Fund (Police) measure pre-adoption; no decision has been taken by the Government on whether to do so post-adoption.

309. The Commission published the draft Council Decision on 8 September 2013 (document number 15187/13). The European Parliament gave its consent to the repeal on 4 December 2013. The next step will be for the Council to act unanimously to adopt the text. The Council will only vote after all Member States have completed their domestic procedures and are in a position to vote in favour of repeal.

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<sup>31</sup> [http://www.biicl.org/files/4276\\_decision\\_2007-124-ec\\_est\\_spec\\_prog\\_on\\_prevention\\_preparedness\\_and\\_consequence\\_mgmt\\_of\\_terrorism.pdf](http://www.biicl.org/files/4276_decision_2007-124-ec_est_spec_prog_on_prevention_preparedness_and_consequence_mgmt_of_terrorism.pdf)

<sup>32</sup> <http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2015187%202013%20INIT>

<sup>33</sup> Regulation (EU) No 513/2014 of the European Parliament and of the Council of 16 April 2014 [http://ec.europa.eu/dgs/home-affairs/financing/fundings/pdf/overview/regulation\\_eu\\_no\\_5132014\\_of\\_the\\_european\\_parliament\\_and\\_of\\_the\\_council\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/financing/fundings/pdf/overview/regulation_eu_no_5132014_of_the_european_parliament_and_of_the_council_en.pdf)

310. The House of Commons European Scrutiny Committee considered this draft Decision in their 17<sup>th</sup>, 23<sup>rd</sup> and 33<sup>rd</sup> Reports of Session 2013-14. The draft Decision has now cleared scrutiny. The House of Lords European Union Committee cleared the draft Decision in their report Progress of Scrutiny 5<sup>th</sup> Edition Session 2013-14.

311. *Subsection (2)(b)* provides for the approval of the draft Decision of the Council of the European Union relating to the “Pericles 2020” programme. Council Regulation 1338/2001 established a harmonised framework for protecting the euro against counterfeiting. The effects of that Regulation were extended to those Member States which had not adopted the euro by Council Regulation 1339/2001. Those Regulations were supplemented by Council Decision 2001/923, which established a detailed action programme for the protection of the Euro against counterfeiting (“the Pericles Programme”). Council Decision 2001/924 extended the effect of Decision 2001/923 to those Member States that had not adopted the euro. In 2011, the European Commission concluded that the Pericles Programme should be renewed. The renewed programme (“the Pericles 2020 programme”) runs from 1 January 2014 to 31 December 2020 and is established by Council Regulation 331/2014<sup>34</sup>. The legal basis for this Regulation is Article 133 of the TFEU. This provides that “the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall lay down the measures necessary for the use of the euro as the single currency”. In the same way as the effect of Council Regulation 1338/2001 and Council Decision 2001/923 was extended to those Member States which had not adopted the Euro, the effect of Council Regulation 331/2014 will be extended to those same Member States. That will be done by way of a measure the legal basis for which is Article 352 of the TFEU. The Council agreed the text of the draft Regulation on 29 November 2013 (document number 16616/13)<sup>35</sup>. The European Parliament gave its consent to the draft Regulation on 12 March 2014. The Council will vote on the final Regulation by unanimity once all Member States have completed their domestic procedures and are in a position to vote in favour.

312. The House of Commons European Scrutiny Committee considered the draft Regulation in its 56<sup>th</sup> Report of Session 2010-12, 2<sup>nd</sup> Report of Session 2012-13 and 1<sup>st</sup> Report of Session 2014-15. The draft Regulation has now cleared scrutiny by that Committee. The House of Lords European Union Committee has also cleared the document<sup>36</sup>.

#### **Clause 74: Minor and consequential amendments**

313. *Subsection (1)* introduces Schedule 4 which contains minor and consequential amendments to other enactments.

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<sup>34</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32014R0331&qid=1399564678498&from=EN>

<sup>35</sup> [http://www.europarl.europa.eu/meetdocs/2009\\_2014/documents/cls/cons\\_cons%282013%2916616/\\_cons\\_cons%282013%2916616\\_en.pdf](http://www.europarl.europa.eu/meetdocs/2009_2014/documents/cls/cons_cons%282013%2916616/_cons_cons%282013%2916616_en.pdf)

<sup>36</sup> *Progress of Scrutiny* 1st Edition Session 2012-13

314. *Subsections (2) to (7)* enable the Secretary of State, by regulations, to make provision consequential upon the Bill, including consequential amendments to other enactments. Any such regulations which amends, repeals, revokes or otherwise modifies provision in primary legislation is be subject to the affirmative resolution procedure, otherwise the negative resolution procedure applies.

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

315. *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 clauses 67 to 69.

316. *Paragraph 2* amends section 50 of the Criminal Appeal Act 1968 consequential on clause 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 clause 3. *Paragraph 3* makes a similar amendment to the Criminal Appeal (Northern Ireland) Act 1980 consequential on clause 26.

317. *Paragraph 4* 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.

318. *Paragraph 5(1)* amends the Civil Jurisdiction and Judgments Act 1982 consequential upon the provisions in clause 23. *Paragraph 3(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 3(1)* amends section 18(6A) of the Civil Jurisdiction and Judgments Act 1982 so as to adds orders relating to PPO receivers. *Paragraph 3(2)* enables the amendments made to the Civil Jurisdiction and Judgments Act 1982 by paragraph 3(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.

319. *Paragraph 6* 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 clause 41 of the Bill.

320. *Paragraph 7* makes a consequential amendment to the heading of section 3A of the 1990 Act arising from the provisions in clause 40.

321. *Paragraphs 8 to 10* make consequential amendments to the 1990 Act arising from the provisions in clause 39. In particular, the amendments to section 6 of that Act apply the extended extra-territorial jurisdiction provided for in clause 40 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).

322. *Paragraph 11* amends the heading of section 10 of the 1990 Act consequential upon clause 43.

323. *Paragraphs 13 to 15* make consequential amendments to the Criminal Procedure (Scotland) Act 1995. Paragraph 13 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 14 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 15 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 clauses 10 and 32 strengthening the default sentences for non payment of a confiscation order.

324. *Paragraph 16* 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.

325. *Paragraphs 17 to 23, 25 and 26* make amendments to sections 12, 14, 15, 19, 20, 21, 22, 32 and 33 of POCA consequential upon clause 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.

326. *Paragraph 24* amends section 31 of POCA consequential on clause 3. *Paragraph 24(2)* amends the title of section 31 in recognition of the fact that

that section no longer deals solely with appeals by prosecutors.

327. *Paragraph 24(3)* amends section 31(3), 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.

328. *Paragraph 27* amends section 35 of POCA consequential on clause 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 clause 10 now makes bespoke provision for default sentences in such cases.

329. *Paragraph 28* amends section 41 of POCA, which provides for restraint orders, consequential upon clause 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.

330. *Paragraph 29* 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 29 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).

331. *Paragraph 30* amends section 55 of POCA consequential upon clause 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 clause 6, have third call on such monies after meeting any expenses of an insolvency practitioner or

receiver where one or other has been appointed.

332. *Paragraph 31* amends section 89 of POCA consequential on clause 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 23, enables the Court of Appeal to award costs in respect of appeals against a determination under new section 10A.

333. *Paragraphs 32 to 39* make like amendments to Part 3 of POCA (Confiscation: Scotland) to those made by paragraphs 18 to 23, 27 and 29.

334. *Paragraph 40* makes a similar amendment to section 131 of POCA to that made to section 55 of that Act by paragraph 30.

335. *Paragraphs 42 to 46* make like amendments to Part 4 of POCA (confiscation: Northern Ireland) to those made by paragraphs 17, 24, 27, 28 and 29.

336. *Paragraphs 47 and 48* make consequential amendments to sections 273 and 277 of POCA as a result of the provisions in clause 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 47 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 48 effects the same consequential amendment.

337. *Paragraph 49*, which is consequential upon clause 23, adds a reference to a PPO receiver to the general interpretation section in Part 5 of POCA.

338. *Paragraph 51* 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 clause 37, attract the appropriate definitions of those terms contained in Parts 2 (England and Wales), 3 (Scotland) and 4 (Northern Ireland) of the Act.

339. *Paragraph 53*, which is consequential upon clause 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.

340. *Paragraph 55* amends Schedule 3 to the Sexual Offences Act 2003 consequential on clause 66. The effect is to subject a person convicted of the offence of possession of a paedophile manual to the notification requirements in Part 2 of the Sexual Offences Act 2003, if the person 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").

341. *Paragraphs 57 to 59* amend Chapter 3 of Part 2 of SOCPA as a consequence of the abolition of FROs by clause 49.

342. *Paragraphs 62 to 67* make consequential amendments to the 2007 Act arising from the provisions in clauses 45 to 49.

343. *Paragraph 62* makes an amendment to section 9 of the 2007 Act consequential upon clause 48. 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.

344. *Paragraphs 63 to 66* amend sections 16, 19, 21 and 36 of the 2007 Act to take account of new section 22E, inserted by clause 48, 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.

345. *Paragraphs 67 and 68* make consequential amendments to the 2007 Act arising from clause 44. *Paragraph 67* adds the new participation offence as provided for in clause 44 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 68* 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.

346. *Paragraphs 69 to 71* make consequential amendments to Part 4 of the 2009 Act arising from clause 50 to reflect the extension of gang injunctions to cover drug-dealing activity as well as gang-related violence. *Paragraph 72* 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. *Paragraph 73* makes a consequential amendment 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.

347. *Paragraph 74* 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 clause 6 and paragraph 28 of Schedule 4.

#### **Clause 74: Transitional and saving provisions**

348. This clause contains various transitional provisions.

349. *Subsections (1), (3) and (4)* provide that a compliance order, as provided for in new sections 13A, 97B and 163A of POCA, may only be made in respect of confiscation orders made after commencement of clauses 7, 16 and 29.

350. *Subsection (2)* provides that the ending of automatic early release for persons serving a default sentence in respect of the non-payment of a confiscation order of more than £10 million, as provided for in clause 10(3), does not have retrospective effect.

351. *Subsections (5), (6) and (10)* ensure that the modifications to existing criminal offences made by the Bill do not have retrospective effect.

352. *Subsections (7), (8) and (9)* provide that the repeal of sections 76, 77 and 78 of SOCPA, which provide for FROs, does not affect FROs made before commencement.

353. *Subsection (11)* provides that prior to the commencement of the relevant provisions of Courts Reform (Scotland) Act 2014, the avenue of appeal in Scotland under clause 61 will be to the sheriff principal rather than to the Sheriff Appeal Court.

354. *Subsection (13)* provides that the new offence of failure to protect a girl from risk of FGM does not have retrospective effect. The effect of *subsection (14)* is that the defendant is not placed under a duty before commencement to take reasonable steps to try to prevent FGM taking place.

#### **Clause 75: Extent**

355. This section sets out the extent of the provisions in the Bill (see paragraphs 8 to

13 for further details).

#### **Clause 76: Commencement**

356. This clause provides for commencement (see paragraph 358 for further details).

357. *Subsection (8)* enables the Secretary of State, the Scottish Ministers and the Department of Justice in Northern Ireland by regulations, to make transitional, transitory or saving provisions in connection with the coming into force of the provisions of the Bill. Such regulations are not subject to any parliamentary procedure.

### **COMMENCEMENT**

358. Clauses 73 (approval of draft Decisions under Article 352 of TFEU relating to serious crime), 74(2) to (7) and 75 to 78 (general) of the Bill come into force on Royal Assent. Clauses 67 to 69, which make amendments to the 2003 Act and the Prohibition of Female Genital Mutilation (Scotland) Act 2005, and 72 (and the associated consequential provisions in paragraph 60 of Schedule 4), which provides for or extends extra-territorial jurisdiction for the offences in sections 5 and 6 of the Terrorism Act 2006, come into force two months after Royal Assent. All other provisions will be brought into force by means of commencement regulations made by the Secretary of State or, in the case of the provisions in clauses 15 to 22 and 37(3) (and certain consequential amendments in Schedule 4), by the Scottish Ministers, or, in the case of the provisions in Chapter 3 of Part 1 (and certain consequential amendments in Schedule 4), by the Northern Ireland Department of Justice. The Scottish Ministers and the Northern Ireland Department of Justice are required to consult the Secretary of State before bringing provisions of the Bill into force. There is a reciprocal requirement on the Secretary of State to consult the Scottish Ministers and the Northern Ireland Department of Justice before bringing provisions into force in Scotland and Northern Ireland respectively which relate, at least in part, to devolved matters.

### **FINANCIAL EFFECTS OF THE BILL**

359. The main financial implications of the Bill for the public sector lie in the following areas. The figures set out in the paragraphs below, which relate to England and Wales, are based on a number of assumptions about implementation which are subject to change. Further details of the costs and benefits of individual provisions are set out in the impact assessments published alongside the Bill.

#### **Part 1: Proceeds of crime**

360. Clause 10 provides for an increase in default sentences where an offender fails to pay a confiscation order. The maximum sentence for orders valued between £500,000 and £1 million will rise from 5 years to 7 years and from 10 years to 14 years for orders in excess of £1 million. The clause also provides for the ending of automatic early release in cases where a confiscation order exceeds £10 million. If

these provisions were to result in no change in offender behaviour, it is estimated that the increase in default sentences will result in an increased prison population of 50 by 2026. The ending of early release for orders over £10 million will result in an estimated increase of the prison population of 10 by 2033. The estimated cost of these additional prison places will be £1.78 million per year from 2033. This estimate is based on year-on-year increases in costs until 2033, at which point they remain level. It is, however, expected that the increase in default sentences will lead to an increase in the number of offenders paying their confiscation orders. If payments for orders over £500,000 increase by 10%, the corresponding increase in confiscation receipts would total £2.25 million.

## **Part 2: Computer misuse**

361. Clause 40 provides for a new aggravated offence of impairing a computer. On the assumption of one case every other year it is estimated that the total cost for criminal justice agencies over a ten year period of £1 million.

## **Part 3: Organised, serious and gang-related crime**

362. Clause 44 provides for a new offence of participation in an organised crime group. Based on 100 to 200 additional proceedings per year for the new offence, the best estimate for the total annual cost for criminal justice agencies of this provision is £6.6 million.

363. Clauses 45 to 49 make changes to the SCPO. On the basis of these changes leading to an additional 60 additional SCPOs imposed in the Crown Court per year and four additional prosecutions for breach per year, the additional annual average cost to criminal justice agencies will be £0.15 million.

364. Clause 50 extends the circumstances in which a gang injunction may be granted. On the basis of this change leading to an additional 85 gang injunctions per year, the additional annual average cost to criminal justice agencies will be £1.1 million.

## **Part 4: Seizure and forfeiture of drug-cutting agents**

365. Part 4 of the Bill confers powers on law enforcement agencies to seize, detain and destroy chemical substances suspected of being used as cutting agents for illegal drugs. Based on 50 proceedings being brought per year under the new powers, the annual cost to Her Majesty's Courts and Tribunals Service and the Crown Prosecution Service (and their equivalents in Scotland and Northern Ireland) are estimated to be between £26,000 and £121,000, with a best estimate of £74,000. The provisions are expected to result in storage cost savings for law enforcement agencies, principally the NCA, of approximately £1.1 million per year.

## **Part 5: Protection of children etc**

366. Clause 65 provides for an offence of possession of a paedophile manual. The number of prosecutions per year is expected to be low. The estimated cost to criminal

justice agencies per prosecution will be up to £11,000.

367. Clause 67 extends extra-territorial jurisdiction for the offences in the Female Genital Mutilation Act 2003. The CPS announced the first prosecutions for FGM in March 2014. Based on an estimated additional two prosecutions per year, the estimated annual cost to criminal justice agencies (the CPS, legal aid, HM Courts and Tribunals Service (HMCTS) and prison and probation services) would be approximately £300,000 in steady state (reached in year six after implementation). Clause 68 confers lifelong anonymity on the victims of FGM. Ensuring victim anonymity is expected to increase the number of victims coming forward, which may increase the number of prosecutions for FGM. It is estimated that each additional prosecution would cost criminal justice agencies some £60,000. Breaching victim anonymity will result in a summary offence punishable by a fine (the maximum penalty being an unlimited fine). The overall impact of this is likely to be minimal with only a small cost to the CPS and HMCTS. Clause 69 provides for a new offence of failing to protect a girl from the risk of genital mutilation. The new offence could result in up to 10 additional prosecutions per year, resulting in costs for criminal justice agencies of up to some £1.1 million. Clause 70 provides for FGM protection orders. The legal aid and HMCTS cost per case is estimated to be £5,000. Breach of an order could be dealt with either as a criminal matter or as a civil contempt of court, either of which would incur costs to some or all of the justice agencies listed above. Based on evidence from forced marriage protection orders, the number of breaches dealt with is expected to be low.

#### **Part 6: Miscellaneous and general**

368. Clause 71 provides for an offence of unauthorised possession in prison of a knife or offensive weapon. Based on an estimated 28 to 83 prosecutions per year, the estimated annual cost to criminal justice agencies would be between £250,000 and £850,000.

369. Clause 72 provides for or extends existing extra-territorial jurisdiction for the UK courts in respect of the offences in section 5 (preparation for terrorist acts) and 6 (training for terrorism) of the Terrorism Act 2006. These provisions are expected to be cost neutral to the criminal justice system in the long term. If the individuals were not prosecuted at an early stage, they could go on to commit terrorist attacks (at much greater cost to the criminal justice system). The estimated costs per defendant to criminal justice agencies for section 5 and 6 are estimated to be between £950,000 - £1.5 million and £850,000 - £1.45 million respectively.

370. The other provisions in the Bill are not expected to have a material financial impact on public sector bodies.

#### **EFFECTS OF THE BILL ON PUBLIC SECTOR MANPOWER**

371. The provisions in the Bill are not expected to have an impact on public sector

manpower.

## **SUMMARY OF IMPACT ASSESSMENT**

372. The Bill is accompanied by an overarching impact assessment. A further nine impact assessments are available on individual provisions. The impact assessments are available on the Government website. The individual impact assessments deal with the following provisions:

- Amendments to the Proceeds of Crime Act 2002 (Part 1 of the Bill);
- Amendments to the Computer Misuse Act 1990 to provide for a new aggravated offence of impairing a computer (clause 40);
- Amendments to the Computer Misuse Act 1990 to give full effect to the EU Directive on attacks against information systems (clauses 41 and 42);
- New offence of participating in organised crime (clause 44);
- Amendments to Part 1 of the Serious Crime Act 2007 (SCPOs) (clauses 45 to 49);
- Amendments to Part 4 of the Policing and Crime Act 2009 (Injunctions: gang-related violence) (clause 50);
- New powers to allow law enforcement agencies to seize, detain and destroy drug-cutting agents (Part 4);
- New offence of unauthorised possession in prison of a knife or offensive weapon (clause 71); and
- Amendment to the Terrorism Act 2006 to provide for the UK courts to have extra-territorial jurisdiction in respect of the offence in section 5 (preparation of terrorist acts) and extend the scope of the existing jurisdiction in respect of the offence in section 6 (training for terrorism) (clause 72).

373. The provisions of the Bill impact mainly on the public sector, in particular: the NCA, police forces (in the United Kingdom), local authorities, the Crown Prosecution Service (in England and Wales), the Crown Office and Procurator Fiscal Service (in Scotland), the Public Prosecution Service for Northern Ireland, the courts (in the UK) and prison and probation services (in the UK). The provisions in Part 1 may also impact on financial institutions as a result of the extension of the investigation powers under POCA.

*These notes refer to the Serious Crime Bill as brought from the House of Lords on 6 November 2014 (Bill 116)*

## **EUROPEAN CONVENTION ON HUMAN RIGHTS**

374. Section 19 of the Human Rights Act 1998 requires the Minister in charge of a Bill in either House of Parliament to make a statement before Second Reading about the compatibility of the provisions of the Bill with the Convention rights (as defined by section 1 of that Act). The Home Secretary, the Rt Hon Theresa May MP, has made the following statement:

“In my view the provisions of the Serious Crime Bill are compatible with the Convention rights.”

375. The Government has published separate ECHR memorandums with its assessment of compatibility of the Bill’s provisions with the Convention rights: these memorandums are available on the Government website.

*These notes refer to the Serious Crime Bill as brought from the House of Lords on 6 November 2014 (Bill 116)*

## **ANNEX A**

### **GLOSSARY**

|                       |   |
|-----------------------|---|
| 1933 Act              | Children and Young Persons Act 1933   |
| 1971 Act              | Misuse of Drugs Act 1971  |
| 1986 Act              | Insolvency Act 1986   |
| 1990 Act              | Computer Misuse Act 1990  |
| 2000 Act              | Powers of Criminal Court (Sentencing) Act 2000  |
| 2003 Act              | Female Genital Mutilation Act 2003  |
| 2006 Act              | Terrorism Act 2006  |
| 2007 Act              | Serious Crime Act 2007  |
| 2009 Act              | Policing and Crime Act 2009   |
| Affirmative procedure | Statutory instrument that are subject to the “affirmative procedure” must be approved by both the House of Commons and the House of Lords to become law.                  |
| CPS                   | Crown Prosecution Service   |
| FGM                   | Female Genital Mutilation   |
| The Directive         | Directive 2013/40/EU on attacks against information systems   |
| FRO                   | Financial Reporting Order   |
| NCA                   | National Crime Agency   |
| Negative procedure    | Statutory instruments that are subject to the “negative procedure” automatically become law unless there is an objection from the House of Commons or the House of Lords. |



*These notes refer to the Serious Crime Bill as brought from the House of Lords on 6 November 2014 (Bill 116)*

|       |   |
|-------|---|
| PACE  | Police and Criminal Evidence Act 1984           |
| POCA  | Proceeds of Crime Act 2002                      |
| PPO   | Prohibitory Property Order                      |
| SCPO  | Serious Crime Prevention Order                  |
| SOCPA | Serious Organised Crime and Police Act 2005     |
| TFEU  | Treaty on the Functioning of the European Union |

## **ANNEX B**

### **OVERVIEW OF THE CONFISCATION PROCESS UNDER POCA**

#### **1. Confiscation**

##### **1.1 Basic concepts**

Confiscation is the process used by the courts to take away the proceeds of criminal conduct. The trigger that sets this process in motion is a conviction for a criminal offence (or offences) from which the defendant has benefited. A confiscation order will be made against the defendant for a sum of money, not specific property. A confiscation order can presently only be made by the Crown Court, although there are provisions in SOCPA for the Secretary of State, by order, to make provision that would enable a magistrates' court in England and Wales to make a confiscation order.

##### **1.2 Benefit**

An offender benefits from criminal conduct if he or she obtains property as a result of that conduct or in connection with it. The benefit is the value of the property obtained. It is important to note that the benefit is not the profit made from the conduct, but the total value of property obtained. For example, an offender acquired heroin with a street value of £10,000, the offender's benefit is £10,000 – even if the heroin was seized by police before the offender was able to sell it and realise any profit.

##### **1.3 Obtaining an order**

Under POCA, the confiscation procedure is mandatory and the court **must** proceed to confiscation if the defendant:

- is convicted of an offence or offences (from which they have benefited) in proceedings before the Crown Court,
- is convicted of an offence or offences (from which they have benefited) in proceedings before a magistrates' court and is committed to the Crown Court for sentencing, or
- is convicted of an offence or offences in proceedings before a magistrates' court and is committed to the Crown Court with a view to a confiscation order being made,

and the court is asked to proceed by the prosecutor or the court believes it is appropriate to do so.

The Crown Court is under a duty to proceed with confiscation unless the court believes that a victim has begun, or intends to begin, civil proceedings against the defendant, in which case the Court has discretion to determine whether or not to proceed.

#### **1.4. The court process**

When the prosecutor indicates to the court that they wish to proceed to confiscation, an order under section 18 may be served on the defendant. This requires the defendant to declare all assets in which he or she has an interest. Once the section 18 response has been received, the prosecutor will prepare a statement of information (a “section 16 statement”). The section 16 statement sets out the prosecution position and details the defendant’s benefit from criminal conduct.

The defence will respond to the section 16 statement with a statement of information (under section 17 of POCA). The statement of information procedure is designed to provide a quick and effective method of identifying the extent of the defendant’s benefit.

At the confiscation hearing the court must decide whether the defendant has a criminal lifestyle or has benefited from particular criminal conduct (see below). When assessing the defendant’s benefit at the hearing the court must take account of conduct occurring, and property acquired, up to the time it makes its decision.

The court must always deal with the issue of confiscation upon conviction and prior to sentence. The proceedings can, however, be postponed:

- on application by the defendant;
- on application by the prosecutor; or
- if the court believes it is appropriate.

If either the prosecutor or defence require time to present their case in relation to confiscation proceedings, the court may set a date for the confiscation hearing and specify dates by which the prosecutor’s statements and defence responses are to be served. Proceedings may not be postponed for more than two years from the date of conviction unless, in the view of the court, there are exceptional circumstances.

A confiscation order is payable as soon as the order is made unless the defendant can show the court that he or she needs time to pay. If this is the case, the court may extend the time to pay for up to six months from the date the order is made. If the court believes there are exceptional circumstances then it may extend the period in which payment is due to a maximum of 12 months. The defendant may apply to the court under this provision at any time after the confiscation order is made, but not after the six month period has elapsed. Time to pay should not be granted unless the prosecutor has been given the opportunity to make representations.

#### **1.5. Criminal conduct**

Criminal conduct is defined as:

“Conduct that constitutes an offence in any part of the UK or, if the conduct occurred elsewhere, would constitute an offence in any part of the UK if it occurred there”.

Criminal conduct can be either “**particular**” or “**general**”. This affects the way a confiscation case proceeds and can lead to distinct confiscation regimes: particular criminal conduct or general criminal conduct (criminal lifestyle).

#### Particular criminal conduct

Particular criminal conduct refers to offences that the defendant has been convicted of in the current (confiscation) proceedings and all other offences taken into consideration.

#### Example of “particular criminal conduct”

An example would be where the court is considering a confiscation order in relation to a defendant who is convicted of a single offence of theft (say, a watch valued at £800) from a jeweller’s and asks the court to take a similar offence (of obtaining a shirt valued at £50) into consideration. The benefit in this case totals £850 and the court can make a confiscation order in this amount.

#### General Criminal Conduct

“General criminal conduct” means the defendant’s criminal conduct, whenever the conduct occurred and whether or not it has ever formed the subject of any criminal prosecution. “General criminal conduct” therefore would include any “particular criminal conduct”. This regime depends on the concept of “criminal lifestyle”. The court must apply the assumptions to all of the defendant’s income and expenditure in the previous six years if the court decides the defendant’s benefit to be from general criminal conduct.

The following assumptions may be applied, unless it is found to be incorrect or there is a serious risk of injustice:

- that any property transferred to the defendant at any time after the relevant date,
- any property held by the defendant at any time after conviction,
- any expenditure incurred by the defendant after the relevant date, for instance luxury holidays,

is tainted or obtained by criminality

- and the defendant obtained the property free from any other interests.

If the prosecution is alleging general criminal conduct, it is suggesting that the defendant has been a career criminal and that assets obtained or enjoyed by him or her are tainted or obtained by criminality.

Section 75 of POCA sets out a number of tests that are applied. A person has a criminal lifestyle if one or more tests are met, including whether the defendant has

committed specific offences under Schedule 2 to POCA (for example, drug trafficking).

It is assumed that the defendant's entire income over the previous six years represents the proceeds of crime. With general, or "lifestyle" offences, the prosecution can look at a defendant's benefit for a period going back six years from the "relevant date". The relevant date is the day when the proceedings started, usually the date of charge.

### **1.6. Recoverable amount**

Once the defendant's benefit has been determined the court must decide the available and recoverable amounts and to make an order requiring the defendant to pay that amount. The "recoverable amount" is a sum of money equal to the defendant's benefit from the conduct concerned allowing for the change in the value of money. The court will endeavour to recover the full value of a defendant's benefit from criminal conduct, whether particular or general. Where this is not possible, for example where the defendant's personal wealth is now less than the benefit obtained, the court will determine the available amount. This is a sum of money due to be paid immediately and comprises:

- the total value of all the defendant's free property<sup>37</sup> at the time the confiscation order is made (that is, the total value of all their property minus any priority obligations<sup>38</sup>); plus
- the value of any tainted gifts.

The court will adopt a staged approach and attempt to recover:

- the full value of the benefit, or
- if the defendant's assets are less, the available amount, or
- if less, a "nominal amount" – for example £1.

An example of how the recoverable amount is calculated is provided at Appendix (i).

Once a confiscation order has been made, the court must specify the sentence to be served in default, that is should the defendant fail to pay. This is the additional prison sentence that the defendant must serve if the order is not satisfied within the time allowed by the court. The maximum period of imprisonment depends upon the amount due and currently ranges from seven days to 10 years.

The court must have regard to the confiscation order before imposing a fine or other order involving payment on the defendant, except for a compensation order, but otherwise to leave the confiscation order out of account in sentencing the defendant.

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<sup>37</sup> Property is all free property wherever situated and includes money, all forms of real or personal property and other intangible property. Property is free unless there is a pre-existing court order in respect of it (section 8).

<sup>38</sup> Priority obligations include fines or other court orders made prior to the confiscation order.

### **1.7. Enforcement**

The magistrates' court ("enforcement authority") has the ultimate responsibility for enforcing a confiscation order and it will enforce the order as if it were a fine. Once the payment period has expired, the enforcement authority can use its own powers to issue a distress warrant for bailiffs to realise assets. This is usually a two-stage process: initial distress warrants are only for known assets. If the order is not satisfied by the recovery (realisation) of those assets, a further warrant may be issued specifying the value to be realised without listing individual assets. However, in cases where there are assets outside the jurisdiction, existing restraint orders, property held in names of third parties and involving real property or appointing receivers, the enforcer will normally be the Crown Prosecution Service, the National Crime Agency or the Serious Fraud Office. In these matters both enforcement and prosecution authorities will work closely together to achieve the payment of confiscation orders.

It is the defendant's responsibility to apply for a variation or discharge of the order where the assets are not sufficient to satisfy the confiscation order. In the cases where assets have been realised, but have generated lower than estimated values and no further assets exist, the prosecution may consent to the variation or discharge being sought.

The defendant (or receiver, if appropriate) may apply to the court for the amount of an order to be reduced if the available amount is insufficient for full payment. This is dealt with under section 23 of POCA which provides that the court "may substitute such smaller amount as the court believes is just". The defendant must show that there is good reason why they no longer have sufficient assets to pay the order.

A confiscation order must be paid immediately unless it is shown that the defendant requires time to pay. The magistrates' court will impose the default sentence (previously determined by the Crown Court) if the defendant fails to pay, but serving the sentence does not remove the debt. Any default sentence will run consecutively (in addition) to the substantive sentence. Interest is payable on any outstanding amount once the time to pay has expired.

## **2. Restraint**

### **2.1 Basic concepts**

Effectively a restraint order freezes a defendant's assets so that they may be used to satisfy a confiscation order and prohibits a specified person(s) from dealing with any realisable property held by them. These specified persons can include third parties holding property. A restraint order may apply to all realisable property held by the defendant wherever it is in the world. This includes cash and any realisable property transferred to the defendant after the order is made and any other property which the defendant may hold but which the investigator is unaware of. Subject to the precise terms of the restraint order, the defendant may be responsible for returning all property held abroad to the jurisdiction of the court. Anyone who holds property jointly with the defendant or on their behalf may be specifically restrained from

dealing with such property or property deemed to be a tainted gift. The court can make any order it believes is appropriate to ensure that a restraint order is effective.

An order cannot restrain property of greater value than the alleged benefit of the criminal conduct.

The court must discharge the restraint order if criminal proceedings do not commence within a reasonable time, an application by the prosecutor for reconsideration of the case or benefit has not been made, an application for confiscation where the defendant has absconded has not been made or upon conclusion of any proceedings. The court must also discharge the restraint order when a confiscation order is not made or the order is satisfied.

## **2.2 Applying for a Restraint Order**

A restraint order may be obtained where there is reasonable cause to believe that that an alleged offender has benefited from their criminal conduct, and at any time after:

- a criminal investigation has started with regard to an offence,
- proceedings have been started for an offence but not concluded,
- an application has been made by the prosecutor for reconsideration of a case, benefit or available amount, or
- an application for confiscation has been made where the defendant has absconded.

A restraint order may also be obtained when:

- an application has been, or is likely to be, made by the prosecutor for reconsideration of benefit where a confiscation order has already been made,
- an application has been, or is likely to be, made by the prosecutor for reconsideration of the available amount where a confiscation order has already been made.

Applications for a restraint order may be made without the subject of the order being notified (to avoid the subject taking action to hide or dissipate the assets) to a Crown Court judge by:

- the prosecutor; or
- an accredited financial investigator.

An application for a restraint order will take the form of a written statement by a financial investigator giving details of the case and the defendant's benefit and property (including any tainted gifts).

## **2.3 Serving a Restraint Order**

The investigator is responsible for serving the restraint order on the defendant (and any other affected parties) as soon as possible after the court grants it. The defendant

*These notes refer to the Serious Crime Bill as brought from the House of Lords on 6 November 2014 (Bill 116)*

must be served with the restraint order together with the copy of the investigator's witness statement.

### **3. Investigation**

Part 8 of POCA provides investigation powers for confiscation and other investigations under the Act. A confiscation investigation is an investigation for the purposes of determining whether a person has benefited from criminal conduct. These investigation tools include: production orders, search and seizure warrants, disclosure orders, customer information orders and account monitoring orders. Applications for these investigative tools may only be made to a court by an appropriate officer and may be sought before, after or at the same time as an application for a restraint order. The granting of an order is dependent on appropriate statutory requirements being met.



### Production Orders

These allow appropriate officers to obtain information about the financial affairs of a person subject to a confiscation, money laundering or civil recovery investigation, most usually in relation to his or her bank accounts. A production order requires the person in possession or control of the material (for example, a bank or building society) to produce it to an appropriate officer to take away, or give an appropriate officer access to it within the period stated in the order.

### Search and Seizure Warrants

A search and seizure warrant authorises an appropriate officer to enter and search specified premises and to seize and retain any material found which is likely to be of substantial value (whether or not by itself) to a money laundering, confiscation, detained cash, civil recovery or exploitation proceeds investigation.

### Disclosure Orders

A disclosure order is an order authorising an appropriate officer to give notice to any person requiring him or her to answer questions, to provide information or to produce documents relating to any matter relevant to the investigation. This order gives extensive powers throughout a confiscation or civil recovery investigation. Thus, unlike other orders, it does not have to be applied for separately on each occasion. It is not available for money laundering investigations.

### Customer Information Orders

These are court orders requiring financial institutions to identify whether the person under investigation holds or has held an account at the financial institution and to provide specified information about the customer. This may be useful where, for example, it is suspected that a person has substantial assets lodged with various unknown banks in a particular area or lodged in different names. The order allows the investigator to send written notice to all banks in the area requiring them to search for accounts held by the person under investigation. The bank may be required to search for all names known to be used by the person under investigation. Customer Information Orders are available for money laundering, exploitation proceeds and confiscation or civil recovery investigations.

### Account Monitoring Orders

These allow appropriate officers to obtain account information (including transaction details) over a defined period from a financial institution for up to 90 days at a time. The order is available for confiscation, money laundering and exploitation proceeds investigations.

## **Appendix (i)**

### **Example Calculation of Benefit (Particular Criminal Conduct)**

#### **Summary of offences charged**

Following a house break in, cash to the value of £50,000 was stolen. The defendant was subsequently charged with a single offence of burglary contrary to section 9(1)(b) of the Theft Act 1968.

The defendant was found guilty of the above offence and asked for one further offence, relating to the theft of £1,000 from a neighbour of the principal victim to be taken into consideration.

#### **Personal History/Lifestyle**

The defendant owns a property which he inherited from his mother and is currently valued at £240,000.

The defendant claimed, when arrested, that he had spent the money he stole gambling. Enquiries indicate that he recently lost £40,000 in a local casino. Since the offence, the defendant also purchased a vehicle for £10,000. The defendant still has possession of this vehicle.

The defendant has been convicted of one previous offence of dishonesty.

The defendant's wife does not work and has been claiming benefits.

#### **Extent of Benefit**

##### **Particular Criminal Conduct**

|   |         |
|---|---------|
| Benefit derived as a result of the offences as charged:               | £50,000 |
| Benefit derived as a result of the offences taken into consideration: | £1,000  |
| Total benefit:  | £51,000 |

In accordance with section 80(2)(a) of POCA, the value of monies obtained should be adjusted to take account of the changes in the value of money. Using the Retail Prices Index, additional benefit as at the date of the confiscation hearing would be calculated.

*These notes refer to the Serious Crime Bill as brought from the House of Lords on 6 November 2014 (Bill 116)*

|   |                |
|---|----------------|
| Monies obtained from particular criminal conduct      | £51,000        |
| Change in value of money                              | £983           |
| <b>Total benefit from particular criminal conduct</b> | <b>£51,983</b> |

### **Confiscation order**

If the court accepts that the defendant has benefited from the proceeds of crime to the extent of £51,983 then the court should declare the benefit in that amount, or in any other amount in respect of which the court finds the defendant has benefited.

The recoverable amount is an amount equal to the defendant's benefit from the conduct concerned. If the defendant shows that the available amount is less than the benefit, the court should make a confiscation order in that sum.

The onus is on the defendant to provide the court with full details of all his free property, including full valuations for any houses he has an interest in. He will also need to supply the court with details of the likely costs that will be incurred in realising the property.

In this example, the defendant has property valued at £240,000 and a vehicle now valued at £6,000. The available amount is therefore £246,000. As the available amount is higher than the recoverable amount, the confiscation order should be made in the sum of £51,983.

FROM THE OFFICE OF THE JUSTICE MINISTER



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Our ref SUB/812/2014

**From:** Tim Logan  
**Date:** 25 June 2014  
**To:** Christine Darrah

### Summary

**Business Area:** Protection and Organised Crime Division.

**Issue:** Notice of intention to seek a Legislative Consent Motion for the Serious Crime Bill

**Restrictions:** None.

**Action Required:** To seek the Justice Committee's views on the Department's proposals to extend certain provisions in the Home Office's Serious Crime Bill dealing with devolved areas to Northern Ireland using a Legislative Consent Motion.

**Officials Attending:** N/A. This is a written briefing.

## **HOME OFFICE SERIOUS CRIME BILL- IMPLICATIONS FOR NORTHERN IRELAND AND POSSIBILITY OF A LEGISLATIVE CONSENT MOTION:**

### Background

Serious and organised crime includes drug trafficking, human trafficking, organised illegal immigration, child sexual exploitation, high value fraud and other financial



crime, counterfeiting, organised acquisitive crime and cyber-crime. Organised Crime costs the United Kingdom at least £24 billion each year. As at December 2013, there are some 36,600 organised criminals in 5,300 groups currently operating in ways that directly affect the United Kingdom.

2. The principal objective of the Serious Crime Bill, which was introduced at Westminster in early June, is to ensure that law enforcement agencies have effective legal powers to deal with the threat from serious and organised crime. In particular, the Bill is intended to:

- Strengthen the operation of the asset recovery process by gaps in the Proceeds of Crime Act 2002 (POCA);
- Better tackle people who actively support, and benefit from, participating in organised crime;
- Create new powers to seize and detain chemical substances suspected of being used as cutting agents for illegal drugs; and
- Amend the Computer Misuse Act 1990 to update the existing offences to cover importing tools for cyber-crime (such as data programmes designed for unlawfully accessing a computer system).

3. The Bill is in six Parts:

Part 1 makes provision in respect of the recovery of property derived from the proceeds of crime.

Part 2 makes amendments to the Computer Misuse Act 1990.

Part 3 principally provides for a new offence of participating in the activities of an organised crime group.

Part 4 provides for the seizure and forfeiture of substances used as drug-cutting agents.

Part 5 amends the criminal law in relation to the offences of child cruelty and female genital mutilation and provides for a new offence of possession of "paedophile manuals" for grooming children.

Part 6 provides for, or extends, extra-territorial jurisdiction in respect of the offences in sections 5 (preparation of terrorist acts) and 6 (training for terrorism) of the Terrorism Act 2006 and confers parliamentary approval (as required by section 8 of the European Union Act 2011) for two draft Council Decisions under Article 352 of the Treaty on the Functioning of the European Union ("TFEU"). Part 6 also contains minor and consequential amendments to other enactments and general provisions, including provisions about territorial application and commencement.

### **Effect on Northern Ireland**

4. The Bill's proposals therefore cover a range of areas with varying levels of impact on Northern Ireland. There are proposals in the non-devolved arena where, while we have been asked for an opinion, we have no legislative power over the decision making process, for example the amendments to the Computer Misuse Act 1990 and the amendments to the Terrorism Act 2006. There are other proposals impacting on devolved areas where, in order for Northern Ireland to maintain parity with legislation in the rest of the United Kingdom on legislation which is correctly United Kingdom wide, we would need to either legislate locally or give legislative consent to Westminster to do so on our behalf. There are other devolved issues which the Minister believes need to be considered in a Northern Ireland context outside the Bill, such as any new offence of participating in the activities of an organised crime group.

### **Legislative handling**

5. In order to bring in the recommended devolved aspects of the Bill here (see below) we would need local primary legislation or a Legislative Consent Motion. Given the current legislative programme, this would delay introduction of legislation until 2016 at the earliest. There would also be considerable



complications in managing the combination of reserved and devolved measures. Furthermore, and significantly, especially for the measures amending existing UK wide legislation, we believe the nature of the provision is such that it is important for judicial and law enforcement consistency that we maintain parity in a timely manner. It is felt, therefore, that the most appropriate approach is to request legislative consent from the Assembly for Westminster to legislate on our behalf.

6. This paper deals with each Part of the Bill in turn:

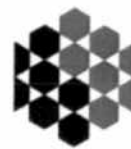
## **Part 1 - Additional provision in respect of the recovery of property derived from the proceeds of crime**

POCA is under sustained legal challenge from criminals who are constantly seeking new ways to avoid its reach and frustrate asset recovery. A number of proposals have been developed to: strengthen the legislation by, amongst other things, ensuring that criminal assets cannot be hidden with spouses, associates or other third parties; substantially strengthen the prison sentences for failing to pay confiscation orders; enable assets to be frozen more quickly and earlier in investigations; significantly reduce the time that the courts can give offenders to pay confiscation orders; and extend the investigative powers in POCA so that they are available to trace assets once a confiscation order is made. The provisions in Part 1 of the Bill give effect to these. They also implement two recommendations on asset recovery made by the Joint Committee on the Draft Modern Slavery Bill in their April 2014 report on the draft Bill. Specifically, the Joint Committee recommended that the test for obtaining a restraint order be amended to make it less stringent (it is also proposed to make this amendment for search and seizure powers) and indicated that it would welcome stronger sanctions for non-payment of confiscation orders.

### **Northern Ireland**

Asset recovery across the United Kingdom is legislated for through the Proceeds of Crime Act 2002 (POCA). The geographic extent varies throughout this legislation with some clauses extending across the United Kingdom and others having limited jurisdiction. The position is that, at present, there is a high degree of parity of asset recovery legislation across the United Kingdom. This parity is important in terms of operation of what is complicated legislation and relevant in terms of practicality in dealing with cases which span jurisdictions or where an organisation spans jurisdictions. We would also be concerned if Northern Ireland's provisions had gaps which were filled in England and Wales in case these were exploited (arguably it would also be preferable for defence lawyers).





The Department, having consulted stakeholders, believes it is important to assist the law enforcement effort.

Subject to some minor exceptions (which are identified below), we propose to seek equivalent legislation for Northern Ireland. In order to avoid a delay in the introduction of this legislation we would propose that the most efficient way of achieving this aim would be to give legislative consent to Westminster.

### **Consultation**

We have carried out a consultation with colleagues across the justice sector on these proposals and the results are included in our assessment of the proposals below. Unless otherwise indicated we propose to maintain parity with the Home Office proposals on the grounds of equity:

### **Proposed changes regarding confiscation arrangements in POCA Part 4 for Northern Ireland**

- Ensuring that criminal assets cannot be hidden with spouses, associates or other third parties. (*Clauses 22-25*)
- Home Office propose to amend section 67 of POCA to enable Magistrates' Courts to order payment of funds held in a bank account that are subject to a determination by the court, towards the satisfaction of a confiscation order. This will enable funds held in a bank account to be confiscated rapidly where the account is not held in the sole name of the defendant. Any third parties affected would have the opportunity to make representations before such a determination is made. The Bill already includes provisions designed to ensure that criminal assets cannot be hidden with spouses, associates or other third parties – this amendment to section 67 is to allow their full utilisation. (*this will be introduced as an amendment*)



- Reducing the maximum time to pay confiscation orders: to “immediately” in some instances; and reducing 12 to 6 months as the maximum in others.  
*(Clause 26)*
- Prioritising the victim surcharge in a confiscation order case. *Clause 6 for E&W*
- *Comment - The Northern Ireland equivalent to this is the Offender Levy which was brought in under separate legislation. Prioritisation of the Offender Levy is not seen as a problem locally therefore we would not propose to seek an equivalent Northern Ireland.*
- Providing the court with a new power to make such an order as it considers appropriate to ensure that a confiscation order is effective. The aim is to enable the court to impose, for instance, a travel ban where there is an unpaid confiscation order. *(Clause 27)*
- Enabling an application to the court to write off unpaid confiscation orders, where the defendant is deceased and it is not reasonable to try to recover the amount due under the order from the defendant’s estate. *(Clause 28)*
- To give prosecutors the power to apply to the court to vary orders down where the available amount is identified as insufficient to satisfy the order. These new powers to write off orders would extend to allow confiscation orders made not just under POCA, but also under the Criminal Justice Act 1988 (c. 33) and the Drug Trafficking Act 1994 (c. 37) to be written off. *(Clause 28)*
- *Comment - the two proposals above allow a sensible power to write off orders where there is no possibility of payment. This is not intended to reduce the burden on defendants but simply to recognise that in some circumstances payment will not be possible.*

- Enabling absconders convicted in their absence to be subject to confiscation orders. *(Clause 2)*
- Strengthening maximum terms of imprisonment for failure to pay confiscation orders (from 5 to 7 years for orders of £500k - £1m and; from 10 to 14 years for orders above £1m). *(Clause 30)*
- Take a regulation-making power (subject to affirmative resolution) to provide for minimum default sentences in each band and otherwise modify the level of default sentences. *(Clause 30)*
- *Comment – We think it appropriate to extend the order making power, but there would be no plans to utilise it. In addition the Department would consult before doing so.*
- End automatic early release for failure to pay a confiscation order over £10 million and take a power to enable this threshold to be varied by regulations *Clause 10 for E&W*
- *Comment - the legal position on early release in Northern Ireland is different from England & Wales and we can achieve this change through secondary legislation. A provision in the Bill for Northern Ireland is not, therefore, required.*
- Enabling assets to be restrained more quickly and earlier in investigations by lowering the test for grant of a restraint order at pre-arrest stage from “reasonable cause to believe” to “reasonable grounds to suspect” that the person has benefited from criminal conduct. *(Clause 31)*
- Sections 47A to 47S of POCA provide for search and seizure powers in England and Wales to prevent the dissipation of realisable property that may be used to satisfy a confiscation order. These powers are subject to the same test as for the making of a restraint order, namely that there is reasonable cause to believe

that the person has benefited from conduct constituting the offence. Home Office therefore propose to bring this provision into line with the change they are making in relation to restraint orders i.e. by lowering the test for the grant of a restraint order from the court having “reasonable cause to believe that the alleged offender has benefited from his criminal conduct” to the court having “reasonable grounds to suspect that the alleged offender has benefited from his criminal conduct”. *(This will be introduced as an amendment)*

- Enabling restraint orders to be maintained in the event of a re-trial. *(Clause 32)*
- Removing necessity for a restraint order to be in place before magistrates’ courts can issue an order to a bank to pay over funds to satisfy a confiscation order. *(Clause 33)*
- Defining ‘senior officer’ for NCA officers using search and seizure powers as at present there is no such definition. *(This was ‘missed’ in the Crime and Courts Bill).*
- *Comment - whilst NCA activity in Northern Ireland is currently curtailed they can operate in limited areas and this omission needs to be resolved.*

### **Proposed changes to the Serious Organised Crime and Police Act 2005**

- The proposal is to remove a current £10,000 upper limit to enable any Magistrates’ courts to make a confiscation order in a case where the conviction is in that court. *(The removal of the bar will be by secondary legislation but the power to make this legislation must first be amended in primary legislation as the Serious Organised Crime and Police Act 2005 currently limits the order making power to under £10,000). (Clause 36)*
- *Comment - while Northern Ireland has an order making power allowing it to give Magistrates’ courts the power to make confiscation orders an Order has*



*never been made. This proposal will amend the order making power so that any Order could specify a limit on the powers rather than be limited to £10,000. Whilst there are no plans to utilise the order making power we think it advisable to give this added flexibility.*

### **Proposed changes to POCA part 8 – Investigations**

- Extending investigative powers so they are available to trace assets once a confiscation order is made. Currently the powers are only available to use in identifying the amount or its whereabouts – not for assisting in the enforcement of the confiscation order. *(Clause 34)*

### **Proposed changes to POCA part 11 – Co-operation**

- Adding pecuniary advantage to the aspects that can be covered in external orders. This is a gap at present and would enable the United Kingdom to assist overseas authorities in cases where the criminal benefit is pecuniary advantage, as opposed to property. The intention is to improve assistance to other countries. *(Clause 35)*



## **Part 2 - Amendments to the Computer Misuse Act 1990**

### **Proposed amendments to the Computer Misuse Act 1990, which applies in all parts of the United Kingdom**

The amendments will achieve compliance with the EU Directive on attacks against information systems by updating offences in the Computer Misuse Act 1990 to cover importing tools for cyber-crime, such as data programmes designed for unlawfully accessing a computer system.

The Bill also proposes a new aggravated offence of impairing a computer in a way that causes, or has the potential to cause, serious damage of a material kind.

Examples of serious damage of a material kind would include damage to human welfare, the environment, the economy or national security. A maximum penalty of life imprisonment may be given for actions presenting a threat to life, loss of life or damage to national security. Regarding damage to the economy or the environment, a maximum 14 year sentence may be imposed.

- *Comment - these amendments will apply across the United Kingdom. The subject matter deals primarily with internet services, which is a reserved matter. Part 2 of the Bill does not, therefore, require legislative consent, on Northern Ireland legislation.*



**Part 3 - New offence of participating in the activities of an organised crime group and strengthening of arrangements for protecting the public from serious crime and gang-related activity provided for in Part 1 of the Serious Crime Act 2007**

**Participation in organised crime**

- A new offence to target those who provide materials, services, infrastructure and information that enable organised crimes to work. This would be an indictable offence with a five year penalty. (*Clause 41*)
- In addition, criminal activities connected to an organised crime group would become a mandatory aggravating factor in sentencing. This would cover serious crime offences of fraud, cyber, human trafficking, drugs, firearms, theft, violence or threat of violence.
- *Comment - the introduction of this type of offence has been discussed in the Organised Crime Taskforce legal sub group and it was felt that it would require further consideration and consultation here against our legislative framework. We would not therefore plan to ask for inclusion in this section of the legislation. If required then local legislation would be sought.*

**Proposed changes to Part 1 of Serious Crime Act - Reform of Serious Crime Prevention Orders (SCPOs)**

- Consolidating the Financial Reporting Order (FRO) within the SCPO – the effect being to streamline civil orders. It would also increase the penalty for failure to comply from one to five years. (*Clause 46*)

FROs enable the court to require a person, who has been convicted of certain offences, to make reports to law enforcement agencies regarding their financial affairs. This can only happen 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. 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.

As at 31st March 2014, 119 FROs had been obtained. This is substantially less than the original expectation of some 1,500 a year and a number of deficiencies have been identified in the process. In particular, a 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.

- Extending the time limit of a SCPO beyond the current five year period by up to a further five years for breach of the original order or conviction of another serious crime. (*Clauses 44,45*)
- Extending the SCPO range of serious offences to include further firearms and computer misuse offences and cultivation of a cannabis plant. (*Clause 43*)

Schedule 1 to the 2007 Act lists the serious offences which can trigger the making of a SCPO. *Subsections (1) to (4)* of this clause 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) to Part 1 of Schedule 1 (which relates to England and Wales) to that Act.

*Subsections (5) to (8)* adds the equivalent offences to Part 2 of Schedule 1 to the 2007 Act (which relates to Northern Ireland).

*Comment – we believe extension here to maintain parity would assist.*





**Gang injunctions**

- This relates to Part 4 of the Policing and Crime Act 2009 which only applies to England and Wales (*Clause 47*)
- *There is no plan to extend this to Northern Ireland.*



## **Part 4 - Seizure and forfeiture of substances used as drug-cutting agents**

### **Drug cutting agents - Misuse of Drugs Act**

- New powers to search for, seize and detain and destroy chemical substances that can be used as cutting agents for illegal drugs.

Certain chemical substances, some of which may also be used in the manufacture of medicinal products for human or veterinary use, can be used as cutting agents for bulking illegal drugs, thereby maximising criminal profit margins. The 'grey market' trade (that is, where it is unclear if there is an apparent legitimate end use) in these substances has become a significant element of the domestic cocaine trade over the last five years. There are currently no laws or regulations that specifically target the domestic trade in cutting agents. This trade impacts across the United Kingdom enabling organised criminals to maximise their profits from the trade in illegal drugs and increases the risks posed to local communities.

*This would not involve an LCM or local legislation as this is a reserved matter which could be extended to NI by Westminster. DHSSPS as policy leads in the area have been consulted on the proposals and are content.*



**Part 5 Amends the criminal law in relation to the offences of child cruelty and female genital mutilation and provides for a new offence of possession of "paedophile manuals"**

**Child cruelty offence**

- This relates to Section 1 of the Children and Young Persons Act 1933 which only applies to E&W

*Proposal*

- A new offence of possession of a paedophile manual. The associated Schedule 3 relates to offences of possession of such prohibited items outside the UK by domestic internet service providers. (*Clause 61*)

The provision aims to protect children by taking this step to address concerns about material designed to instruct paedophiles on how to groom and abuse potential victims.

The provision will ban the simple possession of material containing practical advice on how to commit a sexual offence against children – a provision which is not specifically covered in the present law. Although it may fall within other more general offences such as the current law on encouraging and assisting the commission of offences a more specific offence is felt appropriate.

The type of material this would involve has been described by the Ministry of Justice as being highly detailed and intrusive in content – providing advice on how to entrap or groom a child, where to find a child, family involvement, and how to offend and escape capture. It also includes detailed pseudo-scientific advice, endorsing paedophilia as harmless and an “experience” to be enjoyed by victims.

***Extension to Northern Ireland***

There is already a well-developed legislative framework in Northern Ireland, and across the United Kingdom, around safeguarding and protecting children from



sexual crime, but the Department recognises that it needs to respond to new developments. In this case, the Westminster Government has looked at how best to tackle paedophile material and has brought forward these proposals which we believe should extend to Northern Ireland. Both the PSNI and PPS have been consulted on the proposals and would welcome extension of the provision to Northern Ireland, despite the fact that they have little experience of such offences being committed here at present.

Children, as one of the most vulnerable groups in our society must be protected from such crimes, and the Department is keen to ensure that they are afforded the same level of protection, and at the same time, as their England and Wales counterparts.

### **Offence of female genital mutilation**

- The Bill proposes an amendment to the Female Genital Mutilation Act 2003. The proposal is to extend extra-territorial jurisdiction for offences committed outside the United Kingdom to include people habitually resident in the United Kingdom, whether as a perpetrator or as a victim. *(Clause 6)*

Currently, extra-territorial jurisdiction applies only to UK nationals or someone permanently resident in the United Kingdom. Permanent residence is a narrowly-defined term that does not include, for example, anyone living in the United Kingdom in breach of immigration laws, or subject to a restriction on the duration of their residence in the United Kingdom.

The amendment will replace permanent residence with habitual residence, which allows for more effective prosecution of a wider range of perpetrators, and more effective protection of potential victims. Offences under the Act will continue to apply to UK nationals.

*Comment - It is proposed that the amendment should extend to Northern Ireland through an LCM to enable timely introduction.*



**Part 6 Provides for or extends extra-territorial jurisdiction in respect of the offences in sections 5 (preparation of terrorist acts) and 6 (training for terrorism) of the Terrorism Act 2006 and confers parliamentary approval (as required by section 8 of the European Union Act 2011) for two draft Council Decisions under Article 352 of the Treaty on the Functioning of the European Union ("TFEU").**

*These are non-devolved matters.*

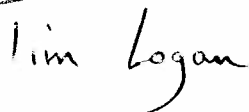


### **Section 75 screening**

The options set out in this policy consultation have been subjected to an Equality Impact Screening. There have been no equality issues identified.

### **Summary**

The Committee is invited to note the provisions in the Westminster Serious Crime Bill. While the Minister would always prefer to legislate locally he does not think that this is a practical approach on this occasion. He would, therefore, welcome the Committee's views on his proposals to seek an LCM for a number of the provisions in the areas highlighted above.

A handwritten signature in black ink that reads "Tim Logan".

**TIM LOGAN  
DALO**