

# Serious Crime Bill [HL]

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[AS AMENDED IN PUBLIC BILL COMMITTEE]

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# B I L L

[AS AMENDED IN PUBLIC BILL COMMITTEE]

TO

Make provision about serious crime prevention orders; to create offences in respect of the encouragement or assistance of crime; to enable information to be shared or processed to prevent fraud or for purposes relating to proceeds of crime; to enable data matching to be conducted both in relation to fraud and for other purposes; to transfer functions of the Director of the Assets Recovery Agency to the Serious Organised Crime Agency and other persons and to make further provision in connection with the abolition of the Agency and the office of Director; to amend the Proceeds of Crime Act 2002 in relation to certain investigations and in relation to accredited financial investigators, management receivers and enforcement receivers, cash recovery proceedings and search warrants; to make amendments relating to Her Majesty's Revenue and Customs in connection with the regulation of investigatory powers; 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

### SERIOUS CRIME PREVENTION ORDERS

#### *General*

#### **1 Serious crime prevention orders**

- (1) The High Court in England and Wales may make an order if—
- (a) it is satisfied that a person has been involved in serious crime (whether in England and Wales or elsewhere); and

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- (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 England and Wales.
- (2) The High Court in Northern Ireland may make an order if—
- (a) it is satisfied that a person has been involved in serious crime (whether in Northern Ireland or elsewhere); and 5
- (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 Northern Ireland.
- (3) An order under this section may contain— 10
- (a) such prohibitions, restrictions or requirements; and
- (b) such other terms;
- as the court considers appropriate for the purpose of protecting the public by preventing, restricting or disrupting involvement by the person concerned in serious crime in England and Wales or (as the case may be) Northern Ireland. 15
- (4) The powers of the court in respect of an order under this section are subject to sections 6 to 15 (safeguards).
- (5) In this Part “serious crime prevention order” means—
- (a) an order under this section; or
- (b) an order under section 19 (corresponding order of the Crown Court on conviction). 20
- (6) For the purposes of this Part references to the person who is the subject of a serious crime prevention order are references to the person against whom the public are to be protected.
- 2 Involvement in serious crime: England and Wales orders** 25
- (1) For the purposes of this Part, a person has been involved in serious crime in England and Wales if he—
- (a) has committed a serious offence in England and Wales;
- (b) has facilitated the commission by another person of a serious offence in England and Wales; or 30
- (c) has conducted himself in a way that was likely to facilitate the commission by himself or another person of a serious offence in England and Wales (whether or not such an offence was committed).
- (2) In this Part “a serious offence in England and Wales” means an offence under the law of England and Wales which, at the time when the court is considering the application or matter in question— 35
- (a) is specified, or falls within a description specified, in Part 1 of Schedule 1; or
- (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. 40
- (3) For the purposes of this Part, involvement in serious crime in England and Wales is any one or more of the following—
- (a) the commission of a serious offence in England and Wales;
- (b) conduct which facilitates the commission by another person of a serious offence in England and Wales; 45

- (c) conduct which is likely to facilitate the commission, by the person whose conduct it is or another person, of a serious offence in England and Wales (whether or not such an offence is committed).
- (4) For the purposes of section 1(1)(a), a person has been involved in serious crime elsewhere than in England and Wales if he – 5
  - (a) has committed a serious offence in a country outside England and Wales;
  - (b) has facilitated the commission by another person of a serious offence in a country outside England and Wales; 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 England and Wales (whether or not such an offence was committed). 10
- (5) In subsection (4) “a serious offence in a country outside England and Wales” means an offence under the law of a country outside England and Wales which, at the time when the court is considering the application or matter in question – 15
  - (a) would be an offence under the law of England and Wales if committed in or as regards England and Wales; and
  - (b) either – 20
    - (i) would be an offence which is specified, or falls within a description specified, in Part 1 of Schedule 1 if committed in or as regards England and Wales; or
    - (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). 25
- (6) The test in subsection (4) is to be used instead of the test in section 3(1) in deciding for the purposes of section 1(1)(a) whether a person has been involved in serious crime in Northern Ireland. 30
- (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 Involvement in serious crime: Northern Ireland orders

- (1) For the purposes of this Part, a person has been involved in serious crime in Northern Ireland if he – 35
  - (a) has committed a serious offence in Northern Ireland;
  - (b) has facilitated the commission by another person of a serious offence in Northern Ireland; 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 Northern Ireland (whether or not such an offence was committed). 40
- (2) In this Part “a serious offence in Northern Ireland” means an offence under the law of Northern Ireland which, at the time when the court is considering the application or matter in question – 45
  - (a) is specified, or falls within a description specified, in Part 2 of Schedule 1; or



- (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 Northern Ireland is any one or more of the following – 5
- (a) the commission of a serious offence in Northern Ireland;
- (b) conduct which facilitates the commission by another person of a serious offence in Northern Ireland;
- (c) conduct which is likely to facilitate the commission, by the person whose conduct it is or another person, of a serious offence in Northern Ireland (whether or not such an offence is committed). 10
- (4) For the purposes of section 1(2)(a), a person has been involved in serious crime elsewhere than in Northern Ireland if he –
- (a) has committed a serious offence in a country outside Northern Ireland;
- (b) has facilitated the commission by another person of a serious offence in a country outside Northern Ireland; or 15
- (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 Northern Ireland (whether or not such an offence was committed). 20
- (5) In subsection (4) “a serious offence in a country outside Northern Ireland” means an offence under the law of a country outside Northern Ireland which, at the time when the court is considering the application or matter in question –
- (a) would be an offence under the law of Northern Ireland if committed in or as regards Northern Ireland; and 25
- (b) either –
- (i) would be an offence which is specified, or falls within a description specified, in Part 2 of Schedule 1 if committed in or as regards Northern Ireland; or 30
- (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).
- (6) The test in subsection (4) is to be used instead of the test in section 2(1) in deciding for the purposes of section 1(2)(a) whether a person has been involved in serious crime in England and Wales. 35
- (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. 40

#### **4 Involvement in serious crime: supplementary**

- (1) In considering for the purposes of this Part whether a person has committed a serious offence –
- (a) the court must decide that the person has committed the offence if –
- (i) he has been convicted of the offence; and 45
- (ii) the conviction has not been quashed on appeal nor has the person been pardoned of the offence; but

- (b) the court must not otherwise decide that the person has committed the offence.
- (2) In deciding for the purposes of this Part whether a person (“the respondent”) facilitates the commission by another person of a serious offence, the court must ignore – 5
  - (a) any act that the respondent can show to be reasonable in the circumstances; and
  - (b) subject to this, his intentions, or any other aspect of his mental state, at the time.
- (3) In deciding for the purposes of this Part whether a person (“the respondent”) conducts himself in a way that is likely to facilitate the commission by himself or another person of a serious offence (whether or not such an offence is committed), the court must ignore – 10
  - (a) any act that the respondent can show to be reasonable in the circumstances; and 15
  - (b) subject to this, his intentions, or any other aspect of his mental state, at the time.
- (4) The Secretary of State may by order amend Schedule 1.

## 5 Type of provision that may be made by orders

- (1) This section contains examples of the type of provision that may be made by a serious crime prevention order but it does not limit the type of provision that may be made by such an order. 20
- (2) Examples of prohibitions, restrictions or requirements that may be imposed by serious crime prevention orders in England and Wales or Northern Ireland include prohibitions, restrictions or requirements in relation to places other than England and Wales or (as the case may be) Northern Ireland. 25
- (3) Examples of prohibitions, restrictions or requirements that may be imposed on individuals (including partners in a partnership) by serious crime prevention orders include prohibitions or restrictions on, or requirements in relation to –
  - (a) an individual’s financial, property or business dealings or holdings; 30
  - (b) an individual’s working arrangements;
  - (c) the means by which an individual communicates or associates with others, or the persons with whom he communicates or associates;
  - (d) the premises to which an individual has access;
  - (e) the use of any premises or item by an individual; 35
  - (f) an individual’s travel (whether within the United Kingdom, between the United Kingdom and other places or otherwise).
- (4) Examples of prohibitions, restrictions or requirements that may be imposed on bodies corporate, partnerships and unincorporated associations by serious crime prevention orders include prohibitions or restrictions on, or requirements in relation to – 40
  - (a) financial, property or business dealings or holdings of such persons;
  - (b) the types of agreements to which such persons may be a party;
  - (c) the provision of goods or services by such persons;
  - (d) the premises to which such persons have access; 45
  - (e) the use of any premises or item by such persons;

- (f) the employment of staff by such persons.
- (5) Examples of requirements that may be imposed on any persons by serious crime prevention orders include—
- (a) a requirement on a person to answer questions, or provide information, specified or described in an order— 5
- (i) at a time, within a period or at a frequency;
- (ii) at a place;
- (iii) in a form and manner; and
- (iv) to a law enforcement officer or description of law enforcement officer; 10
- notified to the person by a law enforcement officer specified or described in the order;
- (b) a requirement on a person to produce documents specified or described in an order— 15
- (i) at a time, within a period or at a frequency;
- (ii) at a place;
- (iii) in a manner; and
- (iv) to a law enforcement officer or description of law enforcement officer; 20
- notified to the person by a law enforcement officer specified or described in the order.
- (6) The prohibitions, restrictions or requirements that may be imposed on individuals by serious crime prevention orders include prohibitions, restrictions or requirements in relation to an individual’s private dwelling (including, for example, prohibitions or restrictions on, or requirements in relation to, where an individual may reside). 25
- (7) In this Part—
- “document” means anything in which information of any description is recorded (whether or not in legible form);
- “a law enforcement officer” means— 30
- (a) a constable;
- (b) a member of the staff of the Serious Organised Crime Agency who is for the time being designated under section 43 of the Serious Organised Crime and Police Act 2005 (c. 15);
- (c) an officer of Revenue and Customs; or 35
- (d) a member of the Serious Fraud Office; and
- “premises” includes any land, vehicle, vessel, aircraft or hovercraft.
- (8) Any reference in this Part to the production of documents is, in the case of a document which contains information recorded otherwise than in legible form, a reference to the production of a copy of the information in legible form. 40

*General safeguards in relation to orders*

**6 Any individual must be 18 or over**

An individual under the age of 18 may not be the subject of a serious crime prevention order.

## 7 Other exceptions

A person may not be the subject of a serious crime prevention order if the person falls within a description specified by order of the Secretary of State.

## 8 Limited class of applicants for making of orders

A serious crime prevention order may be made only on an application by – 5

- (a) in the case of an order in England and Wales –
  - (i) the Director of Public Prosecutions;
  - (ii) the Director of Revenue and Customs Prosecutions; or
  - (iii) the Director of the Serious Fraud Office; and
- (b) in the case of an order in Northern Ireland, the Director of Public Prosecutions for Northern Ireland. 10

## 9 Right of third parties to make representations

- (1) The High Court must, on an application by a person, give the person an opportunity to make representations in proceedings before it about the making of a serious crime prevention order if it considers that the making of the order would be likely to have a significant adverse effect on that person. 15
- (2) The High Court must, on an application by a person, give the person an opportunity to make representations in proceedings before it about the variation of a serious crime prevention order if it considers that –
  - (a) the variation of the order; or
  - (b) a decision not to vary it;would be likely to have a significant adverse effect on that person. 20
- (3) The High Court must, on an application by a person, give the person an opportunity to make representations in proceedings before it about the discharge of a serious crime prevention order if it considers that –
  - (a) the discharge of the order; or
  - (b) a decision not to discharge it;would be likely to have a significant adverse effect on that person. 25
- (4) The Crown Court must, on an application by a person, give the person an opportunity to make representations in proceedings before it arising by virtue of section 19, 20 or 21 if it considers that the making or variation of the serious crime prevention order concerned (or a decision not to vary it) would be likely to have a significant adverse effect on that person. 30
- (5) A court which is considering an appeal in relation to a serious crime prevention order must, on an application by a person, give the person an opportunity to make representations in the proceedings if that person was given an opportunity to make representations in the proceedings which are the subject of the appeal. 35

## 10 Notice requirements in relation to orders

- (1) The subject of a serious crime prevention order is bound by it or a variation of it only if – 40
  - (a) he is represented (whether in person or otherwise) at the proceedings at which the order or (as the case may be) variation is made; or

- (b) a notice setting out the terms of the order or (as the case may be) variation has been served on him.
- (2) The notice may be served on him by –
- (a) delivering it to him in person; or
- (b) sending it by recorded delivery to him at his last-known address (whether residential or otherwise). 5
- (3) For the purposes of delivering such a notice to him in person, a constable or a person authorised for the purpose by the relevant applicant authority may (if necessary by force) –
- (a) enter any premises where he has reasonable grounds for believing the person to be; and 10
- (b) search those premises for him.
- (4) In this Part “the relevant applicant authority” means –
- (a) in relation to a serious crime prevention order in England and Wales – 15
- (i) where the order was applied for by the Director of Public Prosecutions, the Director of Public Prosecutions;
- (ii) where the order was applied for by the Director of Revenue and Customs Prosecutions, the Director of Revenue and Customs Prosecutions; and
- (iii) where the order was applied for by the Director of the Serious Fraud Office, the Director of the Serious Fraud Office; and 20
- (b) in relation to a serious crime prevention order in Northern Ireland, the Director of Public Prosecutions for Northern Ireland.

*Information safeguards*

**11 Restrictions on oral answers** 25

A serious crime prevention order may not require a person to answer questions, or provide information, orally.

**12 Restrictions for legal professional privilege**

- (1) A serious crime prevention order may not require a person –
- (a) to answer any privileged question; 30
- (b) to provide any privileged information; or
- (c) to produce any privileged document.
- (2) A “privileged question” is a question which the person would be entitled to refuse to answer on grounds of legal professional privilege in proceedings in the High Court. 35
- (3) “Privileged information” is information which the person would be entitled to refuse to provide on grounds of legal professional privilege in such proceedings.
- (4) A “privileged document” is a document which the person would be entitled to refuse to produce on grounds of legal professional privilege in such proceedings. 40
- (5) But subsection (1) does not prevent an order from requiring a lawyer to provide the name and address of a client of his.

### 13 Restrictions on excluded material and banking information

- (1) A serious crime prevention order may not require a person to produce –
  - (a) in the case of an order in England and Wales, any excluded material as defined by section 11 of the Police and Criminal Evidence Act 1984 (c. 60); and 5
  - (b) in the case of an order in Northern Ireland, any excluded material as defined by Article 13 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I.12)).
- (2) A serious crime prevention order may not require a person to disclose any information or produce any document in respect of which he owes an obligation of confidence by virtue of carrying on a banking business unless condition A or B is met. 10
- (3) Condition A is that the person to whom the obligation of confidence is owed consents to the disclosure or production.
- (4) Condition B is that the order contains a requirement – 15
  - (a) to disclose information, or produce documents, of this kind; or
  - (b) to disclose specified information which is of this kind or to produce specified documents which are of this kind.

### 14 Restrictions relating to other enactments

- (1) A serious crime prevention order may not require a person – 20
  - (a) to answer any question;
  - (b) to provide any information; or
  - (c) to produce any document;if the disclosure concerned is prohibited under any other enactment.
- (2) In this section – 25
  - “enactment” includes an Act of the Scottish Parliament, Northern Ireland legislation and an enactment comprised in subordinate legislation, and includes an enactment whenever passed or made; and
  - “subordinate legislation” has the same meaning as in the Interpretation Act 1978 (c. 30) and also includes an instrument made under – 30
    - (a) an Act of the Scottish Parliament; or
    - (b) Northern Ireland legislation.

### 15 Restrictions on use of information obtained

- (1) A statement made by a person in response to a requirement imposed by a serious crime prevention order may not be used in evidence against him in any criminal proceedings unless condition A or B is met. 35
- (2) Condition A is that the criminal proceedings relate to an offence under section 25.
- (3) Condition B is that –
  - (a) the criminal proceedings relate to another offence; 40
  - (b) the person who made the statement gives evidence in the criminal proceedings;

- (c) in the course of that evidence, the person makes a statement which is inconsistent with the statement made in response to the requirement imposed by the order; and
- (d) in the criminal proceedings evidence relating to the statement made in response to the requirement imposed by the order is adduced, or a question about it is asked, by the person or on his behalf. 5

*Duration, variation and discharge of orders*

**16 Duration of orders**

- (1) A serious crime prevention order must specify when it is to come into force and when it is to cease to be in force. 10
- (2) An order is not to be in force for more than 5 years beginning with the coming into force of the order.
- (3) An order can specify different times for the coming into force, or ceasing to be in force, of different provisions of the order.
- (4) Where it specifies different times in accordance with subsection (3), the order – 15
  - (a) must specify when each provision is to come into force and cease to be in force; and
  - (b) is not to be in force for more than 5 years beginning with the coming into force of the first provision of the order to come into force.
- (5) The fact that an order, or any provision of an order, ceases to be in force does not prevent the court from making a new order to the same or similar effect. 20
- (6) A new order may be made in anticipation of an earlier order or provision ceasing to be in force.

**17 Variation of orders**

- (1) The High Court in England and Wales may, on an application under this section, vary a serious crime prevention order in England and Wales 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 England and Wales. 25
- (2) The High Court in Northern Ireland may, on an application under this section, vary a serious crime prevention order in Northern Ireland 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 Northern Ireland. 30
- (3) An application for the variation of an order under this section may be made by – 35
  - (a) the relevant applicant authority; or
  - (b) subject as follows –
    - (i) the person who is the subject of the order; or
    - (ii) any other person. 40
- (4) The court must not entertain an application by the person who is the subject of the order unless it considers that there has been a change of circumstances affecting the order.

- 
- (5) The court must not entertain an application by any person falling within subsection (3)(b)(ii) unless it considers that –
- (a) the person is significantly adversely affected by the order;
  - (b) condition A or B is met; and
  - (c) the application is not for the purpose of making the order more onerous on the person who is the subject of it. 5
- (6) Condition A is that –
- (a) the person falling within subsection (3)(b)(ii) –
    - (i) has, on an application under section 9, been given an opportunity to make representations; or 10
    - (ii) has made an application otherwise than under that section; in earlier proceedings in relation to the order (whether before the High Court or the Crown Court); and
  - (b) there has been a change of circumstances affecting the order.
- (7) Condition B is that – 15
- (a) the person falling within subsection (3)(b)(ii) has not made an application of any kind in earlier proceedings in relation to the order (whether before the High Court or the Crown Court); and
  - (b) it was reasonable in all the circumstances for the person not to have done so. 20
- (8) A variation on an application under subsection (3)(a) 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)).
- 18 Discharge of orders**
- (1) On an application under this section – 25
- (a) the High Court in England and Wales may discharge a serious crime prevention order in England and Wales; and
  - (b) the High Court in Northern Ireland may discharge a serious crime prevention order in Northern Ireland.
- (2) An application for the discharge of an order may be made by – 30
- (a) the relevant applicant authority; or
  - (b) subject as follows –
    - (i) the person who is the subject of the order; or
    - (ii) any other person.
- (3) The court must not entertain an application by the person who is the subject of the order unless it considers that there has been a change of circumstances affecting the order. 35
- (4) The court must not entertain an application by any person falling within subsection (2)(b)(ii) unless it considers that –
- (a) the person is significantly adversely affected by the order; and 40
  - (b) condition A or B is met.
- (5) Condition A is that –
- (a) the person –
    - (i) has, on an application under section 9, been given an opportunity to make representations; or 45



- (ii) has made an application otherwise than under that section; in earlier proceedings in relation to the order (whether before the High Court or the Crown Court); and
- (b) there has been a change of circumstances affecting the order.
- (6) Condition B is that – 5
- (a) the person has not made an application of any kind in earlier proceedings in relation to the order (whether before the High Court or the Crown Court); and
- (b) it was reasonable in all the circumstances for the person not to have done so. 10

*Extension of jurisdiction to Crown Court*

**19 Orders by Crown Court on conviction**

- (1) Subsection (2) applies where the Crown Court in England and Wales is dealing with a person who – 15
- (a) has been convicted by or before a magistrates' court of having committed a serious offence in England and Wales and has been committed to the Crown Court to be dealt with; or
- (b) has been convicted by or before the Crown Court of having committed a serious offence in England and Wales.
- (2) The Crown Court may, in addition to dealing with the person in relation to the offence, make an order if 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 England and Wales. 20
- (3) Subsection (4) applies where the Crown Court in Northern Ireland is dealing with a person who has been convicted by or before the Crown Court of having committed a serious offence in Northern Ireland. 25
- (4) The Crown Court may, in addition to dealing with the person in relation to the offence, make an order if 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 Northern Ireland. 30
- (5) An order under this section may contain –
- (a) such prohibitions, restrictions or requirements; and
- (b) such other terms;
- as the court considers appropriate for the purpose of protecting the public by preventing, restricting or disrupting involvement by the person concerned in serious crime in England and Wales or (as the case may be) Northern Ireland. 35
- (6) The powers of the court in respect of an order under this section are subject to sections 6 to 15 (safeguards).
- (7) An order must not be made under this section except – 40
- (a) in addition to a sentence imposed in respect of the offence concerned; or
- (b) in addition to an order discharging the person conditionally.
- (8) An order under this section is also called a serious crime prevention order.

## 20 Powers of Crown Court to vary orders on conviction

- (1) Subsection (2) applies where the Crown Court in England and Wales is dealing with a person who –
  - (a) has been convicted by or before a magistrates' court of having committed a serious offence in England and Wales and has been committed to the Crown Court to be dealt with; or 5
  - (b) has been convicted by or before the Crown Court of having committed a serious offence in England and Wales.
- (2) The Crown Court may –
  - (a) in the case of a person who is the subject of a serious crime prevention order in England and Wales; and 10
  - (b) in addition to dealing with the person in relation to the offence; vary the order if the court 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 England and Wales. 15
- (3) Subsection (4) applies where the Crown Court in Northern Ireland is dealing with a person who has been convicted by or before the Crown Court of having committed a serious offence in Northern Ireland.
- (4) The Crown Court may –
  - (a) in the case of a person who is the subject of a serious crime prevention order in Northern Ireland; and 20
  - (b) in addition to dealing with the person in relation to the offence; vary the order if the court 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 Northern Ireland. 25
- (5) A variation under this section may be made only on an application by the relevant applicant authority.
- (6) A variation 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 conditionally. 30
- (7) 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)).

## 21 Powers of Crown Court to vary orders on breach

- (1) Subsection (2) applies where the Crown Court in England and Wales is dealing with a person who –
  - (a) has been convicted by or before a magistrates' court of having committed an offence under section 25 in relation to a serious crime prevention order and has been committed to the Crown Court to be dealt with; or 40
  - (b) has been convicted by or before the Crown Court of having committed an offence under section 25 in relation to a serious crime prevention order.
- (2) The Crown Court may –
  - (a) in the case of an order in England and Wales; and 45

<p>(b) in addition to dealing with the person in relation to the offence; vary the order 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 in serious crime in England and Wales.</p> <p>(3) Subsection (4) applies where the Crown Court in Northern Ireland is dealing with a person who has been convicted by or before the Crown Court of an offence under section 25 in relation to a serious crime prevention order.</p> <p>(4) The Crown Court may –</p> <p style="padding-left: 20px;">(a) in the case of an order in Northern Ireland; and</p> <p style="padding-left: 20px;">(b) in addition to dealing with the person in relation to the offence; vary the order 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 in serious crime in Northern Ireland.</p> <p>(5) A variation under this section may be made only on an application by the relevant applicant authority.</p> <p>(6) A variation must not be made except –</p> <p style="padding-left: 20px;">(a) in addition to a sentence imposed in respect of the offence concerned; or</p> <p style="padding-left: 20px;">(b) in addition to an order discharging the person conditionally.</p> <p>(7) 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)).</p>	<p></p> <p>5</p> <p></p> <p>10</p> <p>15</p> <p></p> <p>20</p>
<b>22 Inter-relationship between different types of orders</b>	
<p>(1) The fact that a serious crime prevention order has been made or varied by the High Court does not prevent it from being varied by the Crown Court in accordance with this Part.</p> <p>(2) The fact that a serious crime prevention order has been made or varied by the Crown Court does not prevent it from being varied or discharged by the High Court in accordance with this Part.</p> <p>(3) A decision by the Crown Court not to make an order under section 19 does not prevent a subsequent application to the High Court for an order under section 1 in consequence of the same offence.</p> <p>(4) A decision by the Crown Court not to vary a serious crime prevention order under section 20 or 21 does not prevent a subsequent application to the High Court for a variation of the order in consequence of the same offence.</p>	<p>25</p> <p></p> <p>30</p> <p></p>
<i>Appeals</i>	
<b>23 Additional right of appeal from High Court</b>	
<p>(1) An appeal may be made to the Court of Appeal in relation to a decision of the High Court –</p> <p style="padding-left: 20px;">(a) to make a serious crime prevention order;</p> <p style="padding-left: 20px;">(b) to vary, or not to vary, such an order; or</p> <p style="padding-left: 20px;">(c) not to discharge such an order;</p>	<p>40</p>

by any person who was given an opportunity to make representations in the proceedings concerned by virtue of section 9(1), (2) or (as the case may be) (3).

- (2) Subsection (1) is without prejudice to the rights of other persons to make appeals, by virtue of section 16 of the Senior Courts Act 1981 (c. 54) or section 35 of the Judicature (Northern Ireland) Act 1978 (c. 23), in relation to any judgments or orders of the High Court about serious crime prevention orders. 5

## **24 Appeals from Crown Court to Court of Appeal**

- (1) An appeal against a decision of the Crown Court in relation to a serious crime prevention order may be made to the Court of Appeal by – 10
- (a) the person who is the subject of the order; or
  - (b) the relevant applicant authority.
- (2) In addition, an appeal may be made to the Court of Appeal in relation to a decision of the Crown Court – 15
- (a) to make a serious crime prevention order; or
  - (b) to vary, or not to vary, such an order;
- by any person who was given an opportunity to make representations in the proceedings concerned by virtue of section 9(4).
- (3) An appeal under this section lies only with the leave of the Court of Appeal.

### *Enforcement*

## **25 Offence of failing to comply with order** 20

- (1) A person who, without reasonable excuse, fails to comply with a serious crime prevention order commits an offence.
- (2) A person who commits an offence under this section is liable – 25
- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum or to both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine or to both.
- (3) In the application of subsection (2)(a) in Northern Ireland, the reference to 12 months is to be read as a reference to 6 months.
- (4) In proceedings for an offence under this section, a copy of the original order or any variation of it, certified as such by the proper officer of the court which made it, is admissible as evidence of its having been made and of its contents to the same extent that oral evidence of those things is admissible in those proceedings. 30

## **26 Powers of forfeiture in respect of offence** 35

- (1) The court before which a person is convicted of an offence under section 25 may order the forfeiture of anything in his possession at the time of the offence which the court considers to have been involved in the offence.
- (2) Before making an order under subsection (1) in relation to anything the court must give an opportunity to make representations to any person (in addition 40

to the convicted person) who claims to be the owner of that thing or otherwise to have an interest in it.

- (3) An order under subsection (1) may not be made so as to come into force at any time before there is no further possibility (ignoring any power to appeal out of time) of the order being varied or set aside on appeal. 5
- (4) Where the court makes an order under subsection (1), it may also make such other provision as it considers to be necessary for giving effect to the forfeiture.
- (5) That provision may, in particular, include provision relating to the retention, handling, destruction or other disposal of what is forfeited.
- (6) Provision made by virtue of this section may be varied at any time by the court that made it. 10

## **27 Powers to wind up companies etc: England and Wales and Scotland**

- (1) The Director of Public Prosecutions, the Director of Revenue and Customs Prosecutions or the Director of the Serious Fraud Office may present a petition to the court for the winding up of a company, partnership or relevant body if— 15
- (a) the company, partnership or relevant body has been convicted of an offence under section 25 in relation to a serious crime prevention order; and
- (b) the Director concerned considers that it would be in the public interest for the company, partnership or (as the case may be) relevant body to be wound up. 20
- (2) The Insolvency Act 1986 (c. 45) 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). 25
- (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 Director of Public Prosecutions, the Director of Revenue and Customs Prosecutions or the Director of the Serious Fraud Office. 30
- (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 35
- (b) the court considers that it is just and equitable for the company to be wound up.
- (5) Section 420 of the Act of 1986 (power to make provision about insolvent partnerships) applies for the purposes of this section as if the reference to an insolvent partnership were a reference to a partnership to which this section applies. 40
- (6) The Secretary of State may by order provide for the Act of 1986 to apply, with such modifications as he 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. 45

- (7) An order made by virtue of subsection (5) or (6) must ensure that the court may make an order to wind up the partnership or relevant body only if –
- (a) the partnership or 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 partnership or relevant body to be wound up. 5
- (8) No petition may be presented to, or order to wind up made by, a court in Scotland by virtue of this section in respect of a company, partnership or relevant body whose estate may be sequestrated under the Bankruptcy (Scotland) Act 1985 (c. 66). 10
- (9) No petition may be presented, or order to wind up 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. 15
- (10) No petition may be presented, or order to wind up made, by virtue of this section if the company, partnership or relevant body is already being wound up 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. 20
- (12) In this section –
- “company” has the same meaning as in Parts 1 to 7 of the Insolvency Act 1986 (c. 45) (see section 251 of that Act) but –
    - (a) does not include a relevant body; and 25
    - (b) subject to this, does include an unregistered company within the meaning of Part 5 of that Act (see section 220 of that Act);
  - “the court” has the same meaning as in Parts 1 to 7 of the Insolvency Act 1986 but does not include a court in Northern Ireland;
  - “an industrial and provident society” means a society registered under the Industrial and Provident Societies Act 1965 (c. 12) or a society deemed by virtue of section 4 of that Act to be so registered; and 30
  - “relevant body” means –
    - (a) a building society (within the meaning of the Building Societies Act 1986 (c. 53)); 35
    - (b) an incorporated friendly society (within the meaning of the Friendly Societies Act 1992 (c. 40));
    - (c) an industrial and provident society; or
    - (d) such other description of person as may be specified by order made by the Secretary of State; 40
- 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).

## 28 Powers to wind up companies etc: Northern Ireland

- (1) The Director of Public Prosecutions for Northern Ireland may present a petition to the court for the winding up of a company, partnership or relevant body if – 45

- 
- (a) the company, partnership or relevant body has been convicted of an offence under section 25 in relation to a serious crime prevention order; and
- (b) the Director of Public Prosecutions for Northern Ireland considers that it would be in the public interest for the company, partnership or (as the case may be) relevant body to be wound up. 5
- (2) The Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I.19)) applies in relation to –
- (a) a petition under this section for the winding up of a company; and
- (b) the company’s winding up; 10
- as it applies in relation to a petition under Article 104A of the Order of 1989 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) Article 104(5)(b) of the Order of 1989 (application for winding up) applies in relation to a petition under this section as if it permits the petition to be presented by the Director of Public Prosecutions for Northern Ireland. 15
- (4) The court may make an order under Article 105 of the Order of 1989 (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 20
- (b) the court considers that it is just and equitable for the company to be wound up.
- (5) Article 364 of the Order of 1989 (power to make provision about insolvent partnerships) applies for the purposes of this section as if the reference to an insolvent partnership were a reference to a partnership to which this section applies. 25
- (6) The Secretary of State may by order provide for the Order of 1989 to apply, with such modifications as he 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. 30
- (7) An order made by virtue of subsection (5) or (6) must ensure that the court may make an order to wind up the partnership or relevant body only if –
- (a) the partnership or relevant body has been convicted of an offence under section 25 in relation to a serious crime prevention order; and 35
- (b) the court considers that it is just and equitable for the partnership or relevant body to be wound up.
- (8) No petition may be presented, or order to wind up made, by virtue of this section if –
- (a) an appeal against conviction for the offence concerned has been made and not finally determined; or 40
- (b) the period during which such an appeal may be made has not expired.
- (9) No petition may be presented, or order to wind up made, by virtue of this section if the company, partnership or relevant body is already being wound up by the court. 45

- (10) In deciding for the purposes of subsection (8) 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.
- (11) In this section –
- “company” has the same meaning as in Parts 2 to 7 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I.19)) (see Article 5 of that Order) but –
    - (a) does not include a relevant body; and
    - (b) subject to this, does include an unregistered company within the meaning of Part 6 of that Order (see Article 184 of that Order);
  - “the court” means the High Court in Northern Ireland;
  - “an industrial and provident society” means a society registered under the Industrial and Provident Societies Act (Northern Ireland) 1969 (c. 24) or a society deemed by virtue of section 4 of that Act to be so registered; and
  - “relevant body” means –
    - (a) a building society (within the meaning of the Building Societies Act 1986 (c. 53));
    - (b) an incorporated friendly society (within the meaning of the Friendly Societies Act 1992 (c. 40));
    - (c) an industrial and provident society; or
    - (d) such other description of person as may be specified by order made by the Secretary of State;
- and the references to Articles 104 to 105 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I.19)) include references to those Articles as applied by Article 185(1) of that Order (unregistered companies).

## 29 Powers to wind up: supplementary

- (1) The Secretary of State may by order make such modifications as he considers appropriate to the application of –
  - (a) the Insolvency Act 1986 (c. 45) by virtue of section 27(2); or
  - (b) the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I.19)) by virtue of section 28(2).
- (2) Any modifications made by virtue of subsection (1) are in addition to the modifications made by section 27(3) and (4) or (as the case may be) section 28(3) and (4).
- (3) The Secretary of State may by order make such consequential or supplementary provision, applying with or without modifications any provision made by or under an enactment, as he considers appropriate in connection with section 27(2) to (4) or 28(2) to (4).
- (4) An order made by virtue of section 27(5) or (6), section 28(5) or (6) or subsection (1) above may, in particular, contain consequential or supplementary provision applying, with or without modifications, any provision made by or under an enactment.



*Particular types of persons*

**30 Bodies corporate including limited liability partnerships**

- (1) For the purposes of section 10 in its application to a serious crime prevention order against a body corporate or to the variation of such an order –
- (a) a notice setting out the terms of the order or variation – 5
- (i) is delivered to the body corporate in person if it is delivered to an officer of the body corporate in person; and
- (ii) is sent by recorded delivery to the body corporate at its last-known address if it is so sent to an officer of the body corporate at the address of the registered office of that body or at the address of its principal office in the United Kingdom; and 10
- (b) the power conferred by subsection (3) of that section is a power to enter any premises where the person exercising the power has reasonable grounds for believing an officer of the body corporate to be and to search those premises for the officer. 15
- (2) If an offence under section 25 committed by a body corporate is proved to have been committed with the consent or connivance of –
- (a) an officer of the body corporate; or
- (b) a person who was purporting to act in any such capacity;
- he (as well as the body corporate) is guilty of the offence and liable to be proceeded against and punished accordingly. 20
- (3) Nothing in this section prevents a serious crime prevention order from being made against an officer or employee of a body corporate or against any other person associated with a body corporate.
- (4) In this section – 25
- “body corporate” includes a limited liability partnership;
- “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate; and
- “officer of a body corporate” means any director, manager, secretary or other similar officer of the body corporate. 30

**31 Other partnerships**

- (1) A serious crime prevention order against a partnership must be made in the name of the partnership (and not in that of any of the partners).
- (2) An order made in the name of the partnership continues to have effect despite a change of partners provided that at least one of the persons who was a partner before the change remains a partner after it. 35
- (3) For the purposes of this Part, a partnership is involved in serious crime in England and Wales, Northern Ireland or elsewhere if the partnership, or any of the partners, is so involved; and involvement in serious crime in England and Wales or Northern Ireland is to be read accordingly. 40
- (4) For the purposes of section 10 in its application to a serious crime prevention order against a partnership or to the variation of such an order –
- (a) a notice setting out the terms of the order or variation –

- (i) is delivered to the partnership in person if it is delivered to any of the partners in person or to a senior officer of the partnership in person; and
    - (ii) is sent by recorded delivery to the partnership at its last-known address if it is so sent to any of the partners or to a senior officer of the partnership at the address of the principal office of the partnership in the United Kingdom; and
  - (b) the power conferred by subsection (3) of that section is a power to enter any premises where the person exercising the power has reasonable grounds for believing a partner or senior officer of the partnership to be and to search those premises for the partner or senior officer. 10
- (5) Proceedings for an offence under section 25 alleged to have been committed by a partnership must be brought in the name of the partnership (and not in that of any of the partners).
- (6) For the purposes of such proceedings – 15
- (a) rules of court relating to the service of documents have effect as if the partnership were a body corporate; and
  - (b) the following provisions apply as they apply in relation to a body corporate –
    - (i) section 33 of the Criminal Justice Act 1925 (c. 86) and Schedule 3 to the Magistrates’ Courts Act 1980 (c. 43); 20
    - (ii) sections 70 and 143 of the Criminal Procedure (Scotland) Act 1995 (c. 46); and
    - (iii) section 18 of the Criminal Justice Act (Northern Ireland) 1945 (c. 15 (N.I.)) and Schedule 4 to the Magistrates’ Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I.26)). 25
- (7) A fine imposed on the partnership on its conviction for an offence under section 25 is to be paid out of the partnership assets.
- (8) If an offence under section 25 committed by a partnership is proved to have been committed with the consent or connivance of a partner or a senior officer of the partnership, he (as well as the partnership) is guilty of the offence and liable to be proceeded against and punished accordingly. 30
- (9) For the purposes of subsection (8) –
- (a) references to a partner or to a senior officer of a partnership include references to any person purporting to act in such a capacity; and 35
  - (b) subsection (5) is not to be read as prejudicing any liability of a partner under subsection (8).
- (10) Nothing in this section prevents a serious crime prevention order from being made against –
- (a) a particular partner; or 40
  - (b) a senior officer or employee of a partnership or any other person associated with a partnership.
- (11) In this section –
- “senior officer of a partnership” means any person who has the control or management of the business carried on by the partnership at the principal place where it is carried on; and 45
  - “partnership” does not include a limited liability partnership.

## 32 Unincorporated associations

- (1) A serious crime prevention order against an unincorporated association must be made in the name of the association (and not in that of any of its members).
- (2) An order made in the name of the association continues to have effect despite a change in the membership of the association provided that at least one of the persons who was a member of the association before the change remains a member after it. 5
- (3) For the purposes of section 10 in its application to a serious crime prevention order against an unincorporated association or to the variation of such an order – 10
  - (a) a notice setting out the terms of the order or variation –
    - (i) is delivered to the association in person if it is delivered to an officer of the association in person; and
    - (ii) is sent by recorded delivery to the association at its last-known address if it is so sent to an officer of the association at the address of the principal office of the association in the United Kingdom; and 15
  - (b) the power conferred by subsection (3) of that section is a power to enter any premises where the person exercising the power has reasonable grounds for believing an officer of the association to be and to search those premises for the officer. 20
- (4) Proceedings for an offence under section 25 alleged to have been committed by an unincorporated association must be brought in the name of the association (and not in that of any of its members).
- (5) For the purposes of such proceedings – 25
  - (a) rules of court relating to the service of documents have effect as if the association were a body corporate; and
  - (b) the following provisions apply as they apply in relation to a body corporate –
    - (i) section 33 of the Criminal Justice Act 1925 (c. 86) and Schedule 3 to the Magistrates' Courts Act 1980 (c. 43); 30
    - (ii) sections 70 and 143 of the Criminal Procedure (Scotland) Act 1995 (c. 46); and
    - (iii) section 18 of the Criminal Justice Act (Northern Ireland) 1945 (c. 15 (N.I.)) and Schedule 4 to the Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I.26)). 35
- (6) A fine imposed on the association on its conviction for an offence under section 25 is to be paid out of the funds of the association.
- (7) If an offence under section 25 committed by an unincorporated association is proved to have been committed with the consent or connivance of an officer of the association, he (as well as the association) is guilty of the offence and liable to be proceeded against and punished accordingly. 40
- (8) For the purposes of subsection (7) –
  - (a) references to an officer of an unincorporated association include references to any person purporting to act in such a capacity; and 45
  - (b) subsection (4) is not to be read as prejudicing any liability of an officer of an unincorporated association under subsection (7).

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- (9) Nothing in this section prevents a serious crime prevention order from being made against –
- (a) a member, officer or employee of an unincorporated association; or
  - (b) any other person associated with an unincorporated association.
- (10) In this section – 5
- “officer of an unincorporated association” means any officer of an unincorporated association or any member of its governing body; and
  - “unincorporated association” means any body of persons unincorporate but does not include a partnership.
- 33 Overseas bodies** 10
- The Secretary of State may by order modify section 30, 31 or 32 in its application to a body of persons formed under law having effect outside the United Kingdom.
- 34 Providers of information society services**
- (1) A serious crime prevention order may not include terms which restrict the freedom of a service provider who is established in an EEA state other than the United Kingdom to provide information society services in relation to an EEA state unless the conditions in subsections (2) and (3) are met. 15
- (2) The condition in this subsection is that the court concerned considers that the terms – 20
- (a) are necessary for the objective of protecting the public by preventing, restricting or disrupting involvement in –
    - (i) in the case of an order in England and Wales, serious crime in England and Wales; and
    - (ii) in the case of an order in Northern Ireland, serious crime in Northern Ireland; 25
  - (b) relate to an information society service which prejudices that objective or presents a serious and grave risk of prejudice to it; and
  - (c) are proportionate to that objective.
- (3) The conditions in this subsection are that – 30
- (a) a law enforcement officer has requested the EEA state in which the service provider is established to take measures which the law enforcement officer considers to be of equivalent effect under the law of the EEA state to the terms and the EEA state has failed to take the measures; and 35
  - (b) a law enforcement officer has notified the Commission of the European Communities and the EEA state of –
    - (i) the intention to seek an order containing the terms; and
    - (ii) the terms.
- (4) It does not matter for the purposes of subsection (3) whether the request or notification is made before or after the making of the application for the order. 40
- (5) A serious crime prevention order may not include terms which impose liabilities on service providers of intermediary services so far as the imposition of those liabilities would result in a contravention of Article 12, 13 or 14 of the

- E-Commerce Directive (various protections for service providers of intermediary services).
- (6) A serious crime prevention order may not include terms which impose a general obligation on service providers of intermediary services covered by Articles 12, 13 and 14 of the E-Commerce Directive – 5
- (a) to monitor the information which they transmit or store when providing those services; or
  - (b) actively to seek facts or circumstances indicating illegal activity when providing those services.
- (7) For the purposes of this section – 10
- (a) a service provider is established in a particular EEA state if he effectively pursues an economic activity using a fixed establishment in that EEA state for an indefinite period and he is a national of an EEA state or a company or firm mentioned in Article 48 of the EEC Treaty;
  - (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; 15
  - (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 where the service provider has the centre of his activities relating to the service; 20
- and references to a person being established in an EEA state are to be read accordingly.
- (8) In this section –
- “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); 25
  - “information society services” –
    - (a) has the meaning given in Article 2(a) of the E-Commerce Directive (which refers to Article 1(2) of Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations); and 30
    - (b) is summarised in recital 17 of the E-Commerce Directive as covering “any service normally provided for remuneration, at a distance, by means of electronic equipment for the processing (including digital compression) and storage of data, and at the individual request of a recipient of a service”; 35
  - “intermediary services” means an information society service which – 40
    - (a) consists in the provision of access to a communication network or the transmission in a communication network of information provided by a recipient of the service;
    - (b) consists in the transmission in a communication network of information which – 45
      - (i) is provided by a recipient of the service; and
      - (ii) is the subject of automatic, intermediate and temporary storage which is solely for the purpose of making the onward transmission of the information to other recipients of the service at their request more efficient; or 50

- (c) consists in the storage of information provided by a recipient of the service;
- “recipient”, in relation to a service, means any person who, for professional ends or otherwise, uses an information society service, in particular for the purposes of seeking information or making it accessible; and 5
- “service provider” means a person providing an information society service.
- (9) For the purposes of paragraph (a) of the definition of “intermediary services”, the provision of access to a communication network and the transmission of information in a communication network includes the automatic, intermediate and transient storage of the information transmitted so far as the storage is for the sole purpose of carrying out the transmission in the network. 10
- (10) Subsection (9) does not apply if the information is stored for longer than is reasonably necessary for the transmission. 15

### *Supplementary*

#### **35 Proceedings in the High Court**

- (1) Proceedings before the High Court in relation to serious crime prevention orders are civil proceedings.
- (2) One consequence of this is that the standard of proof to be applied by the court in such proceedings is the civil standard of proof. 20

#### **36 Proceedings in the Crown Court**

- (1) Proceedings before the Crown Court arising by virtue of section 19, 20 or 21 are civil proceedings.
- (2) One consequence of this is that the standard of proof to be applied by the court in such proceedings is the civil standard of proof. 25
- (3) Two other consequences of this are that the court—
- (a) is not restricted to considering evidence that would have been admissible in the criminal proceedings in which the person concerned was convicted; and 30
- (b) may adjourn any proceedings in relation to a serious crime prevention order even after sentencing the person concerned.
- (4) The Crown Court, when exercising its jurisdiction in England and Wales under this Part, is a criminal court for the purposes of Part 7 of the Courts Act 2003 (c. 39) (procedure rules and practice directions). 35
- (5) A serious crime prevention order may be made as mentioned in section 19(7)(b) in spite of anything in sections 12 and 14 of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) or (as the case may be) Articles 4 and 6 of the Criminal Justice (Northern Ireland) Order 1996 (S.I. 1996/3160 (N.I.24)) (which relate to orders discharging a person absolutely or conditionally and their effect). 40

- (6) A variation of a serious crime prevention order may be made as mentioned in section 20(6)(b) or 21(6)(b) in spite of anything in sections 12 and 14 of the Act of 2000 or (as the case may be) Articles 4 and 6 of the Order of 1996.

### **37 Functions of applicant authorities**

Schedule 2 (functions of applicant authorities under this Part) has effect. 5

### **38 Disclosure of information in accordance with orders**

- (1) A person who complies with a requirement imposed by a serious crime prevention order to answer questions, provide information or produce documents does not breach—
- (a) any obligation of confidence; or 10
  - (b) any other restriction on making the disclosure concerned (however imposed).
- (2) But see sections 11 to 14 (which limit the requirements that may be imposed by serious crime prevention orders in connection with answering questions, providing information or producing documents). 15

### **39 Powers of law enforcement officers to retain documents**

- (1) A law enforcement officer—
- (a) may take and retain copies of, or extracts from, any document produced to a law enforcement officer in pursuance of a serious crime prevention order; and 20
  - (b) may retain any document so produced for as long as he considers that it is necessary to retain it (rather than any copy of it) for the purposes for which the document was obtained.
- (2) A law enforcement officer may retain any document produced to a law enforcement officer in pursuance of a serious crime prevention order until the conclusion of any legal proceedings if he has reasonable grounds for believing that the document—
- (a) may have to be produced for the purposes of those proceedings; and
  - (b) might be unavailable unless retained. 25

*Interpretation: Part 1* 30

### **40 Interpretation: Part 1**

In this Part—

- “act” and “conduct” include omissions and statements;
- “country” includes territory;
- “modifications” includes additions and omissions (and “modify” is to be read accordingly); 35
- “the public” includes a section of the public or a particular member of the public.

#### 41 Index of defined expressions: Part 1

In this Part, the expressions listed in the left-hand column have the meaning given by, or are to be interpreted in accordance with, the provisions listed in the right-hand column.

<i>Expression</i>	<i>Provision</i>	
act	section 40	
committed a serious offence	section 4(1)	
conduct	section 40	
conducts oneself in a way likely to facilitate the commission by oneself or another person of a serious offence	section 4(3)	10
country	section 40	
Director of Public Prosecutions, Director of Revenue and Customs Prosecutions, Director of the Serious Fraud Office and Director of Public Prosecutions for Northern Ireland	Paragraphs 2(2), 7(2), 13(2) and 17 of Schedule 2	15
document	section 5(7)	
facilitates the commission by another person of a serious offence	section 4(2)	20
involvement in serious crime: England and Wales orders	sections 2, 4 and 31(3)	
involvement in serious crime: Northern Ireland orders	sections 3, 4 and 31(3)	
law enforcement officer	section 5(7)	25
modifications (and modify)	section 40	
person who is the subject of a serious crime prevention order	section 1(6)	
premises	section 5(7)	
production of documents	section 5(8)	30
the public	section 40	
relevant applicant authority	section 10(4)	
serious crime prevention order	section 1(5)	
serious offence in England and Wales	section 2(2)	
serious offence in Northern Ireland	section 3(2)	35



## PART 2

### ENCOURAGING OR ASSISTING CRIME

#### *Inchoate offences*

#### **42 Intentionally encouraging or assisting an offence**

- |     |  |    |
|-----|--|----|
| (1) | A person commits an offence if—  | 5  |
| (a) | he does an act capable of encouraging or assisting the commission of an offence; and   |    |
| (b) | he intends to encourage or assist its commission.  |    |
| (2) | But he is not to be taken to have intended to encourage or assist the commission of an offence merely because such encouragement or assistance was a foreseeable consequence of his act. | 10 |

#### **43 Encouraging or assisting an offence believing it will be committed**

- |                                 |  |    |
|---------------------------------|--|----|
| A person commits an offence if— |  |    |
| (a)                             | he does an act capable of encouraging or assisting the commission of an offence; and | 15 |
| (b)                             | he believes—   |    |
| (i)                             | that the offence will be committed; and  |    |
| (ii)                            | that his act will encourage or assist its commission.                                |    |

#### **44 Encouraging or assisting offences believing one or more will be committed**

- |      |   |    |
|------|---|----|
| (1)  | A person commits an offence if—   | 20 |
| (a)  | he does an act capable of encouraging or assisting the commission of one or more of a number of offences; and   |    |
| (b)  | he believes—  |    |
| (i)  | that one or more of those offences will be committed (but has no belief as to which); and   | 25 |
| (ii) | that his act will encourage or assist the commission of one or more of them.  |    |
| (2)  | It is immaterial for the purposes of subsection (1)(b)(ii) whether the person has any belief as to which offence will be encouraged or assisted.                              |    |
| (3)  | If a person is charged with an offence under subsection (1)—  | 30 |
| (a)  | the indictment must specify the offences alleged to be the “number of offences” mentioned in paragraph (a) of that subsection; but  |    |
| (b)  | nothing in paragraph (a) requires all the offences potentially comprised in that number to be specified.  |    |
| (4)  | In relation to an offence under this section, reference in this Part to the offences specified in the indictment is to the offences specified by virtue of subsection (3)(a). | 35 |

#### **45 Proving an offence under this Part**

- |     |  |
|-----|--|
| (1) | Sections 42, 43 and 44 are to be read in accordance with this section. |
|-----|--|

- 
- (2) If it is alleged under section 42(1)(b) that a person (D) intended to encourage or assist the commission of an offence, it is sufficient to prove that he intended to encourage or assist the doing of an act which would amount to the commission of that offence.
- (3) If it is alleged under section 43(b) that a person (D) believed that an offence would be committed and that his act would encourage or assist its commission, it is sufficient to prove that he believed – 5
- (a) that an act would be done which would amount to the commission of that offence; and
  - (b) that his act would encourage or assist the doing of that act. 10
- (4) If it is alleged under section 44(1)(b) that a person (D) believed that one or more of a number of offences would be committed and that his act would encourage or assist the commission of one or more of them, it is sufficient to prove that he believed –
- (a) that one or more of a number of acts would be done which would amount to the commission of one or more of those offences; and 15
  - (b) that his act would encourage or assist the doing of one or more of those acts.
- (5) In proving for the purposes of this section whether an act is one which, if done, would amount to the commission of an offence – 20
- (a) if the offence is one requiring proof of fault, it must be proved that –
    - (i) D believed that, were the act to be done, it would be done with that fault;
    - (ii) D was reckless as to whether or not it would be done with that fault; or 25
    - (iii) D’s state of mind was such that, were he to do it, it would be done with that fault; and
  - (b) if the offence is one requiring proof of particular circumstances or consequences (or both), it must be proved that –
    - (i) D believed that, were the act to be done, it would be done in those circumstances or with those consequences; or 30
    - (ii) D was reckless as to whether or not it would be done in those circumstances or with those consequences.
- (6) For the purposes of subsection (5)(a)(iii), D is to be assumed to be able to do the act in question. 35
- (7) In the case of an offence under section 42 –
- (a) subsection (5)(b)(i) is to be read as if the reference to “D believed” were a reference to “D intended or believed”; but
  - (b) D is not to be taken to have intended that an act would be done in particular circumstances or with particular consequences merely because its being done in those circumstances or with those consequences was a foreseeable consequence of his act of encouragement or assistance. 40
- (8) Reference in this section to the doing of an act includes reference to – 45
- (a) a failure to act;
  - (b) the continuation of an act that has already begun;
  - (c) an attempt to do an act (except an act amounting to the commission of the offence of attempting to commit another offence).

- (9) In the remaining provisions of this Part (unless otherwise provided) a reference to the anticipated offence is –
- (a) in relation to an offence under section 42, a reference to the offence mentioned in subsection (2); and
  - (b) in relation to an offence under section 43, a reference to the offence mentioned in subsection (3). 5

#### **46 Proving an offence under section 44**

- (1) This section makes further provision about the application of section 45 to an offence under section 44.
- (2) It is sufficient to prove the matters mentioned in section 45(5) by reference to one offence only. 10
- (3) The offence or offences by reference to which those matters are proved must be one of the offences specified in the indictment.
- (4) Subsection (3) does not affect any enactment or rule of law under which a person charged with one offence may be convicted of another and is subject to section 55. 15

#### **47 Supplemental provisions**

- (1) A person may commit an offence under this Part whether or not any offence capable of being encouraged or assisted by his act is committed.
- (2) If a person’s act is capable of encouraging or assisting the commission of a number of offences – 20
  - (a) section 42 applies separately in relation to each offence that he intends to encourage or assist to be committed; and
  - (b) section 43 applies separately in relation to each offence that he believes will be encouraged or assisted to be committed. 25
- (3) A person may, in relation to the same act, commit an offence under more than one provision of this Part.
- (4) In reckoning whether – 30
  - (a) for the purposes of section 43, an act is capable of encouraging or assisting the commission of an offence, or
  - (b) for the purposes of section 44, an act is capable of encouraging or assisting the commission of one or more of a number of offences, offences under this Part and listed offences are to be disregarded.
- (5) “Listed offence” means – 35
  - (a) in England and Wales, an offence listed in Part 1, 2 or 3 of Schedule 3; and
  - (b) in Northern Ireland, an offence listed in Part 1, 4 or 5 of that Schedule.
- (6) The Secretary of State may by order amend Schedule 3.
- (7) For the purposes of sections 43(b)(i) and 44(1)(b)(i) it is sufficient for the person concerned to believe that the offence (or one or more of the offences) will be committed if certain conditions are met. 40

*Reasonableness defence*

**48 Defence of acting reasonably**

- (1) A person is not guilty of an offence under this Part if he proves –
  - (a) that he knew certain circumstances existed; and
  - (b) that it was reasonable for him to act as he did in those circumstances. 5
- (2) A person is not guilty of an offence under this Part if he proves –
  - (a) that he believed certain circumstances to exist;
  - (b) that his belief was reasonable; and
  - (c) that it was reasonable for him to act as he did in the circumstances as he believed them to be. 10
- (3) Factors to be considered in determining whether it was reasonable for a person to act as he did include –
  - (a) the seriousness of the anticipated offence (or, in the case of an offence under section 44, the offences specified in the indictment);
  - (b) any purpose for which he claims to have been acting; 15
  - (c) any authority by which he claims to have been acting.

*Limitation on liability*

**49 Protective offences: victims not liable**

- (1) In the case of protective offences, a person does not commit an offence under this Part by reference to such an offence if –
  - (a) he falls within the protected category; and
  - (b) he is the person in respect of whom the protective offence was committed or would have been if it had been committed. 20
- (2) “Protective offence” means an offence that exists (wholly or in part) for the protection of a particular category of persons (“the protected category”). 25

*Jurisdiction and procedure*

**50 Jurisdiction**

- (1) If a person (D) knows or believes that what he anticipates might take place wholly or partly in England or Wales, he may be guilty of an offence under section 42, 43 or 44 no matter where he was at any relevant time. 30
- (2) If it is not proved that D knows or believes that what he anticipates might take place wholly or partly in England or Wales, he is not guilty of an offence under section 42, 43 or 44 unless paragraph 1, 2 or 3 of Schedule 4 applies.
- (3) A reference in this section (and in any of those paragraphs) to what D anticipates is to be read as follows –
  - (a) in relation to an offence under section 42 or 43, it refers to the act which would amount to the commission of the anticipated offence;
  - (b) in relation to an offence under section 44, it refers to an act which would amount to the commission of any of the offences specified in the indictment. 40

- (4) In their application to Northern Ireland, this section and Schedule 4 have effect as if references to—
- (a) England or Wales; and
  - (b) England and Wales;
- were references to Northern Ireland. 5

#### **51 Prosecution of offences triable by reason of Schedule 4**

No proceedings for an offence triable by reason of any provision of Schedule 4 may be instituted—

- (a) in England and Wales, except by, or with the consent of, the Attorney General; or 10
- (b) in Northern Ireland, except by, or with the consent of, the Advocate General for Northern Ireland.

#### **52 Institution of proceedings etc. for an offence under this Part**

- (1) Any provision to which this section applies has effect with respect to an offence under this Part as it has effect with respect to the anticipated offence. 15
- (2) This section applies to provisions made by or under an enactment (whenever passed or made) that—
- (a) provide that proceedings may not be instituted or carried on otherwise than by, or on behalf or with the consent of, any person (including any provision which also makes exceptions to the prohibition); 20
  - (b) confer power to institute proceedings;
  - (c) confer power to seize and detain property;
  - (d) confer a power of forfeiture, including any power to deal with anything liable to be forfeited.
- (3) In relation to an offence under section 44— 25
- (a) the reference in subsection (1) to the anticipated offence is to be read as a reference to any offence specified in the indictment; and
  - (b) each of the offences specified in the indictment must be an offence in respect of which the prosecutor has power to institute proceedings.
- (4) Any consent to proceedings required as a result of this section is in addition to any consent required by section 51. 30

#### **53 Mode of trial**

- (1) An offence under section 42 or 43 is triable in the same way as the anticipated offence.
- (2) An offence under section 44 is triable on indictment. 35

#### **54 Persons who may be perpetrators or encouragers etc.**

- (1) In proceedings for an offence under this Part (“the inchoate offence”) the defendant may be convicted if—
- (a) it is proved that he must have committed the inchoate offence or the anticipated offence; but 40
  - (b) it is not proved which of those offences he committed.

- (2) For the purposes of this section, a person is not to be treated as having committed the anticipated offence merely because he aided, abetted, counselled or procured its commission.
- (3) In relation to an offence under section 44, a reference in this section to the anticipated offence is to be read as a reference to an offence specified in the indictment. 5

## 55 Alternative verdicts and guilty pleas

- (1) If in proceedings on indictment for an offence under section 42 or 43 a person is not found guilty of that offence by reference to the specified offence, he may be found guilty of that offence by reference to an alternative offence. 10
- (2) If in proceedings for an offence under section 44 a person is not found guilty of that offence by reference to any specified offence, he may be found guilty of that offence by reference to one or more alternative offences.
- (3) If in proceedings for an offence under section 44 a person is found guilty of the offence by reference to one or more specified offences, he may also be found guilty of it by reference to one or more other alternative offences. 15
- (4) For the purposes of this section, an offence is an alternative offence if—
  - (a) it is an offence of which, on a trial on indictment for the specified offence, an accused may be found guilty; or
  - (b) it is an indictable offence, or one to which section 40 of the Criminal Justice Act 1988 (c. 33) applies (power to include count for common assault etc. in indictment), and the condition in subsection (5) is satisfied. 20
- (5) The condition is that the allegations in the indictment charging the person with the offence under this Part amount to or include (expressly or by implication) an allegation of that offence by reference to it. 25
- (6) Subsection (4)(b) does not apply if the specified offence, or any of the specified offences, is murder or treason.
- (7) In the application of subsection (5) to proceedings for an offence under section 42, the allegations in the indictment are to be taken to include an allegation of that offence by reference to the offence of attempting to commit the specified offence. 30
- (8) Section 47(4) applies to an offence which is an alternative offence in relation to a specified offence as it applies to that specified offence.
- (9) In this section—
  - (a) in relation to a person charged with an offence under section 42 or 43, “the specified offence” means the offence specified in the indictment as the one alleged to be the anticipated offence;
  - (b) in relation to a person charged with an offence under section 44, “specified offence” means an offence specified in the indictment (within the meaning of subsection (4) of that section), and related expressions are to be read accordingly. 40
- (10) A person arraigned on an indictment for an offence under this Part may plead guilty to an offence of which he could be found guilty under this section on that indictment. 45

- (11) This section applies to an indictment containing more than one count as if each count were a separate indictment.
- (12) This section is without prejudice to –
- (a) section 6(1)(b) and (3) of the Criminal Law Act 1967 (c. 58);
  - (b) section 6(1)(b) and (2) of the Criminal Law Act (Northern Ireland) 1967 (c. 18).

## 56 Penalties

- (1) Subsections (2) and (3) apply if –
- (a) a person is convicted of an offence under section 42 or 43; or
  - (b) a person is convicted of an offence under section 44 by reference to only one offence (“the reference offence”).
- (2) If the anticipated or reference offence is murder, he is liable to imprisonment for life.
- (3) In any other case he is liable to any penalty for which he would be liable on conviction of the anticipated or reference offence.
- (4) Subsections (5) to (7) apply if a person is convicted of an offence under section 44 by reference to more than one offence (“the reference offences”).
- (5) If one of the reference offences is murder, he is liable to imprisonment for life.
- (6) If none of the reference offences is murder but one or more of them is punishable with imprisonment, he is liable –
- (a) to imprisonment for a term not exceeding the maximum term provided for any one of those offences (taking the longer or the longest term as the limit for the purposes of this paragraph where the terms provided differ); or
  - (b) to a fine.
- (7) In any other case he is liable to a fine.
- (8) Subsections (3), (6) and (7) are subject to any contrary provision made by or under –
- (a) an Act; or
  - (b) Northern Ireland legislation.
- (9) In the case of an offence triable either way, the reference in subsection (6) to the maximum term provided for that offence is a reference to the maximum term so provided on conviction on indictment.

### *Consequential alterations of the law*

## 57 Abolition of common law replaced by this Part 35

The common law offence of inciting the commission of another offence is abolished.

## 58 Amendments relating to service law

Schedule 5 (which amends enactments relating to service law) has effect.

**59 Repeal of offence of enabling unauthorised access to computer material**

- (1) The Police and Justice Act 2006 (c. 48) is amended as follows.
- (2) In section 35 (unauthorised access to computer material), omit subsection (2).
- (3) In section 36 (unauthorised acts with intent to impair operation of computer, etc.), in the section to be substituted for section 3 of the Computer Misuse Act 1990 (c. 18) –
  - (a) in subsection (2) –
    - (i) at the end of paragraph (b), insert “or”; and
    - (ii) omit paragraph (d) and the word “or” preceding it;
  - (b) in subsection (3) for “to (d)” substitute “to (c)”. 10
- (4) In section 38 (transitional and saving provision), omit subsection (1).
- (5) In Schedule 14 (minor and consequential amendments), omit paragraphs 19(2) and 29(2).

**60 No individual liability in respect of corporate manslaughter**

- In section 18 of the Corporate Manslaughter and Corporate Homicide Act 2007 (c. 00) (no individual liability for offences under that Act) after subsection (1) insert – 15
- “(1A) An individual cannot be guilty of an offence under Part 2 of the Serious Crime Act 2007 (encouraging or assisting crime) by reference to an offence of corporate manslaughter.” 20

**61 Consequential amendments: Part 2**

- (1) In the provisions listed in Part 1 of Schedule 6, any reference however expressed to (or to conduct amounting to) the offence abolished by section 57 has effect as a reference to (or to conduct amounting to) the offences under this Part. 25
- (2) Part 2 of Schedule 6 contains other minor and consequential amendments.
- (3) The Secretary of State may by order amend Part 1 of Schedule 6 by adding or removing a provision.

*Interpretation: Part 2*

**62 Encouraging or assisting the commission of an offence** 30

A reference in this Part to encouraging or assisting the commission of an offence is to be read in accordance with section 45.

**63 Being capable of encouraging or assisting**

- (1) A reference in this Part to a person’s doing an act that is capable of encouraging the commission of an offence includes a reference to his doing so by threatening another person or otherwise putting pressure on another person to commit the offence. 35



- (2) A reference in this Part to a person’s doing an act that is capable of encouraging or assisting the commission of an offence includes a reference to his doing so by –
- (a) taking steps to reduce the possibility of criminal proceedings being brought in respect of that offence; 5
  - (b) failing to take reasonable steps to discharge a duty.
- (3) But a person is not to be regarded as doing an act that is capable of encouraging or assisting the commission of an offence merely because he fails to respond to a constable’s request for assistance in preventing a breach of the peace.
- 64 Indirectly encouraging or assisting** 10
- If a person (D1) arranges for a person (D2) to do an act that is capable of encouraging or assisting the commission of an offence, and D2 does the act, D1 is also to be treated for the purposes of this Part as having done it.
- 65 Course of conduct**
- A reference in this Part to an act includes a reference to a course of conduct, and a reference to doing an act is to be read accordingly. 15

### PART 3

#### OTHER MEASURES TO PREVENT OR DISRUPT SERIOUS AND OTHER CRIME

#### CHAPTER 1

#### PREVENTION OF FRAUD 20

#### *Sharing information with anti-fraud organisations*

- 66 Disclosure of information to prevent fraud**
- (1) A public authority may, for the purposes of preventing fraud or a particular kind of fraud, disclose information as a member of a specified anti-fraud organisation or otherwise in accordance with any arrangements made by such an organisation. 25
- (2) The information –
- (a) may be information of any kind; and
  - (b) may be disclosed to the specified anti-fraud organisation, any members of it or any other person to whom disclosure is permitted by the arrangements concerned. 30
- (3) Disclosure under this section does not breach –
- (a) any obligation of confidence owed by the public authority disclosing the information; or
  - (b) any other restriction on the disclosure of information (however imposed). 35
- (4) But nothing in this section authorises any disclosure of information which –
- (a) contravenes the Data Protection Act 1998 (c. 29); or

- (b) is prohibited by Part 1 of the Regulation of Investigatory Powers Act 2000 (c. 23).
- (5) Nothing in this section authorises any disclosure by a relevant public authority of information whose subject-matter is a matter about which provision would be within the legislative competence of the Scottish Parliament if it were included in an Act of that Parliament. 5
- (6) In subsection (5) “relevant public authority” means a public authority which has (whether alone or in addition to other functions) functions which are exercisable within devolved competence (within the meaning given by section 54 of the Scotland Act 1998 (c. 46)). 10
- (7) This section does not limit the circumstances in which information may be disclosed apart from this section.
- (8) In this section –
  - “an anti-fraud organisation” means any unincorporated association, body corporate or other person which enables or facilitates any sharing of information to prevent fraud or a particular kind of fraud or which has any of these functions as its purpose or one of its purposes; 15
  - “information” includes documents;
  - “public authority” means any public authority within the meaning of section 6 of the Human Rights Act 1998 (c. 42) (acts of public authorities); and 20
  - “specified” means specified by an order made by the Secretary of State.

**67 Offence for certain further disclosures of information**

- (1) A person (“B”) commits an offence, subject as follows, if –
  - (a) B discloses protected information which has been disclosed by a public authority – 25
    - (i) as a result of the public authority being a member of a specified anti-fraud organisation; or
    - (ii) otherwise in accordance with any arrangements made by such an organisation; 30
  - (b) the information –
    - (i) has been so disclosed by the public authority to B; or
    - (ii) has come into B’s possession as a result (whether directly or indirectly) of such a disclosure by the public authority to another person; and 35
  - (c) B knows or suspects, or has reasonable grounds for suspecting, that the information is information of the kind mentioned in paragraphs (a) and (b).
- (2) Subsection (1) does not apply to a disclosure made by B –
  - (a) where B is acting (whether as an employee or otherwise) on behalf of the person to whom the information was disclosed by the public authority concerned and the disclosure by B is to another person acting (whether as an employee or otherwise) on behalf of that person; 40
  - (b) for the purposes of the detection, investigation or prosecution of an offence in the United Kingdom; 45
  - (c) with the consent of the public authority concerned; or

- (d) in pursuance of a Community obligation or a duty imposed by an enactment;  
but it does apply to a disclosure made by B which does not fall within paragraphs (a) to (d) above but which (but for the offence) would have been permitted by a power conferred by an enactment. 5
- (3) Subsection (1) does not apply to a disclosure made by B of information –  
(a) which has been disclosed by a relevant public authority; and  
(b) whose subject-matter is a matter about which provision would be within the legislative competence of the Scottish Parliament if it were included in an Act of that Parliament; 10  
and subsection (6) of section 66 applies for the purposes of this subsection as it applies for the purposes of subsection (5) of that section.
- (4) It is a defence for a person charged with an offence under this section to prove that the person reasonably believed –  
(a) that the disclosure was lawful; or 15  
(b) that the information had already and lawfully been made available to the public.
- (5) In this section “protected information” means –  
(a) any revenue and customs information disclosed by Revenue and Customs and revealing the identity of the person to whom it relates; or 20  
(b) any specified information disclosed by a specified public authority.
- (6) For the purposes of this section –  
(a) “revenue and customs information” means information about, acquired as a result of or held in connection with the exercise of a function of the Commissioners of Revenue and Customs or an officer of Revenue and Customs in respect of a person; 25  
(b) revenue and customs information reveals a person’s identity if –  
(i) it specifies his identity; or  
(ii) his identity can be deduced from it; and  
(c) revenue and customs information relates to a person if he is the person in respect of whom the function mentioned in paragraph (a) is exercised. 30
- (7) In this section –  
“Commissioners of Revenue and Customs” means Commissioners for Her Majesty’s Revenue and Customs; 35  
“enactment” has the same meaning as in section 14;  
“public authority” has the same meaning as in section 66;  
“Revenue and Customs” means –  
(a) the Commissioners of Revenue and Customs;  
(b) an officer of Revenue and Customs; or 40  
(c) a person acting on behalf of the Commissioners or an officer of Revenue and Customs;  
“specified anti-fraud organisation” means any person which is a specified anti-fraud organisation for the purposes of section 66;  
“specified information” means information specified or described in an order made by the Secretary of State; and 45  
“specified public authority” means a public authority specified or described in an order made by the Secretary of State.

## 68 Penalty and prosecution for offence under section 67

- (1) A person who commits an offence under section 67 is liable –
- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum or to both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both. 5
- (2) A prosecution for an offence under section 67 may be begun in England and Wales only –
- (a) in the case of revenue and customs information disclosed by Revenue and Customs – 10
    - (i) by the Director of Revenue and Customs Prosecutions; or
    - (ii) with the consent of the Director of Public Prosecutions; and
  - (b) in any other case, with the consent of the Director of Public Prosecutions.
- (3) A prosecution for an offence under section 67 may be begun in Northern Ireland only – 15
- (a) in the case of revenue and customs information disclosed by Revenue and Customs –
    - (i) by the Commissioners of Revenue and Customs; or
    - (ii) with the consent of the Director of Public Prosecutions for Northern Ireland; and 20
  - (b) in any other case, with the consent of the Director of Public Prosecutions for Northern Ireland.
- (4) If an offence under section 67 committed by a body corporate or a partnership is proved to have been committed with the consent or connivance of – 25
- (a) an officer of the body corporate or (as the case may be) a partner or a senior officer of the partnership; or
  - (b) a person who was purporting to act in any such capacity; 30
- he (as well as the body corporate or partnership) is guilty of the offence and liable to be proceeded against and punished accordingly.
- (5) In the application of subsection (1)(a) in Northern Ireland, the reference to 12 months is to be read as a reference to 6 months.
- (6) In this section –
- “body corporate” includes a limited liability partnership;
  - “Commissioners of Revenue and Customs”, “Revenue and Customs” and “revenue and customs information” have the same meaning as in section 67; 35
  - “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate;
  - “officer of a body corporate” means any director, manager, secretary or other similar officer of the body corporate; and 40
  - “senior officer of a partnership” means any person who has the control or management of the business carried on by the partnership at the principal place where it is carried on.

## 69 Code of practice for disclosure of information to prevent fraud

- (1) The Secretary of State must prepare, and keep under review, a code of practice with respect to the disclosure, for the purposes of preventing fraud or a particular kind of fraud, of information by public authorities as members of specified anti-fraud organisations or otherwise in accordance with any arrangements made by such organisations. 5
- (2) Before preparing or altering the code, the Secretary of State must consult –
- (a) any specified anti-fraud organisation;
  - (b) the Information Commissioner; and
  - (c) such other persons as the Secretary of State considers appropriate. 10
- (3) A public authority must have regard to the code in (or in connection with) disclosing information, for the purposes of preventing fraud or a particular kind of fraud, as a member of a specified anti-fraud organisation or otherwise in accordance with any arrangements made by such an organisation.
- (4) Nothing in this section applies in relation to any disclosure by a relevant public authority of information whose subject-matter is a matter about which provision would be within the legislative competence of the Scottish Parliament if it were included in an Act of the Scottish Parliament. 15
- (5) The Secretary of State must –
- (a) lay a copy of the code, and of any alterations to it, before Parliament; and 20
  - (b) from time to time publish the code as for the time being in force.
- (6) In this section –
- “information” and “public authority” have the same meaning as in section 66; 25
  - “relevant public authority” has the meaning given by section 66(6); and
  - “specified anti-fraud organisation” means any person which is a specified anti-fraud organisation for the purposes of section 66.

## 70 Data protection rules

- In Schedule 3 to the Data Protection Act 1998 (c. 29) (conditions for processing sensitive personal data), after paragraph 7, insert – 30
- “7A (1) The processing –
- (a) is either –
    - (i) the disclosure of sensitive personal data by a person as a member of an anti-fraud organisation or otherwise in accordance with any arrangements made by such an organisation; or 35
    - (ii) any other processing by that person or another person of sensitive personal data so disclosed; and
  - (b) is necessary for the purposes of preventing fraud or a particular kind of fraud. 40
- (2) In this paragraph “an anti-fraud organisation” means any unincorporated association, body corporate or other person which enables or facilitates any sharing of information to prevent fraud or a particular kind of fraud or which has any of these functions as its purpose or one of its purposes.” 45

*Data matching*

**71 Data matching**

Schedule 7 (which makes provision about data matching) has effect.

**CHAPTER 2**

PROCEEDS OF CRIME

5

*Assets Recovery Agency*

**72 Abolition of Assets Recovery Agency and redistribution of functions etc.**

- (1) The Assets Recovery Agency and the corporation sole that is its Director shall cease to exist on such day as the Secretary of State may by order appoint.
- (2) The following Parts of Schedule 8 (abolition of Assets Recovery Agency and its Director) have effect –
  - (a) Part 1 (abolition of confiscation functions);
  - (b) Part 2 (transfer to SOCA and prosecution authorities of civil recovery functions);
  - (c) Part 3 (transfer to SOCA of Revenue functions and power to abolish those functions); 15
  - (d) Part 4 (transfer of investigation functions);
  - (e) Part 5 (transfer of accreditation and training functions to National Policing Improvement Agency);
  - (f) Part 6 (other amendments to the Proceeds of Crime Act 2002 (c. 29)); and 20
  - (g) Part 7 (amendments to other enactments).
- (3) Schedule 9 (which makes provision about the transfer of the Director and staff of the Agency, and property, rights and liabilities of the Director and the Agency, to SOCA and the National Policing Improvement Agency) has effect. 25
- (4) In this section and Schedules 8 and 9 “SOCA” means the Serious Organised Crime Agency.

*Detained cash investigations: use of production orders and warrants*

**73 Use of production orders for detained cash investigations**

- (1) After section 341(3) of the Proceeds of Crime Act 2002 (types of investigation to which Part 8 applies) insert –
  - “(3A) For the purposes of this Part a detained cash investigation is –
    - (a) an investigation for the purposes of Chapter 3 of Part 5 into the derivation of cash detained under section 295 or a part of such cash, or 35
    - (b) an investigation for the purposes of Chapter 3 of Part 5 into whether cash detained under section 295, or a part of such cash, is intended by any person to be used in unlawful conduct.”

- (2) In section 345(2) of that Act (investigations in respect of which production orders may be made), in paragraph (b), after “a civil recovery investigation” insert “or a detained cash investigation”.
- (3) In section 346(2) of that Act (reasonable suspicion requirement for making a production order), after paragraph (b), insert – 5
- “(ba) in the case of a detained cash investigation into the derivation of cash, the property the application for the order specifies as being subject to the investigation, or a part of it, is recoverable property;
- (bb) in the case of a detained cash investigation into the intended use of cash, the property the application for the order specifies as being subject to the investigation, or a part of it, is intended by any person to be used in unlawful conduct;” 10
- (4) In section 380(3) of that Act (investigations in respect of which production orders may be made in Scotland), in paragraph (b), after “a civil recovery investigation” insert “or a detained cash investigation”. 15
- (5) In section 381(2) of that Act (reasonable suspicion requirement for making a production order in Scotland), after paragraph (b), insert –
- “(ba) in the case of a detained cash investigation into the derivation of cash, the property the application for the order specifies as being subject to the investigation, or a part of it, is recoverable property; 20
- (bb) in the case of a detained cash investigation into the intended use of cash, the property the application for the order specifies as being subject to the investigation, or a part of it, is intended by any person to be used in unlawful conduct;” 25

#### **74 Use of search warrants etc. for detained cash investigations**

- (1) In section 352(2) of the Proceeds of Crime Act 2002 (c. 29) (investigations in respect of which a search and seizure warrant may be issued), in paragraph (b), after “a civil recovery investigation” insert “or a detained cash investigation”. 30
- (2) In section 353(2) of that Act (reasonable suspicion grounds for warrant where no production order), after paragraph (b), insert –
- “(ba) in the case of a detained cash investigation into the derivation of cash, the property specified in the application for the warrant, or a part of it, is recoverable property; 35
- (bb) in the case of a detained cash investigation into the intended use of cash, the property specified in the application for the warrant, or a part of it, is intended by any person to be used in unlawful conduct;”
- (3) After section 353(7) of that Act (types of material in respect of which warrant may be issued where no production order) insert – 40
- “(7A) In the case of a detained cash investigation into the derivation of cash, material falls within this subsection if it cannot be identified at the time of the application but it –
- (a) relates to the property specified in the application, the question whether the property, or a part of it, is recoverable property or any other question as to its derivation, and 45

(b)	is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the warrant is sought.	
(7B)	In the case of a detained cash investigation into the intended use of cash, material falls within this subsection if it cannot be identified at the time of the application but it—	5
(a)	relates to the property specified in the application or the question whether the property, or a part of it, is intended by any person to be used in unlawful conduct, and	
(b)	is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the warrant is sought.”	10
(4)	In section 387(3) of that Act (investigations in respect of which a search warrant may be issued in Scotland), in paragraph (b), after “a civil recovery investigation” insert “or a detained cash investigation”.	15
(5)	In section 388(2) of that Act (reasonable suspicion grounds for issue of warrant in Scotland where no production order), after paragraph (b), insert—	
“(ba)	in the case of a detained cash investigation into the derivation of cash, the property specified in the application for the warrant, or a part of it, is recoverable property;	20
(bb)	in the case of a detained cash investigation into the intended use of cash, the property specified in the application for the warrant, or a part of it, is intended by any person to be used in unlawful conduct;”.	
(6)	After section 388(7) of that Act (types of material in respect of which warrant may be issued in Scotland where no production order) insert—	25
“(7A)	In the case of a detained cash investigation into the derivation of cash, material falls within this subsection if it cannot be identified at the time of the application but it—	
(a)	relates to the property specified in the application, the question whether the property, or a part of it, is recoverable property or any other question as to its derivation, and	30
(b)	is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the warrant is sought.	35
(7B)	In the case of a detained cash investigation into the intended use of cash, material falls within this subsection if it cannot be identified at the time of the application but it—	
(a)	relates to the property specified in the application or the question whether the property, or a part of it, is intended by any person to be used in unlawful conduct, and	40
(b)	is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the warrant is sought.”	
<b>75</b>	<b>Further provision about detained cash investigations</b>	<b>45</b>
	Schedule 10 (which makes further provision about detained cash investigations) has effect.	



*Extension of powers of accredited financial investigators*

**76 Powers to seize property to which restraint orders apply**

- (1) In section 45(1) of the Proceeds of Crime Act 2002 (c. 29) (seizure of property to which restraint order applies: England and Wales) after “constable” insert “, an accredited financial investigator”. 5
- (2) After section 45(2) of that Act insert—
- “(3) The reference in subsection (1) to an accredited financial investigator is a reference to an accredited financial investigator who falls within a description specified in an order made for the purposes of that subsection by the Secretary of State under section 453.” 10
- (3) In section 194(1) of that Act (seizure of property to which restraint order applies: Northern Ireland) after “constable” insert “, an accredited financial investigator”.
- (4) After section 194(2) of that Act insert—
- “(3) The reference in subsection (1) to an accredited financial investigator is a reference to an accredited financial investigator who falls within a description specified in an order made for the purposes of that subsection by the Secretary of State under section 453.” 15

**77 Powers to recover cash**

Schedule 11 (which gives accredited financial investigators powers to recover cash under Chapter 3 of Part 5 of the Proceeds of Crime Act 2002 and makes related amendments) has effect. 20

**78 Powers in relation to certain investigations**

- (1) In section 352(5) of the Proceeds of Crime Act 2002 (search and seizure warrants in connection with confiscation, money laundering and detained cash investigations etc.)— 25
- (a) in paragraph (a), after “constable” insert “, an accredited financial investigator”; and
- (b) in paragraph (c) (as inserted by Schedule 10 to this Act), after “constable” insert “, an accredited financial investigator”. 30
- (2) After section 352(6) of that Act insert—
- “(7) The reference in paragraph (a) or (c) of subsection (5) to an accredited financial investigator is a reference to an accredited financial investigator who falls within a description specified in an order made for the purposes of that paragraph by the Secretary of State under section 453.” 35
- (3) In section 353(10) of that Act (requirements in relation to search and seizure warrants)—
- (a) in paragraph (a), after “constable” insert “, an accredited financial investigator”; and 40
- (b) in paragraph (c) (as inserted by Schedule 10 to this Act), after “constable” insert “, an accredited financial investigator”.

- (4) After section 353(10) of that Act insert –
  - “(11) The reference in paragraph (a) or (c) of subsection (10) to an accredited financial investigator is a reference to an accredited financial investigator who falls within a description specified in an order made for the purposes of that paragraph by the Secretary of State under section 453.” 5
- (5) In section 356(11)(b) of that Act (as inserted by Schedule 10 to this Act) (further provisions in relation to search and seizure warrants: detained cash investigations) after “constable” insert “, an accredited financial investigator”.
- (6) After section 356(11) of that Act (as inserted by Schedule 10 to this Act) insert – 10
  - “(12) The reference in paragraph (b) of subsection (11) to an accredited financial investigator is a reference to an accredited financial investigator who falls within a description specified in an order made for the purposes of that paragraph by the Secretary of State under section 453.” 15
- (7) In section 378(3A) of that Act (as inserted by Schedule 10 to this Act) (meaning of “officers” for purposes of Part 8 in relation to detained cash investigations) after paragraph (a) insert –
  - “(ab) an accredited financial investigator;”.
- (8) After section 378(3A) of that Act (as inserted by Schedule 10 to this Act) insert – 20
  - “(3B) The reference in paragraph (ab) of subsection (3A) to an accredited financial investigator is a reference to an accredited financial investigator who falls within a description specified in an order made for the purposes of that paragraph by the Secretary of State under section 453.” 25

**79 Supplementary provision in relation to new powers**

- (1) In section 453(2) of the Proceeds of Crime Act 2002 (c. 29) (power to modify references to accredited financial investigators) –
  - (a) after “may” insert “, in particular;”;
  - (b) after “person” insert “or by reference to particular types of training undertaken”. 30
- (2) After section 453 of that Act insert –
  - “453A Certain offences in relation to financial investigators**
  - (1) A person commits an offence if he assaults an accredited financial investigator who is acting in the exercise of a relevant power. 35
  - (2) A person commits an offence if he resists or wilfully obstructs an accredited financial investigator who is acting in the exercise of a relevant power.
  - (3) A person guilty of an offence under subsection (1) is liable on summary conviction – 40
    - (a) to imprisonment for a term not exceeding 51 weeks; or
    - (b) to a fine not exceeding level 5 on the standard scale; or to both.

- (4) A person guilty of an offence under subsection (2) is liable on summary conviction –
- (a) to imprisonment for a term not exceeding 51 weeks; or
  - (b) to a fine not exceeding level 3 on the standard scale; or to both. 5
- (5) In this section “relevant power” means a power exercisable under –
- (a) section 45 or 194 (powers to seize property to which restraint orders apply);
  - (b) section 289 (powers to search for cash);
  - (c) section 294 (powers to seize cash); 10
  - (d) section 295(1) (power to detain seized cash); or
  - (e) a search and seizure warrant issued under section 352.
- (6) In the application of this section to England and Wales in relation to an offence committed before the commencement of section 281(5) of the Criminal Justice Act 2003 (c. 44) (alteration of penalties for summary offences), and in the application of this section to Northern Ireland –
- (a) the reference to 51 weeks in subsection (3)(a) is to be read as a reference to 6 months; and
  - (b) the reference to 51 weeks in subsection (4)(a) is to be read as a reference to 1 month.” 15

*Miscellaneous*

**80 Powers of management receivers and enforcement receivers**

- (1) After section 49(8) of the Proceeds of Crime Act 2002 (c. 29) (opportunity for persons to make representations before powers conferred on management receivers to manage or otherwise deal with property: England and Wales) insert – 25
- “(8A) Subsection (8), so far as relating to the power mentioned in subsection (2)(b), does not apply to property which –
- (a) is perishable; or
  - (b) ought to be disposed of before its value diminishes.” 30
- (2) After section 51(8) of that Act (opportunity for persons to make representations before powers conferred on enforcement receivers to manage or otherwise deal with property: England and Wales) insert –
- “(8A) Subsection (8), so far as relating to the power mentioned in subsection (2)(b), does not apply to property which – 35
- (a) is perishable; or
  - (b) ought to be disposed of before its value diminishes.”
- (3) After section 197(8) of that Act (opportunity for persons to make representations before powers conferred on management receivers to manage or otherwise deal with property: Northern Ireland) insert – 40
- “(8A) Subsection (8), so far as relating to the power mentioned in subsection (2)(b), does not apply to property which –
- (a) is perishable; or
  - (b) ought to be disposed of before its value diminishes.”

- (4) After section 199(8) of that Act (opportunity for persons to make representations before powers conferred on enforcement receivers to manage or otherwise deal with property: Northern Ireland) insert –

“(8A) Subsection (8), so far as relating to the power mentioned in subsection (2)(b), does not apply to property which –

5

(a) is perishable; or

(b) ought to be disposed of before its value diminishes.”

## 81 Powers for prosecutors to appear in cash recovery proceedings

- (1) After section 302 of the Proceeds of Crime Act 2002 (c. 29) (recovery of cash in summary proceedings: compensation) insert –

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### “302A Powers for prosecutors to appear in proceedings

- (1) The Director of Public Prosecutions or the Director of Public Prosecutions for Northern Ireland may appear for a constable in proceedings under this Chapter if the Director –

(a) is asked by, or on behalf of, a constable to do so, and

15

(b) considers it appropriate to do so.

- (2) The Director of Revenue and Customs Prosecutions may appear for the Commissioners for Her Majesty’s Revenue and Customs or an officer of Revenue and Customs in proceedings under this Chapter if the Director –

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(a) is asked by, or on behalf of, the Commissioners for Her Majesty’s Revenue and Customs or (as the case may be) an officer of Revenue and Customs to do so, and

(b) considers it appropriate to do so.

- (3) The Directors may charge fees for the provision of services under this section.”

25

- (2) After section 2C(3) of that Act (prosecuting authorities) (as inserted by Schedule 8 to this Act) insert –

“(3A) Subsection (3) does not apply to the functions of the Director of Public Prosecutions, the Director of Public Prosecutions for Northern Ireland and the Director of Revenue and Customs Prosecutions under section 302A.”

30

- (3) After section 38(1) of the Commissioners for Revenue and Customs Act 2005 (c. 11) (conduct of prosecutions on behalf of the Office) insert –

“(1A) An individual who is not a member of the Office may be appointed by the Director to appear in –

35

(a) specified proceedings, or

(b) a specified class or description of proceedings,

in which the Director or a Prosecutor would otherwise appear by virtue of section 302A of the Proceeds of Crime Act 2002 (cash recovery proceedings).”

40

- (4) After section 39(1) of that Act (designation of non-legal staff) insert –

“(1A) The Director may designate a member of the Office to appear in –

(a) specified proceedings, or

(b) a specified class or description of proceedings, in which the Director or a Prosecutor would otherwise appear by virtue of section 302A of the Proceeds of Crime Act 2002 (c. 29) (cash recovery proceedings).”

<b>82</b>	<b>Disclosure of information by Revenue and Customs</b>	5
(1)	This section applies to information held as mentioned in section 18(1) of the Commissioners for Revenue and Customs Act 2005 (c. 11) (confidentiality).	
(2)	Information to which this section applies may be disclosed by or with the authority of the Commissioners of Revenue and Customs –	
	(a) to the Criminal Assets Bureau in Ireland (“the CAB”) for the purpose of enabling or assisting the CAB to exercise any of its functions in connection with any matter within subsection (3); or	10
	(b) to any specified public authority (in the United Kingdom or elsewhere) –	
	(i) for the purpose of enabling or assisting the public authority to exercise any of its functions in connection with any matter within subsection (3); or	15
	(ii) (if the specifying order so provides) for the purpose of enabling or assisting the public authority to exercise any of its functions in connection with any matter within that subsection that is specified, or of a description specified, in the order.	20
(3)	The matters within this subsection are –	
	(a) the identification of proceeds of crime;	
	(b) the bringing of civil proceedings for enforcement purposes in relation to proceeds of crime; and	25
	(c) the taking of other action in relation to proceeds of crime.	
(4)	Information disclosed in accordance with subsection (2) must not be further disclosed except –	
	(a) in connection with the exercise of any of the functions of the CAB or a specified public authority in connection with any matter within subsection (3) (or, in a subsection (2)(b)(ii) case, any such matter as is mentioned there); and	30
	(b) with the consent of the Commissioners of Revenue and Customs or an authorised officer of the Commissioners of Revenue and Customs.	
(5)	For the purposes of this section any consent or authorisation may be general or specific.	35
(6)	If a person in the United Kingdom discloses, in contravention of subsection (4), any revenue and customs information relating to a person whose identity –	
	(a) is specified in the disclosure; or	
	(b) can be deduced from it;	40
	section 19 of the 2005 Act (wrongful disclosure) applies in relation to that disclosure as it applies in relation to a disclosure of such information in contravention of section 20(9) of that Act.	
(7)	Any reference in this section to a disclosure to the CAB or a specified public authority is a reference to a disclosure to such person, or to persons of such description, as may be specified in relation to the CAB or the public authority (as the case may be).	45

(8)	Nothing in this section authorises any disclosure of information which –	
	(a) contravenes the Data Protection Act 1998 (c. 29); or	
	(b) is prohibited by Part 1 of the Regulation of Investigatory Powers Act 2000 (c. 23).	
(9)	In this section –	5
	“the 2005 Act” means the Commissioners for Revenue and Customs Act 2005 (c. 11);	
	“assets” means property of any description, wherever situated;	
	“civil proceedings” means civil proceedings of whatever nature and whether brought in the United Kingdom or elsewhere;	10
	“Commissioners of Revenue and Customs” means the Commissioners for Her Majesty’s Revenue and Customs;	
	“enforcement purposes”, in relation to the proceeds of crime, means with a view to –	
	(a) recovering, forfeiting or freezing assets constituting proceeds of crime; or	15
	(b) otherwise depriving persons (to any extent) of, or of access to, such assets or the benefit of such assets;	
	“functions” includes powers, duties and objectives, and references to the exercise of functions include the pursuit of objectives;	20
	“proceeds of crime” means assets derived, or suspected to be derived, directly or indirectly from criminal conduct (wherever occurring);	
	“public authority” means any body or person discharging functions of a public nature;	
	“revenue and customs information relating to a person” has the meaning given by section 19(2) of the 2005 Act;	25
	“specified” means specified in an order made by the Treasury; and	
	“the specifying order”, in relation to a specified public authority, means the order specifying the authority for the purposes of this section.	
<b>83</b>	<b>Use of force in executing search warrants: Scotland</b>	30
	In section 387 of the Proceeds of Crime Act 2002 (c. 29) (issue of search warrants in Scotland in connection with certain investigations), after subsection (4), insert –	
	“(4A) A proper person may, if necessary, use reasonable force in executing a search warrant.”	35

### CHAPTER 3

#### REGULATION OF INVESTIGATORY POWERS

<b>84</b>	<b>Extension of powers of Revenue and Customs</b>	
	Schedule 12 (which makes provision about the regulation of investigatory powers of Her Majesty’s Revenue and Customs) has effect.	40

## PART 4

### GENERAL AND FINAL PROVISIONS

#### *General*

- 85 Orders**
- (1) Any power of the Secretary of State, the Treasury or the Scottish Ministers to make an order under this Act is exercisable by statutory instrument. 5
- (2) Any power of the Secretary of State or the Treasury to make an order under this Act—
- (a) may be exercised so as to make different provision for different cases or descriptions of case or different purposes; 10
- (b) includes power to make such supplementary, incidental, consequential, transitional, transitory or saving provision as the Secretary of State or (as the case may be) the Treasury considers appropriate.
- (3) No order is to be made under section 4(4), 47(6), 61(3), 67 or 86, or paragraph 102 of Schedule 8, unless a draft of the order has been laid before, and approved by a resolution of, each House of Parliament. 15
- (4) Subsection (3) does not apply to an order under section 86 which does not amend or repeal any provision of an Act.
- (5) An order under section 86 which does not amend or repeal any provision of an Act is subject to annulment in pursuance of a resolution of either House of Parliament. 20
- (6) An order under section 7, 27(6) or (12), 28(6) or (11), 29, 33, 66 or 82 is subject to annulment in pursuance of a resolution of either House of Parliament.
- 86 Supplementary, incidental and consequential provision** 25
- (1) The Secretary of State may by order make such supplementary, incidental or consequential provision as he considers appropriate for the general purposes, or any particular purpose, of this Act or in consequence of any provision made by or under this Act or for giving full effect to this Act or any such provision.
- (2) The power conferred by this section may, in particular, be exercised by amending, repealing, revoking or otherwise modifying any provision made by or under an enactment (including this Act and any Act passed in the same Session as this Act). 30
- (3) The power conferred by this section does not include the power to make provision which would be within the legislative competence of the Scottish Parliament if it were included in an Act of that Parliament. 35
- 87 Transitional and transitory provisions and savings**
- (1) Schedule 13 (transitional and transitory provisions and savings) has effect.
- (2) The Secretary of State may by order make such transitional, transitory or saving provision as he considers appropriate in connection with the coming 40

into force of any provision of this Act (other than the provisions specified in section 90(4)).

- (3) The Scottish Ministers may by order make such transitional, transitory or saving provision as they consider appropriate in connection with the coming into force of the provisions of this Act specified in section 90(4). 5

## 88 Repeals and revocations

Schedule 14 (which contains repeals and revocations) has effect.

### *Final*

## 89 Extent

- (1) The following provisions extend to England and Wales only – 10
- (a) section 76(1) and (2);
  - (b) section 80(1) and (2); and
  - (c) Parts 1 and 2 of Schedule 7 and section 71 so far as relating to those Parts.
- (2) The following provisions extend to England and Wales and Northern Ireland only – 15
- (a) Part 1 (including Schedules 1 and 2) but excluding sections 25 to 29 (and any provision of that Part so far as relating to those sections);
  - (b) Part 2 (including Schedules 3 and 4 and Part 1 of Schedule 6) but excluding sections 58 and 59, Schedule 5 and Part 2 of Schedule 6; 20
  - (c) section 73(2) and (3);
  - (d) section 74(1) to (3);
  - (e) section 78; and
  - (f) section 79(2).
- (3) The following provisions extend to Scotland only – 25
- (a) section 66(5) and (6);
  - (b) section 67(3);
  - (c) section 73(4) and (5);
  - (d) section 74(4) to (6); and
  - (e) section 83. 30
- (4) The following provisions extend to Northern Ireland only –
- (a) section 76(3) and (4);
  - (b) section 80(3) and (4); and
  - (c) Part 3 of Schedule 7 and section 71 so far as relating to that Part.
- (5) Any provision of section 59 or Part 2 of Schedule 6 (and any corresponding entry in Schedule 14) has the same extent as the enactment amended, repealed or revoked by it except that – 35
- (a) it does not extend to Scotland; and
  - (b) paragraph 49 of Schedule 6 does not extend to Northern Ireland.
- (6) Any amendment, repeal or revocation by Schedule 5, 8, 10 or 14 of an enactment has (subject to subsection (5)) the same extent as the enactment amended, repealed or revoked. 40



- (7) Subject as above, this Act extends to England and Wales, Scotland and Northern Ireland.

## 90 Commencement

- (1) The preceding provisions of this Act (other than sections 85, 86, 87(2) and (3) and 89 and the provisions specified in subsection (4)) come into force on such day as the Secretary of State may by order appoint; and different days may be appointed for different purposes. 5
- (2) The Secretary of State must consult the Scottish Ministers before making an order under subsection (1) in relation to – 10
- (a) section 73(1);
  - (b) paragraph 2 of Schedule 10; or
  - (c) paragraph 24 of that Schedule.
- (3) The provisions of this Act specified in subsection (4) come into force on such day as the Scottish Ministers may by order appoint; and different days may be appointed for different purposes. 15
- (4) Those provisions are –
- (a) section 73(4) and (5);
  - (b) section 74(4) to (6);
  - (c) section 83;
  - (d) paragraphs 14 to 23 and, so far as extending to Scotland, paragraph 25 of Schedule 10; and 20
  - (e) so far as relating to the provisions falling within paragraph (d) above, paragraph 1 of that Schedule and section 75.

## 91 Short title

- This Act may be cited as the Serious Crime Act 2007. 25

## SCHEDULES

### SCHEDULE 1

Sections 2 and 3

#### SERIOUS OFFENCES

##### PART 1

#### SERIOUS OFFENCES IN ENGLAND AND WALES

5

#### *Drug trafficking*

- |   |  |    |
|---|--|----|
| 1 | (1) An offence under any of the following provisions of the Misuse of Drugs Act 1971 (c. 38) –   |    |
|   | (a) section 4(2) or (3) (unlawful production or supply of controlled drugs);   | 10 |
|   | (b) section 5(3) (possession of controlled drug with intent to supply);  |    |
|   | (c) section 8 (permitting etc. certain activities relating to controlled drugs);   |    |
|   | (d) section 20 (assisting in or inducing the commission outside the United Kingdom of an offence punishable under a corresponding law).  | 15 |
|   | (2) An offence under any of the following provisions of the Customs and Excise Management Act 1979 (c. 2) 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 – | 20 |
|   | (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.).   |    |
|   | (3) An offence under either of the following provisions of the Criminal Justice (International Co-operation) Act 1990 (c. 5) –   | 25 |
|   | (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).   |    |

#### *People trafficking*

- |   |   |    |
|---|---|----|
| 2 | (1) An offence under section 25, 25A or 25B of the Immigration Act 1971 (c. 77) (assisting unlawful immigration etc.).                              | 30 |
|   | (2) An offence under any of sections 57 to 59 of the Sexual Offences Act 2003 (c. 42) (trafficking for sexual exploitation).                        |    |
|   | (3) An offence under section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19) (trafficking people for exploitation). | 35 |

*Arms trafficking*

- 3 (1) An offence under either of the following provisions of the Customs and Excise Management Act 1979 (c. 2) if it is committed in connection with a firearm or ammunition –
- (a) section 68(2) (exportation of prohibited or restricted goods); 5
- (b) section 170 (fraudulent evasion of duty etc.).
- (2) An offence under section 3(1) of the Firearms Act 1968 (c. 27) (dealing etc. in firearms or ammunition by way of trade or business without being registered).
- (3) In this paragraph “firearm” and “ammunition” have the same meanings as 10  
in section 57 of the Firearms Act 1968.

*Prostitution and child sex*

- 4 (1) An offence under section 33A of the Sexual Offences Act 1956 (c. 69) (keeping a brothel used for prostitution).
- (2) An offence under any of the following provisions of the Sexual Offences Act 15  
2003 (c. 42) –
- (a) section 14 (arranging or facilitating commission of a child sex offence);
- (b) section 48 (causing or inciting child prostitution or pornography);
- (c) section 49 (controlling a child prostitute or a child involved in 20  
pornography);
- (d) section 50 (arranging or facilitating child prostitution or pornography);
- (e) section 52 (causing or inciting prostitution for gain);
- (f) section 53 (controlling prostitution for gain). 25

*Armed robbery etc.*

- 5 (1) An offence under section 8(1) of the Theft Act 1968 (c. 60) (robbery) where the use or threat of force involves a firearm, an imitation firearm or an offensive weapon.
- (2) An offence at common law of an assault with intent to rob where the assault 30  
involves a firearm, imitation firearm or an offensive weapon.
- (3) In this paragraph –
- “firearm” has the meaning given by section 57(1) of the Firearms Act 1968;
- “imitation firearm” has the meaning given by section 57(4) of that Act; 35
- “offensive weapon” means any weapon to which section 141 of the Criminal Justice Act 1988 (c. 33) (offensive weapons) applies.

*Money laundering*

- 6 An offence under any of the following provisions of the Proceeds of Crime Act 2002 (c. 29) – 40
- (a) section 327 (concealing etc. criminal property);
- (b) section 328 (facilitating the acquisition etc. of criminal property by or on behalf of another);

- (c) section 329 (acquisition, use and possession of criminal property).

*Fraud*

- 7 (1) An offence under section 17 of the Theft Act 1968 (c. 60) (false accounting).
- (2) An offence under any of the following provisions of the Fraud Act 2006 (c. 35) – 5
- (a) section 1 (fraud by false representation, failing to disclose information or abuse of position);
  - (b) section 6 (possession etc. of articles for use in frauds);
  - (c) section 7 (making or supplying articles for use in frauds);
  - (d) section 9 (participating in fraudulent business carried on by sole trader etc.); 10
  - (e) section 11 (obtaining services dishonestly).
- (3) An offence at common law of conspiracy to defraud.

*Offences in relation to public revenue*

- 8 (1) An offence under section 170 of the Customs and Excise Management Act 1979 (c. 2) (fraudulent evasion of duty etc.) so far as not falling within paragraph 1(2)(c) or 3(1)(b) above. 15
- (2) An offence under section 72 of the Value Added Tax Act 1994 (c. 23) (fraudulent evasion of VAT etc.).
- (3) An offence under section 144 of the Finance Act 2000 (c. 17) (fraudulent evasion of income tax). 20
- (4) An offence under section 35 of the Tax Credits Act 2002 (c. 21) (tax credit fraud).
- (5) An offence at common law of cheating in relation to the public revenue.

*Corruption and bribery* 25

- 9 (1) An offence under section 1 of the Public Bodies Corrupt Practices Act 1889 (c. 69) (corruption in public office).
- (2) An offence which is the first or second offence under section 1(1) of the Prevention of Corruption Act 1906 (c. 34) (corrupt transactions with agents other than those of giving or using false etc. documents which intended to mislead principal). 30
- (3) An offence at common law of bribery.

*Counterfeiting*

- 10 An offence under any of the following provisions of the Forgery and Counterfeiting Act 1981 (c. 45) – 35
- (a) section 14 (making counterfeit notes or coins);
  - (b) section 15 (passing etc. counterfeit notes or coins);
  - (c) section 16 (having custody or control of counterfeit notes or coins);
  - (d) section 17 (making or having custody or control of counterfeiting materials or implements). 40

*Blackmail*

- 11 (1) An offence under section 21 of the Theft Act 1968 (c. 60) (blackmail).
- (2) An offence under section 12(1) or (2) of the Gangmasters (Licensing) Act 2004 (c. 11) (acting as a gangmaster other than under the authority of a licence, possession of false documents, etc.). 5

*Intellectual property*

- 12 (1) An offence under any of the following provisions of the Copyright, Designs and Patents Act 1988 (c. 48) –
- (a) section 107(1)(a), (b), (d)(iv) or (e) (making, importing or distributing an article which infringes copyright); 10
- (b) section 198(1)(a), (b) or (d)(iii) (making, importing or distributing an illicit recording);
- (c) section 297A (making or dealing etc. in unauthorised decoders).
- (2) An offence under section 92(1), (2) or (3) of the Trade Marks Act 1994 (c. 26) (unauthorised use of trade mark etc.). 15

*Environment*

- 13 (1) An offence under section 1 of the Salmon and Freshwater Fisheries Act 1975 (c. 51) (fishing for salmon, trout or freshwater fish with prohibited implements etc.).
- (2) An offence under section 14 of the Wildlife and Countryside Act 1981 (c. 69) (introduction of new species etc.). 20
- (3) An offence under section 33 of the Environmental Protection Act 1990 (c. 43) (prohibition on unauthorised or harmful deposit, treatment or disposal etc. of waste).
- (4) An offence under regulation 8 of the Control of Trade in Endangered Species (Enforcement) Regulations 1997 (S.I. 1997/1372) (purchase and sale etc. of endangered species and provision of false statements and certificates). 25

*Inchoate offences*

- 14 (1) An offence of attempting or conspiring the commission of an offence specified or described in this Part of this Schedule. 30
- (2) An offence under Part 2 of this Act (encouraging or assisting) where the offence (or one of the offences) which the person in question intends or believes would be committed is an offence specified or described in this Part of this Schedule.
- (3) An offence of aiding, abetting, counselling or procuring the commission of an offence specified or described in this Part of this Schedule. 35
- (4) The references in sub-paragraphs (1) to (3) to offences specified or described in this Part of this Schedule do not include the offence at common law of conspiracy to defraud.

*Earlier offences*

- 15 (1) This Part of this Schedule (apart from paragraph 14(2)) has effect, in its application to conduct before the passing of this Act, 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
- (2) Paragraph 14(2) has effect, in its application to conduct before the passing of this Act or before the coming into force of section 57 of this Act, as if the offence specified or described in that provision were an offence of inciting the commission of an offence specified or described in this Part of this Schedule. 10

*Scope of offences*

- 16 Where this Part of this Schedule refers to offences which are offences under the law of England and Wales and another country, the reference is to be read as limited to the offences so far as they are offences under the law of England and Wales. 15

PART 2

SERIOUS OFFENCES IN NORTHERN IRELAND

*Drug trafficking*

- 17 (1) An offence under any of the following provisions of the Misuse of Drugs Act 1971 (c. 38) – 20
- (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);
  - (c) section 8 (permitting etc. certain activities relating to controlled drugs); 25
  - (d) section 20 (assisting in or inducing the commission outside the United Kingdom of an offence punishable under a corresponding law).
- (2) An offence under any of the following provisions of the Customs and Excise Management Act 1979 (c. 2) 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 – 30
- (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.). 35
- (3) An offence under either of the following provisions of the Criminal Justice (International Co-operation) Act 1990 (c. 5) –
- (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). 40

*People trafficking*

- 18 (1) An offence under section 25, 25A or 25B of the Immigration Act 1971 (c. 77) (assisting unlawful immigration etc.).

- (2) An offence under any of sections 57 to 59 of the Sexual Offences Act 2003 (c. 42) (trafficking for sexual exploitation).
- (3) An offence under section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19) (trafficking people for exploitation).

*Arms trafficking*

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- 19 (1) An offence under either of the following provisions of the Customs and Excise Management Act 1979 (c. 2) 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.).
- (2) An offence under Article 24 of the Firearms (Northern Ireland) Order 2004 (S.I. 2004/702 (N.I.3)) (dealing etc. in firearms or ammunition by way of trade or business without being registered).
- (3) In this paragraph “firearm” and “ammunition” have the same meanings as in Article 2(2) of the Firearms (Northern Ireland) Order 2004.

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*Prostitution and child sex*

- 20 (1) An offence under section 13(1) of the Criminal Law Amendment Act 1885 (c. 69) (keeping a brothel used for prostitution).
- (2) An offence under any of the following provisions of the Sexual Offences Act 2003 –
- (a) section 48 (causing or inciting child prostitution or pornography);
  - (b) section 49 (controlling a child prostitute or a child involved in pornography);
  - (c) section 50 (arranging or facilitating child prostitution or pornography);
  - (d) section 52 (causing or inciting prostitution for gain);
  - (e) section 53 (controlling prostitution for gain).

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*Armed robbery etc.*

- 21 (1) An offence under section 8(1) of the Theft Act (Northern Ireland) 1969 (c. 16 (N.I.)) (robbery) where the use or threat of force involves a firearm, an imitation firearm or an offensive weapon.
- (2) An offence at common law of an assault with intent to rob where the assault involves a firearm, imitation firearm or an offensive weapon.
- (3) In this paragraph –
- “firearm” and “imitation firearm” have the meaning given by Article 2(2) of the Firearms (Northern Ireland) Order 2004 (S.I. 2004/702 (N.I.3));
  - “offensive weapon” means any weapon to which section 141 of the Criminal Justice Act 1988 (c. 33) (offensive weapons) applies.

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*Money laundering*

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- 22 An offence under any of the following provisions of the Proceeds of Crime Act 2002 (c. 29) –

- (a) section 327 (concealing etc. criminal property);
- (b) section 328 (facilitating the acquisition etc. of criminal property by or on behalf of another);
- (c) section 329 (acquisition, use and possession of criminal property).

*Fraud* 5

- 23 (1) An offence under section 17 of the Theft Act (Northern Ireland) 1969 (c. 16 (N.I.)) (false accounting).
- (2) An offence under any of the following provisions of the Fraud Act 2006 (c. 35) –
- (a) section 1 (fraud by false representation, failing to disclose information or abuse of position); 10
  - (b) section 6 (possession etc. of articles for use in frauds);
  - (c) section 7 (making or supplying articles for use in frauds);
  - (d) section 9 (participating in fraudulent business carried on by sole trader etc.); 15
  - (e) section 11 (obtaining services dishonestly).
- (3) An offence at common law of conspiracy to defraud.

*Offences in relation to public revenue*

- 24 (1) An offence under section 170 of the Customs and Excise Management Act 1979 (c. 2) (fraudulent evasion of duty etc.) so far as not falling within paragraph 17(2)(c) or 19(1)(b) above. 20
- (2) An offence under section 72 of the Value Added Tax Act 1994 (c. 23) (fraudulent evasion of VAT etc.).
- (3) An offence under section 144 of the Finance Act 2000 (c. 17) (fraudulent evasion of income tax). 25
- (4) An offence under section 35 of the Tax Credits Act 2002 (c. 21) (tax credit fraud).
- (5) An offence at common law of cheating in relation to the public revenue.

*Corruption and bribery*

- 25 (1) An offence under section 1 of the Public Bodies Corrupt Practices Act 1889 (c. 69) (corruption in public office). 30
- (2) An offence which is the first or second offence under section 1(1) of the Prevention of Corruption Act 1906 (c. 34) (corrupt transactions with agents other than those of giving or using false etc. documents which intended to mislead principal). 35
- (3) An offence at common law of bribery.

*Counterfeiting*

- 26 An offence under any of the following provisions of the Forgery and Counterfeiting Act 1981 (c. 45) –
- (a) section 14 (making counterfeit notes or coins); 40



- (b) section 15 (passing etc. counterfeit notes or coins);
- (c) section 16 (having custody or control of counterfeit notes or coins);
- (d) section 17 (making or having custody or control of counterfeiting materials or implements).

*Blackmail*

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- 27 (1) An offence under section 20 of the Theft Act (Northern Ireland) 1969 (c. 16) (blackmail).
- (2) An offence under section 12(1) or (2) of the Gangmasters (Licensing) Act 2004 (c. 11) (acting as a gangmaster other than under the authority of a licence, possession of false documents, etc.).

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*Intellectual property*

- 28 (1) An offence under any of the following provisions of the Copyright, Designs and Patents Act 1988 (c. 48) –
- (a) section 107(1)(a), (b), (d)(iv) or (e) (making, importing or distributing an article which infringes copyright);
  - (b) section 198(1)(a), (b) or (d)(iii) (making, importing or distributing an illicit recording);
  - (c) section 297A (making or dealing etc. in unauthorised decoders).
- (2) An offence under section 92(1), (2) or (3) of the Trade Marks Act 1994 (c. 26) (unauthorised use of trade mark etc.).

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*Environment*

- 29 (1) An offence under section 62 or 63 of the Fisheries Act (Northern Ireland) 1966 (c. 17 (N.I.)) (prohibition of certain methods of fishing).
- (2) An offence under Article 15 of the Wildlife (Northern Ireland) Order 1985 (S.I. 1985/171 (N.I.2)) (introduction of new species, etc.).
- (3) An offence under Article 4 of the Waste and Contaminated Land (Northern Ireland) Order 1997 (S.I. 1997/2778 (N.I.19)) (prohibition on unauthorised or harmful deposit, treatment or disposal, etc. of waste).
- (4) An offence under regulation 8 of the Control of Trade in Endangered Species (Enforcement) Regulations 1997 (S.I. 1997/1372) (purchase and sale etc. of endangered species and provision of false statements and certificates).

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*Inchoate offences*

- 30 (1) An offence of attempting or conspiring the commission of an offence specified or described in this Part of this Schedule.
- (2) An offence under Part 2 of this Act (encouraging or assisting) where the offence (or one of the offences) which the person in question intends or believes would be committed is an offence specified or described in this Part of this Schedule.
- (3) An offence of aiding, abetting, counselling or procuring the commission of an offence specified or described in this Part of this Schedule.

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- (4) The references in sub-paragraphs (1) to (3) to offences specified or described in this Part of this Schedule do not include the offence at common law of conspiracy to defraud.

*Earlier offences*

- 31 (1) This Part of this Schedule (apart from paragraph 30(2)) has effect, in its application to conduct before the passing of this Act, 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
- (2) Paragraph 30(2) has effect, in its application to conduct before the passing of this Act or before the coming into force of section 57 of this Act, as if the offence specified or described in that provision were an offence of inciting the commission of an offence specified or described in this Part of this Schedule. 10

*Scope of offences*

- 32 Where this Part of this Schedule refers to offences which are offences under the law of Northern Ireland and another country, the reference is to be read as limited to the offences so far as they are offences under the law of Northern Ireland. 15

SCHEDULE 2

Section 37

FUNCTIONS OF APPLICANT AUTHORITIES UNDER PART 1 20

*Director of Public Prosecutions*

- 1 The functions of the Director of Public Prosecutions under this Part are—
- (a) to have the conduct of applications for serious crime prevention orders in England and Wales or for their variation or discharge;
  - (b) to appear on any application made under section 17 or 18 by another person for the variation or discharge of a serious crime prevention order in England and Wales; 25
  - (c) to have the conduct of, or (as the case may be) appear in, any other proceedings in connection with serious crime prevention orders (whether proceedings on appeal, by virtue of section 27 or otherwise); 30
  - (d) to give advice in connection with any proceedings or possible proceedings in connection with serious crime prevention orders; and
  - (e) to do anything for the purposes of, or in connection with, the functions in paragraphs (a) to (d). 35
- 2 (1) The Director may, to such extent as he may decide, delegate the exercise of his functions under this Part to a Crown Prosecutor.
- (2) References in this Part to the Director are accordingly to be read, so far as necessary for the purposes of sub-paragraph (1), as references to the Director or any Crown Prosecutor. 40
- 3 The functions of the Director under this Part are exercisable under the superintendence of the Attorney General.

- |   |   |         |
|---|---|---------|
| 4 | <p>(1) The Code for Crown Prosecutors issued under section 10 of the Prosecution of Offences Act 1985 (c. 23) (guidelines for Crown Prosecutors) may include guidance by the Director on general principles to be applied by Crown Prosecutors in determining in any case –</p> <ul style="list-style-type: none"> <li>(a) whether to make an application for a serious crime prevention order in England and Wales or for the variation or discharge of such an order;</li> <li>(b) whether to present a petition by virtue of section 27 of this Act; or</li> <li>(c) where such an application has been made or petition presented, whether the proceedings concerned should be discontinued.</li> </ul> <p>(2) Section 10(2) and (3) of that Act (power to make alterations in the Code and duty to set out alterations in Director’s report) are to be read accordingly.</p> | 5<br>10 |
| 5 | <p>Section 14 of that Act (power of Attorney General to make regulations about fees of legal representatives and costs and expenses of witnesses) applies in relation to proceedings in connection with serious crime prevention orders and attendance for the purposes of such cases as it applies in relation to criminal proceedings and attendance for the purposes of such cases.</p>  | 15      |

*Director of Revenue and Customs Prosecutions*

- |    |  |                |
|----|--|----------------|
| 6  | <p>The functions of the Director of Revenue and Customs Prosecutions under this Part are –</p> <ul style="list-style-type: none"> <li>(a) to have the conduct of applications for serious crime prevention orders in England and Wales or for their variation or discharge;</li> <li>(b) to appear on any application made under section 17 or 18 by another person for the variation or discharge of a serious crime prevention order in England and Wales;</li> <li>(c) to have the conduct of, or (as the case may be) appear in, any other proceedings in connection with serious crime prevention orders (whether proceedings on appeal, by virtue of section 27 or otherwise);</li> <li>(d) to give advice in connection with any proceedings or possible proceedings in connection with serious crime prevention orders; and</li> <li>(e) to do anything for the purposes of, or in connection with, the functions in paragraphs (a) to (d).</li> </ul> | 20<br>25<br>30 |
| 7  | <p>(1) The Director may, to such extent as he may decide, delegate the exercise of his functions under this Part to a Revenue and Customs Prosecutor.</p> <p>(2) References in this Part to the Director are accordingly to be read, so far as necessary for the purposes of sub-paragraph (1), as references to the Director or any Revenue and Customs Prosecutor.</p>   | 35             |
| 8  | <p>The functions of the Director under this Part are exercisable under the superintendence of the Attorney General.</p>  | 40             |
| 9  | <p>The Director must have regard to the Code for Crown Prosecutors issued under section 10 of the Prosecution of Offences Act 1985 (guidelines for Crown Prosecutors) so far as it applies in relation to serious crime prevention orders in England and Wales, and petitions and proceedings by virtue of section 27 of this Act, by virtue of paragraph 4 above.</p>   | 45             |
| 10 | <p>Section 21 of the Commissioners for Revenue and Customs Act 2005 (c. 11) (disclosure to prosecuting authority) has effect as if the purpose mentioned</p>   |                |

in subsection (1)(b) included the purpose of enabling the Director to exercise his functions under this Part.

- 11 Section 41(1) of the Act of 2005 (disclosure of information to Director) applies in relation to a purpose connected with a serious crime prevention order or possible serious crime prevention order as it applies in relation to a purpose connected with a specified investigation or prosecution. 5

*Director of Serious Fraud Office*

- 12 The functions of the Director of the Serious Fraud Office under this Part are –
- (a) to have the conduct of applications for serious crime prevention orders in England and Wales or for their variation or discharge; 10
  - (b) to appear on any application made under section 17 or 18 by another person for the variation or discharge of a serious crime prevention order in England and Wales;
  - (c) to have the conduct of, or (as the case may be) appear in, any other proceedings in connection with serious crime prevention orders (whether proceedings on appeal, by virtue of section 27 or otherwise); 15
  - (d) to give advice in connection with any proceedings or possible proceedings in connection with serious crime prevention orders; and 20
  - (e) to do anything for the purposes of, or in connection with, the functions in paragraphs (a) to (d).
- 13 (1) The Director may, to such extent as he may decide, delegate the exercise of his functions under this Part to a member of the Serious Fraud Office designated under section 1(7) of the Criminal Justice Act 1987 (c. 38). 25
- (2) References in this Part to the Director are accordingly to be read, so far as necessary for the purposes of sub-paragraph (1) above, as references to the Director or any member of the Serious Fraud Office so designated.
- 14 The functions of the Director under this Part are exercisable under the superintendence of the Attorney General. 30
- 15 Paragraph 8 of Schedule 1 to the Criminal Justice Act 1987 (power of Attorney General to make regulations about fees of counsel and costs and expenses of witnesses) applies in relation to proceedings in connection with serious crime prevention orders and attendance for the purposes of such cases as it applies in relation to criminal proceedings and attendance for the purposes of such cases. 35

*Director of Public Prosecutions for Northern Ireland*

- 16 The functions of the Director of Public Prosecutions for Northern Ireland under this Part are –
- (a) to have the conduct of applications for serious crime prevention orders in Northern Ireland or for their variation or discharge; 40
  - (b) to appear on any application made under section 17 or 18 by another person for the variation or discharge of a serious crime prevention order in Northern Ireland;
  - (c) to have the conduct of, or (as the case may be) appear in, any other proceedings in connection with serious crime prevention orders 45

- (whether proceedings on appeal, by virtue of section 28 or otherwise);
- (d) to give advice in connection with any proceedings or possible proceedings about serious crime prevention orders; and
- (e) to do anything for the purposes of, or in connection with, the functions in paragraphs (a) to (d). 5
- 17 References in this Part to the Director are to be read, so far as necessary for the purposes of functions delegated by him to Public Prosecutors, as references to the Director or any Public Prosecutor.
- 18 (1) The Code for Public Prosecutors issued under section 37 of the Justice (Northern Ireland) Act 2002 (c. 26) (guidelines for Public Prosecutors) may include guidance by the Director on general principles to be applied by Public Prosecutors in determining in any case – 10
- (a) whether to make an application for a serious crime prevention order in Northern Ireland or for the variation or discharge of such an order; 15
- (b) whether to present a petition by virtue of section 28 of this Act; or
- (c) where such an application has been made or petition presented, whether the proceedings concerned should be discontinued.
- (2) Sections 37(4) and 39(2) of that Act (power to make alterations in the Code and duty to set out alterations in Director’s report) are to be read accordingly. 20
- 19 Section 1 of the Costs in Criminal Cases Act (Northern Ireland) 1968 (c. 10 (N.I.)) (expenses of prosecution) applies in relation to proceedings in connection with serious crime prevention orders and attendance for the purposes of such cases as it applies in relation to criminal proceedings and attendance for the purposes of such cases. 25

### Interpretation

- 20 In this Schedule references to having the conduct of proceedings include references to starting or discontinuing proceedings.

## SCHEDULE 3

Section 47(5)

30

### LISTED OFFENCES

#### PART 1

#### OFFENCES COMMON TO ENGLAND AND WALES AND NORTHERN IRELAND

#### *Offences against the Person Act 1861 (c. 100)*

- 1 An offence under section 4 of the Offences against the Person Act 1861 (solicitation etc. of murder). 35
- 2 An offence under section 21 of that Act (attempting to choke etc. in order to commit or assist in the committing of any indictable offence) so far as it may be committed with the intention of enabling any other person to commit, or assisting any other person in the commission of, an indictable offence. 40

3	An offence under section 22 of that Act (using chloroform etc. to commit or assist in the committing of any indictable offence) so far as it may be committed with the intention of enabling any other person to commit, or assisting any other person in the commission of, an indictable offence.	
4	But references in paragraphs 2 and 3 to any other person do not include reference to the person whose act is capable of encouraging or assisting the commission of the offence under section 21 or, as the case may be, section 22 of that Act.	5
<i>Aliens Restriction (Amendment) Act 1919 (c. 92)</i>		
5	An offence under section 3(1) of the Aliens Restriction (Amendment) Act 1919 (acts calculated or likely to cause sedition or disaffection amongst HM forces etc.) consisting in attempting an act calculated or likely to cause sedition or disaffection in contravention of that subsection.	10
6	An offence under section 3(2) of that Act (promoting or attempting to promote industrial unrest) consisting in attempting to promote industrial unrest in contravention of that subsection.	15
<i>Official Secrets Act 1920 (c. 75)</i>		
7	An offence under section 7 of the Official Secrets Act 1920 (soliciting etc. commission of an offence under that Act or the Official Secrets Act 1911).	
<i>Incitement to Disaffection Act 1934 (c. 56)</i>		
8	An offence under section 1 of the Incitement to Disaffection Act 1934 (endeavouring to seduce members of HM forces from their duty or allegiance).	20
<i>Misuse of Drugs Act 1971 (c. 38)</i>		
9	An offence under section 19 of the Misuse of Drugs Act 1971 (inciting any other offence under that Act).	25
10	An offence under section 20 of that Act (assisting or inducing commission outside United Kingdom of offence punishable under corresponding law).	
<i>Immigration Act 1971 (c. 77)</i>		
11	An offence under section 25 of the Immigration Act 1971 (assisting unlawful immigration to a member State).	30
12	An offence under section 25B of that Act (assisting entry to the United Kingdom in breach of deportation or exclusion order).	
<i>Representation of the People Act 1983 (c. 2)</i>		
13	An offence under section 97(1) of the Representation of the People Act 1983 (public meetings) consisting in the incitement of others to act in a disorderly manner for the purpose of preventing at a lawful public meeting to which that section applies the transaction of the business for which the meeting was called.	35

*Computer Misuse Act 1990 (c. 18)*

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|----|---|----|
| 14 | An offence under section 3A(1) of the Computer Misuse Act 1990 (making etc. article intending it to be used to commit, or to assist in the commission of, an offence under section 1 or 3 of that Act).     |    |
| 15 | An offence under section 3A(2) of that Act (supply or offer to supply article believing it is likely to be used to commit, or to assist in the commission of, an offence under section 1 or 3 of that Act). | 5  |
| 16 | An offence under section 3A(3) of that Act (obtaining an article with a view to its being supplied for use to commit, or to assist in the commission of, an offence under section 1 or 3 of that Act).      | 10 |

*Criminal Justice Act 1993 (c. 36)*

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|----|---|--|
| 17 | An offence under section 52(2)(a) of the Criminal Justice Act 1993 (encouraging insider dealing). |  |
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*Reserve Forces Act 1996 (c. 14)*

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|----|--|----|
| 18 | An offence under section 101 of the Reserve Forces Act 1996 (inducing a person to desert or absent himself). | 15 |
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*Landmines Act 1998 (c. 33)*

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| 19 | An offence under section 2(2) of the Landmines Act 1998 (encouraging, assisting or inducing an offence under section 2(1) of that Act). |  |
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*Terrorism Act 2006 (c. 11)*

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|----|--|----|
| 20 | An offence under section 1(2) of the Terrorism Act 2006 (encouraging terrorism).   |    |
| 21 | An offence under section 2(1) of that Act (disseminating terrorist publications).  |    |
| 22 | An offence under section 5 of that Act (engaging in conduct in preparation for giving effect to intention to commit or assisting another to commit acts of terrorism).   | 25 |
| 23 | An offence under section 6(1) of that Act (provision of instruction or training knowing that a person trained or instructed intends to use the skills obtained for or in connection with the commission of acts of terrorism or for assisting the commission or preparation of such acts by others). | 30 |
| 24 | An offence under section 6(2) of that Act as a result of paragraph (b)(ii) of that subsection (receipt of instruction or training intending to use the skills obtained for assisting the commission or preparation of acts of terrorism by others).  | 35 |

PART 2

OFFENCES UNDER PARTICULAR ENACTMENTS: ENGLAND AND WALES

*Public Meeting Act 1908 (c. 66)*

- 25 An offence under section 1(2) of the Public Meeting Act 1908 (inciting others to commit offences under that section). 5

*Perjury Act 1911 (c. 6)*

- 26 An offence under section 7(2) of the Perjury Act 1911 (inciting a person to commit an offence under that Act).

*Prison Act 1952 (c. 52)*

- 27 An offence under section 39(1) of the Prison Act 1952 (assisting a prisoner to escape). 10

*Criminal Law Act 1967 (c. 58)*

- 28 An offence under section 4(1) of the Criminal Law Act 1967 (assisting persons who have committed an offence).
- 29 An offence under section 5(1) of that Act (accepting or agreeing to accept consideration for not disclosing information about an offence). 15

*Greater London Council (General Powers) Act 1973 (c. xxx)*

- 30 An offence under section 13 of the Greater London Council (General Powers) Act 1973 (assaults etc. on officers) consisting in the aiding or inciting of any person to assault, resist or obstruct an officer of the Thames Water Authority duly exercising or performing any power or duty under a section or byelaw mentioned in that section. 20

*Greater London Council (General Powers) Act 1974 (c. xxiv)*

- 31 An offence under section 21(6) of the Greater London Council (General Powers) Act 1974 (assaults etc. on officers of a borough council) consisting in the aiding or inciting of any person to assault, resist or obstruct an officer of a borough council duly exercising or performing any power or duty under section 21 of that Act. 25

*Criminal Law Act 1977 (c. 45)*

- 32 An offence under section 1(1) of the Criminal Law Act 1977 (conspiracy). 30

*Criminal Attempts Act 1981 (c. 47)*

- 33 An offence under section 1(1) of the Criminal Attempts Act 1981 (attempting to commit an offence).



*Public Order Act 1986 (c. 64)*

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| 34 | An offence under section 12(6) of the Public Order Act 1986 (inciting commission of offences under section 12(5) of that Act). |   |
| 35 | An offence under section 13(9) of that Act (inciting commission of offences under section 13(8) of that Act).                  | 5 |
| 36 | An offence under section 14(6) of that Act (inciting commission of offences under section 14(5) of that Act).                  |   |
| 37 | An offence under section 14B(3) of that Act (inciting commission of offences under section 14B(2) of that Act).                |   |

*Terrorism Act 2000 (c. 11)*

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| 38 | An offence under section 59 of the Terrorism Act 2000 (inciting in England and Wales the commission of acts of terrorism outside the United Kingdom). |  |
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PART 3

OTHER OFFENCES: ENGLAND AND WALES

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| 39 | An offence of conspiracy falling within section 5(2) or (3) of the Criminal Law Act 1977 (c. 45) (forms of conspiracy not affected by abolition of offence of conspiracy at common law). | 15 |
| 40 | (1) An attempt under a special statutory provision.  |    |
|    | (2) Sub-paragraph (1) is to be read with section 3 of the Criminal Attempts Act 1981 (c. 47).  | 20 |

PART 4

OFFENCES UNDER PARTICULAR ENACTMENTS: NORTHERN IRELAND

*Prison Act (Northern Ireland) 1953 (c. 18)*

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|----|---|----|
| 41 | An offence under section 29(a) of the Prison Act (Northern Ireland) 1953 (rescuing or assisting a person sentenced to imprisonment for life, or in lawful custody for an offence carrying that sentence, to escape or attempt to escape) so far as it consists in assisting a person. | 25 |
| 42 | An offence under section 30(a) of that Act (rescuing or assisting a person sentenced to imprisonment for a term less than life, or in lawful custody for an offence carrying such a sentence, to escape or attempt to escape) so far as it consists in assisting a person.            | 30 |

*Criminal Law Act (Northern Ireland) 1967 (c. 18)*

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| 43 | An offence under section 4(1) of the Criminal Law Act (Northern Ireland) 1967 (assisting persons who have committed an offence). |  |
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*Perjury (Northern Ireland) Order 1979 (S.I. 1979/1714 (N.I.19))*

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| 44 | An offence under Article 12(2) of the Perjury (Northern Ireland) Order 1979 (inciting a person to commit an offence under that Order). |  |
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*Criminal Attempts and Conspiracy (Northern Ireland) Order 1983 (S.I. 1983/1120 (N.I.13))*

- 45 An offence under Article 3(1) of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983 (attempting to commit an offence).
- 46 An offence under Article 9(1) of that Order (conspiracy).

*Public Processions (Northern Ireland) Act 1998 (c. 2)* 5

- 47 An offence under section 8(8) of the Public Processions (Northern Ireland) Act 1998 (inciting commission of offences under section 8(7) of that Act).
- 48 An offence under section 9A(8) of that Act (inciting commission of offences under section 9A of that Act).

*Terrorism Act 2000 (c. 11)* 10

- 49 An offence under section 60 of the Terrorism Act 2000 (inciting in Northern Ireland the commission of acts of terrorism outside the United Kingdom).

PART 5

OTHER OFFENCES: NORTHERN IRELAND

- 50 An offence of conspiracy falling within Article 13(2) or (3) of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983 (S.I. 1983/1120 (N.I.13)) (forms of conspiracy not affected by abolition of offence of conspiracy at common law). 15

SCHEDULE 4

Section 50(2)

EXTRA-TERRITORIALITY 20

- 1 (1) This paragraph applies if –
  - (a) any relevant behaviour of D’s takes place wholly or partly in England or Wales;
  - (b) D knows or believes that what he anticipates might take place wholly or partly in a place outside England and Wales; and 25
  - (c) either –
    - (i) the anticipated offence is one that would be triable under the law of England and Wales if it were committed in that place; or
    - (ii) if there are relevant conditions, it would be so triable if it were committed there by a person who satisfies the conditions. 30
- (2) “Relevant condition” means a condition that –
  - (a) determines (wholly or in part) whether an offence committed outside England and Wales is nonetheless triable under the law of England and Wales; and 35
  - (b) relates to the citizenship, nationality or residence of the person who commits it.

- 
- 2 (1) This paragraph applies if –
- (a) paragraph 1 does not apply;
  - (b) any relevant behaviour of D’s takes place wholly or partly in England or Wales;
  - (c) D knows or believes that what he anticipates might take place wholly or partly in a place outside England and Wales; and 5
  - (d) what D anticipates would amount to an offence under the law in force in that place.
- (2) The condition in sub-paragraph (1)(d) is to be taken to be satisfied unless, not later than rules of court may provide, the defence serve on the prosecution a notice – 10
- (a) stating that on the facts as alleged the condition is not in their opinion satisfied;
  - (b) showing their grounds for that opinion; and
  - (c) requiring the prosecution to show that it is satisfied. 15
- (3) The court, if it thinks fit, may permit the defence to require the prosecution to show that the condition is satisfied without prior service of a notice under sub-paragraph (2).
- (4) In the Crown Court, the question whether the condition is satisfied is to be decided by the judge alone. 20
- (5) An act punishable under the law in force in any place outside England and Wales constitutes an offence under that law for the purposes of this paragraph, however it is described in that law.
- 3 (1) This paragraph applies if –
- (a) any relevant behaviour of D’s takes place wholly outside England and Wales; 25
  - (b) D knows or believes that what he anticipates might take place wholly or partly in a place outside England and Wales; and
  - (c) D could be tried under the law of England and Wales if he committed the anticipated offence in that place. 30
- (2) For the purposes of sub-paragraph (1)(c), D is to be assumed to be able to commit the anticipated offence.
- 4 In relation to an offence under section 44, a reference in this Schedule to the anticipated offence is to be read as a reference to any of the offences specified in the indictment. 35

## SCHEDULE 5

Section 58

### AMENDMENTS RELATING TO SERVICE LAW

#### *Criminal Justice Act 1982 (c. 48)*

- 1 In section 32 of the Criminal Justice Act 1982 (early release of prisoners), in subsection (2A) for “incitement” substitute “encouragement and assistance”. 40

*Sexual Offences (Amendment) Act 1992 (c. 34)*

- 2 In section 6 of the Sexual Offences (Amendment) Act 1992 (interpretation), in subsection (1A) for “incitement” substitute “encouragement and assistance”.

*Powers of Criminal Courts (Sentencing) Act 2000 (c. 6)*

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- 3 In section 114 of the Powers of Criminal Courts (Sentencing) Act 2000 (offences under service law), in subsection (3) for “incitement” substitute “encouragement and assistance”.

*Sexual Offences Act 2003 (c. 42)*

- 4 (1) The Sexual Offences Act 2003 is amended as follows. 10
- (2) In paragraph 93A of Schedule 3 (sexual offences for purposes of Part 2), in sub-paragraph (3) for “incitement” substitute “encouragement and assistance”.
- (3) In paragraph 172A of Schedule 5 (other offences for purposes of Part 2), in sub-paragraph (2) for “incitement” substitute “encouragement and assistance”. 15

*Criminal Justice Act 2003 (c. 44)*

- 5 In section 233 of the Criminal Justice Act 2003 (offences under service law), in subsection (2) for “incitement” substitute “encouragement and assistance”. 20

*Gambling Act 2005 (c. 19)*

- 6 In Part 1 of Schedule 7 to the Gambling Act 2005 (relevant offences), in paragraph 22A for “incitement” substitute “encouragement and assistance”.

*Armed Forces Act 2006 (c. 52)*

- 7 The Armed Forces Act 2006 is amended as follows. 25
- 8 In section 39 (attempts), in subsection (4)(b) for “inciting another person to commit” substitute “encouraging or assisting the commission of”.
- 9 For section 40 (incitement) substitute –
- “40 Encouraging and assisting**
- (1) A person subject to service law commits an offence if he encourages or assists the commission of a service offence (other than an offence under section 42). 30
- (2) A civilian subject to service discipline commits an offence if he encourages or assists the commission of an offence mentioned in section 39(4). 35
- (3) Reference in this section to encouraging or assisting the commission of an offence is to the doing of an act that would have constituted an offence under Part 2 of the Serious Crime Act 2007 if the offence

- encouraged or assisted had been an offence under the law of England and Wales.
- (4) In determining whether an act would have constituted an offence under that Part, section 47(4) of that Act has effect as if for “offences under this Part and listed offences” it read “offences under sections 39 and 40 of the Armed Forces Act 2006”. 5
- (5) Any requirement in that Part to specify matters in an indictment applies for the purposes of this section as it applies for the purposes of that Part, but with references to the indictment being read as references to the charge sheet. 10
- (6) A person guilty of an offence under this section is liable to the same punishment as he would be liable to if guilty of – 15
- (a) the service offence encouraged or assisted; or
- (b) if convicted of the offence under this section by reference to more than one such service offence, any one of those service offences.”
- 10 Accordingly, in the heading immediately before section 39 for “incitement” substitute “encouragement and assistance”.
- 11 For section 46 (inciting criminal conduct) substitute –
- “46 Encouraging or assisting criminal conduct”** 20
- (1) Subsection (2) applies if a person subject to service law, or a civilian subject to service discipline, encourages or assists the doing of an act (or one or more of a number of acts) that, if done in England or Wales, would be punishable by the law of England and Wales.
- (2) Regardless of where that act (or those acts) might be done and of his state of mind with respect to that question, his encouragement or assistance shall be treated for the purposes of section 42(1) as an act that is punishable by the law of England and Wales (so far as it is not such an act in any event). 25
- (3) Reference in this section to encouraging or assisting is to an act that would constitute an offence under Part 2 of the Serious Crime Act 2007 disregarding any provision in that Part about the place where the act (or acts) being encouraged or assisted might be done or the accused’s state of mind with respect to that question.” 30
- 12 In section 48 (provision supplementary to sections 43 to 47), in subsection (1)(a) for “incitement” substitute “encouragement or assistance”. 35
- 13 In Schedule 2 (list of serious offences) –
- (a) in paragraph 11 for “inciting another person to commit” substitute “encouraging or assisting the commission of”;
- (b) in paragraph 13 for “of incitement to commit” substitute “under Part 2 of the Serious Crime Act 2007 of encouraging or assisting the commission of”. 40

SCHEDULE 6

Section 61(1) and (2)

MINOR AND CONSEQUENTIAL AMENDMENTS: PART 2

PART 1

REFERENCES TO COMMON LAW OFFENCE OF INCITEMENT

1	Section 30(4) of the Theft Act 1968 (c. 60) (restriction of proceedings against spouses and civil partners).	5
2	Section 1B(2) of the Biological Weapons Act 1974 (c. 6) (Revenue and Customs prosecutions).	
3	Section 17(1) of the Industry Act 1975 (c. 68) (no criminal proceedings to lie in respect of contravention of a prohibition order).	10
4	Section 7(2)(ix) of the Sexual Offences (Amendment) Act 1976 (c. 82) (meaning of “rape offence” in relation to court martial proceedings).	
5	In the Magistrates’ Courts Act 1980 (c. 43) – <ul style="list-style-type: none"> <li>(a) section 22(11)(b) (aggregation of value in relation to charges involving two or more scheduled offences);</li> <li>(b) section 103(2)(d) (written statement of child admissible in committal proceedings for certain offences);</li> <li>(c) paragraph 2 of Schedule 2 (offences for which the value involved is relevant to the mode of trial).</li> </ul>	15
6	Article 8(1A) of the Criminal Justice (Northern Ireland) Order 1980 (S.I. 1980/704 (N.I.6)) (driving disqualification where vehicle used for the purposes of crime).	20
7	In the Betting and Gaming Duties Act 1981 (c. 63) – <ul style="list-style-type: none"> <li>(a) section 9(5) (prohibitions for protection of revenue);</li> <li>(b) section 9A(4) (prohibitions for protection of revenue: overseas brokers).</li> </ul>	25
8	In section 32(1) of the Criminal Justice Act 1982 (c. 48) (early release of prisoners) – <ul style="list-style-type: none"> <li>(a) paragraph (b)(iv) (imprisonment for excluded offence etc.);</li> <li>(b) paragraph (c)(iv) (imprisonment for service offence corresponding to excluded offence etc.), inserted by paragraph 94(2) of Schedule 16 to the Armed Forces Act 2006 (c. 52).</li> </ul>	30
9	Section 80(3)(c) of the Police and Criminal Evidence Act 1984 (c. 60) (compellability of accused’s spouse or civil partner).	
10	Section 49(4) of the Airports Act 1986 (c. 31) (no criminal proceedings to lie in respect of contravention of compliance order).	35
11	Section 12(6)(a) of the Outer Space Act 1986 (c. 38) (offences).	
12	Section 30(4) of the Gas Act 1986 (c. 44) (no criminal proceedings to lie in respect of contravention of final or provisional order).	
13	Section 7(1) of the Public Order Act 1986 (c. 64) (consent of DPP to prosecution).	40

14	Section 2(3)(ba) of the Ministry of Defence Police Act 1987 (c. 4) (jurisdiction of members of MoD police).	
15	In the Road Traffic Offenders Act 1988 (c. 53) –	
	(a) section 28(2) (penalty points to be attributed to an offence);	
	(b) section 34(5) (disqualification for certain offences);	5
	(c) section 35(5A) (disqualification for repeated offences).	
16	Paragraph 2(a) of Schedule 1 to the Football Spectators Act 1989 (c. 37) (offences).	
17	Article 79(3)(c) of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I.12)) (compellability of accused’s spouse or civil partner).	10
18	In the Aviation and Maritime Security Act 1990 (c. 31) –	
	(a) section 11(3)(b) (destroying ships or fixed platforms or endangering their safety);	
	(b) section 15(2)(c) (master’s power of delivery).	15
19	In the Criminal Justice Act 1991 (c. 53) –	
	(a) section 53(7) (cases involving children in which notice of transfer may be given);	
	(b) section 86A(4) (offences in respect of which prisoner custody officers have powers in relation to persons other than prisoners).	20
20	In the Sexual Offences (Amendment) Act 1992 (c. 34) –	
	(a) subsections (1)(g) and (3)(k) of section 2 (offences to which Act applies);	
	(b) section 6(2A) (person who is to be treated as person against whom inchoate offences are committed).	25
21	Section 12(7) of the Finance Act 1994 (c. 9) (offences of fraud and dishonesty).	
22	Section 9A(4) of the Criminal Justice and Public Order Act 1994 (c. 33) (offences in respect of which custody officers at contracted out secure training centres have powers in relation to persons other than those detained in the centre).	30
23	Paragraph (b) of the definition of “specified offence” in section 60(6) of the Drug Trafficking Act 1994 (c. 37) (Revenue and Customs prosecutions).	
24	Article 40(4) of the Airports (Northern Ireland) Order 1994 (S.I. 1994/426 (N.I.1)) (no criminal proceedings to lie in respect of contravention of compliance order).	35
25	Article 4(1A) and (7) of the Children’s Evidence (Northern Ireland) Order 1995 (S.I. 1995/757 (N.I.3)) (cases involving children in which notice of transfer may be given).	
26	Section 30A(2) of the Chemical Weapons Act 1996 (c. 6) (Revenue and Customs prosecutions).	40
27	Section 29(6)(i) of the Criminal Procedure and Investigations Act 1996 (c. 25) (meaning of “terrorism offence” for purpose of requirement to hold preparatory hearing).	

28	In the Proceeds of Crime (Northern Ireland) Order 1996 (S.I. 1996/1299 (N.I.9)) –	
	(a) paragraph (h) of the definition of “drug trafficking offence” in Article 2(2) (interpretation);	
	(b) paragraph (b) of the definition of “specified offence” in Article 55 (Revenue and Customs prosecutions).	5
29	In the Road Traffic Offenders (Northern Ireland) Order 1996 (S.I. 1996/1320 (N.I.10)) –	
	(a) Article 30(2) (penalty points to be attributed to an offence);	
	(b) Article 35(6) (disqualification for certain offences);	10
	(c) Article 40(7) (disqualification for repeated offences).	
30	Paragraph 8 of the Schedule to the Sexual Offences (Protected Material) Act 1997 (c. 39) (sexual offences for the purposes of that Act).	
31	Section 14(2)(d) of the Northern Ireland (Sentences) Act 1998 (c. 35) (inadmissibility).	15
32	Section 51C(3)(e) of the Crime and Disorder Act 1998 (c. 37) (notices in certain cases involving children).	
33	Section 62(2) of the Youth Justice and Criminal Evidence Act 1999 (c. 23) (meaning of “sexual offence” and other references to offences).	
34	Article 3(2) of the Criminal Evidence (Northern Ireland) Order 1999 (S.I. 1999/2789 (N.I.8)) (meaning of “sexual offence” and other references to offences).	20
35	Section 147(2) of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) (driving disqualification where vehicle used for purposes of crime).	
36	Paragraph 3(t)(i) of Schedule 4 to the Criminal Justice and Court Services Act 2000 (c. 43) (meaning of “offence against a child”).	25
37	Section 34(1)(g) of the Criminal Justice and Police Act 2001 (c. 16) (meaning of “drug trafficking offence”).	
38	Sections 55(1)(b) and 62(1)(b) of the International Criminal Court Act 2001 (c. 17) (meaning of “ancillary offence”).	30
39	Section 53(2) of the Anti-terrorism, Crime and Security Act 2001 (c. 24) (Revenue and Customs prosecutions).	
40	In the Proceeds of Crime Act 2002 (c. 29) –	
	(a) section 340(11)(b) (interpretation of Part 7: money laundering);	
	(b) section 415(2)(a) (money laundering offences for purposes of Part 8: investigations);	35
	(c) section 447(9)(b) (interpretation of Part 11: national and international co-operation);	
	(d) section 451(6)(c) (Revenue and Customs prosecutions).	
41	Section 4 of the Dealing in Cultural Objects (Offences) Act 2003 (c. 27) (Revenue and Customs prosecutions).	40
42	Section 142(7)(a) of the Extradition Act 2003 (c. 41) (extradition from category 1 territory to the United Kingdom).	



- |    |   |    |
|----|---|----|
| 43 | Paragraph 3(a) of Schedule 2 to the Sexual Offences Act 2003 (c. 42) (sexual offences to which section 72 of that Act applies).   |    |
| 44 | In the Criminal Justice Act 2003 (c. 44) –  |    |
|    | (a) in Schedule 15 (specified violent and sexual offences for the purposes of Chapter 5 of Part 12 of that Act), paragraphs 64(a) and 153(3);                                       | 5  |
|    | (b) in Schedule 17 (Northern Ireland violent and sexual offences specified for the purposes of section 229(4) of that Act), paragraphs 61(a) and 110(a).                            |    |
| 45 | Paragraph 3(i)(i) of the Schedule to the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003 (S.I. 2003/417 (N.I.4)) (meaning of “offence against a child”). | 10 |
| 46 | Section 14 of the Gangmasters (Licensing) Act 2004 (c. 11) (enforcement officer’s power of arrest).   |    |
| 47 | Section 76(3)(p) of the Serious Organised Crime and Police Act 2005 (c. 15) (offences giving rise to financial reporting order).  | 15 |
| 48 | Paragraph 12(b) of Schedule 1 to the Terrorism Act 2006 (c. 11) (Convention offences).  |    |

## PART 2

### OTHER MINOR AND CONSEQUENTIAL AMENDMENTS

- |    |  |    |
|----|--|----|
|    | <i>Misuse of Drugs Act 1971 (c. 38)</i>  | 20 |
| 49 | In section 19 of the Misuse of Drugs Act 1971 for “such an offence” substitute “an offence under any other provision of this Act”.                               |    |
|    | <i>Criminal Law Act 1977 (c. 45)</i>   |    |
| 50 | In section 5 of the Criminal Law Act 1977 (effects of creation of statutory offence of conspiracy) omit subsection (7).  | 25 |
|    | <i>Magistrates’ Courts Act 1980 (c. 43)</i>  |    |
| 51 | (1) The Magistrates’ Courts Act 1980 is amended as follows.  |    |
|    | (2) In section 32(1) (penalties for offences triable either way as a result of Schedule 1 to that Act) omit paragraph (b).                                       |    |
|    | (3) Omit section 45.   | 30 |
|    | (4) In Schedule 1 (offences triable either way) omit paragraph 35.   |    |
|    | <i>Magistrates’ Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I.26))</i>   |    |
| 52 | Omit Article 60(1) of the Magistrates’ Courts (Northern Ireland) Order 1981.   |    |
|    | <i>Criminal Attempts and Conspiracy (Northern Ireland) Order 1983 (S.I. 1983/1120 (N.I.13))</i>  |    |
| 53 | In Article 13 of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983 (effects of creation of statutory offence of conspiracy) omit paragraph (8). | 35 |

*Public Order Act 1986 (c. 64)*

- 54 (1) The Public Order Act 1986 is amended as follows.
- (2) In each of the provisions mentioned in sub-paragraph (3) omit the words from “notwithstanding” to the end.
- (3) The provisions are— 5
- (a) section 12(10);
  - (b) section 13(13);
  - (c) section 14(10);
  - (d) section 14B(7).

*Computer Misuse Act 1990 (c. 18)* 10

- 55 (1) The Computer Misuse Act 1990 is amended as follows.
- (2) In section 6 (incitement) omit subsection (3).
- (3) In section 7 (territorial scope of inchoate offences related to offences under external law corresponding to offences under the Act) omit subsection (4).
- (4) In section 8(3) (relevance of external law) omit “or by virtue of section 7(4) above”. 15
- (5) In section 9(2) (offences in relation to which British citizenship is immaterial) omit paragraph (d).
- (6) In section 16(4) (application to Northern Ireland) omit the words from “and any reference” to the end. 20

*International Criminal Court Act 2001 (c. 17)*

- 56 (1) The International Criminal Court Act 2001 is amended as follows.
- (2) In section 55 (meaning of ancillary offence: England and Wales) omit subsection (3).
- (3) In section 62 (meaning of ancillary offence: Northern Ireland) omit subsection (3). 25

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

- 57 After sub-paragraph (1) in each of paragraph 10 of Schedule 2 to the Proceeds of Crime Act 2002 and paragraph 10 of Schedule 5 to that Act (inchoate offences which are lifestyle offences) insert the following sub-paragraph— 30
- “(1A) An offence under section 42 of the Serious Crime Act 2007 of doing an act capable of encouraging or assisting the commission of an offence specified in this Schedule.”

*Sexual Offences Act 2003 (c. 42)* 35

- 58 (1) The Sexual Offences Act 2003 is amended as follows.
- (2) In Schedule 3 (sexual offences for the purposes of Part 2 of that Act), after

paragraph 94, insert –

“94A A reference in a preceding paragraph to an offence (“offence A”) includes a reference to an offence under Part 2 of the Serious Crime Act 2007 in relation to which offence A is the offence (or one of the offences) which the person intended or believed would be committed.” 5

(3) In Schedule 5 (other offences which are relevant for the purposes of Part 2 of the Act), after paragraph 173, insert –

“173A A reference in a preceding paragraph to an offence (“offence A”) includes a reference to an offence under Part 2 of the Serious Crime Act 2007 in relation to which offence A is the offence (or one of the offences) which the person intended or believed would be committed.” 10

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

59 (1) The Serious Organised Crime and Police Act 2005 is amended as follows. 15

(2) In section 136 (penalties in relation to demonstrations in the vicinity of Parliament) for subsection (4) substitute –

“(4) A person who is guilty of an offence under section 42 or 43 of the Serious Crime Act 2007 in relation to which an offence mentioned in subsection (1), (2) or (3) is the anticipated offence (as defined by section 45(9) of that Act) is liable on summary conviction to imprisonment for a term not exceeding 51 weeks, to a fine not exceeding level 4 on the standard scale or to both. 20

(4A) If a person is guilty of an offence under section 44 of that Act by reference to an offence mentioned in subsection (1), (2) or (3), the maximum term of imprisonment applicable for the purposes of section 56(6) of that Act to the offence so mentioned is a term not exceeding 51 weeks.” 25

(3) In section 175(3) (transitional modification of penalties for summary offences in England and Wales) in the table, for the entry relating to section 136(4) substitute – 30

“section 136(4)	3 months
section 136(4A)	3 months”.

SCHEDULE 7

Section 71

DATA MATCHING

PART 1

DATA MATCHING: ENGLAND

- |   |  |   |
|---|--|---|
| 1 | The Audit Commission Act 1998 (c. 18) is amended as follows. | 5 |
| 2 | After Part 2 insert –  |   |

“PART 2A

DATA MATCHING

**32A Power to conduct data matching exercises**

- |     |   |    |
|-----|---|----|
| (1) | The Commission may conduct data matching exercises or arrange for them to be conducted on its behalf.   | 10 |
| (2) | A data matching exercise is an exercise involving the comparison of sets of data to determine how far they match (including the identification of any patterns and trends).                           |    |
| (3) | The power in subsection (1) is exercisable for the purpose of assisting in the prevention and detection of fraud.   | 15 |
| (4) | That assistance may, but need not, form part of an audit.   |    |
| (5) | A data matching exercise may not be used to identify patterns and trends in an individual’s characteristics or behaviour which suggest nothing more than his potential to commit fraud in the future. | 20 |
| (6) | In the following provisions of this Part, reference to a data matching exercise is to an exercise conducted or arranged to be conducted under this section.   |    |

**32B Mandatory provision of data**

- |     |   |    |
|-----|---|----|
| (1) | The Commission may require –  | 25 |
|     | (a) any body mentioned in subsection (2), and   |    |
|     | (b) any officer or member of such a body,   |    |
|     | to provide the Commission or a person acting on its behalf with such data (and in such form) as the Commission or that person may reasonably require for the purpose of conducting data matching exercises. | 30 |
| (2) | The bodies are –  |    |
|     | (a) a body subject to audit,  |    |
|     | (b) an English best value authority which is not a body subject to audit.   | 35 |
| (3) | A person who without reasonable excuse fails to comply with a requirement of the Commission under subsection (1)(b) is guilty of an offence and liable on summary conviction –                              |    |
|     | (a) to a fine not exceeding level 3 on the standard scale, and  |    |

- 
- (b) to an additional fine not exceeding £20 for each day on which the offence continues after conviction for that offence.
- (4) Any expenses incurred by the Commission in connection with proceedings for an offence under subsection (3) alleged to have been committed by an officer or member of a body, so far as not recovered from any other source, are recoverable from that body. 5
- (5) “English best value authority” means a best value authority other than—
- (a) a county council, county borough council or community council in Wales, 10
- (b) a National Park authority for a National Park in Wales,
- (c) a police authority for a police area in Wales,
- (d) a fire and rescue authority in Wales constituted by a scheme under section 2 of the Fire and Rescue Services Act 2004 (c. 21) or a scheme to which section 4 of that Act applies. 15
- 32C Voluntary provision of data**
- (1) If the Commission thinks it appropriate to conduct a data matching exercise using data held by or on behalf of a body or person not subject to section 32B, the data may be disclosed to the Commission or a person acting on its behalf. 20
- (2) A disclosure under subsection (1) does not breach—
- (a) any obligation of confidence owed by a person making the disclosure, or
- (b) any other restriction on the disclosure of information (however imposed). 25
- (3) But nothing in this section authorises a disclosure which—
- (a) contravenes the Data Protection Act 1998 (c. 29), or
- (b) is prohibited by Part 1 of the Regulation of Investigatory Powers Act 2000 (c. 23).
- (4) Data may not be disclosed under subsection (1) if the data comprise or include patient data. 30
- (5) “Patient data” means data relating to an individual which are held for medical purposes (within the meaning of section 251 of the National Health Service Act 2006 (c. 41)) and from which the individual can be identified. 35
- (6) This section does not limit the circumstances in which data may be disclosed apart from this section.
- (7) Data matching exercises may include data provided by a body or person outside England and Wales.
- 32D Disclosure of results of data matching etc** 40
- (1) This section applies to the following information—
- (a) information relating to a particular body or person obtained by or on behalf of the Commission for the purpose of conducting a data matching exercise,
- (b) the results of any such exercise. 45

- 
- (2) Information to which this section applies may be disclosed by or on behalf of the Commission if the disclosure is –
- (a) for or in connection with a purpose for which the data matching exercise is conducted,
  - (b) to a body mentioned in subsection (3) (or a related party) for or in connection with a function of that body corresponding or similar to the functions of an auditor under Part 2 or the functions of the Commission under this Part, or 5
  - (c) in pursuance of a duty imposed by or under a statutory provision. 10
- (3) The bodies are –
- (a) the Auditor General for Wales,
  - (b) the Auditor General for Scotland,
  - (c) the Accounts Commission for Scotland,
  - (d) Audit Scotland, 15
  - (e) the Comptroller and Auditor General for Northern Ireland,
  - (f) a person designated as a local government auditor under Article 4 of the Local Government (Northern Ireland) Order 2005 (S.I. 2005/1968 (N.I.18)).
- (4) “Related party”, in relation to a body mentioned in subsection (3), means – 20
- (a) a body or person acting on its behalf,
  - (b) a body whose accounts are required to be audited by it or by a person appointed by it,
  - (c) a person appointed by it to audit those accounts. 25
- (5) If the data used for a data matching exercise include patient data –
- (a) subsection (2)(a) applies only so far as the purpose for which the disclosure is made relates to a relevant NHS body,
  - (b) subsection (2)(b) applies only so far as the function for or in connection with which the disclosure is made relates to such a body. 30
- (6) In subsection (5) –
- (a) “patient data” has the same meaning as in section 32C,
  - (b) “relevant NHS body” means – 35
    - (i) a health service body,
    - (ii) a Welsh NHS body,
    - (iii) an NHS body as defined in section 22(1) of the Community Care and Health (Scotland) Act 2002 (asp 5),
    - (iv) a body to which Article 90 of the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I.14)) applies. 40
- (7) Information disclosed under subsection (2) may not be further disclosed except –
- (a) for or in connection with the purpose for which it was disclosed under paragraph (a) or the function for which it was disclosed under paragraph (b) of that subsection, 45

- (b) for the investigation or prosecution of an offence (so far as the disclosure does not fall within paragraph (a)), or
  - (c) in pursuance of a duty imposed by or under a statutory provision.
- (8) Except as authorised by subsections (2) and (7), a person who discloses information to which this section applies is guilty of an offence and liable –
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine or to both, or
  - (b) on summary conviction, to imprisonment for a term not exceeding 12 months, to a fine not exceeding the statutory maximum or to both.
- (9) Section 49 does not apply to information to which this section applies.
- (10) In this section, “body” includes office.

### **32E Publication**

- (1) Nothing in section 32D prevents the Commission from publishing a report on a data matching exercise (including on the results of the exercise).
- (2) But the report may not include information relating to a particular body or person if –
- (a) the body or person is the subject of any data included in the data matching exercise,
  - (b) the body or person can be identified from the information, and
  - (c) the information is not otherwise in the public domain.
- (3) A report published under this section may be published in such manner as the Commission considers appropriate for bringing it to the attention of those members of the public who may be interested.
- (4) Section 51 does not apply to information to which section 32D applies.
- (5) This section does not affect any powers of an auditor where the data matching exercise in question forms part of an audit under Part 2.

### **32F Fees for data matching**

- (1) The Commission must prescribe a scale or scales of fees in respect of data matching exercises.
- (2) A body required under section 32B(1) to provide data for a data matching exercise must pay to the Commission the fee applicable to that exercise in accordance with the appropriate scale.
- (3) But if it appears to the Commission that the work involved in the exercise was substantially more or less than that envisaged by the appropriate scale, the Commission may charge the body a fee which is larger or smaller than that referred to in subsection (2).
- (4) Before prescribing a scale of fees under this section, the Commission must consult –

- (a) the bodies mentioned in section 32B(2), and
  - (b) such other bodies or persons as the Commission thinks fit.
- (5) If the Secretary of State considers it necessary or desirable to do so, he may by regulations prescribe a scale or scales of fees to have effect, for such period as is specified in the regulations, in place of any scale or scales of fees prescribed by the Commission and, if he does so, references in this section to the appropriate scale are to be read as respects that period as references to the appropriate scale prescribed by the Secretary of State. 5
- (6) Before making any regulations under subsection (5), the Secretary of State must consult – 10
  - (a) the Commission, and
  - (b) such other bodies or persons as he thinks fit.
- (7) In addition to the power under subsection (2), the Commission may charge a fee to any other body or person providing data for or receiving the results of a data matching exercise, such fee to be payable in accordance with terms agreed between the Commission and that body or person. 15

### **32G Code of data matching practice**

- (1) The Commission must prepare, and keep under review, a code of practice with respect to data matching exercises. 20
- (2) Regard must be had to the code in conducting and participating in any such exercise.
- (3) Before preparing or altering the code, the Commission must consult the bodies mentioned in section 32B(2), the Information Commissioner and such other bodies or persons as the Commission thinks fit. 25
- (4) The Commission must –
  - (a) send a copy of the code, and of any alterations made to the code, to the Secretary of State, who must lay the copy before Parliament, and 30
  - (b) from time to time publish the code as for the time being in force.

### **32H Powers of Secretary of State**

- (1) The Secretary of State may by order amend this Part – 35
  - (a) to add any purpose mentioned in subsection (2) to the purposes for which data matching exercises may be conducted,
  - (b) to modify the application of this Part in relation to a purpose so added. 40
- (2) The purposes which may be added are –
  - (a) to assist in the prevention and detection of crime (other than fraud),
  - (b) to assist in the apprehension and prosecution of offenders,
  - (c) to assist in the recovery of debt owing to public bodies. 45



- 
- (3) The Secretary of State may by order amend this Part –
- (a) to add a public body to the list of bodies in section 32B(2),
  - (b) to modify the application of this Part in relation to a body so added,
  - (c) to remove a body from that list. 5
- (4) An order under this section may include such incidental, consequential, supplemental or transitional provision as the Secretary of State thinks fit.
- (5) In this section, “public body” means a body or person whose functions – 10
- (a) are functions of a public nature, or
  - (b) include functions of that nature,
- but, in the latter case, the body or person is a public body to the extent only of those functions.”
- 3 In section 52 (orders and regulations), after subsection (1) insert – 15
- “(1A) No order shall be made under section 32H unless a draft of the order has been laid before and approved by a resolution of each House of Parliament.”

## PART 2

### DATA MATCHING: WALES 20

- 4 After Part 3 of the Public Audit (Wales) Act 2004 (c. 23) insert –

#### “PART 3A

##### DATA MATCHING

#### **64A Power to conduct data matching exercises**

- (1) The Auditor General for Wales may conduct data matching exercises or arrange for them to be conducted on his behalf. 25
- (2) A data matching exercise is an exercise involving the comparison of sets of data to determine how far they match (including the identification of any patterns and trends).
- (3) The power in subsection (1) is exercisable for the purpose of assisting in the prevention and detection of fraud in or with respect to Wales. 30
- (4) That assistance may, but need not, form part of an audit.
- (5) A data matching exercise may not be used to identify patterns and trends in an individual’s characteristics or behaviour which suggest nothing more than his potential to commit fraud in the future. 35
- (6) In the following provisions of this Part, reference to a data matching exercise is to an exercise conducted or arranged to be conducted under this section.

#### **64B Mandatory provision of data**

- (1) The Auditor General for Wales may require – 40

- (a) any body mentioned in subsection (2), and
  - (b) any officer or member of such a body,to provide the Auditor General or a person acting on his behalf with such data (and in such form) as the Auditor General or that person may reasonably require for the purpose of conducting data matching exercises. 5
- (2) The bodies are –
  - (a) a local government body in Wales (as defined in section 12(1));
  - (b) a Welsh NHS body (as defined in section 60). 10
- (3) A person who without reasonable excuse fails to comply with a requirement of the Auditor General under subsection (1)(b) is guilty of an offence and liable on summary conviction –
  - (a) to a fine not exceeding level 3 on the standard scale, and
  - (b) to an additional fine not exceeding £20 for each day on which the offence continues after conviction for that offence. 15
- (4) If an officer or member of a body is convicted of an offence under subsection (3), any expenses incurred by the Auditor General in connection with proceedings for the offence, so far as not recovered from any other source, are recoverable from that body. 20

#### **64C Voluntary provision of data**

- (1) If the Auditor General for Wales thinks it appropriate to conduct a data matching exercise using data held by or on behalf of a body or person not subject to section 64B, the data may be disclosed to the Auditor General or a person acting on his behalf. 25
- (2) A disclosure under subsection (1) does not breach –
  - (a) any obligation of confidence owed by a person making the disclosure, or
  - (b) any other restriction on the disclosure of information (however imposed). 30
- (3) But nothing in this section authorises a disclosure which –
  - (a) contravenes the Data Protection Act 1998 (c. 29), or
  - (b) is prohibited by Part 1 of the Regulation of Investigatory Powers Act 2000 (c. 23).
- (4) Data may not be disclosed under subsection (1) if the data comprise or include patient data. 35
- (5) “Patient data” means data relating to an individual which are held for medical purposes (within the meaning of section 251 of the National Health Service Act 2006 (c. 41)) and from which the individual can be identified. 40
- (6) This section does not limit the circumstances in which data may be disclosed apart from this section.
- (7) Data matching exercises may include data provided by a body or person outside England and Wales.

#### **64D Disclosure of results of data matching etc**

- (1) This section applies to the following information –
- (a) information relating to a particular body or person obtained by or on behalf of the Auditor General for Wales for the purpose of conducting a data matching exercise, 5
  - (b) the results of any such exercise.
- (2) Information to which this section applies may be disclosed by or on behalf of the Auditor General for Wales if the disclosure is –
- (a) for or in connection with a purpose for which the data matching exercise is conducted, 10
  - (b) to a body mentioned in subsection (3) (or a related party) for or in connection with a function of that body corresponding or similar to the functions of an auditor under Chapter 1 of Part 2 or the functions of the Auditor General under Part 3 or this Part, or 15
  - (c) in pursuance of a duty imposed by or under a statutory provision.
- (3) The bodies are –
- (a) the Audit Commission,
  - (b) the Auditor General for Scotland, 20
  - (c) the Accounts Commission for Scotland,
  - (d) Audit Scotland,
  - (e) the Comptroller and Auditor General for Northern Ireland,
  - (f) a person designated as a local government auditor under Article 4 of the Local Government (Northern Ireland) Order 2005 (S.I. 2005/1968 (N.I.18)). 25
- (4) “Related party”, in relation to a body mentioned in subsection (3), means –
- (a) a body or person acting on its behalf,
  - (b) a body whose accounts are required to be audited by it or by a person appointed by it, 30
  - (c) a person appointed by it to audit those accounts.
- (5) If the data used for a data matching exercise include patient data –
- (a) subsection (2)(a) applies only so far as the purpose for which the disclosure is made relates to a relevant NHS body, 35
  - (b) subsection (2)(b) applies only so far as the function for or in connection with which the disclosure is made relates to such a body.
- (6) In subsection (5) –
- (a) “patient data” has the same meaning as in section 64C, 40
  - (b) “relevant NHS body” means –
    - (i) a Welsh NHS body as defined in section 60,
    - (ii) a health service body as defined in section 53(1) of the Audit Commission Act 1998 (c. 18),
    - (iii) an NHS body as defined in section 22(1) of the Community Care and Health (Scotland) Act 2002 (asp 5), 45

- (iv) a body to which Article 90 of the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I.14)) applies.
- (7) Information disclosed under subsection (2) may not be further disclosed except— 5
- (a) for or in connection with the purpose for which it was disclosed under paragraph (a) or the function for which it was disclosed under paragraph (b) of that subsection,
  - (b) for the investigation or prosecution of an offence (so far as the disclosure does not fall within paragraph (a)), or 10
  - (c) in pursuance of a duty imposed by or under a statutory provision.
- (8) Except as authorised by subsections (2) and (7), a person who discloses information to which this section applies is guilty of an offence and liable— 15
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine or to both, or
  - (b) on summary conviction, to imprisonment for a term not exceeding 12 months, to a fine not exceeding the statutory maximum or to both. 20
- (9) Section 54 does not apply to information to which this section applies.
- (10) In this section “statutory provision” has the meaning given in section 59(8).
- 64E Publication** 25
- (1) Nothing in section 64D prevents the Auditor General for Wales from publishing a report on a data matching exercise (including on the results of the exercise).
- (2) But the report may not include information relating to a particular body or person if— 30
- (a) the body or person is the subject of any data included in the data matching exercise,
  - (b) the body or person can be identified from the information, and
  - (c) the information is not otherwise in the public domain. 35
- (3) A report published under this section may be published in any manner which the Auditor General considers appropriate for bringing it to the attention of those members of the public who may be interested.
- (4) This section does not affect any powers of an auditor or the Auditor General where the data matching exercise in question forms part of an audit under Part 2 or 3. 40
- 64F Fees for data matching**
- (1) The Auditor General for Wales must prescribe a scale or scales of fees in respect of data matching exercises. 45

- 
- (2) A body required under section 64B(1) to provide data for a data matching exercise must pay to the Auditor General the fee applicable to that exercise in accordance with the appropriate scale.
- (3) But if it appears to the Auditor General that the work involved in the exercise was substantially more or less than that envisaged by the appropriate scale, the Auditor General may charge the body a fee which is larger or smaller than that referred to in subsection (2). 5
- (4) Before prescribing a scale of fees under this section, the Auditor General must consult – 10
- (a) the bodies mentioned in section 64B(2), and
- (b) such other bodies or persons as the Auditor General thinks fit.
- (5) If the Welsh Ministers consider it necessary or desirable to do so, they may by regulations prescribe a scale or scales of fees to have effect, for such period as is specified in the regulations, in place of any scale or scales of fees prescribed by the Auditor General and, if they do so, references in this section to the appropriate scale are to be read as respects that period as references to the appropriate scale prescribed by the Welsh Ministers. 15
- (6) Before making any regulations under subsection (5), the Welsh Ministers must consult – 20
- (a) the Auditor General for Wales, and
- (b) such other bodies or persons as they think fit.
- (7) The power under subsection (5) is exercisable by statutory instrument subject to annulment in pursuance of a resolution of the Assembly. 25
- (8) In addition to the power under subsection (2), the Auditor General may charge a fee to any other body or person providing data for or receiving the results of a data matching exercise, such fee to be payable in accordance with terms agreed between the Auditor General and that body or person. 30

#### **64G Code of data matching practice**

- (1) The Auditor General for Wales must prepare, and keep under review, a code of practice with respect to data matching exercises.
- (2) Regard must be had to the code in conducting and participating in any such exercise. 35
- (3) Before preparing or altering the code, the Auditor General must consult the bodies mentioned in section 64B(2), the Information Commissioner and such other bodies or persons as the Auditor General thinks fit. 40
- (4) The Auditor General must – 45
- (a) lay a copy of the code, and of any alterations made to the code, before the Assembly, and
- (b) from time to time publish the code as for the time being in force.

#### 64H Powers of Secretary of State

- (1) The Secretary of State may by order amend this Part –
    - (a) to add any purpose mentioned in subsection (2) to the purposes for which data matching exercises may be conducted, 5
    - (b) to modify the application of this Part in relation to a purpose so added.
  - (2) The purposes which may be added are –
    - (a) to assist in the prevention and detection of crime (other than fraud) in or with respect to Wales, 10
    - (b) to assist in the apprehension and prosecution of offenders in or with respect to Wales,
    - (c) to assist in the recovery of debt owing to Welsh public bodies.
  - (3) The Secretary of State may by order amend this Part –
    - (a) to add a Welsh public body to the list of bodies in section 64B(2), 15
    - (b) to modify the application of this Part in relation to a body so added,
    - (c) to remove a body from that list.
  - (4) Before making an order under this section, the Secretary of State must consult the Auditor General for Wales. 20
  - (5) An order under this section –
    - (a) is to be made by statutory instrument, and
    - (b) may include such incidental, consequential, supplemental or transitional provision as the Secretary of State thinks fit. 25
  - (6) No order under this section may be made unless a draft of the statutory instrument has been laid before, and approved by a resolution of, each House of Parliament.
  - (7) In this section “Welsh public body” means a public body (as defined in section 12(3)) whose functions relate exclusively to Wales or an area of Wales.” 30
- 5 (1) Paragraph 9 of Schedule 8 to the Government of Wales Act 2006 (c. 32) (special finance provisions) is amended as follows.
- (2) In sub-paragraph (3)(b) after “government audit” insert “or, so far as the functions relate to local government bodies in Wales, Part 3A of that Act (data matching)”.
  - (3) In sub-paragraph (4)(c) for the words from “Part 2” to the end substitute “the following provisions of the Public Audit (Wales) Act 2004 (c. 23) –
    - (i) Part 2 (including those charged as a result of paragraph 11(3)(c)), 40
    - (ii) Part 3A (but only those charged to a local government body in Wales).”
  - (4) After sub-paragraph (4) insert –
    - “(5) “Local government body in Wales” has the meaning given in section 12(1) of the Public Audit (Wales) Act 2004.” 45

PART 3

DATA MATCHING: NORTHERN IRELAND

- 6 After Article 4 of the Audit and Accountability (Northern Ireland) Order 2003 (S.I. 2003/418 (N.I.5)) insert—

*“Data matching* 5

**4A Power to conduct data matching exercises**

- (1) The Comptroller and Auditor General may conduct data matching exercises or arrange for them to be conducted on his behalf.
- (2) A data matching exercise is an exercise involving the comparison of sets of data to determine how far they match (including the identification of any patterns and trends). 10
- (3) The power in paragraph (1) is exercisable for the purpose of assisting in the prevention and detection of fraud.
- (4) That assistance may, but need not, form part of an audit.
- (5) A data matching exercise may not be used to identify patterns and trends in an individual’s characteristics or behaviour which suggest nothing more than his potential to commit fraud in the future. 15
- (6) In Articles 4B to 4H, reference to a data matching exercise is to an exercise conducted or arranged to be conducted under this Article.

**4B Mandatory provision of data** 20

- (1) The Comptroller and Auditor General may require—
  - (a) any body mentioned in paragraph (2); and
  - (b) any officer or member of such a body,
 to provide the Comptroller and Auditor General or a person acting on his behalf with such data (and in such form) as the Comptroller and Auditor General or that person may reasonably require for the purpose of conducting data matching exercises. 25
- (2) The bodies are—
  - (a) any body (including a holder of a statutory office) whose accounts are required to be audited by the Comptroller and Auditor General, other than a body whose accounts are required to be so audited by virtue of section 55 of the Northern Ireland Act 1998 (c. 47); 30
  - (b) any body whose accounts are required to be audited by a local government auditor. 35
- (3) A person who without reasonable excuse fails to comply with a requirement of the Comptroller and Auditor General under paragraph (1)(b) is guilty of an offence and liable on summary conviction—
  - (a) to a fine not exceeding level 3 on the standard scale; and 40
  - (b) to an additional fine not exceeding £20 for each day on which the offence continues after conviction for that offence.

- (4) If an officer or member of a body is convicted of an offence under paragraph (3), any expenses incurred by the Comptroller and Auditor General in connection with proceedings for the offence, so far as not recovered from any other source, are recoverable from that body. 5

#### **4C Voluntary provision of data**

- (1) If the Comptroller and Auditor General thinks it appropriate to conduct a data matching exercise using data held by or on behalf of a body or person not subject to Article 4B, the data may be disclosed to the Comptroller and Auditor General or a person acting on his behalf. 10
- (2) A disclosure under paragraph (1) does not breach –
- (a) any obligation of confidence owed by a person making the disclosure; or
  - (b) any other restriction on the disclosure of information (however imposed). 15
- (3) But nothing in this Article authorises a disclosure which –
- (a) contravenes the Data Protection Act 1998 (c. 29); or
  - (b) is prohibited by Part 1 of the Regulation of Investigatory Powers Act 2000 (c. 23). 20
- (4) Data may not be disclosed under paragraph (1) if the data comprise or include patient data.
- (5) “Patient data” means data relating to an individual which are held for any of the following purposes and from which the individual can be identified – 25
- (a) preventative medicine, medical diagnosis, medical research, the provision of care and treatment and the management of health and social care services;
  - (b) informing individuals about their physical or mental health or condition, the diagnosis of their condition or their care and treatment. 30
- (6) This Article does not limit the circumstances in which data may be disclosed apart from this Article.
- (7) Data matching exercises may include data provided by a body or person outside Northern Ireland. 35

#### **4D Disclosure of results of data matching etc**

- (1) This Article applies to the following information –
- (a) information relating to a particular body or person obtained by or on behalf of the Comptroller and Auditor General for the purpose of conducting a data matching exercise; 40
  - (b) the results of any such exercise.
- (2) Information to which this Article applies may be disclosed by or on behalf of the Comptroller and Auditor General if the disclosure is –
- (a) for or in connection with a purpose for which the data matching exercise is conducted; 45



- 
- (b) to a body mentioned in paragraph (3) (or a related party) for or in connection with a function of that body corresponding or similar to the audit functions of the Comptroller and Auditor General or a local government auditor under any statutory provision or the data matching functions of the Comptroller and Auditor General under Article 4A; or 5
- (c) in pursuance of a duty imposed by or under a statutory provision.
- (3) The bodies are – 10
- (a) the Audit Commission for Local Authorities and the National Health Service in England;
- (b) the Auditor General for Wales;
- (c) the Auditor General for Scotland;
- (d) the Accounts Commission for Scotland;
- (e) Audit Scotland. 15
- (4) “Related party”, in relation to a body mentioned in paragraph (3), means – 20
- (a) a body or person acting on its behalf;
- (b) a body whose accounts are required to be audited by it or by a person appointed by it;
- (c) a person appointed by it to audit those accounts.
- (5) If the data used for a data matching exercise include patient data – 25
- (a) paragraph (2)(a) applies only so far as the purpose for which the disclosure is made relates to a relevant NHS body;
- (b) paragraph (2)(b) applies only so far as the function for or in connection with which the disclosure is made relates to such a body.
- (6) In paragraph (5) – 30
- (a) “patient data” has the same meaning as in Article 4C;
- (b) “relevant NHS body” means – 35
- (i) a body to which Article 90 of the Health and Personal Social Services (Northern Ireland) Order 1972 (NI 14) applies;
- (ii) a health service body as defined in section 53(1) of the Audit Commission Act 1998 (c. 18);
- (iii) a Welsh NHS body as defined in section 60 of the Public Audit (Wales) Act 2004 (c. 23);
- (iv) an NHS body as defined in section 22(1) of the Community Care and Health (Scotland) Act 2002 (asp 5). 40
- (7) Information disclosed under paragraph (2) may not be further disclosed except – 45
- (a) for or in connection with the purpose for which it was disclosed under sub-paragraph (a) or the function for which it was disclosed under sub-paragraph (b) of that paragraph;
- (b) for the investigation or prosecution of an offence (so far as the disclosure does not fall within sub-paragraph (a)); or

- (c) in pursuance of a duty imposed by or under a statutory provision.
- (8) Except as authorised by paragraphs (2) and (7), a person who discloses information to which this Article applies is guilty of an offence and liable –
  - (a) on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine or to both; or
  - (b) on summary conviction, to imprisonment for a term not exceeding 6 months, to a fine not exceeding the statutory maximum or to both.
- (9) Article 27 of the Local Government (Northern Ireland) Order 2005 (NI 18) does not apply to information to which this Article applies.
- (10) In this Article “body” includes office.

#### **4E Publication**

- (1) Nothing in Article 4D prevents the Comptroller and Auditor General from publishing a report on a data matching exercise (including on the results of the exercise).
- (2) But the report may not include information relating to a particular body or person if –
  - (a) the body or person is the subject of any data included in the data matching exercise;
  - (b) the body or person can be identified from the information; and
  - (c) the information is not otherwise in the public domain.
- (3) A report published under this Article may be published in such manner as the Comptroller and Auditor General considers appropriate for bringing it to the attention of those members of the public who may be interested.
- (4) This Article does not affect any powers of the Comptroller and Auditor General or a local government auditor where the data matching exercise in question forms part of an audit carried out by either of them.

#### **4F Fees for data matching**

- (1) The Comptroller and Auditor General may charge a fee to any body required under Article 4B(1) to provide data for a data matching exercise.
- (2) But a body whose functions are discharged on behalf of the Crown may not be charged a fee under paragraph (1) except with the consent of the Department.
- (3) In addition to the power under paragraph (1), the Comptroller and Auditor General may charge a fee to any other body or person providing data for or receiving the results of a data matching exercise, such fee to be payable in accordance with terms agreed between the Comptroller and Auditor General and that body or person.

- (4) Any fee received by the Comptroller and Auditor General by virtue of this Article is to be paid by him into the Consolidated Fund.

#### **4G Code of data matching practice**

- (1) The Comptroller and Auditor General must prepare, and keep under review, a code of practice with respect to data matching exercises. 5
- (2) Regard must be had to the code in conducting and participating in any such exercise.
- (3) Before preparing or altering the code, the Comptroller and Auditor General must consult the bodies mentioned in Article 4B(2), the Information Commissioner and such other bodies or persons as he thinks fit. 10
- (4) The Comptroller and Auditor General must—
- (a) send a copy of the code, and of any alterations made to the code, to the Department and the Department must lay the copy before the Assembly; and 15
  - (b) from time to time publish the code as for the time being in force.

#### **4H Powers of the Department**

- (1) The Department may by order amend Articles 4A to 4G—
- (a) to add any purpose mentioned in paragraph (2) to the purposes for which data matching exercises may be conducted; 20
  - (b) to modify the application of those Articles in relation to a purpose so added.
- (2) The purposes which may be added are— 25
- (a) to assist in the prevention and detection of crime (other than fraud);
  - (b) to assist in the apprehension and prosecution of offenders;
  - (c) to assist in the recovery of debt owing to public bodies.
- (3) The Department may by order amend Articles 4A to 4G— 30
- (a) to add a public body to the list of bodies in Article 4B(2);
  - (b) to modify the application of those Articles in relation to a body so added;
  - (c) to remove a body from that list.
- (4) An order under this Article may include such incidental, consequential, supplemental or transitional provision as the Department thinks fit. 35
- (5) An order under this Article is subject to affirmative resolution.
- (6) In this Article “public body” means a body or person whose functions— 40
- (a) are functions of a public nature; or
  - (b) include functions of that nature,
- but, in the latter case, the body or person is a public body to the extent only of those functions.”

- 7 In Article 6 of the Audit (Northern Ireland) Order 1987 (S.I. 1987/460 (N.I.5)) (expenses and accounts of Northern Ireland Audit Office), in paragraph (5) after “examination” insert “or in respect of data matching”.

## SCHEDULE 8

Section 72(2)

### ABOLITION OF ASSETS RECOVERY AGENCY AND ITS DIRECTOR

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#### PART 1

##### ABOLITION OF CONFISCATION FUNCTIONS

- 1 The Proceeds of Crime Act 2002 (c. 29) is amended as follows.
- 2 In section 6(3)(a) (making of confiscation orders in England and Wales) omit “or the Director”. 10
- 3 In section 11(7) (time for payment of order) omit paragraph (b) and the word “or” before it.
- 4 In section 14(7)(b) (postponement of proceedings) omit “or the Director (as the case may be)”.
- 5 (1) Section 16 (statement of information) is amended as follows. 15
- (2) In subsection (1) omit “or the Director (as the case may be)”.
- (3) In subsection (3) omit –
- (a) “or the Director (as the case may be)”; and
- (b) “or the Director”.
- (4) In subsection (4) omit “or Director”. 20
- (5) In subsection (5) omit –
- (a) “or the Director (as the case may be)”; and
- (b) “or the Director”.
- (6) In subsection (6) omit “or the Director”.
- 6 In section 17(1) (defendant’s response to statement of information) omit “or the Director”. 25
- 7 In section 18(6) (provision of information by defendant) omit “or the Director (as the case may be)”.
- 8 In section 19(1)(c) (no order made: reconsideration of case) omit “or the Director”. 30
- 9 (1) Section 20 (no order made: reconsideration of benefit) is amended as follows.
- (2) Omit subsection (3).
- (3) In subsection (4) –
- (a) omit the words from “If the court” to “to do so,”; and
- (b) in paragraph (b) omit “or the Director”. 35

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- 10 In section 21(1) (order made: reconsideration of benefit), in paragraphs (b), (c) and (d), omit “or the Director”.
- 11 In section 22(2) (order made: reconsideration of available amount) –
- (a) omit paragraph (b); and
- (b) in paragraph (c) omit “or 52”. 5
- 12 In section 23(1)(b) (inadequacy of available amount: variation of order) omit “or 52”.
- 13 (1) Section 26 (information) is amended as follows.
- (2) In subsection (1)(b) omit “or the Director”.
- (3) In subsection (2) – 10
- (a) in paragraph (a) omit “or the Director (as the case may be)”; and
- (b) in paragraph (b) omit “or the Director”.
- 14 (1) Section 27 (defendant convicted or committed) is amended as follows.
- (2) In subsection (3)(a) omit “or the Director”.
- (3) In subsection (5)(b) omit “or the Director (as the case may be)”. 15
- (4) In subsection (7) omit “or the Director”.
- 15 (1) Section 28 (defendant neither convicted nor acquitted) is amended as follows.
- (2) In subsection (3)(a) omit “or the Director”.
- (3) In subsection (5)(b) omit “or the Director (as the case may be)”. 20
- 16 (1) Section 31 (appeal by prosecutor or Director) is amended as follows.
- (2) In the heading omit “or Director”.
- (3) In subsection (1) omit “or the Director”.
- (4) In subsection (2) omit “or the Director”.
- 17 In section 33(2) (appeal to the House of Lords) – 25
- (a) in paragraph (a) omit “(if the prosecutor appealed under section 31)”; and
- (b) omit paragraph (b).
- 18 Omit section 34 (Director as enforcement authority).
- 19 (1) Section 35 (Director not appointed as enforcement authority) is amended as follows. 30
- (2) For the heading substitute “Enforcement as fines”.
- (3) In subsection (1) omit paragraph (b) and the word “and” before it.
- 20 Omit sections 36 and 37 (Director appointed as enforcement authority and Director’s application for enforcement). 35
- 21 (1) Section 39 (reconsideration etc: variation of prison term) is amended as follows.
- (2) In subsection (5) for “appropriate person” substitute “prosecutor”.

- (3) Omit subsection (6).
- 22 (1) Section 40 (conditions for exercise of powers) is amended as follows.
- (2) In subsection (4)(a) omit “or the Director”.
- (3) In subsection (5)(a) omit “or the Director”.
- (4) In subsection (6)(a) omit “or the Director”. 5
- (5) In subsection (8)(b) omit “or the Director (as the case may be)”.
- 23 In section 42(2) (application, discharge and variation) omit paragraph (b).
- 24 Omit sections 52 and 53 (Director’s receivers).
- 25 Omit sections 56 and 57 (Director’s receivers and sums received by Director). 10
- 26 In section 58(6)(b) (restraint orders: restrictions) for “, 50 or 52” substitute “or 50”.
- 27 Omit section 60 (Director’s receivers).
- 28 In section 61 (protection) for “, 50 or 52” substitute “or 50”.
- 29 In section 62(1) (further applications) for “, 50 or 52” substitute “or 50”. 15
- 30 In section 63(1) (discharge and variation) –
- (a) for “to 53” substitute “to 51”; and
- (b) in paragraph (b) omit the words from “or”, where it first appears, to “Director”.
- 31 (1) Section 64 (management receivers: discharge) is amended as follows. 20
- (2) In subsection (1)(b) omit the words from “or” to “section 52”.
- (3) Omit subsection (3).
- 32 (1) Section 65 (appeal to Court of Appeal) is amended as follows.
- (2) In subsection (1) omit “or section 53”.
- (3) In subsection (2) omit “or section 53”. 25
- (4) In subsection (5)(a) omit the words from “or”, where it first appears, to “Director”.
- 33 In section 67(4) (seized money) omit paragraph (c).
- 34 In section 69(1) (powers of court and receiver) –
- (a) in paragraph (a) for “60” substitute “59”; and 30
- (b) in paragraph (b) for “, 50 or 52” substitute “or 50”.
- 35 In section 74(1) (enforcement abroad) –
- (a) in paragraph (b) omit “or the Director”; and
- (b) in paragraph (c) omit “or the Director (as the case may be)”.
- 36 In section 156(3)(a) (making of confiscation orders in Northern Ireland) omit 35  
“or the Director”.

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- 37 In section 161(7) (time for payment of order) omit paragraph (b) and the word “or” before it.
- 38 In section 164(7)(b) (postponement of proceedings) omit “or the Director (as the case may be)”.
- 39 (1) Section 166 (statement of information) is amended as follows. 5
- (2) In subsection (1) omit “or the Director (as the case may be)”.
- (3) In subsection (3) omit –
- (a) “or the Director (as the case may be)”; and
- (b) “or the Director”.
- (4) In subsection (4) omit “or Director”. 10
- (5) In subsection (5) omit –
- (a) “or the Director (as the case may be)”; and
- (b) “or the Director”.
- (6) In subsection (6) omit “or the Director”.
- 40 In section 167(1) (defendant’s response to statement of information) omit “or the Director”. 15
- 41 In section 168(6) (provision of information by defendant) omit “or the Director (as the case may be)”.
- 42 In section 169(1)(c) (no order made: reconsideration of case) omit “or the Director”. 20
- 43 (1) Section 170 (no order made: reconsideration of benefit) is amended as follows.
- (2) Omit subsection (3).
- (3) In subsection (4) –
- (a) omit the words from “If the court” to “to do so,”; and 25
- (b) in paragraph (b) omit “or the Director”.
- 44 In section 171(1) (order made: reconsideration of benefit), in paragraphs (b), (c) and (d), omit “or the Director”.
- 45 In section 172(2) (order made: reconsideration of available amount) –
- (a) omit paragraph (b); and 30
- (b) in paragraph (c) omit “or 200”.
- 46 In section 173(1)(b) (inadequacy of available amount: variation of order) omit “or 200”.
- 47 (1) Section 176 (information) is amended as follows.
- (2) In subsection (1)(b) omit “or the Director”. 35
- (3) In subsection (2) –
- (a) in paragraph (a) omit “or the Director (as the case may be)”; and
- (b) in paragraph (b) omit “or the Director”.
- 48 (1) Section 177 (defendant convicted or committed) is amended as follows.

- (2) In subsection (3)(a) omit “or the Director”.
- (3) In subsection (5)(b) omit “or the Director (as the case may be)”.
- (4) In subsection (7) omit “or the Director”.
- 49 (1) Section 178 (defendant neither convicted nor acquitted) is amended as follows. 5
  - (2) In subsection (3)(a) omit “or the Director”.
  - (3) In subsection (5)(b) omit “or the Director (as the case may be)”.
- 50 (1) Section 181 (appeal by prosecutor or Director) is amended as follows.
  - (2) In the heading omit “or Director”.
  - (3) In subsection (1) omit “or the Director”. 10
  - (4) In subsection (2) omit “or the Director”.
- 51 In section 183(2) (appeal to the House of Lords) –
  - (a) in paragraph (a) omit “(if the prosecutor appealed under section 181)”; and
  - (b) omit paragraph (b). 15
- 52 Omit section 184 (Director as enforcement authority).
- 53 Omit section 186 (Director’s application for enforcement).
- 54 (1) Section 188 (reconsideration etc: variation of prison term) is amended as follows.
  - (2) In subsection (5) for “appropriate person” substitute “prosecutor”. 20
  - (3) Omit subsection (6).
- 55 (1) Section 189 (conditions for exercise of powers) is amended as follows.
  - (2) In subsection (4)(a) omit “or the Director”.
  - (3) In subsection (5)(a) omit “or the Director”.
  - (4) In subsection (6)(a) omit “or the Director”. 25
  - (5) In subsection (8)(b) omit “or the Director (as the case may be)”.
- 56 In section 191(2) (application, discharge and variation) omit paragraph (b).
- 57 Omit sections 200 and 201 (Director’s receivers).
- 58 Omit sections 204 and 205 (Director’s receivers and sums received by Director). 30
- 59 In section 206(5)(b) (restraint orders) for “, 198 or 200” substitute “or 198”.
- 60 Omit section 208 (Director’s receivers).
- 61 In section 209 (protection) for “, 198 or 200” substitute “or 198”.
- 62 (1) Section 210 (further applications) is amended as follows.
  - (2) In subsection (1) for “, 198 or 200” substitute “or 198”. 35



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- (3) In subsection (2)(b) omit “or 200”.
- (4) In subsection (3) omit “or 200”.
- 63 In section 211(1) (discharge and variation) –
- (a) for “any of sections 198 to 201” substitute “section 198 or 199”; and
- (b) in paragraph (b) omit the words from “or”, where it first appears, to “Director”. 5
- 64 (1) Section 212 (management receivers: discharge) is amended as follows.
- (2) In subsection (1)(b) omit the words from “or” to “section 200”.
- (3) Omit subsection (3).
- 65 (1) Section 213 (appeal to Court of Appeal) is amended as follows. 10
- (2) In subsection (1) omit “or section 201”.
- (3) In subsection (2) omit “or section 201”.
- (4) In subsection (5)(a) omit the words from “or”, where it first appears, to “Director”.
- 66 In section 215(4) (seized money) omit paragraph (d). 15
- 67 In section 217(1) (powers of court and receiver) –
- (a) in paragraph (a) for “208” substitute “207”; and
- (b) in paragraph (b) for “, 198 or 200” substitute “or 198”.
- 68 In section 222(1) (enforcement abroad) –
- (a) in paragraph (b) omit “or the Director”; and 20
- (b) in paragraph (c) omit “or the Director (as the case may be)”.
- 69 In section 417(2) (insolvency etc: modifications of the 1986 Act) –
- (a) in paragraph (b) omit “or 52”; and
- (b) in paragraph (d) omit “or 200”.
- 70 (1) Section 418 (restriction of powers) is amended as follows. 25
- (2) In subsection (2) –
- (a) in paragraph (a) for “, 50 or 52” substitute “or 50”; and
- (b) in paragraph (c) for “, 198 or 200” substitute “or 198”.
- (3) In subsection (3)(d) for “, 52, 198 or 200” substitute “or 198”.
- 71 In section 419(2)(b) (tainted gifts) – 30
- (a) omit “52,”; and
- (b) for “, 198 or 200” substitute “or 198”.
- 72 In section 420(2) (modifications of the 1985 Act) –
- (a) in paragraph (b) omit “or 52”; and
- (b) in paragraph (d) omit “or 200”. 35
- 73 (1) Section 421 (restriction of powers) is amended as follows.
- (2) In subsection (2) –
- (a) in paragraph (a) for “, 50 or 52” substitute “or 50”; and
- (b) in paragraph (c) for “, 198 or 200” substitute “or 198”.

- (3) In subsection (3)(d) for “, 52, 198 or 200” substitute “or 198”.
- 74 In section 422(2)(b) (tainted gifts) –  
(a) omit “52,”; and  
(b) for “, 198 or 200” substitute “or 198”.
- 75 In section 423(2) (modifications of the 1989 Order) – 5  
(a) in paragraph (b) omit “or 52”; and  
(b) in paragraph (d) omit “or 200”.
- 76 (1) Section 424 (restriction of powers) is amended as follows.  
(2) In subsection (2) –  
(a) in paragraph (a) for “, 50 or 52” substitute “or 50”; and 10  
(b) in paragraph (c) for “, 198 or 200” substitute “or 198”.  
(3) In subsection (3)(d) for “, 52, 198 or 200” substitute “or 198”.
- 77 In section 425(2)(b) (tainted gifts) –  
(a) omit “52,”; and  
(b) for “, 198 or 200” substitute “or 198”. 15
- 78 (1) Section 426 (winding up under the 1986 Act) is amended as follows.  
(2) In subsection (2) –  
(a) in paragraph (b) omit “or 52”; and  
(b) in paragraph (d) omit “or 200”.  
(3) In subsection (5) – 20  
(a) in paragraph (a) for “, 50 or 52” substitute “or 50”; and  
(b) in paragraph (c) for “, 198 or 200” substitute “or 198”.
- 79 In section 427(3)(b) (tainted gifts) –  
(a) omit “52,”; and  
(b) for “, 198 or 200” substitute “or 198”. 25
- 80 (1) Section 428 (winding up under the 1989 Order) is amended as follows.  
(2) In subsection (2) –  
(a) in paragraph (b) omit “or 52”; and  
(b) in paragraph (d) omit “or 200”.  
(3) In subsection (5) – 30  
(a) in paragraph (a) for “, 50 or 52” substitute “or 50”; and  
(b) in paragraph (c) for “, 198 or 200” substitute “or 198”.
- 81 In section 429(3)(b) (tainted gifts) –  
(a) omit “52,”; and  
(b) for “, 198 or 200” substitute “or 198”. 35
- 82 (1) Section 430 (floating charges) is amended as follows.  
(2) In subsection (2) –  
(a) in paragraph (b) omit “or 52”; and  
(b) in paragraph (d) omit “or 200”.  
(3) In subsection (5) – 40

- (a) in paragraph (a) for “, 50 or 52” substitute “or 50”; and  
 (b) in paragraph (c) for “, 198 or 200” substitute “or 198”.
- 83 In section 432(7) (insolvency practitioners) –  
 (a) in paragraph (a) for “, 55(3), 56(2) or 57(3)” substitute “or 55(3)”; and  
 (b) in paragraph (c) for “, 203(3), 204(2) or 205(3)” substitute “or 203(3)”. 5
- 84 In Schedule 10 (tax), in paragraph 1 –  
 (a) in paragraph (a) for “, 50 or 52” substitute “or 50”; and  
 (b) in paragraph (c) for “, 198 or 200” substitute “or 198”.
- PART 2
- TRANSFER OF CIVIL RECOVERY FUNCTIONS 10
- 85 The Proceeds of Crime Act 2002 (c. 29) is amended as follows.
- 86 In section 246(7) (application for interim receiving order) for “Agency” substitute “enforcement authority”.
- 87 After section 272(6) (compensation for loss in relation to associated and joint property) insert – 15  
 “(7) In subsection (5) the reference to the enforcement authority is, in the case of an enforcement authority in relation to England and Wales or Northern Ireland, a reference to the enforcement authority which obtained the property freezing order or interim receiving order concerned.” 20
- 88 (1) Section 280 (applying realised proceeds) is amended as follows.  
 (2) In subsection (3) –  
 (a) for “Director” substitute “enforcement authority (unless it is the Scottish Ministers)”; and  
 (b) for “him” substitute “it”. 25  
 (3) In subsection (4) for “Agency” substitute “enforcement authority concerned”.
- 89 After section 283(9) (compensation) insert –  
 “(10) In the case of an enforcement authority in relation to England and Wales or Northern Ireland – 30  
 (a) the reference in subsection (5) to the enforcement authority is a reference to the enforcement authority which obtained the property freezing order or interim receiving order concerned, and  
 (b) the reference in subsection (8) to the enforcement authority is a reference to the enforcement authority which obtained the recovery order concerned.” 35
- 90 Omit section 313 (restriction on performance of Director’s functions by police).
- 91 (1) Section 316 (general interpretation: Part 5) is amended as follows. 40  
 (2) In subsection (1), in the definition of “enforcement authority” –

- (a) for paragraph (a) substitute –  
    “(a) in relation to England and Wales, means SOCA, the Director of Public Prosecutions, the Director of Revenue and Customs Prosecutions or the Director of the Serious Fraud Office;” and 5
- (b) after paragraph (b) insert –  
    “(c) in relation to Northern Ireland, means SOCA, the Director of the Serious Fraud Office or the Director of Public Prosecutions for Northern Ireland.”
- (3) After subsection (8) insert – 10  
    “(8A) In relation to an order in England and Wales or Northern Ireland which is a recovery order, a property freezing order, an interim receiving order or an order under section 276, references to the enforcement authority are, unless the context otherwise requires, references to the enforcement authority which is seeking, or (as the case may be) has obtained, the order.” 15

### PART 3

#### TRANSFER OR ABOLITION OF REVENUE FUNCTIONS

- 92 The Proceeds of Crime Act 2002 (c. 29) is amended in accordance with paragraphs 93 to 101. 20
- 93 (1) Section 317 (Director’s general Revenue functions) is amended as follows.  
(2) In the heading for “Director’s” substitute “SOCA’s”.  
(3) In subsection (1) for “the Director” substitute “SOCA”.  
(4) In subsection (2) for “the Director”, in both places where it appears, substitute “SOCA”. 25  
(5) In subsection (3) for “the Director” substitute “SOCA”.  
(6) In subsection (4) for “The Director” substitute “SOCA”.  
(7) In subsection (6) for “the Director” substitute “SOCA”.  
(8) In subsection (7) for “the Director” substitute “SOCA”.  
(9) In subsection (8)(b) for “the Director” substitute “SOCA”. 30
- 94 (1) Section 318 (Revenue functions regarding employment) is amended as follows.  
(2) In subsection (1)(a) for “the Director” substitute “SOCA”.  
(3) In subsection (2) for “the Director” substitute “SOCA”.  
(4) In subsection (3)(a) for “the Director” substitute “SOCA”. 35  
(5) In subsection (4) for “the Director” substitute “SOCA”.
- 95 (1) Section 319 (source of income) is amended as follows.  
(2) In subsection (1) –  
    (a) for “the Director” substitute “SOCA”;

- 
- (b) for “him” substitute “it”; and
  - (c) for “he” substitute “SOCA”.
  - (3) In subsection (2) for “the Director” substitute “SOCA”.
  - (4) In subsection (3) –
    - (a) for “the Director” substitute “SOCA”; and 5
    - (b) for “him” substitute “SOCA”.
  - 96 (1) Section 320 (appeals) is amended as follows.
    - (2) In subsection (1) for “the Director” substitute “SOCA”.
    - (3) In subsection (2) –
      - (a) for “the Director” substitute “SOCA”; and 10
      - (b) for “his” substitute “its”.
  - 97 (1) Section 321 (Director’s functions: transfers of value) is amended as follows.
    - (2) In the heading for “Director’s” substitute “SOCA’s”.
    - (3) In subsection (1) –
      - (a) for “the Director” substitute “SOCA”; and 15
      - (b) in paragraph (b) for “it” substitute “the transfer of value”.
    - (4) In subsection (2) for “the Director”, in both places where it appears, substitute “SOCA”.
    - (5) In subsection (3) for “the Director” substitute “SOCA”.
    - (6) In subsection (4) for “The Director” substitute “SOCA”. 20
    - (7) In subsection (5) for “the Director” substitute “SOCA”.
    - (8) In subsection (6) for “the Director” substitute “SOCA”.
  - 98 (1) Section 322 (Director’s functions: certain settlements) is amended as follows.
    - (2) In the heading for “Director’s” substitute “SOCA’s”.
    - (3) In subsection (1) for “the Director” substitute “SOCA”. 25
    - (4) In subsection (2) –
      - (a) for “the Director”, in both places where it appears, substitute “SOCA”; and
      - (b) in paragraph (c) for “he” substitute “SOCA”.
    - (5) In subsection (3) for “the Director” substitute “SOCA”. 30
    - (6) In subsection (4) for “The Director” substitute “SOCA”.
    - (7) In subsection (5) for “the Director” substitute “SOCA”.
    - (8) In subsection (6) for “the Director” substitute “SOCA”.
  - 99 (1) Section 324 (exercise of Revenue functions) is amended as follows.
    - (2) In subsection (1) for “the Director” substitute “SOCA”. 35
    - (3) In subsection (2) for “Paragraph (b) of section 1(6)” substitute “Section 2B(2)”.

- (4) In subsection (3) for “The Director” substitute “SOCA”.
- (5) In subsection (4) for “The Director” substitute “SOCA”.
- (6) In subsection (5) –
- (a) for “The Director” substitute “SOCA”; and
- (b) for “they” substitute “the Board”. 5
- 100 (1) Section 325 (declarations) is amended as follows.
- (2) Omit subsection (1).
- (3) For subsection (2) substitute –
- “(2) Every member of SOCA’s staff who is assigned to carry out any of SOCA’s functions under this Part must, as soon as practicable after being so assigned, make a declaration in the form set out in Schedule 8 before a person nominated by the Director General of SOCA for the purpose.” 10
- 101 (1) Schedule 8 (forms of declarations) is amended as follows.
- (2) Omit the words from “The Director”, where it first appears, to “by law.””, 15  
where it first appears.
- (3) For “The Staff Of The Agency” substitute “SOCA’s Staff”.
- (4) For “authorised by the Director of the Assets Recovery Agency” substitute “assigned by SOCA”.
- (5) For “to the Director” substitute “to SOCA”. 20
- (6) For “his” substitute “its”.
- 102 The Secretary of State may by order –
- (a) repeal Part 6 of the Proceeds of Crime Act 2002 (c. 29); and
- (b) make such amendment, repeal or revocation of any provision made by or under any enactment (including this Schedule to this Act) as appears to the Secretary of State to be appropriate in consequence of the repeal of Part 6 of the Act of 2002. 25

#### PART 4

##### TRANSFER OF INVESTIGATION FUNCTIONS

- 103 The Proceeds of Crime Act 2002 is amended as follows. 30
- 104 In section 351(5) (supplementary) –
- (a) after “investigator,”, where it first appears, insert “a member of SOCA’s staff,”; and
- (b) after “investigator,”, where it appears for the second time, insert “member of SOCA’s staff,”. 35
- 105 (1) Section 352 (search and seizure warrants) is amended as follows.
- (2) In subsection (5)(b) for “named member of the staff of the Agency” substitute “member of SOCA’s staff or of the staff of the relevant Director”.

- 
- (3) After subsection (5) insert –
- “(5A) In this Part “relevant Director” –
- (a) in relation to England and Wales, means the Director of Public Prosecutions, the Director of Revenue and Customs Prosecutions or the Director of the Serious Fraud Office; and 5
- (b) in relation to Northern Ireland, means the Director of the Serious Fraud Office or the Director of Public Prosecutions for Northern Ireland.”
- 106 In section 353(10)(b) (requirements where production order not available) for “the staff of the Agency” substitute “SOCA’s staff or of the staff of the relevant Director”. 10
- 107 (1) Section 356 (further provisions: civil recovery) is amended as follows.
- (2) Omit subsection (6).
- (3) In subsection (11)(a) (as inserted by Schedule 10) for “the Director” substitute “an appropriate officer”. 15
- 108 (1) Section 357 (disclosure orders) is amended as follows.
- (2) In subsection (1) for “the Director” substitute “the relevant authority”.
- (3) After subsection (2) insert –
- “(2A) The relevant authority may only make an application for a disclosure order in relation to a confiscation investigation if the relevant authority is in receipt of a request to do so from an appropriate officer.” 20
- (4) In subsection (3)(a) for “the Director” substitute “an appropriate officer”.
- (5) In subsection (4) –
- (a) for “the Director”, where it first appears, substitute “an appropriate officer”; and 25
- (b) for “the Director”, where it appears for the second time, substitute “the appropriate officer”.
- (6) In subsection (5) for “the Director” substitute “the appropriate officer concerned”. 30
- (7) After subsection (6) insert –
- “(7) In this Part “relevant authority” means –
- (a) in relation to a confiscation investigation, a prosecutor; and
- (b) in relation to a civil recovery investigation, a member of SOCA’s staff or the relevant Director. 35
- (8) For the purposes of subsection (7)(a) a prosecutor is –
- (a) in relation to a confiscation investigation carried out by a member of SOCA’s staff, the relevant Director or any specified person;
- (b) in relation to a confiscation investigation carried out by an accredited financial investigator, the Director of Public Prosecutions, the Director of Public Prosecutions for Northern Ireland or any specified person; 40

- (c) in relation to a confiscation investigation carried out by a constable, the Director of Public Prosecutions, the Director of Public Prosecutions for Northern Ireland, the Director of the Serious Fraud Office or any specified person; and
- (d) in relation to a confiscation investigation carried out by an officer of Revenue and Customs, the Director of Revenue and Customs Prosecutions, the Director of Public Prosecutions for Northern Ireland or any specified person. 5
- (9) In subsection (8) “specified person” means any person specified, or falling within a description specified, by an order of the Secretary of State.” 10
- 109 (1) Section 361 (further provisions) is amended as follows.
- (2) In subsection (7) for “The Director” substitute “An appropriate officer”.
- (3) In subsection (9) for “the Director” substitute “an appropriate officer”.
- 110 (1) Section 362 (supplementary) is amended as follows. 15
- (2) In subsection (3)(a) for “Director” substitute “person who applied for the order”.
- (3) After subsection (4) insert –
- “(4A) If a member of SOCA’s staff or a person falling within a description of persons specified by virtue of section 357(9) applies for a disclosure order, an application to discharge or vary the order need not be by the same member of SOCA’s staff or (as the case may be) the same person falling within that description. 20
- (4B) References to a person who applied for a disclosure order must be construed accordingly.” 25
- (4) In subsection (5) for “(4)” substitute “(4B)”.
- 111 (1) Section 369 (supplementary) is amended as follows.
- (2) In subsection (5) –
- (a) after “investigator,”, where it first appears, insert “a member of SOCA’s staff,”; and 30
- (b) after “investigator,”, where it appears for the second time, insert “member of SOCA’s staff,”.
- (3) In subsection (7) after “investigator,” insert “a member of SOCA’s staff,”.
- 112 In section 375(4) (supplementary) –
- (a) after “investigator,”, where it first appears, insert “a member of SOCA’s staff,”; and 35
- (b) after “investigator,”, where it appears for the second time, insert “member of SOCA’s staff,”.
- 113 Omit section 376 (evidence overseas).
- 114 (1) Section 377 (code of practice) is amended as follows. 40
- (2) In the heading after “practice” insert “of Secretary of State etc.”.
- (3) In subsection (1) –



- 
- (a) in paragraph (a) for “the Director” substitute “the Director General of SOCA”; and
- (b) in paragraph (b) for “members of the staff of the Agency” substitute “other members of SOCA’s staff”.
- (4) In subsection (9) – 5
- (a) after “officer” insert “or the relevant authority”; and
- (b) for “he” substitute “either”.
- 115 After section 377 (code of practice of Secretary of State etc.) insert –
- “377A Code of practice of Attorney General or Advocate General for Northern Ireland** 10
- (1) The Attorney General must prepare a code of practice as to –
- (a) the exercise by the Director of Public Prosecutions, the Director of Revenue and Customs Prosecutions and the Director of the Serious Fraud Office of functions they have under this Chapter; and 15
- (b) the exercise by any other person, who is the relevant authority by virtue of section 357(9) in relation to a confiscation investigation, of functions he has under this Chapter in relation to England and Wales as the relevant authority. 20
- (2) The Advocate General for Northern Ireland must prepare a code of practice as to –
- (a) the exercise by the Director of Public Prosecutions for Northern Ireland of functions he has under this Chapter; and
- (b) the exercise by any other person, who is the relevant authority by virtue of section 357(9) in relation to a confiscation investigation, of functions he has under this Chapter in relation to Northern Ireland as the relevant authority. 25
- (3) After preparing a draft of the code the Attorney General or (as the case may be) the Advocate General for Northern Ireland – 30
- (a) must publish the draft;
- (b) must consider any representations made to him about the draft;
- (c) may amend the draft accordingly. 35
- (4) After the Attorney General or the Advocate General for Northern Ireland has proceeded under subsection (3) he must lay the code before Parliament.
- (5) When the code has been so laid the Attorney General or (as the case may be) the Advocate General for Northern Ireland may bring the code into operation on such day as he may appoint by order. 40
- (6) A person specified in subsection (1)(a) or (b) or (2)(a) or (b) must comply with a code of practice which is in operation under this section in the exercise of any function he has under this Chapter to which the code relates. 45

- (7) If such a person fails to comply with any provision of such a code of practice the person is not by reason only of that failure liable in any criminal or civil proceedings.
- (8) But the code of practice is admissible in evidence in such proceedings and a court may take account of any failure to comply with its provisions in determining any question in the proceedings. 5
- (9) The Attorney General or (as the case may be) the Advocate General for Northern Ireland may from time to time revise a code previously brought into operation under this section; and the preceding provisions of this section apply to a revised code as they apply to the code as first prepared. 10
- (10) In this section references to the Advocate General for Northern Ireland are to be read, before the coming into force of section 27(1) of the Justice (Northern Ireland) Act 2002 (c. 26), as references to the Attorney General for Northern Ireland.” 15
- 116 (1) Section 378 (officers) is amended as follows.
- (2) In subsection (1)(a) for “the Director” substitute “a member of SOCA’s staff”.
- (3) In subsection (2)(a) for “the Director” substitute “a senior member of SOCA’s staff”.
- (4) In subsection (3) for the words from “the Director”, where it first appears, to the end of the subsection substitute “– 20
- (a) a member of SOCA’s staff or the relevant Director is an appropriate officer;
- (b) a senior member of SOCA’s staff is a senior appropriate officer.” 25
- (5) In subsection (5) for “the Serious Organised Crime Agency” substitute “SOCA”.
- (6) Omit subsection (7).
- (7) After subsection (7) insert –
- “(8) For the purposes of this Part a senior member of SOCA’s staff is – 30
- (a) the Director General of SOCA; or
- (b) any member of SOCA’s staff authorised by the Director General (whether generally or specifically) for this purpose.”
- 117 In section 416(2) (other interpretative provisions) –
- (a) after the entry for production order insert – 35
- “relevant authority: section 357(7) to (9)
- relevant Director: section 352(5A)”; and
- (b) at the end insert –
- “senior member of SOCA’s staff: section 378(8).”
- 118 After section 449 (pseudonyms) insert – 40
- “449A Staff of relevant Directors: pseudonyms**
- (1) This section applies to a member of the staff of the relevant Director if –

- 
- (a) the member is to exercise a function as a member of that staff under, or in relation to, Part 8; and
- (b) it is necessary or expedient for the purpose of exercising that function for the member of staff to identify himself by name.
- (2) The relevant Director may direct that such a member of staff may for that purpose identify himself by means of a pseudonym. 5
- (3) For the purposes of any proceedings or application under this Act, a certificate signed by the relevant Director which sufficiently identifies the member of staff by reference to the pseudonym is conclusive evidence that that member of staff is authorised to use the pseudonym. 10
- (4) In any proceedings or application under this Act a member of the staff of the relevant Director in respect of whom a direction under this section is in force must not be asked (and if asked is not required to answer) any question which is likely to reveal his true identity. 15
- (5) The relevant Director may not delegate the exercise of his functions under this section or otherwise authorise another person to exercise those functions on his behalf.
- (6) In this section “relevant Director” has the meaning given by section 352(5A).” 20
- 119 (1) Section 459 (orders and regulations) is amended as follows.
- (2) In subsection (3) after “instrument” insert “(other than the power of the Advocate General for Northern Ireland to make an order under section 377A(5) which is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I.12)))”. 25
- (3) In subsection (4)(a) after “377(4)” insert “, 377A(5)”.
- (4) After subsection (6)(a) insert –
- “(aa) by the Attorney General or the Advocate General for Northern Ireland under section 377A(5) unless a draft of the order has been laid before Parliament and approved by a resolution of each House;” 30
- (5) After subsection (7) insert –
- “(8) In this section references to the Advocate General for Northern Ireland are to be read, before the coming into force of section 27(1) of the Justice (Northern Ireland) Act 2002 (c. 26), as references to the Attorney General for Northern Ireland.” 35

## PART 5

### TRANSFER OF ACCREDITATION AND TRAINING FUNCTIONS

- 120 (1) Section 3 of the Proceeds of Crime Act 2002 (c. 29) (accreditation and training) is amended as follows. 40
- (2) In subsection (1) for “Director” substitute “National Policing Improvement Agency”.
- (3) Omit subsection (6).

- (4) In subsection (7) for “Director” substitute “National Policing Improvement Agency”.
- (5) Omit subsection (8).

## PART 6

### OTHER AMENDMENTS TO 2002 ACT

5

- 121 The Proceeds of Crime Act 2002 (c. 29) is amended as follows.
- 122 In the heading for Part 1 for “Assets Recovery Agency” substitute “Introductory”.
- 123 Omit sections 1 and 2 (the Assets Recovery Agency, its Director and the Director’s general functions). 10
- 124 After section 2 insert –

#### **“2A Contribution to the reduction of crime**

- (1) A relevant authority must exercise its functions under this Act in the way which it considers is best calculated to contribute to the reduction of crime. 15
- (2) In this section “a relevant authority” means –
  - (a) SOCA,
  - (b) the Director of Public Prosecutions,
  - (c) the Director of Public Prosecutions for Northern Ireland,
  - (d) the Director of Revenue and Customs Prosecutions, or 20
  - (e) the Director of the Serious Fraud Office.
- (3) In considering under subsection (1) the way which is best calculated to contribute to the reduction of crime a relevant authority must have regard to any guidance given to it by –
  - (a) in the case of SOCA, the Secretary of State, 25
  - (b) in the case of the Director of Public Prosecutions, the Director of Revenue and Customs Prosecutions or the Director of the Serious Fraud Office, the Attorney General, and
  - (c) in the case of the Director of Public Prosecutions for Northern Ireland, the Advocate General for Northern Ireland. 30
- (4) The guidance must indicate that the reduction of crime is in general best secured by means of criminal investigations and criminal proceedings.
- (5) The reference in this section to the Advocate General for Northern Ireland is to be read, before the coming into force of section 27(1) of the Justice (Northern Ireland) Act 2002 (c. 26), as a reference to the Attorney General for Northern Ireland. 35

#### **2B SOCA and members of SOCA’s staff**

- (1) For the purposes of this Act SOCA is the Serious Organised Crime Agency. 40
- (2) Anything which SOCA is authorised or required to do under this Act (whether directly or through its staff) may be done by a person

providing services under arrangements made by SOCA if the person is authorised by SOCA (whether generally or specifically) for that purpose.

- (3) References in this Act to members of SOCA’s staff are to be read in accordance with paragraph 8(4) of Schedule 1 to the Serious Organised Crime and Police Act 2005 (c. 15) (employees of SOCA or persons seconded to SOCA to serve as members of its staff). 5

## 2C Prosecuting authorities

- (1) The Director of Public Prosecutions may, to such extent as he may decide, delegate the exercise of his functions under, or in relation to, Part 5 or 8 of this Act to a Crown Prosecutor. 10
- (2) The Director of the Serious Fraud Office may, to such extent as he may decide, delegate the exercise of his functions under, or in relation to, Part 5 or 8 of this Act to a member of the Serious Fraud Office designated under section 1(7) of the Criminal Justice Act 1987 (c. 38). 15
- (3) Anything which a relevant Director is authorised or required to do under, or in relation to, Part 5 or 8 of this Act may be done by a person providing services under arrangements made by the relevant Director if the person is authorised by the relevant Director (whether generally or specifically) for that purpose. 20
- (4) In this section “relevant Director” means – 25
- (a) the Director of Public Prosecutions,
  - (b) the Director of Public Prosecutions for Northern Ireland,
  - (c) the Director of Revenue and Customs Prosecutions, or
  - (d) the Director of the Serious Fraud Office.”

- 125 Omit sections 4 and 5 (co-operation and advice and assistance for Secretary of State).
- 126 In section 330(4)(b) (failure to disclose: regulated sector) for “the Serious Organised Crime Agency” substitute “SOCA”. 30
- 127 In section 331(4) (failure to disclose: nominated officers in the regulated sector) for “the Serious Organised Crime Agency” substitute “SOCA”.
- 128 In section 332(4) (failure to disclose: other nominated officers) for “the Serious Organised Crime Agency” substitute “SOCA”.
- 129 In section 336(2)(a), (3)(a) and (4)(a) (nominated officer: consent) for “the Serious Organised Crime Agency” substitute “SOCA”. 35
- 130 In section 340(13) (interpretation: Part 7) for “the Serious Organised Crime Agency” substitute “SOCA”.
- 131 Omit sections 435 to 438 (information: England and Wales and Northern Ireland). 40
- 132 In section 439(5) (disclosure of information to Lord Advocate and to Scottish Ministers) –
- (a) in paragraph (b) for “the Director General of the Serious Organised Crime Agency” substitute “SOCA”; and

- (b) after paragraph (f) insert –  
    “(fa) the Director of Revenue and Customs Prosecutions;”.
- 133 In section 441(2) (disclosure of information by Lord Advocate and by Scottish Ministers) for paragraph (f) substitute –  
    “(f) the exercise of SOCA’s functions under this Act; 5  
    (fa) the exercise of the functions of the Director of Public Prosecutions, the Director of Revenue and Customs Prosecutions, the Director of the Serious Fraud Office or the Director of Public Prosecutions for Northern Ireland under, or in relation to, Part 5;” 10
- 134 In section 442(1) and (2) (restriction on disclosure for overseas purposes) omit “438(1)(a) or (b) or”.
- 135 (1) Section 443 (enforcement in different parts of the United Kingdom) is amended as follows.  
(2) In subsection (3)(a) for “and the Director” substitute “, SOCA and the relevant Director”. 15  
(3) After subsection (4) insert –  
    “(5) In this section “relevant Director” has the meaning given by section 352(5A).”
- 136 In section 444(4)(d) (external requests and orders) for “the Director” substitute “SOCA”. 20
- 137 In section 445(2)(b) (external investigations) for the words from “the Director”, where it first appears, to “Agency” substitute “SOCA, the Director of Public Prosecutions, the Director of Public Prosecutions for Northern Ireland, the Director of Revenue and Customs Prosecutions”. 25
- 138 (1) Section 449 (agency staff: pseudonyms) is amended as follows.  
(2) In the heading for “Agency” substitute “SOCA’s”.  
(3) In subsection (1) –  
    (a) for “the staff of the Agency”, in both places where it appears, substitute “SOCA’s staff”; and 30  
    (b) for “authorised (generally or specifically) by the Director” substitute “assigned by SOCA”.  
(4) In subsection (2) –  
    (a) for “The Director” substitute “An authorised person”; and  
    (b) for “the staff of the Agency” substitute “SOCA’s staff”. 35  
(5) In subsection (3) –  
    (a) for “the Director” substitute “an authorised person”; and  
    (b) for “the staff of the Agency”, in both places where it appears, substitute “SOCA’s staff”.  
(6) In subsection (4) for “the staff of the Agency” substitute “SOCA’s staff”. 40  
(7) Omit subsection (5).

- (8) After subsection (5) insert –
- “(6) In this section “authorised person” means a member of SOCA’s staff authorised by SOCA for the purposes of this section.”
- 139 (1) Section 459 (orders and regulations) is amended as follows.
- (2) In subsection (4)(a) omit “, 436(6), 438(9)”. 5
- (3) In subsection (6)(a) for “, 377(4), 436(6) or 438(9)” substitute “or 377(4)”.
- 140 After section 460(2) (finance) insert –
- “(3) Subject to anything in this Act –
- (a) any sums received by the Director of Public Prosecutions, the Director of Revenue and Customs Prosecutions or the Director of the Serious Fraud Office in consequence of this Act are to be paid into the Consolidated Fund; and 10
- (b) any sums received by the Director of Public Prosecutions for Northern Ireland in consequence of this Act are to be paid to the Secretary of State.” 15
- 141 Omit Schedule 1 (the Assets Recovery Agency).

## PART 7

### AMENDMENTS TO OTHER ENACTMENTS

#### *Parliamentary Commissioner Act 1967 (c. 13)*

- 142 (1) Schedule 2 to the Parliamentary Commissioner Act 1967 (departments etc. subject to investigation) is amended as follows. 20
- (2) Omit the entry for “The Director of the Assets Recovery Agency”.
- (3) After the entry for “Sentencing Guidelines Council” insert “The Serious Organised Crime Agency”.
- (4) Omit the paragraph in the Notes headed “Assets Recovery Agency”. 25
- (5) After the paragraph in the Notes headed “Ministry of Defence” insert –
- “Serious Organised Crime Agency*
- In the case of the Serious Organised Crime Agency, an investigation may be conducted only in respect of the exercise of functions vested in it by virtue of a notice served on the Commissioners for Her Majesty’s Revenue and Customs under section 317(2), 321(2) or 322(2) of the Proceeds of Crime Act 2002 (c. 29) (Revenue functions).” 30

#### *Criminal Appeal Act 1968 (c. 19)*

- 143 In section 33 of the Criminal Appeal Act 1968 (right of appeal to House of Lords) omit subsection (1A). 35
- 144 In section 51(1A) of that Act (interpretation) omit “, subject to section 33(1A) of this Act,”.

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

- 145 (1) Section 31 of the Criminal Appeal (Northern Ireland) Act 1980 (right of appeal to House of Lords) is amended as follows.
- (2) Omit subsection (1A).
- (3) In subsection (3) omit “, subject to subsection (1A) above,”. 5

*Limitation Act 1980 (c. 58)*

- 146 (1) Section 27A of the Limitation Act 1980 (actions for recovery of property obtained through unlawful conduct etc.) is amended as follows.
- (2) In subsection (2) for “Director’s” substitute “relevant person’s”.
- (3) In subsection (4) for “Director’s” substitute “relevant person’s”. 10
- (4) After subsection (7) insert –
- “(8) In this section “relevant person” means –
- (a) the Serious Organised Crime Agency,
- (b) the Director of Public Prosecutions,
- (c) the Director of Revenue and Customs Prosecutions, or 15
- (d) the Director of the Serious Fraud Office.”

*Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 (S.I. 1981/228 (N.I.8))*

- 147 (1) Paragraph 2A of Part 1 of Schedule 1 to the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 (Crown Court proceedings under the Proceeds of Crime Act 2002 (c. 29)) for which legal aid may be given under Part 2 of the Order) is amended as follows. 20
- (2) In sub-paragraph (1)(a) omit “or 204(3)”.
- (3) In sub-paragraph (1)(c) for “to 201” substitute “to 199”.

*Prosecution of Offences Act 1985 (c. 23)*

- 148 In section 3(2) of the Prosecution of Offences Act 1985 (functions of the Director of Public Prosecutions), after paragraph (fe), insert – 25
- “(ff) to discharge such duties as are conferred on him by, or in relation to, Part 5 or 8 of the Proceeds of Crime Act 2002 (c. 29) (civil recovery of the proceeds etc. of unlawful conduct, civil recovery investigations and disclosure orders in relation to confiscation investigations);” 30

*Bankruptcy (Scotland) Act 1985 (c. 66)*

- 149 In section 31A(1)(b) of the Bankruptcy (Scotland) Act 1985 (property subject to restraint order) –
- (a) omit “52,”; and 35
- (b) for “, 198 or 200” substitute “or 198”.



*Insolvency Act 1986 (c. 45)*

- 150 In section 306A(1)(b) of the Insolvency Act 1986 (property subject to restraint order) –
- (a) omit “52,”; and
  - (b) for “, 198 or 200” substitute “or 198”. 5

*Criminal Justice Act 1987 (c. 38)*

- 151 After section 1(6) of the Criminal Justice Act 1987 (functions of the Director of the Serious Fraud Office) insert –
- “(6A) The Director has the functions conferred on him by, or in relation to, Part 5 or 8 of the Proceeds of Crime Act 2002 (c. 29) (civil recovery of the proceeds etc. of unlawful conduct, civil recovery investigations and disclosure orders in relation to confiscation investigations).” 10

*Limitation (Northern Ireland) Order 1989 (SI 1989/1339 (N.I.11))*

- 152 (1) Article 72A of the Limitation (Northern Ireland) Order 1989 (actions for recovery of property obtained through unlawful conduct etc.) is amended as follows. 15
- (2) In paragraph (2) for “Director’s” substitute “relevant person’s”.
  - (3) In paragraph (4) for “Director’s” substitute “relevant person’s”.
  - (4) After paragraph (7) insert –
    - “(8) In this Article “relevant person” means – 20
    - (a) the Serious Organised Crime Agency,
    - (b) the Director of the Serious Fraud Office, or
    - (c) the Director of Public Prosecutions for Northern Ireland.”

*Insolvency (Northern Ireland) Order 1989 (SI 1989/2405 (N.I.19))*

- 153 In Article 279A(1)(b) of the Insolvency (Northern Ireland) Order 1989 (property subject to restraint order) – 25
- (a) omit “52,”; and
  - (b) for “, 198 or 200” substitute “or 198”.

*Police Act 1996 (c. 16)*

- 154 (1) Section 97 of the Police Act 1996 (police officers engaged on service outside their force) is amended as follows. 30
- (2) In subsection (1) omit paragraph (ce).
  - (3) In subsection (6)(a) omit “(ce),”.
  - (4) In subsection (8)(a) omit “(ce),”.

*Police (Northern Ireland) Act 1998 (c. 32)* 35

- 155 (1) Section 27 of the Police (Northern Ireland) Act 1998 (members of the Police Service of Northern Ireland engaged on other police service) is amended as follows.

- (2) In subsection (1) omit paragraph (ca).
- (3) In subsection (5)(b) omit “(ca),”.
- (4) In subsection (7) omit “(ca),”.
- 156 After section 60ZA(6) of that Act (SOCA) insert—
- “(7) An agreement or order under this section must not provide for procedures in relation to so much of any complaint or matter as relates to any functions of the Agency mentioned in section 2A of the Serious Organised Crime and Police Act 2005 (c. 15) (functions as to the recovery of assets).” 5
- Northern Ireland Act 1998 (c. 47)* 10
- 157 (1) In section 75(4A) of the Northern Ireland Act 1998 (statutory duty on public authorities) after “offences” insert “or any of the functions conferred on him by, or in relation to, Part 5 or 8 of the Proceeds of Crime Act 2002 (c. 29) (civil recovery of the proceeds etc. of unlawful conduct, civil recovery investigations and disclosure orders in relation to confiscation investigations)” 15
- (2) After section 76(10) of that Act (discrimination by public authorities) insert—
- “(11) The reference in subsection (1) to the functions of the Director of Public Prosecutions for Northern Ireland does not include any of the functions conferred on him by, or in relation to, Part 5 or 8 of the Proceeds of Crime Act 2002 (c. 29) (civil recovery of the proceeds etc. of unlawful conduct, civil recovery investigations and disclosure orders in relation to confiscation investigations).” 20
- Access to Justice Act 1999 (c. 22)* 25
- 158 (1) Paragraph 3 of Schedule 2 to the Access to Justice Act 1999 (advocacy in Crown Court proceedings under the Proceeds of Crime Act 2002 (c. 29) which may be funded as part of the Community Legal Service) is amended as follows.
- (2) In sub-paragraph (1)(b) omit “or 56(3)”. 30
- (3) In sub-paragraph (1)(d) for “to 53” substitute “to 51”.
- Police Reform Act 2002 (c. 30)*
- 159 After section 10(8) of the Police Reform Act 2002 (general functions of the Independent Police Complaints Commission) insert—
- “(9) Nothing in this Part shall confer any function on the Commission in relation to so much of any complaint, conduct matter or DSI matter as relates to— 35
- (a) any functions of the Serious Organised Crime Agency mentioned in section 2A of the Serious Organised Crime and Police Act 2005 (c. 15) (functions as to the recovery of assets); 40
- or

- (b) the functions of the National Policing Improvement Agency under section 3 of the Proceeds of Crime Act 2002 (c. 29) (accreditation and training of financial investigators).”
- 160 After section 26A(4) of that Act (SOCA) insert –
- “(4A) An agreement under this section must not provide for procedures in relation to so much of any complaint, conduct matter or DSI matter as relates to any functions of the Agency mentioned in section 2A of the Serious Organised Crime and Police Act 2005 (c. 15) (functions as to the recovery of assets).” 5
- 161 After section 26B(4) of that Act (National Policing Improvement Agency) insert – 10
- “(4A) An agreement under this section must not provide for procedures in relation to so much of any complaint, conduct matter or DSI matter as relates to the functions of the Agency under section 3 of the Proceeds of Crime Act 2002 (c. 29) (accreditation and training of financial investigators).” 15
- Access to Justice (Northern Ireland) Order 2003 (S.I. 2003/435 (N.I.10))*
- 162 (1) Paragraph 3 of Schedule 2 to the Access to Justice (Northern Ireland) Order 2003 (representation in Crown Court proceedings under the Proceeds of Crime Act 2002 (c. 29) which may be funded by the Northern Ireland Legal Services Commission) is amended as follows. 20
- (2) In sub-paragraph (1)(a) omit “or 204(3)”.
- (3) In sub-paragraph (1)(c) for “to 201” substitute “to 199”.
- Commissioners for Revenue and Customs Act 2005 (c. 11)*
- 163 After section 35(4) of the Commissioners for Revenue and Customs Act 2005 (functions of the Director of Revenue and Customs Prosecutions) insert – 25
- “(4A) The Director has the functions conferred on him by, or in relation to, Part 5 or 8 of the Proceeds of Crime Act 2002 (c. 29) (civil recovery of the proceeds etc. of unlawful conduct, civil recovery investigations and disclosure orders in relation to confiscation investigations).” 30
- 164 In section 37(1) of that Act (prosecutors) after “section 35” insert “(including any function mentioned in subsection (4A) of that section)”.
- 165 (1) Section 40 of that Act (confidentiality) is amended as follows.
- (2) In subsection (2) (exceptions to confidentiality restrictions), after paragraph (c), insert – 35
- “(ca) does not apply to a disclosure made for the purposes of –
- (i) the exercise of any functions of the prosecutor under Parts 2, 3 and 4 of the Proceeds of Crime Act 2002 (c. 29),
- (ii) the exercise of any functions of the Serious Organised Crime Agency under that Act, 40
- (iii) the exercise of any functions of the Director of Public Prosecutions, the Director of the Serious Fraud Office, the Director of Public Prosecutions for Northern

- Ireland or the Scottish Ministers under, or in relation to, Part 5 of that Act,
- (iv) the exercise of any functions of an officer of Revenue and Customs or a constable under Chapter 3 of Part 5 of that Act, or 5
- (v) investigations or proceedings outside the United Kingdom which have led or may lead to the making of an external order within the meaning of section 447 of that Act,
- (cb) does not apply to a disclosure of information obtained in the exercise of functions under the Proceeds of Crime Act 2002 (c. 29) if the disclosure is made for the purposes of the exercise of a function which the Secretary of State thinks is a public function and which he designates by order,” 10
- (3) After subsection (10) insert – 15
- “(10A) An order under subsection (2)(cb) –
- (a) may include transitional or incidental provision,
- (b) shall be made by statutory instrument, and
- (c) shall not be made unless a draft has been laid before, and approved by a resolution of, each House of Parliament.” 20
- 166 In section 41(1) of that Act (disclosure of information to Director of Revenue and Customs Prosecutions) after “prosecution” insert “or for the purpose of the exercise by the Director of his functions under the Proceeds of Crime Act 2002 (c. 29)”.
- Serious Organised Crime and Police Act 2005 (c. 15)* 25
- 167 After section 2 of the Serious Organised Crime and Police Act 2005 (functions of SOCA as to serious organised crime) insert –
- "2A Functions of SOCA as to the recovery of assets**
- SOCA has the functions conferred on it (whether directly or through its staff) by the Proceeds of Crime Act 2002 (c. 29) (functions relating to the recovery of assets).” 30
- 168 (1) Section 5 of that Act (SOCA’s general powers) is amended as follows.
- (2) In subsection (2)(d) after “or 3” insert “or mentioned in section 2A,”.
- (3) In subsection (3) after “3” insert “or mentioned in section 2A”.
- (4) In subsection (4) after “section” insert “2A or”. 35
- 169 After section 19(4) of that Act (charges by SOCA and other receipts) insert –
- “(4A) Subsection (3) is subject to any provision made by the Proceeds of Crime Act 2002 (c. 29).”
- 170 (1) Section 33 (disclosure of information by SOCA) of that Act is amended as follows. 40
- (2) In subsection (2) after paragraph (c) insert –
- “(ca) the exercise of any function of SOCA mentioned in section 2A (functions relating to the recovery of assets);

	(cb) the exercise of any functions of the prosecutor under Parts 2, 3 and 4 of the Proceeds of Crime Act 2002 (c. 29);	
	(cc) the exercise of any functions of the Director of Public Prosecutions, the Director of Revenue and Customs Prosecutions, the Director of the Serious Fraud Office, the Director of Public Prosecutions for Northern Ireland or the Scottish Ministers under, or in relation to, Part 5 of that Act;	5
	(cd) the exercise of any functions of an officer of Revenue and Customs or a constable under Chapter 3 of Part 5 of that Act;	
	(ce) investigations or proceedings outside the United Kingdom which have led or may lead to the making of an external order within the meaning of section 447 of that Act;”	10
(3)	After subsection (2) insert –	
	“(2A) Subsections (1) and (2) do not apply to information obtained by SOCA in connection with the exercise of its functions under Part 6 of the Proceeds of Crime Act 2002 (c. 29) (Revenue functions).	15
	(2B) But such information may be disclosed by SOCA –	
	(a) to the Commissioners;	
	(b) to the Lord Advocate for the purpose of the exercise by the Lord Advocate of his functions under Part 3 of that Act (confiscation: Scotland).	20
	(2C) Information disclosed to the Lord Advocate under subsection (2B)(b) may be further disclosed by him only to the Scottish Ministers for the purpose of the exercise by them of their functions under Part 5 of that Act (civil recovery of the proceeds etc. of unlawful conduct).”	25
171	In paragraph 8 of Schedule 1 to that Act (SOCA’s staff) after sub-paragraph (1), insert –	
	“(1A) SOCA must appoint one of its employees as a person with responsibilities in relation to the exercise of SOCA’s functions in Northern Ireland under the Proceeds of Crime Act 2002 (c. 29).”	30
172	In paragraph 21(1) and (2) of Schedule 5 to that Act (persons specified for the purposes of protection) omit “is or”.	
<i>Gambling Act 2005 (c. 19)</i>		
173	In Part 2 of Schedule 6 to the Gambling Act 2005 (exchange of information: enforcement and regulatory bodies) –	35
	(a) omit the entries relating to the Director and staff of the Assets Recovery Agency, the Director General and staff of the National Crime Squad and the Director General and staff of the National Criminal Intelligence Service; and	
	(b) after the entry for the Serious Fraud Office insert –	40
	“The Serious Organised Crime Agency”.	
<i>Police and Justice Act 2006 (c. 48.)</i>		
174	(1) Schedule 1 to the Police and Justice Act 2006 (National Policing Improvement Agency) is amended as follows.	

- (2) In paragraph 1 (the objects of the Agency) –
- (a) after paragraph (e), insert –
    - “(ea) the carrying out of its functions under section 3 of the Proceeds of Crime Act 2002 (c. 29) (accreditation and training of financial investigators);”;
  - (b) in paragraph (f) for “(e)” substitute “(ea)”.
- (3) After paragraph 4(5) (consultation: Scotland or Northern Ireland) insert –
- “(6) This paragraph does not apply to any exercise of the Agency’s power under paragraph 2(1) which is for the purposes of attaining the object mentioned in paragraph 1(ea) (accreditation and training of financial investigators).”
- (4) After paragraph 6(4) (strategic priorities) insert –
- “(4A) Before determining strategic priorities for the Agency in relation to its functions under section 3 of the Proceeds of Crime Act 2002 (c. 29) (accreditation and training of financial investigators), the Secretary of State must (in addition to those required above) consult such other persons as the Secretary of State considers appropriate.”
- (5) In paragraph 35 (payments by Agency to police authorities) after “objects” insert “(other than the object mentioned in paragraph 1(ea): accreditation and training of financial investigators)”.

## SCHEDULE 9

Section 72(3)

### TRANSFERS TO SOCA OR NPIA

#### *Interpretation*

- 1 In this Schedule –
- “the Agency” means the Assets Recovery Agency;
  - “the Director” means the Director of the Assets Recovery Agency;
  - “NPIA” means the National Policing Improvement Agency; and
  - “transfer scheme” means a scheme made by the Secretary of State under this Schedule.

#### *Director and staff of Agency*

- 2 (1) A transfer scheme may provide for a person who is the Director or a member of staff of the Agency to become an employee of SOCA or NPIA.
- (2) If the person had a contract of employment before becoming an employee of SOCA or NPIA, the scheme may provide for that contract to have effect (subject to any necessary modifications) as if originally made between him and SOCA or (as the case may be) NPIA.
- (3) If the person did not have a contract of employment, the scheme may provide for the terms and conditions of his appointment or service to have effect (subject to any necessary modifications) as the terms and conditions of his contract of employment with SOCA or (as the case may be) NPIA.

- 
- 3 (1) A transfer scheme may provide—
- (a) for any secondment by virtue of which a person serves as the Director or a member of staff of the Agency to have effect as a secondment to SOCA or NPIA; and
  - (b) for him to serve as a member of the staff of SOCA or (as the case may be) NPIA. 5
- (2) The scheme may make provision as to the terms and conditions which are to have effect as the terms and conditions of his secondment to SOCA or (as the case may be) NPIA.
- 4 (1) A transfer scheme may provide— 10
- (a) for the transfer to SOCA or (as the case may be) NPIA of the rights, powers, duties and liabilities of the employer under or in connection with the contract of employment of a person who becomes a member of the staff of SOCA or NPIA by virtue of the scheme;
  - (b) for anything done before that transfer by, or in relation to, the employer in respect of such a contract or the employee to be treated as having been done by, or in relation to, SOCA or (as the case may be) NPIA. 15
- (2) Sub-paragraph (1) applies with the necessary modifications in relation to a person who before becoming a member of the staff of SOCA or NPIA— 20
- (a) did not have a contract of employment; or
  - (b) held an appointment by virtue of a secondment.
- (3) A transfer scheme may make provision for periods before a person became an employee of SOCA or NPIA to count as periods of employment with SOCA or (as the case may be) NPIA (and for the operation of the scheme not to be treated as having interrupted the continuity of that employment). 25
- 5 (1) A transfer scheme may provide for a person who—
- (a) is the Director or a member of staff of the Agency; and
  - (b) would otherwise become a member of the staff of SOCA or NPIA by the operation of the scheme; 30
- not to become a member of the staff of SOCA or (as the case may be) NPIA if he gives notice objecting to the operation of the scheme in relation to him.
- (2) A transfer scheme may provide for any person who would be treated (whether by an enactment or otherwise) as being dismissed by the operation of the scheme not to be so treated. 35
- 6 (1) A transfer scheme may provide for the termination of an appointment as the Director or a member of staff of the Agency.
- (2) The Secretary of State may make a payment of such amount (if any) as he may determine to the person who held the appointment.
- Property, rights and liabilities etc.* 40
- 7 (1) A transfer scheme may provide for the transfer to SOCA or NPIA of property, rights and liabilities of the Director or the Agency.
- (2) The scheme may create rights, or impose liabilities, in relation to property, rights and liabilities transferred by virtue of the scheme.

- (3) The scheme may provide for things done by or in relation to persons to whom sub-paragraph (4) applies to be –
- (a) treated as done by or in relation to SOCA or members of the staff of SOCA or (as the case may be) NPIA or members of the staff of NPIA;
  - (b) continued by or in relation to SOCA or members of the staff of SOCA or (as the case may be) NPIA or members of the staff of NPIA. 5
- (4) This sub-paragraph applies to –
- (a) the Director;
  - (b) members of staff of the Agency.
- (5) The scheme may, in particular, make provision about the continuation of legal proceedings. 10
- 8 A transfer scheme may provide for SOCA or NPIA to make any payment which –
- (a) before a day specified in the scheme could have been made by the Director or a member of staff of the Agency; but
  - (b) is not a liability which can be transferred by virtue of paragraph 7. 15

*Supplementary*

- 9 (1) A transfer scheme may contain –
- (a) further provision in connection with any of the matters to which paragraphs 2 to 8 relate; 20
  - (b) the provision mentioned in sub-paragraph (3).
- (2) The provision which may be made under sub-paragraph (1)(a) includes provision as to the consequences of the termination of a person's appointment or employment by or by virtue of the scheme.
- (3) The provision mentioned in this sub-paragraph is provision – 25
- (a) for the Secretary of State, or any other person nominated by or in accordance with the scheme, to determine any matter requiring determination under or in consequence of the scheme; and
  - (b) as to the payment of fees charged, or expenses incurred, by any person nominated to determine any matter by virtue of paragraph (a). 30
- 10 Before making a transfer scheme which contains any provision relating to the Director or the members of staff of the Agency, the Secretary of State must consult such bodies appearing to represent the interests of the persons concerned as he considers appropriate. 35
- 11 A transfer scheme is not an order of the Secretary of State for the purposes of section 85.



SCHEDULE 10

Section 75

DETAINED CASH INVESTIGATIONS: FURTHER PROVISION

*Amendments of the Proceeds of Crime Act 2002*

- |   |  |    |
|---|--|----|
| 1 | The Proceeds of Crime Act 2002 (c. 29) (investigations) is amended as follows.   | 5  |
| 2 | In section 342(1) (offences of prejudicing investigation) after “a civil recovery investigation” insert “, a detained cash investigation”. |    |
| 3 | In section 343(3) (judges) after “a civil recovery investigation” insert “or a detained cash investigation”.                               |    |
| 4 | In section 344(b) (courts) after “a civil recovery investigation” insert “or a detained cash investigation”.                               | 10 |
| 5 | In section 350(5)(b) (government departments) after “a civil recovery investigation” insert “or a detained cash investigation”.            |    |
| 6 | In section 351(8) (supplementary) after “a civil recovery investigation” insert “or a detained cash investigation”.                        | 15 |
| 7 | (1) Section 352 (search and seizure warrants) is amended as follows.   |    |
|   | (2) In subsection (3)(c) after “(7)” insert “, (7A), (7B)”.  |    |
|   | (3) After subsection (5)(b) insert –   |    |
|   | “(c) a constable or an officer of Revenue and Customs, if the warrant is sought for the purposes of a detained cash investigation.”        | 20 |
| 8 | (1) Section 353 (requirements where production order not available) is amended as follows.   |    |
|   | (2) In subsection (5)(a) after “(7)” insert “, (7A), (7B)”.  |    |
|   | (3) After subsection (10)(b) insert –  | 25 |
|   | “(c) a constable or an officer of Revenue and Customs, if the warrant is sought for the purposes of a detained cash investigation.”        |    |
| 9 | (1) Section 356 (further provisions: civil recovery) is amended as follows.  |    |
|   | (2) In the heading after “civil recovery” insert “and detained cash”.  | 30 |
|   | (3) In subsection (1) after “civil recovery investigations” insert “or detained cash investigations”.                                      |    |
|   | (4) In subsection (6) after “If” insert “, in the case of civil recovery investigations,”.   |    |
|   | (5) In subsection (10) for the words from “if” to “reasonable” substitute “if the appropriate person has reasonable”.                      | 35 |
|   | (6) After subsection (10) insert –   |    |
|   | “(11) The appropriate person is –  |    |
|   | (a) the Director, if the warrant was issued for the purposes of a civil recovery investigation;  | 40 |

- (b) a constable or an officer of Revenue and Customs, if the warrant was issued for the purposes of a detained cash investigation.”
- 10 In section 357(2) (investigations to which disclosure orders do not apply) after “to a” insert “detained cash investigation or a”. 5
- 11 In section 363 (customer information orders) after subsection (1) insert –  
“(1A) No application for a customer information order may be made in relation to a detained cash investigation.”
- 12 In section 370 (account monitoring orders) after subsection (1) insert –  
“(1A) No application for an account monitoring order may be made in relation to a detained cash investigation.” 10
- 13 In section 378 (officers) after subsection (3) insert –  
“(3A) In relation to a detained cash investigation these are appropriate officers –  
(a) a constable;  
(b) an officer of Revenue and Customs.” 15
- 14 In section 380(2) (sheriff in Scotland to act in exercise of civil jurisdiction in making production orders in certain cases) after “a civil recovery investigation” insert “or a detained cash investigation”.
- 15 In section 385(4)(b) (government departments: Scotland) after “a civil recovery investigation” insert “or a detained cash investigation”. 20
- 16 In section 386(3)(b) (rules of court in connection with production orders and orders to grant entry: Scotland) after “a civil recovery investigation” insert “or a detained cash investigation”.
- 17 In section 387(2) (sheriff in Scotland to act in exercise of civil jurisdiction in issuing search warrants in certain cases) after “a civil recovery investigation” insert “or a detained cash investigation”. 25
- 18 In section 388(5)(a) (requirements where production order not available: Scotland) after “(7)” insert “, (7A), (7B)”.
- 19 (1) Section 390 (further provisions: confiscation, civil recovery and money laundering: Scotland) is amended as follows. 30  
(2) In the heading after “civil recovery” insert “, detained cash”.  
(3) In subsection (1) after “civil recovery investigations” insert “, detained cash investigations”.  
(4) In subsection (5) after “a civil recovery investigation” insert “or a detained cash investigation”. 35  
(5) In subsection (6) after “a civil recovery investigation” insert “or a detained cash investigation”.  
(6) In subsection (7) after “a civil recovery investigation” insert “or a detained cash investigation”. 40
- 20 In section 391(2) (investigations to which disclosure orders do not apply: Scotland) after “to a” insert “detained cash investigation or a”.

- 
- 21 In section 397 (customer information orders: Scotland) after subsection (1) insert—  
 “(1A) No application for a customer information order may be made in relation to a detained cash investigation.”
- 22 In section 404 (account monitoring orders: Scotland) after subsection (1) insert—  
 “(1A) No application for an account monitoring order may be made in relation to a detained cash investigation.”
- 23 (1) Section 412 (interpretation: Scotland) is amended as follows.  
 (2) In the definition of “appropriate person”, in paragraph (b), after “a civil recovery investigation” insert “or a detained cash investigation”.  
 (3) In the definition of “proper person”, in paragraph (b), after “a civil recovery investigation” insert “or a detained cash investigation”.
- 24 (1) Section 416 (other interpretative provisions) is amended as follows.  
 (2) In subsection (1) after “confiscation investigation: section 341(1)” insert—  
 “detained cash investigation: section 341(3A)”.  
 (3) After subsection (7) insert—  
 “(7A) “Unlawful conduct” has the meaning given by section 241.”
- 25 In section 450(1)(a) (pseudonyms: Scotland) after “a civil recovery investigation” insert “or a detained cash investigation”.
- Other amendments*
- 26 In section 18(2)(f) of the Civil Jurisdiction and Judgments Act 1982 (c. 27)—  
 (a) after “a civil recovery investigation” insert “or a detained cash investigation”; and  
 (b) for “meaning” substitute “meanings”.
- 27 In section 64(3)(aa) of the Criminal Justice and Police Act 2001 (c. 16) after “a civil recovery investigation” insert “or a detained cash investigation”.
- 28 In Schedule 2 to the Commissioners for Revenue and Customs Act 2005 (c. 11) (functions of Commissioners and officers: restrictions etc.), after paragraph 13, insert—  
 “13A The powers conferred on an officer of Revenue and Customs by virtue of section 352(5)(c), 353(10)(c), 356(11)(b) or 378(3A)(b) of the Act of 2002 (powers in relation to search and seizure warrants and production orders) are exercisable only in relation to cash seized in accordance with paragraph 13 above by an officer of Revenue and Customs under section 294 of that Act.”

SCHEDULE 11

Section 77

POWERS TO RECOVER CASH: FINANCIAL INVESTIGATORS

*Amendments to Chapter 3 of Part 5 of 2002 Act*

- 1 Chapter 3 of Part 5 of the Proceeds of Crime Act 2002 (c. 29) (recovery of cash in summary proceedings) is amended in accordance with paragraphs 2 to 13. 5
- 2 (1) Section 289 (powers to search for cash) is amended as follows.
  - (2) In subsection (1) –
    - (a) for “or constable who” substitute “, a constable or an accredited financial investigator”; and
    - (b) after “premises”, where it first appears, insert “and”. 10
  - (3) In subsection (2) for “or constable” substitute “, a constable or an accredited financial investigator”.
  - (4) In subsections (3) and (4) for “or constable” substitute “, constable or accredited financial investigator”.
  - (5) In subsection (5), after paragraph (b), insert – 15
    - “(c) are exercisable by an accredited financial investigator only in relation to premises or (as the case may be) suspects in England, Wales or Northern Ireland.”
- 3 (1) Section 290 (prior approval by senior officer) is amended as follows.
  - (2) In subsection (4), after paragraph (b), insert – 20
    - “(c) in relation to the exercise of the power by an accredited financial investigator, an accredited financial investigator who falls within a description specified in an order made for this purpose by the Secretary of State under section 453.”
  - (3) In subsection (6) for “or constable” substitute “, constable or accredited financial investigator”. 25
- 4 In section 291(2) (report on exercise of powers) for “or constable” substitute “, constable or accredited financial investigator”.
- 5 (1) Section 292 (code of practice) is amended as follows.
  - (2) In subsection (1) after “constables” insert “and accredited financial investigators”. 30
  - (3) In subsection (6) for “or constable” substitute “, a constable or an accredited financial investigator”.
- 6 (1) Section 294 (seizure of cash) is amended as follows.
  - (2) In subsections (1) and (2) for “or constable” substitute “, a constable or an accredited financial investigator”. 35
  - (3) After subsection (3) insert –
    - “(4) This section does not authorise the seizure by an accredited financial investigator of cash found in Scotland.”
- 7 (1) Section 295 (detention of seized cash) is amended as follows. 40

- 
- (2) In subsection (1) for “or constable” substitute “, constable or accredited financial investigator”.
- (3) In subsection (4)(a) for “or a constable” substitute “, a constable or an accredited financial investigator”.
- 8 In section 296(2) (release of part of cash seized) for “or constable” substitute “, constable or accredited financial investigator”. 5
- 9 In section 297(4) (release of detained cash) after “constable” insert “or accredited financial investigator”.
- 10 In section 298(1)(a) (power to apply for forfeiture) before “or” insert “, an accredited financial investigator”. 10
- 11 After section 302(7) insert –
- “(7A) If the cash was seized by an accredited financial investigator who was not an officer of Revenue and Customs or a constable, the compensation is to be paid as follows –
- (a) in the case of an investigator – 15
- (i) who was employed by a police authority in England and Wales under section 15 of the Police Act 1996 (c. 16) and was under the direction and control of the chief officer of police of the police force maintained by the authority, or 20
- (ii) who was a member of staff of the City of London police force,  
it is to be paid out of the police fund from which the expenses of the police force are met,
- (b) in the case of an investigator who was a member of staff of the Police Service of Northern Ireland, it is to be paid out of money provided by the Chief Constable, 25
- (c) in the case of an investigator who was a member of staff of a department of the Government of the United Kingdom, it is to be paid by the Minister of the Crown in charge of the department or by the department, 30
- (d) in the case of an investigator who was a member of staff of a Northern Ireland department, it is to be paid by the department,
- (e) in any other case, it is to be paid by the employer of the investigator. 35
- (7B) The Secretary of State may by order amend subsection (7A).”
- 12 (1) Section 302A (powers for prosecutors to appear in proceedings) (as inserted by section 81(1) above) is amended as follows.
- (2) In subsection (1) – 40
- (a) after “constable”, in the first place where it appears, insert “or an accredited financial investigator”; and
- (b) after “constable”, in the second place where it appears, insert “or (as the case may be) an accredited financial investigator”.

(3) After subsection (3) insert –

“(4) The references in subsection (1) to an accredited financial investigator do not include an accredited financial investigator who is an officer of Revenue and Customs but the references in subsection (2) to an officer of Revenue and Customs do include an accredited financial investigator who is an officer of Revenue and Customs.” 5

13 After section 303 insert –

**“303A Financial investigators**

(1) In this Chapter (apart from this section) any reference in a provision to an accredited financial investigator is a reference to an accredited financial investigator who falls within a description specified in an order made for the purposes of that provision by the Secretary of State under section 453. 10

(2) Subsection (1) does not apply to the second reference to an accredited financial investigator in section 290(4)(c). 15

(3) Where an accredited financial investigator of a particular description –  
(a) applies for an order under section 295,  
(b) applies for forfeiture under section 298, or  
(c) brings an appeal under, or relating to, this Chapter, 20  
any subsequent step in the application or appeal, or any further application or appeal relating to the same matter, may be taken, made or brought by a different accredited financial investigator of the same description.”

*Other amendments to 2002 Act* 25

14 In section 438(1)(f) of the Proceeds of Crime Act 2002 (c. 29) (disclosure of information by the Director of the Assets Recovery Agency) before “or” insert “, an accredited financial investigator”.

15 (1) Section 459 of that Act (orders and regulations) is amended as follows.

(2) In subsection (4)(a) (exceptions to negative procedure) after “292(4),” insert “302(7B),” 30

(3) In subsection (6)(a) (powers subject to affirmative procedure) after “292(4),” insert “302(7B),”.

(4) After subsection (6) insert –

“(6A) If a draft of an order under section 302(7B) would, apart from this subsection, be treated as a hybrid instrument for the purposes of the standing orders of either House of Parliament, it shall proceed in that House as if it were not a hybrid instrument.” 35

*Amendments to other enactments*

16 In section 40(2)(ca)(iv) of the Commissioners for Revenue and Customs Act 2005 (c. 11) (confidentiality) (as inserted by Schedule 8) after “Customs” insert “, an accredited financial investigator” 40

- 17 In section 33(2)(cd) of the Serious Organised Crime and Police Act 2005 (c. 15) (disclosure of information by SOCA) (as inserted by Schedule 8) after “Customs” insert “, an accredited financial investigator”.

SCHEDULE 12

Section 84

REVENUE AND CUSTOMS: REGULATION OF INVESTIGATORY POWERS 5

*Police Act 1997 (c. 50)*

- 1 In section 93 of the Police Act 1997 (authorisations to interfere with property, &c.) –
- (a) in subsection (1B) for “customs officer” substitute “an officer of Revenue and Customs”; 10
  - (b) in subsection (3)(d) for “a customs officer” substitute “an officer of Revenue and Customs”; and
  - (c) for subsection (5)(h) substitute –
    - “(h) an officer of Revenue and Customs designated for the purposes of this paragraph by the Commissioners for Her Majesty’s Revenue and Customs;” 15
- 2 In section 94(2)(f) of that Act (urgency) for “by a customs officer designated by the Commissioners of Customs and Excise” substitute “by an officer of Revenue and Customs designated by the Commissioners for Her Majesty’s Revenue and Customs”. 20
- 3 In section 107(4)(c) of that Act (supplementary) for “the Commissioners of Customs and Excise.” substitute “the Commissioners for Her Majesty’s Revenue and Customs.”
- 4 In section 108(1) of that Act (interpretation) omit the definition of “customs officer”. 25

*Regulation of Investigatory Powers Act 2000 (c. 23)*

- 5 The Regulation of Investigatory Powers Act 2000 is amended as follows.
- 6 In section 6(2)(h) (application for issue of interception warrant) for “the Commissioners of Customs and Excise” substitute “the Commissioners for Her Majesty’s Revenue and Customs”. 30
- 7 In section 21(5)(c) (acquisition of data, &c.) for “customs officers.” substitute “officers of Revenue and Customs).”
- 8 In the definition of “relevant public authority” in section 25(1) (communications data: interpretation) for paragraphs (d) and (e) substitute – 35
- “(d) Her Majesty’s Revenue and Customs;”
- 9 In section 27(4)(c) (lawful surveillance, &c.) for “customs officers).” substitute “officers of Revenue and Customs).”

- 10 For section 32(6)(m) (authorisation of intrusive surveillance) substitute –  
 “(m) an officer of Revenue and Customs designated for the purposes of this paragraph by the Commissioners for Her Majesty’s Revenue and Customs;”.
- 11 In section 33 (surveillance: authorisation) – 5  
 (a) for subsection (2) substitute –  
 “(2) A person who is a designated person for the purposes of section 28 or 29 by reference to office, rank or position in Her Majesty’s Revenue and Customs shall not grant an authorisation under that section except on an application made by an officer of Revenue and Customs.”; 10  
 (b) for subsection (4) substitute –  
 “(4) A person who is a senior authorising officer by virtue of a designation by the Commissioners for Her Majesty’s Revenue and Customs shall not grant an authorisation for the carrying out of intrusive surveillance except on an application made by an officer of Revenue and Customs.”; 15  
 and  
 (c) in subsection (5)(a) for “a customs officer” substitute “an officer of Revenue and Customs”; 20  
 (and in the italic cross-heading before section 33 for “customs” substitute “Revenue and Customs”).
- 12 In section 34 (grant of authorisation in senior officer’s absence) –  
 (a) in subsection (1) for “a customs officer;” substitute “an officer of Revenue and Customs;” 25  
 (b) in subsection (2)(a) for “the Commissioners of Customs and Excise,” substitute “the Commissioners for Her Majesty’s Revenue and Customs;” and  
 (c) in subsection (4)(l) for “the Commissioners of Customs and Excise,” substitute “the Commissioners for Her Majesty’s Revenue and Customs;” 30
- 13 In section 35 (intrusive surveillance authorisation: notification) –  
 (a) in subsection (1) for “customs” substitute “Revenue and Customs;”  
 (b) in subsection (10) for “customs” substitute “Revenue and Customs;” and 35  
 (c) in subsection (10)(b) for “the Commissioners of Customs and Excise;” substitute “the Commissioners for Her Majesty’s Revenue and Customs;”.
- 14 In section 36 (approval required for authorisation of intrusive surveillance to take effect) – 40  
 (a) for subsection (1)(d) substitute –  
 “(d) an officer of Revenue and Customs;” and  
 (b) for subsection (6)(g) substitute –  
 “(g) where the authorisation was granted by an officer of Revenue and Customs, the officer of Revenue and Customs for the time being designated for the purposes of this paragraph by a written notice given to the Chief Surveillance Commissioner by the 45



	Commissioners for Her Majesty’s Revenue and Customs;”.	
15	For section 37(1)(d) (quashing authorisations) substitute – “(d) an officer of Revenue and Customs;” (and in the heading to that section for “customs” substitute “Revenue and Customs”).	5
16	For section 40(d) (information) substitute – “(d) every officer of Revenue and Customs;”.	
17	In section 46(3) (Scotland: restrictions) for paragraph (e) substitute – “(e) the Commissioners for Her Majesty’s Revenue and Customs;”.	10
18	In section 48(3)(c)(ii) (interpretation) for “customs officers.” substitute “officers of Revenue and Customs).”	
19	In section 49(1)(e) (encrypted data: disclosure: permission) for “the customs and excise” substitute (in each place) “Her Majesty’s Revenue and Customs”.	15
20	In section 51 (cases where key required) – (a) for “the customs and excise” (in each place) substitute “Her Majesty’s Revenue and Customs”; and (b) for “the Commissioners of Customs and Excise” (in each place) substitute “the Commissioners for Her Majesty’s Revenue and Customs”.	20
21	In section 54(3) (secrecy) for “the customs and excise” substitute (in each place) “Her Majesty’s Revenue and Customs”.	
22	For section 55(1)(c) (general duty in relation to encrypted data) substitute – “(c) the Commissioners for Her Majesty’s Revenue and Customs;”.	25
23	In section 56(1) (interpretation) omit the definition of “the customs and excise”.	
24	For section 65(6)(f) (the Tribunal) substitute – “(f) the Commissioners for Her Majesty’s Revenue and Customs;”.	30
25	In section 71(2)(c) (codes of practice) for “customs and excise” substitute “Her Majesty’s Revenue and Customs”.	
26	In section 76A(11) (foreign surveillance operations) for paragraph (d) of the definition of “United Kingdom officer” substitute – “(d) an officer of Revenue and Customs.”	35
27	In section 81(1) (interpretation) omit the definition of “customs officer”.	
28	In Schedule 1 (surveillance authorisation: relevant authorities) for paragraphs 7 and 8 substitute –	40

“Revenue and Customs

7 Her Majesty’s Revenue and Customs.”

- 29 (1) In paragraphs 2(3) and (5), 4(2) and 5(3)(b) of Schedule 2 (encrypted data: disclosure: permission) for “customs and excise” or “the customs and excise” (in each place) substitute “Her Majesty’s Revenue and Customs”.
- (2) In paragraph 6(4) of that Schedule –
- (a) for “A person commissioned by the Commissioners of Customs and Excise” substitute “An officer of Revenue and Customs”; 5
  - (b) for “those Commissioners themselves” substitute “the Commissioners for Her Majesty’s Revenue and Customs”;
  - (c) for “their department” substitute “Revenue and Customs”; and
  - (d) for “they” substitute “the Commissioners”. 10

*Commissioners for Revenue and Customs Act 2005 (c. 11)*

- 30 The following paragraphs of Schedule 2 to the Commissioners for Revenue and Customs Act 2005 (which restrict the class of functions in connection with which certain powers may be used) shall cease to have effect –
- (a) paragraph 1 (Wireless Telegraphy Act 2006 (c. 36), s. 48); and 15
  - (b) paragraph 11 (Regulation of Investigatory Powers Act 2000 (c. 23), ss. 6(2)(h), 32(6)(m), 49(1)(e) and 54 and Sched. 2, paras. 2(3) and 4(2)).
- 31 Nothing in section 6 or 7 of the Commissioners for Revenue and Customs Act 2005 (initial functions) restricts the functions in connection with which Her Majesty’s Revenue and Customs may exercise a power under an enactment amended by this Schedule. 20

SCHEDULE 13

Section 87(1)

TRANSITIONAL AND TRANSITORY PROVISIONS AND SAVINGS

*Serious crime prevention orders*

- 1 In deciding for the purposes of paragraph (a) of section 1(1) or (2) whether a person has been involved in serious crime, the court may take account of conduct before the coming into force of that provision as well as conduct after the coming into force of that provision. 25
- 2 (1) Section 19, 20 or 21 does not apply to a person who is being dealt with on or after the coming into force of the section in relation to an offence of which the person was convicted before the coming into force of the section. 30
- (2) Sub-paragraph (1) does not prevent an application to the High Court for a serious crime prevention order in connection with the offence concerned.
- 3 In the application of section 23(2) before the commencement of paragraph 1(1) of Part 1 of Schedule 11 to the Constitutional Reform Act 2005 (c. 4) (citation of acts and rules), the reference to the Senior Courts Act 1981 (c. 54) is to be read as a reference to the Supreme Court Act 1981 (c. 54). 35
- 4 In the application of section 25(2)(a) –
- (a) in England and Wales, in relation to an offence committed before the commencement of section 282(1) of the Criminal Justice Act 2003 (c. 44) (increase in sentencing powers of magistrates’ court from 6 to 12 months for certain offences triable either way); and 40

- (b) in Scotland, until the commencement of section 45(1) of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6) (increase in sentencing powers from 6 to 12 months);  
the reference to 12 months is to be read as a reference to 6 months.
- Encouraging or assisting crime* 5
- 5 (1) Nothing in any provision of Part 2 affects the operation of –  
(a) any rule of the common law; or  
(b) any provision made by or under an Act or Northern Ireland legislation;  
in relation to offences committed wholly or partly before the commencement of the provision in Part 2 concerned. 10
- (2) For the purposes of sub-paragraph (1), an offence is partly committed before commencement if –  
(a) a relevant event occurs before commencement; and  
(b) another relevant event occurs on or after commencement. 15
- (3) In this paragraph “relevant event”, in relation to an offence, means any act or other event (including any consequence of an act) proof of which is required for conviction of the offence.
- 6 (1) This paragraph applies where, in any proceedings –  
(a) a person (“D”) is charged in respect of the same act both with an offence under section 42 and with the common law offence of inciting the commission of another offence; 20  
(b) the only thing preventing D from being found guilty of the offence under section 42 is the fact that it has not been proved beyond reasonable doubt that the time when the act took place was after the coming into force of that section; and 25  
(c) the only thing preventing D from being found guilty of the common law offence is that it has not been proved beyond reasonable doubt that that time was before the coming into force of section 57.
- (2) For the purpose of determining D’s guilt it shall be conclusively presumed that the time when the act took place was before the coming into force of section 42. 30
- 7 In relation to any time before the coming into force of section 27(1) of the Justice (Northern Ireland) Act 2002 (c. 26), the reference in section 51(b) to the Advocate General for Northern Ireland is to be read as a reference to the Attorney General for Northern Ireland. 35

*Data-sharing*

- 8 In the application of section 68(1)(a) –  
(a) in England and Wales, in relation to an offence committed before the commencement of section 282(1) of the Criminal Justice Act 2003 (c. 44) (increase in sentencing powers of magistrates’ court from 6 to 12 months for certain offences triable either way); and 40  
(b) in Scotland, until the commencement of section 45(1) of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6) (increase in sentencing powers from 6 to 12 months); 45  
the reference to 12 months is to be read as a reference to 6 months.

*Data matching*

- 9 In relation to an offence committed before the commencement of section 282(1) of the Criminal Justice Act 2003 (c. 44) (increase in sentencing powers of magistrates’ court from 6 to 12 months for certain offences triable either way), the reference to 12 months in each of the following provisions is to be read as a reference to 6 months –
- (a) section 32D(8)(b) of the Audit Commission Act 1998 (c. 18) (as inserted by paragraph 2 of Schedule 7 to this Act);
  - (b) section 64D(8)(b) of the Public Audit (Wales) Act 2004 (c. 23) (as inserted by paragraph 4 of that Schedule).

SCHEDULE 14

Section 88

REPEALS AND REVOCATIONS

<i>Title</i>	<i>Extent of repeal or revocation</i>	
Parliamentary Commissioner Act 1967 (c. 13)	In Schedule 2— (a) the entry for “The Director of the Assets Recovery Agency.”; (b) the paragraph in the Notes headed “Assets Recovery Agency”.	15
Criminal Appeal Act 1968 (c. 19)	Section 33(1A). In section 51(1A), the words “, subject to section 33(1A) of this Act,”.	20
Criminal Law Act 1977 (c. 45)	Section 5(7).	
Magistrates’ Courts Act 1980 (c. 43)	Section 32(1)(b). Section 45. In Schedule 1, paragraph 35.	25
Criminal Appeal (Northern Ireland) Act 1980 (c. 47)	In section 31— (a) subsection (1A); (b) in subsection (3), the words “, subject to subsection (1A) above,”.	
Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 (S.I. 1981/228 (N.I.8))	In paragraph 2A(1)(a) of Part 1 of Schedule 1, the words “or 204(3)”.	30
Magistrates’ Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I.26))	Article 60(1).	35
Criminal Attempts and Conspiracy (Northern Ireland) Order 1983 (S.I. 1983/1120 (N.I.13))	Article 13(8).	
Bankruptcy (Scotland) Act 1985 (c. 66)	In section 31A(1)(b), the word “52,”.	
Insolvency Act 1986 (c. 45)	In section 306A(1)(b), the word “52,”.	40

<i>Title</i>	<i>Extent of repeal or revocation</i>	
Public Order Act 1986 (c. 64)	In section 12(10), the words from “notwithstanding” to the end. In section 13(13), the words from “notwithstanding” to the end. In section 14(10), the words from “notwithstanding” to the end. In section 14B(7), the words from “notwithstanding” to the end.	5
Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I.19))	In Article 279A(1)(b), the word “52,”.	10
Computer Misuse Act 1990 (c. 18)	Section 6(3). Section 7(4). In section 8(3), the words “or by virtue of section 7(4) above”. Section 9(2)(d). In section 16(4), the words from “and any reference” to the end.	15
Police Act 1996 (c. 16)	In section 97 – (a) subsection (1)(ce); (b) in subsections (6)(a) and (8)(a), the word “(ce),”.	20
Police Act 1997 (c. 50)	In section 108(1), the definition of “customs officer”.	25
Police (Northern Ireland) Act 1998 (c. 32)	In section 27 – (a) subsection (1)(ca); (b) in subsection (5)(b), the word “(ca),”; (c) in subsection (7), the word “(ca),”.	
Access to Justice Act 1999 (c. 22)	In paragraph 3(1)(b) of Schedule 2, the words “or 56(3)”.	30
Regulation of Investigatory Powers Act 2000 (c. 23)	In section 56(1), the definition of “the customs and excise”. In section 81(1), the definition of “customs officer”.	35
International Criminal Court Act 2001 (c. 17)	Section 55(3). Section 62(3).	
Proceeds of Crime Act 2002 (c. 29)	Sections 1 and 2. Section 3(6) and (8). Sections 4 and 5. In section 6(3)(a), the words “or the Director”. In section 11(7), paragraph (b) and the word “or” before it. In section 14(7)(b), the words “or the Director (as the case may be)”.	40     45

Title	Extent of repeal or revocation	
Proceeds of Crime Act 2002 (c. 29) – <i>cont.</i>	In section 16 –	
	(a) in subsection (1), the words “or the Director (as the case may be)”;	5
	(b) in subsection (3), the words “or the Director (as the case may be)” and “or the Director”;	
	(c) in subsection (4), the words “or Director”;	
	(d) in subsection (5), the words “or the Director (as the case may be)” and “or the Director”;	10
	(e) in subsection (6), the words “or the Director”.	
	In section 17(1), the words “or the Director”.	15
	In section 18(6), the words “or the Director (as the case may be)”.	
	In section 19(1)(c), the words “or the Director”.	
	In section 20 –	
	(a) subsection (3);	20
	(b) in subsection (4), the words from “If the court” to “to do so,” and, in paragraph (b), the words “or the Director”.	
	In section 21(1)(b), (c) and (d), the words “or the Director”.	25
	In section 22(2), paragraph (b) and, in paragraph (c), the words “or 52”.	
	In section 23(1)(b), the words “or 52”.	
	In section 26 –	
	(a) in subsection (1)(b), the words “or the Director”;	30
	(b) in subsection (2), in paragraph (a), the words “or the Director (as the case may be)” and, in paragraph (b), the words “or the Director”.	35
	In section 27 –	
	(a) in subsection (3)(a), the words “or the Director”;	
(b) in subsection (5)(b), the words “or the Director (as the case may be)”;	40	
(c) in subsection (7), the words “or the Director”.		
In section 28 –		
(a) in subsection (3)(a), the words “or the Director”;	45	
(b) in subsection (5)(b), the words “or the Director (as the case may be)”.		
In section 31 –		
(a) in the heading, the words “or Director”;		
(b) in subsections (1) and (2), the words “or the Director”.	50	

<i>Title</i>	<i>Extent of repeal or revocation</i>
<p>Proceeds of Crime Act 2002 (c. 29) – <i>cont.</i></p>	<p>In section 33(2) –</p> <p style="padding-left: 2em;">(a) in paragraph (a), the words “(if the prosecutor appealed under section 31)”;</p> <p style="padding-left: 2em;">(b) paragraph (b). <span style="float: right;">5</span></p>
	<p>Section 34.</p> <p>In section 35(1), paragraph (b) and the word “and” before it.</p> <p>Sections 36 and 37.</p> <p>Section 39(6). <span style="float: right;">10</span></p>
	<p>In section 40 –</p> <p style="padding-left: 2em;">(a) in subsections (4)(a), (5)(a) and (6)(a), the words “or the Director”;</p> <p style="padding-left: 2em;">(b) in subsection (8)(b), the words “or the Director (as the case may be)”. <span style="float: right;">15</span></p>
	<p>Section 42(2)(b).</p> <p>Sections 52 and 53.</p> <p>Sections 56 and 57.</p> <p>Section 60.</p> <p>In section 63(1)(b), the words from “or”, where it first appears, to “Director”. <span style="float: right;">20</span></p>
	<p>In section 64 –</p> <p style="padding-left: 2em;">(a) in subsection (1)(b), the words from “or” to “section 52”;</p> <p style="padding-left: 2em;">(b) subsection (3). <span style="float: right;">25</span></p>
	<p>In section 65 –</p> <p style="padding-left: 2em;">(a) in subsections (1) and (2), the words “or section 53”;</p> <p style="padding-left: 2em;">(b) in subsection (5)(a), the words from “or”, where it first appears, to “Director”. <span style="float: right;">30</span></p>
	<p>Section 67(4)(c).</p> <p>In section 74(1) –</p> <p style="padding-left: 2em;">(a) in paragraph (b), the words “or the Director”;</p> <p style="padding-left: 2em;">(b) in paragraph (c), the words “or the Director (as the case may be)”. <span style="float: right;">35</span></p>
	<p>In section 156(3)(a), the words “or the Director”.</p> <p>In section 161(7), paragraph (b) and the word “or” before it.</p> <p>In section 164(7)(b), the words “or the Director (as the case may be)”. <span style="float: right;">40</span></p>

Title	Extent of repeal or revocation	
Proceeds of Crime Act 2002 (c. 29) – <i>cont.</i>	In section 166 –	
	(a) in subsection (1), the words “or the Director (as the case may be)”;	5
	(b) in subsection (3), the words “or the Director (as the case may be)” and “or the Director”;	
	(c) in subsection (4), the words “or Director”;	
	(d) in subsection (5), the words “or the Director (as the case may be)” and “or the Director”;	10
	(e) in subsection (6), the words “or the Director”.	
	In section 167(1), the words “or the Director”.	15
	In section 168(6), the words “or the Director (as the case may be)”.	
	In section 169(1)(c), the words “or the Director”.	
	In section 170 –	
	(a) subsection (3);	20
	(b) in subsection (4), the words from “If the court” to “to do so,” and, in paragraph (b), the words “or the Director”.	
	In section 171(1)(b), (c) and (d), the words “or the Director”.	25
	In section 172(2), paragraph (b) and, in paragraph (c), the words “or 200”.	
	In section 173(1)(b), the words “or 200”.	
	In section 176 –	
	(a) in subsection (1)(b), the words “or the Director”;	30
(b) in subsection (2), in paragraph (a), the words “or the Director (as the case may be)” and, in paragraph (b), the words “or the Director”.	35	
In section 177 –		
(a) in subsection (3)(a), the words “or the Director”;		
(b) in subsection (5)(b), the words “or the Director (as the case may be)”;	40	
(c) in subsection (7), the words “or the Director”.		
In section 178 –		
(a) in subsection (3)(a), the words “or the Director”;	45	
(b) in subsection (5)(b), the words “or the Director (as the case may be)”.		
In section 181 –		
(a) in the heading, the words “or Director”;		
(b) in subsections (1) and (2), the words “or the Director”.	50	



Title	Extent of repeal or revocation	
Proceeds of Crime Act 2002 (c. 29) – <i>cont.</i>	In section 183(2) –	
	(a) in paragraph (a), the words “(if the prosecutor appealed under section 181)”;	
	(b) paragraph (b).	5
	Section 184.	
	Section 186.	
	Section 188(6).	
	In section 189 –	
	(a) in subsections (4)(a), (5)(a) and (6)(a), the words “or the Director”;	10
	(b) in subsection (8)(b), the words “or the Director (as the case may be)”.	
	Section 191(2)(b).	
	Sections 200 and 201.	15
	Sections 204 and 205.	
	Section 208.	
	In section 210(2)(b) and (3), the words “or 200”.	
	In section 211(1)(b), the words from “or”, where it first appears, to “Director”.	20
	In section 212 –	
	(a) in subsection (1)(b), the words from “or” to “section 200”;	
	(b) subsection (3).	
	In section 213 –	25
	(a) in subsections (1) and (2), the words “or section 201”;	
	(b) in subsection (5)(a), the words from “or”, where it first appears, to “Director”.	
	Section 215(4)(d).	30
	In section 222(1) –	
(a) in paragraph (b), the words “or the Director”;		
(b) in paragraph (c), the words “or the Director (as the case may be)”.	35	
Section 313.		
Section 325(1).		
Section 356(6).		
Section 376.		
Section 378(7).	40	
In section 417(2) –		
(a) in paragraph (b), the words “or 52”;		
(b) in paragraph (d), the words “or 200”.		
In section 419(2)(b), the word “52,”.		
In section 420(2) –	45	
(a) in paragraph (b), the words “or 52”;		
(b) in paragraph (d), the words “or 200”.		
In section 422(2)(b), the word “52,”.		
In section 423(2) –		
(a) in paragraph (b), the words “or 52”;	50	
(b) in paragraph (d), the words “or 200”.		
In section 425(2)(b), the word “52,”.		

Title	Extent of repeal or revocation
Proceeds of Crime Act 2002 (c. 29) – <i>cont.</i>	<p>In section 426(2) –</p> <ul style="list-style-type: none"> <li>(a) in paragraph (b), the words “or 52”;</li> <li>(b) in paragraph (d), the words “or 200”.</li> </ul> <p>In section 427(3)(b), the word “52,”.</p> <p>In section 428(2) –</p> <ul style="list-style-type: none"> <li>(a) in paragraph (b), the words “or 52”;</li> <li>(b) in paragraph (d), the words “or 200”.</li> </ul> <p>In section 429(3)(b), the word “52,”.</p> <p>In section 430(2) –</p> <ul style="list-style-type: none"> <li>(a) in paragraph (b), the words “or 52”;</li> <li>(b) in paragraph (d), the words “or 200”.</li> </ul> <p>Sections 435 to 438.</p> <p>In section 442(1) and (2), the words “438(1)(a) or (b) or”.</p> <p>Section 449(5).</p> <p>In section 459(4)(a), the words “, 436(6), 438(9)”.</p> <p>Schedule 1.</p> <p>In Schedule 8, the words from “The Director”, where it first appears, to “by law.”, where it first appears.</p> <p>In Schedule 11, paragraphs 2, 4(2), 9(3), 30(1) and (2) and 34(1) and (2).</p>
Access to Justice (Northern Ireland) Order 2003 (S.I. 2003/435 (N.I.10))	<p>In paragraph 3(1)(a) of Schedule 2, the words “or 204(3)”.</p>
Commissioners for Revenue and Customs Act 2005 (c. 11)	<p>Paragraphs 1 and 11 of Schedule 2.          Paragraph 98 of Schedule 4.</p>
Serious Organised Crime and Police Act 2005 (c. 15)	<p>Section 99(4).          In Schedule 4 –</p> <ul style="list-style-type: none"> <li>(a) in paragraph 82(2), paragraph (b) and the word “and” at the end of paragraph (b);</li> <li>(b) paragraphs 169, 176 and 178.</li> </ul> <p>In Schedule 5, in paragraph 21(1) and (2), the words “is or”.</p>
Gambling Act 2005 (c. 19)	<p>In Part 2 of Schedule 6, the entries relating to the Director and staff of the Assets Recovery Agency, the Director General and staff of the National Crime Squad and the Director General and staff of the National Criminal Intelligence Service.</p>
Wireless Telegraphy Act 2006 (c. 36)	<p>In Schedule 7, paragraph 38.</p>
Police and Justice Act 2006 (c. 48)	<p>Section 35(2).          In section 36, in the section to be substituted for section 3 of the Computer Misuse Act 1990 (c. 18), in subsection (2), paragraph (d) and the word “or” preceding it.          Section 38(1).          In Schedule 14, paragraphs 19(2) and 29(2).</p>

# Serious Crime Bill [HL]

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## B I L L

[AS AMENDED IN PUBLIC BILL COMMITTEE]

To make provision about serious crime prevention orders; to create offences in respect of the encouragement or assistance of crime; to enable information to be shared or processed to prevent fraud or for purposes relating to proceeds of crime; to enable data matching to be conducted both in relation to fraud and for other purposes; to transfer functions of the Director of the Assets Recovery Agency to the Serious Organised Crime Agency and other persons and to make further provision in connection with the abolition of the Agency and the office of Director; to amend the Proceeds of Crime Act 2002 in relation to certain investigations and in relation to accredited financial investigators, management receivers and enforcement receivers, cash recovery proceedings and search warrants; to make amendments relating to Her Majesty's Revenue and Customs in connection with the regulation of investigatory powers; and for connected purposes.

*Brought from the Lords, 10th May 2007.*

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*Ordered, by The House of Commons,  
to be Printed, 10th July 2007.*

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