

# Serious Crime Bill [HL]

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[AS AMENDED IN COMMITTEE]

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**B I L L**

[AS AMENDED IN COMMITTEE]

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 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*

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**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 15
    - (b) any action or proceedings taken for the purposes of any such realisation or transfer.
  - (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 Appeals

- (1) In section 31 of the Proceeds of Crime Act 2002 (appeal to Court of Appeal), after subsection (3) insert –
  - “(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
  - (5) An appeal under subsection (4) lies at the instance of –
    - (a) the prosecutor; 10
    - (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.
  - (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 – 20
    - (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,
    - (b) such an application has been made but has not yet been determined, or 25
    - (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 –
    - (a) confirm the determination, or
    - (b) make such order as it believes is appropriate.” 30
- (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 –
      - (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 31(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 32(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.”

#### 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—
- (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

#### 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. 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 12 of that Act (interest on unpaid sums), for subsection (3) substitute –
  - “(3) If –
    - (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,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.”

## 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 after “other than” substitute “a priority order”.
- (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;
    - (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 –
    - (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.”
- (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)”.

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## 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”). 10
- (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. 15
- (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). 20
- (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. 25

### 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 a compliance order – 30
- (a) the prosecutor;
- (b) any person affected by the order.
- (3) On an appeal under subsection (1) or (2) the Court of Appeal may – 35
- (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. 40
- (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.”

## 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”. 5
- (2) After section 25 of that Act insert –
- “25A Recovery from estate of deceased defendant impractical: discharge of order”** 10
- (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 designated officer for a magistrates’ court applies to the Crown Court for the discharge of the order. 15
- (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.” 20
- (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, or
  - (b) a confiscation order made under the Drug Trafficking Act 1994, 25
- 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 –
- “(2) The first condition is that a defendant falls within any of the following paragraphs – 30
- (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 for sentence in respect of an offence or offences under section 3, 3A, 3B, 3C, 4, 4A or 6 of the Sentencing Act; 35
  - (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).” 40
- (2) For subsections (6) and (7) of that section substitute –
- “(6) Once the defendant ceases to be an absconder –

- (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.”;
- (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
- (b) the court believes it is appropriate for it to do so.”;
- (c) section 21 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,
- (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.”;
- (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”.
- (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,
- (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
- (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).”

## 10 Default sentences

- (1) In section 35 of the Proceeds of Crime Act 2002 (enforcement as fines), after subsection (2) insert – 5

“(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. 10

TABLE

| <i>Amount</i>                                  | <i>Maximum term</i> |    |
|--|---------------------|----|
| £10,000 or less                                | 6 months            | 15 |
| 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            | 20 |

- (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 – 25
- (a) subsections (2) and (3) of that section, and
- (b) subsection (2A) above.

- (2C) The Secretary of State may by order – 30
- (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;
- (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(6)(a) of that Act (orders subject to affirmative resolution procedure), after “section” insert “35(2C),”. 35

- (3) In section 258 of the Criminal Justice Act 2003 (early release of fine defaulters etc), after subsection (2A) insert – 40
- “(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.

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

- (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).”

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## 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 –

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“(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 –

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(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)).

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(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 –

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(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)).”

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## 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 –

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(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.

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(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,

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- (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.”

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### 13 Search and seizure powers: “appropriate approval”

- (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,”.

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### 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

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- (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.” 5
- (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 10
- (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),”. 15

## CHAPTER 2

### SCOTLAND

#### *Confiscation*

- 15 Restitution order and victim surcharge** 20
- (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** 25
- (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. 30
- (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 35
- (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 40



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. 5
- (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. 10
- (8) In this section, “relevant order” means –
  - (a) a restitution order, or 15
  - (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 Enforcement of confiscation orders

In section 118 of the Proceeds of Crime Act 2002 (application of provisions about fine enforcement in relation to confiscation orders), 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”. 20

## 17 Conditions for exercise of restraint order powers

- (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”. 25
- (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 investigation having been instituted in Scotland with regard to an offence. 30
  - (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 35
    - (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)). 40
  - (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
- (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)).”

**18 Conditions for exercise of search and seizure powers** 5

- (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 – 10
  - “(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,”. 15

*Civil recovery*

**19 Notification of making etc of prohibitory property orders**

After section 255B of the Proceeds of Crime Act 2002 insert –

**“255BA Notification of making etc of prohibitory property orders**

- (1) Where a prohibitory property order is made or varied, the enforcement authority must – 20
  - (a) serve a copy of the order as so made or varied on any person specified in the order –
    - (i) to whose property the order applies, or 25
    - (ii) who holds property to which the order applies, and
  - (b) unless the court dispenses with service, serve a copy of the order as so made or varied on any other person specified in the order who has an interest in the property to which the order applies.
- (2) Where a prohibitory property order is recalled, the enforcement authority must – 30
  - (a) serve a copy of the interlocutor by which the recall is effected on the persons mentioned in paragraph (a) of subsection (1), and
  - (b) unless the court dispenses with service, serve a copy of the interlocutor on any other person as mentioned in paragraph (b) of that subsection. 35
- (3) For the purposes of subsections (1) and (2), a copy is served if it is sent in accordance with provision made by act of sederunt.”

**20 Offences relating to prohibitory property orders**

- (1) The Proceeds of Crime Act 2002 is amended as follows. 40

- (2) After section 255F insert –

**“255G Offences relating to prohibitory property orders**

- (1) A specified person commits an offence if without reasonable excuse he –
- (a) fails to comply with a prohibitory property order that applies to his property, or
  - (b) fails to comply with a prohibitory property order by dealing in any way with any property that he holds to which the order applies.
- (2) In subsection (1), “specified person” has the meaning given by section 255A(2A). 10
- (3) For the purposes of subsection (1), a failure to comply with a prohibitory property order includes a failure to comply with any conditions subject to which an exclusion under section 255C is made in respect of the prohibition on dealing with the property to which the order applies. 15
- (4) A person guilty of an offence under subsection (1) is liable –
- (a) on summary conviction, to imprisonment for a term not exceeding twelve months or to a fine not exceeding the statutory maximum or to both, or
  - (b) on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine or to both.” 20
- (3) In section 255A (application for prohibitory property order) –
- (a) in subsection (2)(b), for “any person” substitute “a specified person”;
  - (b) after subsection (2) insert – 25
- “(2A) In subsection (2), “specified person” means a person specified in the prohibitory property order –
- (a) at the time the order is granted, or
  - (b) by virtue of the order being varied under section 255B.”
- (4) In section 255B (variation and recall of prohibitory property order), after subsection (4) insert – 30
- “(4A) The court may vary a prohibitory property order so as to include or remove a specified person (within the meaning of subsection (2A) of section 255A) for the purpose of subsection (2) of that section.”

**21 Prohibitory property orders: PPO receivers 35**

- (1) The Proceeds of Crime Act 2002 is amended as follows.  
(2) After section 255G (inserted by section 20 above) insert –

**“255H 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 40

- 
- (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).
- (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. 5
- (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. 10
- (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.
- (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. 15
- (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). 20
- 255I Powers of receivers appointed under section 255H**
- (1) If the Court of Session appoints a PPO receiver under section 255H on an application by an enforcement authority, the court may act under this section on the application of the authority. 25
- (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, 30
- (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 – 35
- (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. 40
- (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. 45

- 
- (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. 5
- (7) If—
- (a) the PPO receiver deals with any property which is not property in respect of which he is appointed under section 255H, 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, 10
- 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.
- 255J Supervision of PPO receiver and variations** 15
- (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, 20
  - (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— 25
- (a) the PPO receiver,
  - (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). 30
- (3) The court may at any time vary or recall—
- (a) an order appointing a PPO receiver,
  - (b) any order under section 255I, or
  - (c) any directions under this section. 35
- (4) Before exercising any power under subsection (3), the court must give an opportunity to be heard to—
- (a) the PPO receiver,
  - (b) the parties to the proceedings for— 40
    - (i) the appointment of the PPO receiver,
    - (ii) the order under section 255I, or
    - (iii) (as the case may be) the directions under this section,
  - (c) the parties to the proceedings for the prohibitory property order concerned,
  - (d) any person who may be affected by the court’s decision.” 45

(3) After section 282C insert –

**“282CA Enforcement abroad before recovery order: PPO receiver**

- (1) This section applies if –
  - (a) a prohibitory property order made by the Court of Session has effect in relation to property, and 5
  - (b) the PPO receiver appointed under section 255H in respect of the property believes that it is in a country outside the United Kingdom (the “receiving country”).
- (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. 10
- (3) The Secretary of State must forward the request for assistance to the government of the receiving country.
- (4) A request for assistance under this section is a request to the government of the receiving country – 15
  - (a) to secure that any person is prohibited from dealing with the property,
  - (b) for assistance in connection with the management of the property, including with securing its detention, custody or preservation.” 20

**22 Notification of making etc of interim administration orders**

After section 260 of the Proceeds of Crime Act 2002 insert –

**“260A Notification of making etc of interim administration orders**

- (1) Where an interim administration order is made or varied, the enforcement authority must – 25
  - (a) serve a copy of the order as so made or varied on any person specified in the order –
    - (i) to whose property the order applies, or
    - (ii) who holds property to which the order applies, and
  - (b) unless the court dispenses with service, serve a copy of the order as so made or varied on any other person specified in the order who has an interest in the property to which the order applies. 30
- (2) Where an interim administration order is recalled, the enforcement authority must – 35
  - (a) serve a copy of the interlocutor by which the recall is effected on the persons mentioned in paragraph (a) of subsection (1), and
  - (b) unless the court dispenses with service, serve a copy of the interlocutor on any other person as mentioned in paragraph (b) of that subsection. 40
- (3) For the purposes of subsections (1) and (2), a copy is served if it is sent in accordance with provision made by act of sederunt.”

## 23 Offences relating to interim administration orders

- (1) The Proceeds of Crime Act 2002 is amended as follows.
- (2) After section 265 insert –
- “265A Offences relating to interim administration orders**
- (1) A person specified for the purposes of this section in an interim administration order commits an offence if without reasonable excuse he –
- (a) owns or holds property to which the order applies, and
- (b) deals in any way with the property so as to prevent the detention, custody or preservation of the property for which the order is granted.
- (2) A person guilty of an offence under subsection (1) is liable –
- (a) on summary conviction, to imprisonment for a term not exceeding twelve months or to a fine not exceeding the statutory maximum or to both, or
- (b) on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine or to both.”
- (3) In section 256 (application for interim administration order), after subsection (2) insert –
- “(2A) An interim administration order must, for the purposes of section 265A, specify a person to whom the order applies.
- (2B) Such a person may be specified in the interim administration order –
- (a) at the time the order is granted, or
- (b) by virtue of the order being varied under section 260.”
- (4) In section 260 (supervision of interim administrator and variation of order), after subsection (3) insert –
- “(3A) The court may, for the purposes of section 265A, vary an interim administration order so as to specify or remove a person to whom the order applies.”

## 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 –

- “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,

|   |    |
|---|----|
| 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.          | 5  |
| (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 –  | 10 |
| (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.   |    |
| (4) Subsection (3) –  | 15 |
| (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.”  | 20 |
| <br>  |    |
| <b>25 Provision of information</b>  |    |
| (1) In section 166 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 – | 25 |
| (a) whether to make a determination under section 160A, or  |    |
| (b) what determination to make (if the court decides to make one).  | 30 |
| (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) –  | 35 |
| (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  | 40 |
| (ii) whether to make a determination under section 160A, or what determination to make (if the court decides to make one).”   |    |



## 26 Appeals

- (1) In section 181 of the Proceeds of Crime Act 2002 (appeal to Court of Appeal), after subsection (3) insert –
- “(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
- (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.
- (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. 15
- (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.”
- (2) In section 182 of that Act (court’s powers on appeal), after subsection (2) insert – 25
- “(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.”
- (3) In section 183 of that Act (appeal to Supreme Court) – 30
- (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);
- (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.”; 35
- (b) after subsection (3) insert –
- “(3A) On an appeal under this section from a decision under section 182(2A) the Supreme Court may –
- (a) confirm the decision of the Court of Appeal, or 40
- (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 5
  - (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; 10
- and the determination does not bind the court if paragraph (a) or (b) applies.”

*Confiscation: other amendments*

**28 Time for payment**

- (1) For section 161 of the Proceeds of Crime Act 2002 substitute – 15
- “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.
  - (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 – 20
    - (a) in a specified period, or
    - (b) in specified periods each of which relates to a specified amount.
  - (3) A specified period – 25
    - (a) must start with the day on which the confiscation order is made, and
    - (b) must not exceed three months.
  - (4) If – 30
    - (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,

the court may make an order extending the period (for all or any part or parts of the amount in question). 35
  - (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 – 5
      - (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.” 10
  - (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, 15
      - (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.” 20
  - (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** 25
- 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”). 30
  - (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. 35
  - (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). 40
  - (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**

- (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. 5
- (2) The following persons may appeal to the Court of Appeal in respect of the Crown Court’s decision to make 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 – 10
- (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. 15
- (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.” 20

### **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”. 25
- (2) After section 175 of that Act insert –
- “175A Recovery from estate of deceased defendant impractical: discharge of order**
- (1) This section applies if – 30
- (a) a court has made a confiscation order,
- (b) the defendant dies while the order is not satisfied, and
- (c) a chief clerk 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 – 35
- (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.”
- (3) Section 175A of that Act (inserted by subsection (2) above) applies to – 40
- (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.

### 31 Absconding defendants

- (1) In section 177 of the Proceeds of Crime Act 2002 (absconding defendant convicted or committed), for subsection (2) substitute— 5
- “(2) The first condition is that a defendant falls within either 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; 10
- (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—
- (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, 20
- (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—
- “(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 30
- (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—
- (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, 40
- (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 45
- (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).”
- (3) In section 178 of that Act (absconding defendant neither convicted nor acquitted), in subsection (2)(c), for “two years” substitute “three months”. 5
- (4) For subsection (6) of that section substitute –
- “(6) Once the defendant has ceased to be an absconder –
- (a) section 171 has effect as if subsection (1) read –
- “(1) This section applies if –
- (a) a court has made a confiscation order, 10
- (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 15
- (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).” 20

### 32 Default sentences

- (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. 25

TABLE 30

| <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             | 35 |
| More than £1 million                           | 14 years            |    |

- (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 40

- 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.” 5
- (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”. 10
- (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. 15
- (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 20
- (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)). 25
- (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)).” 30

### 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— 35
- “(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 40
- (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— 45

- 
- (a) if the Court of Appeal declines to make an order for the defendant to be retried,
- (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 5
- (c) otherwise, on the conclusion of proceedings for the retrial of the defendant.”
- 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”. 10
- (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,”. 15
- 36 Seized money etc**
- (1) In section 215 of the Proceeds of Crime Act 2002 (seized money), for subsections (4) and (5) substitute— 20
- “(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, 25
- 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— 30
- “(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— 35
- (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
- (b) must have regard to that determination in deciding what is the appropriate order to make.” 40
- (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.” 5
- (4) In section 215A of that Act (seized personal property), for subsections (2) and (3) substitute –
  - “(3) If – 10
    - (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.” 15
- (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 20

### 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.” 25
- (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”. 30

### 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 – 35

- “(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. 40

- (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.”

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

- (1) The Serious Organised Crime and Police Act 2005 is amended as follows. 5
- (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”.
- (4) After that subsection insert –
- “(2A) The Department of Justice may by order amend subsection (2) so as to substitute a different amount.” 15
- (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)”.

## **PART 2**

### **COMPUTER MISUSE 25**

### **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 –
- “3ZA Unauthorised acts causing, or creating risk of, serious damage**
- (1) A person is guilty of an offence if – 30
- (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;
- (c) the act causes, or creates a significant risk of, serious damage of a material kind; and 35
- (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.
- (2) Damage is of a “material kind” for the purposes of this section if it is –
- (a) damage to human welfare in any country; 40

- (b) damage to the environment in any country;
  - (c) damage to the economy of any country; or
  - (d) damage to the national security of any country.
- (3) For the purposes of subsection (2)(a) an act causes damage to human welfare only if it causes – 5
- (a) loss to human life;
  - (b) human illness or injury;
  - (c) disruption of a supply of money, food, water, energy or fuel;
  - (d) disruption of a system of communication;
  - (e) disruption of facilities for transport; or 10
  - (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 – 20
- (a) a reference to doing an act includes a reference to causing an act to be done;
  - (b) “act” includes a series of acts;
  - (c) a reference to a country includes a reference to a territory, and to – 20
    - (i) any place in, or part or region of, a country or territory;
    - (ii) the territorial sea adjacent to 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 – 30
- (a) serious damage to human welfare of the kind mentioned in subsection (3)(a) or (3)(b), or
  - (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 25
- (c) a British protected person within the meaning of that Act.”
- (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”;
  - (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

- 5
- 10
- (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”.
- (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.”

### PART 3

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

##### *Organised crime groups*

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

- 15
- 20
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- 40
- (1) A person who participates in the criminal activities of an organised crime group commits an offence.
- (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 has reasonable cause to suspect—
- (a) are criminal activities of an organised crime group, or
- (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
- (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,
- (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.
- (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.
- (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. 15

**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)) – 20

- (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

|           |  |           |
|-----------|--|-----------|
| (iii)     | the court or sheriff deals with the person for the offence without varying the order or making a new one;  |           |
| (b)       | the person is acquitted of the offence;  |           |
| (c)       | the charge is withdrawn;   |           |
| (d)       | in the case of a serious crime prevention order in England and Wales or Northern Ireland –   | 5         |
| (i)       | proceedings in respect of the charge are discontinued, or  |           |
| (ii)      | an order is made for the charge to lie on the file;  |           |
| (e)       | in the case of a serious crime prevention order in Scotland –  |           |
| (i)       | proceedings against the person are deserted <i>simpliciter</i> ,   | 10        |
| (ii)      | proceedings against the person are deserted <i>pro loco et tempore</i> 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.   | 15        |
| (5)       | An order may be made under this section only if –  |           |
| (a)       | the serious crime prevention order is still in force, and  |           |
| (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. | 20        |
| (6)       | In subsection (5)(b) “serious crime” means –   |           |
| (a)       | serious crime in England and Wales, in the case of a serious crime prevention order in England and Wales;  | 25        |
| (b)       | serious crime in Scotland, in the case of a serious crime prevention order in Scotland;  |           |
| (c)       | serious crime in Northern Ireland, in the case of a serious crime prevention order in Northern Ireland.”   |           |
| <b>49</b> | <b>Serious crime prevention orders and financial reporting etc</b>   | <b>30</b> |
| (1)       | In Chapter 3 of Part 2 of the Serious Organised Crime and Police Act 2005 (financial reporting orders) –   |           |
| (a)       | omit section 76 (making financial reporting orders in England and Wales);  |           |
| (b)       | omit section 77 (making financial reporting orders in Scotland);   | 35        |
| (c)       | omit section 78 (making financial reporting orders in Northern Ireland).   |           |
| (2)       | In Part 1 of the Serious Crime Act 2007 (serious crime prevention orders), after section 5 insert –  |           |
|           | <b>“5A Verification and disclosure of information</b>  | <b>40</b> |
| (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.                 |           |
|           | “Information requirement” means a requirement of the kind referred to in section 5(5)(a) or (b).   | 45        |
| (2)       | The law enforcement officer may, for the purpose of –  |           |

- (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
  - (7) In this section “law enforcement officer” has the same meaning as in section 5.”

*Gang injunctions* 30

**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 –

**“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. 35
- (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 –
  - (a) gang-related violence, or 40
  - (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 –

- (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. 5
- (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;
  - (b) require the respondent to do anything described in the injunction. 10
- (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 –
  - (a) consists of at least three people, and 15
  - (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.
- (7) In this Part “drug-dealing activity” means the unlawful production, supply, importation or exportation of a controlled drug. 20  
 “Production”, “supply” and “controlled drug” here have the meanings given by section 37(1) of the Misuse of Drugs Act 1971.”

#### PART 4

##### SEIZURE AND FORFEITURE OF DRUG-CUTTING AGENTS

##### *Warrants* 25

### 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 –
  - (a) to enter premises, and
  - (b) to search them for substances that appear to be intended for use as drug-cutting agents, 30
 if the justice is satisfied that there are reasonable grounds to suspect that a substance intended for such use is on the premises.
- (2) In this Part “police or customs officer” means –
  - (a) a constable, 35
  - (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.
- (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 40
  - (b) a warrant that relates only to premises specified in the warrant (a “specific-premises warrant”).

- (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 – 5
  - (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. 10
- (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; 15
  - (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 – 20
  - (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 – 25
  - (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); 30
  - (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. 35  
 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 – 40
  - (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. 5
- (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.
- 53 Execution of search and seizure warrants**
- (1) Schedule 2 (execution of search and seizure warrants) has effect. 10
- (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.
- (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. 15
- (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.
- Seizure* 20
- 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.
- 55 Seizure of substances without search and seizure warrant** 25
- 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. 30
- 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 to a person who the officer thinks may be entitled to the substance. 35
- (2) A notice under subsection (1) must explain the effect of sections 58, 59, 60 and 62.
- (3) The persons “entitled” to a substance for the purpose of this Part are –

- (a) the person from whom it was seized;
- (b) (if different) any person to whom it belongs.

## 57 Containers

- (1) An officer who seizes a substance under section 54 or 55 may also seize any container holding the substance. 5
- (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.
- (3) Subsection (2) does not apply – 10
  - (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.

*Retention of seized substances* 15

## 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. 20
- (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). 25 30

## 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.35
- (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. 40

- (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 –
- (a) the date of seizure, in the case of a substance seized under section 54 or 55, or 5
  - (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) 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. 10
- (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.
- (7) Where – 15
- (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 a person who the officer thinks may be entitled to the substance. 20
- (8) A notice under subsection (7) must explain –
- (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 – 25
- (a) the person is convicted or acquitted of the offence and either –
    - (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; 30
  - (b) the charge is withdrawn;
  - (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; 35
  - (d) in Scotland –
    - (i) proceedings against the person are deserted *simpliciter*,
    - (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 40
    - (iv) the diet not having been continued, adjourned or postponed, no further proceedings are in contemplation in relation to the person.
- Paragraph (a) applies, where an appeal is made, with references to an appeal being read as references to any further appeal. 45



*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.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 a person who the officer thinks may be entitled to the substance. 35
- (3) An appeal under this section is to –
  - (a) the Crown Court, in England and Wales;
  - (b) the sheriff principal, 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 or sheriff principal hearing the appeal may make any order the court or sheriff principal thinks appropriate.
- (6) If an appeal against an order for the return of the substance is allowed –
- (a) the court or sheriff principal must order the substance to be forfeited, and 5
  - (b) subsections (4) and (5) of section 60 apply with the necessary adaptations.
- (7) If an appeal against an order forfeiting the substance is allowed –
- (a) the court or sheriff principal must order the substance to be returned to a person entitled to it, and 10
  - (b) subsection (7) of section 60 applies with the necessary adaptations.
- 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 – 30
- (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
  - (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 section 56(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) 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. 25
- (4) 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.
- (5) In the application of this Part to Northern Ireland – 30
- (a) a reference to a justice of the peace in section 51 is to be read as a reference to a lay magistrate;
  - (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. 35

## PART 5

### PROTECTION OF CHILDREN ETC

#### 65 Child cruelty offence

- (1) Section 1 of the Children and Young Persons Act 1933 (cruelty to persons under 16) is amended as follows. 40
- (2) In subsection (1), for the words from “(including” to “derangement)” substitute “(whether the suffering or injury is of a physical or a psychological nature)”.
- (3) In that subsection, for “a misdemeanour” substitute “an offence”.

## 66 Possession of paedophile manual

- (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; 5
  - (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 10
  - (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. 15
- (3) A person guilty of an offence under this section is liable—
  - (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; 20
  - (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; 25
  - (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)—
  - (a) section 4 (entry, search and seizure);
  - (b) the Schedule (forfeiture of photographs). 30
- (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)—
  - (a) Article 4 (entry, search and seizure);
  - (b) the Schedule (forfeiture of photographs). 35
- (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. 40
- (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) 45

Order 2008 (S.I. 2008/1769 ((N.I. 2)), against a person under 16, or

- (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), 5

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; 10

“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”; 15
- (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.” 20
- (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”; 25
- (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.” 30

## PART 6

### MISCELLANEOUS AND GENERAL

#### *Miscellaneous*

## 68 Preparation or training abroad for terrorism 35

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”.

## 69 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). 40

- (2) The following draft decisions of the Council of the European Union under Article 352 of TFEU are approved –
- (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); 5
  - (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). 10
- (3) In this section “TFEU” means the Treaty on the Functioning of the European Union. 15

*General*

**70 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. 20
- (3) The power to make regulations under this section –
- (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. 25
- (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; 30
  - (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.
- (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. 35
- (6) Any other statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of either House of Parliament. 40
- (7) In this section “primary legislation” means –
- (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) Northern Ireland legislation.

## 71 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. 5
- (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.
- (3) 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. 10
- (4) 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. 15
- (5) The amendments made by paragraph 7 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. 20
- (6) The repeals by this Act of—
- (a) section 76 of the Serious Organised Crime and Police Act 2005 (“the 2005 Act”), and 25
  - (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.
- (7) The repeals by this Act of— 30
- (a) section 77 of the 2005 Act, and
  - (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.
- (8) The repeals by this Act of— 35
- (a) section 78 of the 2005 Act, and
  - (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. 40
- (9) 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—
- (a) section 42;
  - (b) section 67; 45
  - (c) section 68.



- (10) Subsection (3)(a) of section 66 applies in relation to offences under that section committed before the commencement of section 154(1) of the Criminal Justice Act 2003 (general limit on power of magistrates' courts to impose imprisonment) as if the reference to 12 months were a reference to 6 months.

**72 Extent** 5

- (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. 10
- (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;
  - (d) section 67(1). 15
- (3) The following provisions extend to Scotland only –
- (a) sections 15 to 18;
  - (b) section 37(3);
  - (c) section 42(6) and (7);
  - (d) section 67(2). 20
- (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.
- (6) The other provisions of this Act extend to England and Wales, Scotland and Northern Ireland. 25

**73 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. 30
- (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 18;
  - (b) section 37(3).
- (3) Chapter 3 of Part 1 comes into force on whatever day or days the Department of Justice in Northern Ireland appoints by regulations after consulting the Secretary of State. 35
- (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) section 67;
  - (b) section 68 and paragraph 52 of Schedule 4 (and section 70(1) so far as relating to that paragraph). 40

- (5) The following provisions come into force on the day on which this Act is passed—
- (a) section 69;
  - (b) section 70(2) to (7);
  - (c) sections 71 to 74. 5
- (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) sections 19 to 23;
  - (b) section 37(1); 10
  - (c) Part 2;
  - (d) sections 45 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 45 to 49;
  - (d) section 66. 20
- (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)). 25

#### **74 Short title**

This Act may be cited as the Serious Crime Act 2014.

## 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) –
  - (a) for “test in section” substitute “tests in sections 2A(1) and”; 25
  - (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.”



- (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
    - (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, 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.
  - (3) A court or sheriff making an order by virtue of section (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 –
    - (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.
  - (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 –
    - (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**
- (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
      - (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

- (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; 35by 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 Adjournment under section 305 of the Criminal Procedure (Scotland) Act 1995 (Acts of Adjournment) 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 15  
 of the Court of Session.”
- (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 20  
 insert –
- |                    |               |
|--------------------|---------------|
| “appropriate court | section 1(5); |
|--------------------|---------------|
- |   |                           |
|---|---------------------------|
| “involvement in serious crime:<br>Scotland orders | sections 2A, 4 and 31(3); |
|---|---------------------------|
- |                              |                 |
|------------------------------|-----------------|
| “serious offence in Scotland | section 2A(2)”. |
|------------------------------|-----------------|
- 25
- 29 In section 89 (orders) –
- (a) in subsection (2) –
- (i) for “or the Treasury” substitute “, the Treasury or the Scottish  
 Ministers”;
- (ii) at the end insert “or the Scottish Ministers consider 30  
 appropriate.”;
- (b) in subsection (6) –
- (i) for “statutory instrument” substitute “the Secretary of State  
 or the Treasury”;
- (ii) after “27(6) or (12),” insert “, 27A(7)”;
- (c) after subsection (6) insert – 35  
 “(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.”
- 30 In section 93 (extent), in subsection (2) (provisions that extend to England and Wales and Northern Ireland only) omit paragraph (a). 5
- 31 In Schedule 1 (serious offences), after Part 1 insert –

“PART 1A

SERIOUS OFFENCES IN SCOTLAND

*Drug trafficking*

- 16A (1) An offence under any of the following provisions of the Misuse of Drugs Act 1971 – 10
- (a) section 4(2) or (3) (unlawful production or supply of controlled drugs);
  - (b) section 5(3) (possession of controlled drug with intent to supply); 15
  - (c) section 6 (restriction of cultivation of cannabis plant);
  - (d) section 8 (permitting etc certain activities relating to controlled drugs);
  - (e) section 20 (assisting in or inducing the commission outside the United Kingdom of an offence punishable under a corresponding law). 20
- (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);
  - (b) section 68(2) (exportation of prohibited or restricted goods);
  - (c) section 170 (fraudulent evasion of duty etc). 30
- (3) An offence under either of the following provisions of the Criminal Justice (International Co-operation) Act 1990 –
- (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). 35

*People trafficking*

- 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). 40

*Firearms offences*

- 16C (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); 5
  - (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). 10
- (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); 15
  - (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.

*Prostitution, child sex and pornography*

- 16D (1) An offence under any of the following provisions of the Criminal Law Consolidation (Scotland) Act 1995 – 20
- (a) section 11(1) (living on earnings of prostitution or soliciting for immoral purposes);
  - (b) section 11(4) (aiding, abetting or compelling prostitution for gain); 25
  - (c) section 11(5) (running of brothels).
- (2) An offence under section 22 of the Criminal Justice (Scotland) Act 2003 (traffic in prostitution etc).
- (3) An offence under any of the following provisions of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 – 30
- (a) section 10 (causing or inciting provision by child of sexual services or child pornography);
  - (b) section 11 (controlling a child providing sexual services or involved in pornography); 35
  - (c) section 12 (arranging or facilitating provision by child of sexual services or child pornography).
- (4) An offence under section 51(2) of the Civic Government (Scotland) Act 1982 (obscene material).

*Serious organised crime*

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- 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).



- (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* 5

- 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); 10
  - (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. 15
- (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). 20
- (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 – 25
- (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 – 30
- (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); 35
  - (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). 40

- (2) Fraud.
- (3) Conspiracy to defraud.
- (4) Theft.
- (5) Extortion.
- (6) Assault and robbery. 5

*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);
  - (b) section 2 (unauthorised access with intent to commit or facilitate commission of further offences); 10
  - (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)); 15
  - (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). 20
- (2) An offence under section 92(1), (2) or (3) of the Trade Marks Act 1994 (unauthorised use of trade mark etc).

*Environment*

- 16M(1) An offence under any of the following provisions of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003— 25
- (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). 30
- (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). 35
- (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).

*Inchoate offences*

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

*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. 5

*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.” 10

SCHEDULE 2

Section 53

EXECUTION OF SEARCH AND SEIZURE WARRANTS 15

*Persons who may execute warrant*

- 1 (1) A search and seizure warrant may be executed by any police or customs officer.
- (2) A search and seizure warrant may authorise persons to accompany any police or customs officer who is executing it. 20
- (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;
  - (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. 25

*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.

*All-premises warrants* 30

- 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*

- 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*

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- 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.

*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 – 10
- (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; 15
  - (b) must produce the warrant to the occupier;
  - (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 – 20
- (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; 20
  - (b) if not, the officer must leave a copy of the warrant in a prominent place on the premises. 25

*Extent of search*

- 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. 30

*Securing premises after entry*

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- 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*

- 10 (1) A police or customs officer executing a search and seizure warrant must make an endorsement on it – 40

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

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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).

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|  |    |
|--|----|
| (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                                     | 5  |
| (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”.                                   | 10 |
| (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).   | 15 |
| (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.   | 20 |
| (7) “Non-UK service provider” means a 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 –  | 25 |
| (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;  | 30 |
| (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;   | 35 |
| (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.   |    |
| <i>Domestic service providers: extension of liability</i>  | 40 |
| 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). | 45 |

(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.

The offence may for all incidental purposes be treated as having been committed at any place in England and Wales or Northern Ireland.

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(3) Nothing in this paragraph affects the operation of any of paragraphs 4 to 6.

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

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.

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(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.

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(3) “The public interest objective” means the pursuit of public policy.

*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 –

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(a) initiate the transmission,

(b) select the recipient of the transmission, or

(c) select or modify the information contained in the transmission.

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(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.

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(3) Sub-paragraph (2) does not apply if the information is stored for longer than is reasonably necessary for the transmission.

*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.

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(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.

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- (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. 5
- (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, 10
  - (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.

*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 – 15
- (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. 20
- (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 70

## MINOR AND CONSEQUENTIAL AMENDMENTS 25

*Criminal Appeal Act 1968 (c. 19)*

- 1 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)* 30

- 2 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)”.

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

- 3 (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 – 35
- “(d) an order under section 255H or 255I of that Act (order relating to PPO receivers in connection with prohibitory property order).” 40



- (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).

*Computer Misuse Act 1990 (c. 18)*

- 4 In each of the following provisions of the Computer Misuse Act 1990, for “six” substitute “12” – 5
- (a) section 1(3)(b);
  - (b) section 2(5)(b);
  - (c) section 3(6)(b);
  - (d) section 3A(5)(b). 10
- 5 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**”.
- 6 In section 4 of that Act (territorial scope of offences), in the heading, for “**sections 1 to 3**” substitute “**this Act**”. 15
- 7 (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”.
  - (4) In subsection (2), for “section 3 above” substitute “this Act”. 20
- 8 (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”.
  - (4) In subsection (2)(c), for “section 3 above” substitute “this Act”. 25
- 9 In section 10 of that Act, for the heading substitute “**Savings**”.

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

- 10 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 – 30
- “(cb) a decision under section 22A of the Serious Crime Act 2007 not to make a serious crime prevention order;”.
- 11 (1) Section 175 of that Act (right of appeal from summary proceedings) is amended as follows.
- (2) In subsection (4), after paragraph (ca) insert – 35
    - “(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)”.

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

- |    |   |    |
|----|---|----|
| 12 | In section 12 of the Proceeds of Crime Act 2002 (interest on unpaid sums), in subsection (1)–   |    |
|    | (a) for “the amount required to be paid” substitute “any amount required to be paid”;   | 5  |
|    | (b) for “must pay interest on the amount” substitute “must pay interest on that amount”.  |    |
| 13 | In section 14 of that Act (postponement), after paragraph (c) of subsection (12) insert–  |    |
|    | “(ca) made an order under section 161A of the Criminal Justice Act 2003 (orders requiring payment of surcharge);”.  | 10 |
| 14 | (1) Section 15 of that Act (effect of postponement) is amended as follows.  |    |
|    | (2) In subsection (2)–  |    |
|    | (a) at the end of paragraph (c) omit “or”;  |    |
|    | (b) after that paragraph insert–  | 15 |
|    | “(ca) make an order for the payment of a surcharge under section 161A of the Criminal Justice Act 2003, or”.  |    |
|    | (3) In subsection (3)–  |    |
|    | (a) at the end of paragraph (c) omit “or”;  |    |
|    | (b) after that paragraph insert–  | 20 |
|    | “(ca) making an order for the payment of a surcharge under section 161A of the Criminal Justice Act 2003, or”.  |    |
| 15 | (1) Section 19 of that Act (no order made: reconsideration of case) is amended as follows.  | 25 |
|    | (2) In subsection (7), after paragraph (d) insert–  |    |
|    | “(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);”. | 30 |
|    | (3) In subsection (8), after “Sentencing Act” insert “, a surcharge under section 161A of the Criminal Justice Act 2003”.   |    |
| 16 | (1) Section 20 of that Act (no order made: reconsideration of benefit) is amended as follows.   |    |
|    | (2) In subsection (11), after paragraph (d) insert–   | 35 |
|    | “(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);”. |    |
|    | (3) In subsection (12), after “Sentencing Act” insert “, a surcharge under section 161A of the Criminal Justice Act 2003”.  | 40 |
| 17 | (1) Section 21 of that Act (order made: reconsideration of benefit) is amended as follows.  |    |

- (2) In subsection (9), after paragraph (c) insert –
- “(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);”.
- (3) In subsection (10), after “(9)(c)” insert “, (ca)”.
- 18 (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,”.
- 19 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)”.
- 20 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)”.
- 21 In section 35 of that Act (enforcement as fines), in subsection (2), for “139(2) to (4)” substitute “139(2), (3)”.
- 22 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.”
- 23 (1) Section 42 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 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.”
- 24 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)”.
- 25 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),”.
- 26 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.”
- 27 (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
- 28 (1) Section 104 of that Act (no order made: reconsideration of case) is amended as follows.  
 (2) In subsection (7), after paragraph (d) insert – 25  
     “(e) any restitution order which has been made against the accused in respect of the offence (or any of the offences) concerned;  
     (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
- 29 (1) Section 105 of that Act (no order made: reconsideration of benefit) is amended as follows.  
 (2) In subsection (10), after paragraph (d) insert – 40  
     “(e) any restitution order which has been made against the accused in respect of the offence (or any of the offences) concerned;  
     (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
- 30 (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
- 31 In section 118 of that Act (application of provisions about fine enforcement), in subsection (2) omit paragraph (k).
- 32 In section 131 of that Act (sums received by clerk of court) –
- (a) in subsection (6), after “97(6)” insert “or 97A(4)”; 25
- (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.” 30
- 33 In section 153 of that Act (satisfaction of confiscation orders), in subsection (1) omit paragraph (b).
- 34 In section 162 of that Act (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”.
- 35 (1) Section 181 of that Act (appeal to Court of Appeal) is amended as follows. 40
- (2) In the heading, after “**prosecutor**” insert “**etc**”.
- (3) In subsection (3), after “by virtue of section” insert “160A,”.
- 36 In section 185 of that Act (enforcement as fines), in subsection (2) omit “(2),”.
- 37 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.” 5
- 38 (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 – 10
- (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. 15
- (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.” 20
- 39 In section 273 of that Act (payments in respect of rights under pension schemes), in subsection (4)(b), after “section 245E,” insert “PPO receiver,”.
- 40 In section 277 of that Act (consent orders: pensions), in subsection (7)(b), after “section 245E,” insert “PPO receiver,”. 25
- 41 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 255H(2);”.
- 42 In section 341 of that Act (investigations), in subsection (1) omit “or” at the end of paragraph (a). 30
- 43 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; 35
- (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.”
- 44 (1) Section 459 of that Act (orders and regulations) is amended as follows. 40
- (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),”.
- 45 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 – 5  
    “(da) a PPO receiver appointed under section 255H;”.
- Courts Act 2003 (c. 39)*
- 46 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)* 10
- 47 (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 – 15  
        (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 20  
        (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)* 25
- 48 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)*
- 49 In the Serious Organised Crime and Police Act 2005 omit sections 79 to 81 (financial reporting orders). 30
- 50 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).
- 51 (1) Section 179 of that Act (extent etc) is amended as follows.
- (2) In subsection (3)(b), for “79” substitute “82.” 35
- (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)*

- 52 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”.
- 5

*Armed Forces Act 2006 (c. 52)*

- 53 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).”
- 10  
15

*Serious Crime Act 2007 (c. 27)*

- 54 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”.
- 55 In section 16 of that Act (duration of orders), at the end insert –
- 20
- “(7) Subsections (2) and (4)(b) have effect subject to section 22E.”
- 56 (1) Section 19 of that Act (orders by Crown Court on conviction) is amended as follows.
- (2) After subsection (2) insert –
- “(2A) A court that makes an order by virtue of section (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.”
- 25
- (3) After subsection (4) insert –
- “(4A) A court that makes an order by virtue of section (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.”
- 30
- 57 In section 21 of that Act (powers of Crown Court to vary orders on breach), in the heading, after “vary” insert “or replace”.
- 58 In section 36 of that Act (proceedings in the Crown Court), in subsection (1), for “or 21” substitute “, 21 or 22E”.
- 35
- 59 (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*

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 – 5

“*Firearms offences*”.

60 In Part 2 of Schedule 3 to that Act (offences under particular enactments: England and Wales), after paragraph 38 insert –

“*Serious Crime Act 2014*” 10

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)*

61 In the Policing and Crime Act 2009, in the heading of Part 4, after “VIOLENCE” insert “AND DRUG-DEALING ACTIVITY”. 15

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

63 In section 49 (interpretation), at the appropriate place in subsection (1) insert –  
““drug-dealing activity” has the meaning given by section 34(7);”. 20

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

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

*Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10)* 25

65 (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*”.

(3) In sub-paragraph (1) of that paragraph, after “*violence*” insert “*and drug-dealing activity*”. 30

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

66 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 24 above). 35

# Serious Crime Bill [HL]

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## B I L L

[AS AMENDED IN COMMITTEE]

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 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.

*Lord Taylor of Holbeach*

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HL Bill 36

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