



**Law
Commission**
Reforming the law

Sentencing law in England and Wales
Legislation currently in force
Part 3.4 – Behaviour Orders

9 October 2015

Part 3. Sentencing powers and duties

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3.4 Behaviour Orders

3.4.1. Criminal Behaviour Orders

3.4.1.1. General

Note: Saving and transitional provisions are contained in ASBCPA 2014 s.33, setting out the transitional arrangements for the repeal of, amongst others, the ASBO. For the purposes of the CBO, the relevant date is the date the proceedings were begun; prior to the commencement date (20 October 2014) the power to make an ASBO is preserved and a CBO is not available.

What is a CBO?

ASBCPA 2014 s.22⁹³⁰: Power to make orders

- s.22(5) - a criminal behaviour order is an order which, for the purpose of preventing the offender from engaging in such behaviour:
- (a) prohibits the offender from doing anything described in the order;
 - (b) requires the offender to do anything described in the order.

Offenders aged under 18

ASBCPA 2014 s.23⁹³¹: Proceedings on an application for an order

- s.23(7) - subsection (8) applies in relation to proceedings in which a criminal behaviour order is made against an offender who is under the age of 18.
- s.23(8) - in so far as the proceedings relate to the making of the order:
- (a) section 49 of the Children and Young Persons Act 1933 (restrictions on reports of proceedings in which children and young persons are concerned) does not apply in respect of the offender;
 - (b) section 39 of that Act (power to prohibit publication of certain matters) does so apply.

Definitions

ASBCPA 2014 s.22⁹³²: Power to make orders

- s.22(10) - in this section “local youth offending team” means:
- (a) the youth offending team in whose area it appears to the prosecution that the offender lives, or
 - (b) if it appears to the prosecution that the offender lives in more than one such area, whichever one or more of the relevant youth offending teams the prosecution thinks appropriate.

⁹³⁰ Commencement: 20 October 2014, SI 2014/2590 art.3(a).

⁹³¹ Commencement: 20 October 2014, SI 2014/2590 art.3(a).

⁹³² Commencement: 20 October 2014, SI 2014/2590 art.3(a).

Special measures for witnesses

ASBCPA 2014 s.31⁹³³: Special measures for witnesses

- s.31(1) - chapter 1 of Part 2 of the Youth Justice and Criminal Evidence Act 1999 (special measures directions in the case of vulnerable and intimidated witnesses) applies to criminal behaviour order proceedings as it applies to criminal proceedings, but with:
- (a) the omission of the provisions of that Act mentioned in subsection (2) (which make provision appropriate only in the context of criminal proceedings), and
 - (b) any other necessary modifications.
- s.31(2) - the provisions are:
- (a) section 17(4) to (7);
 - (b) section 21(4C)(e);
 - (c) section 22A;
 - (d) section 27(10);
 - (e) section 32.
- s.31(3) - rules of court made under or for the purposes of Chapter 1 of Part 2 of that Act apply to criminal behaviour order proceedings:
- (a) to the extent provided by rules of court, and
 - (b) subject to any modifications provided by rules of court.
- s.31(4) - section 47 of that Act (restrictions on reporting special measures directions etc) applies with any necessary modifications:
- (a) to a direction under section 19 of that Act as applied by this section;
 - (b) to a direction discharging or varying such a direction.
- Sections 49 and 51 of that Act (offences) apply accordingly.
- s.31(5) - in this section “*criminal behaviour order proceedings*” means proceedings in a magistrates’ court or the Crown Court so far as relating to the issue whether to make a criminal behaviour order.

Power to issue guidance

ASBCPA 2014 s.32⁹³⁴: Guidance

- s.32(1) - the Secretary of State may issue guidance to:
- (a) chief officers of police, and
 - (b) the councils mentioned in section 29(2),
- about the exercise of their functions under this Part.
- s.32(2) - the Secretary of State may revise any guidance issued under this section.

⁹³³ Commencement: 20 October 2014, SI 2014/2590 art.3(a).

⁹³⁴ Commencement: 20 October 2014, SI 2014/2590 art.3(a).

- s.32(3) - the Secretary of State must arrange for any guidance issued or revised under this section to be published.

3.4.1.2. Availability and power to order

Availability

ASBCPA 2014 s.22⁹³⁵: Power to make orders

- s.22(1) - this section applies where a person (“the offender”) is convicted of an offence.
- s.22(6) - the court may make a criminal behaviour order against the offender only if it is made in addition to:
- (a) a sentence imposed in respect of the offence, or
 - (b) an order discharging the offender conditionally.
- s.22(7) - the court may make a criminal behaviour order against the offender only on the application of the prosecution.

Test to apply

ASBCPA 2014 s.22⁹³⁶: Power to make orders

- s.22(2) - the court may make a criminal behaviour order against the offender if two conditions are met.
- s.22(3) - the first condition is that the court is satisfied, beyond reasonable doubt, that the offender has engaged in behaviour that caused or was likely to cause harassment, alarm or distress to any person.
- s.22(4) - the second condition is that the court considers that making the order will help in preventing the offender from engaging in such behaviour.

3.4.1.3. The application for the order

Prosecution must make an application

ASBCPA 2014 s.22⁹³⁷: Power to make orders

- s.22(7) - the court may make a criminal behaviour order against the offender only on the application of the prosecution.
- s.22(8) - the prosecution must find out the views of the local youth offending team before applying for a criminal behaviour order to be made if the offender will be under the age of 18 when the application is made.

⁹³⁵ Commencement: 20 October 2014, SI 2014/2590 art.3(a).

⁹³⁶ Commencement: 20 October 2014, SI 2014/2590 art.3(a).

⁹³⁷ Commencement: 20 October 2014, SI 2014/2590 art.3(a).

Power to adjourn

ASBCPA 2014 s.23⁹³⁸: Proceedings on an application for an order

- s.23(3) - the court may adjourn any proceedings on an application for a criminal behaviour order even after sentencing the offender.
- s.23(4) - if the offender does not appear for any adjourned proceedings the court may:
- (a) further adjourn the proceedings,
 - (b) issue a warrant for the offender's arrest, or
 - (c) hear the proceedings in the offender's absence.
- s.23(5) - the court may not act under paragraph (b) of subsection (4) unless it is satisfied that the offender has had adequate notice of the time and place of the adjourned proceedings.
- s.23(6) - the court may not act under paragraph (c) of subsection (4) unless it is satisfied that the offender:
- (a) has had adequate notice of the time and place of the adjourned proceedings, and
 - (b) has been informed that if the offender does not appear for those proceedings the court may hear the proceedings in his or her absence.

Evidence

ASBCPA 2014 s.23⁹³⁹: Proceedings on an application for an order

- s.23(1) - for the purpose of deciding whether to make a criminal behaviour order the court may consider evidence led by the prosecution and evidence led by the offender.
- s.23(2) - it does not matter whether the evidence would have been admissible in the proceedings in which the offender was convicted.

3.4.1.4. Length of the order

ASBCPA 2014 s.25⁹⁴⁰: Duration of order etc.

- s.25(3) - a criminal behaviour order must specify the period (“the order period”) for which it has effect.
- s.25(4) - in the case of a criminal behaviour order made before the offender has reached the age of 18, the order period must be a fixed period of:
- (a) not less than 1 year, and
 - (b) not more than 3 years.
- s.25(5) - in the case of a criminal behaviour order made after the offender has reached the age of 18, the order period must be:
- (a) a fixed period of not less than 2 years, or

⁹³⁸ Commencement: 20 October 2014, SI 2014/2590 art.3(a).

⁹³⁹ Commencement: 20 October 2014, SI 2014/2590 art.3(a).

⁹⁴⁰ Commencement: 20 October 2014, SI 2014/2590 art.3(a).

- (b) an indefinite period (so that the order has effect until further order).

3.4.1.5. Requirements and prohibitions

Duty to avoid conflict etc.

ASBCPA 2014 s.22⁹⁴¹: Power to make orders

- s.22(9) - prohibitions and requirements in a criminal behaviour order must, so far as practicable, be such as to avoid:
- (a) any interference with the times, if any, at which the offender normally works or attends school or any other educational establishment;
 - (b) any conflict with the requirements of any other court order or injunction to which the offender may be subject.

ASBCPA 2014 s.24⁹⁴²: Requirements included in orders

- s.24(3) - before including two or more requirements, the court must consider their compatibility with each other.

Must specify person responsible for supervising compliance

ASBCPA 2014 s.24⁹⁴³: Requirements included in orders

- s.24(1) - a criminal behaviour order that includes a requirement must specify the person who is to be responsible for supervising compliance with the requirement.
- The person may be an individual or an organisation.

Duty to receive evidence as to suitability of proposed requirement

ASBCPA 2014 s.24⁹⁴⁴: Requirements included in orders

- s.24(2) - before including a requirement, the court must receive evidence about its suitability and enforceability from:
- (a) the individual to be specified under subsection (1), if an individual is to be specified;
 - (b) an individual representing the organisation to be specified under subsection (1), if an organisation is to be specified.

ASBCPA 2014 s.25⁹⁴⁵: Duration of order etc.

- s.25(6) - a criminal behaviour order may specify periods for which particular prohibitions or requirements have effect.

⁹⁴¹ Commencement: 20 October 2014, SI 2014/2590 art.3(a).

⁹⁴² Commencement: 20 October 2014, SI 2014/2590 art.3(a).

⁹⁴³ Commencement: 20 October 2014, SI 2014/2590 art.3(a).

⁹⁴⁴ Commencement: 20 October 2014, SI 2014/2590 art.3(a).

⁹⁴⁵ Commencement: 20 October 2014, SI 2014/2590 art.3(a).

3.4.1.6. Effect of the order

When does the order take effect?

ASBCPA 2014 s.25⁹⁴⁶: Duration of order etc.

- s.25(1) - a criminal behaviour order takes effect on the day it is made, subject to subsection (2).
- s.25(2) - if on the day a criminal behaviour order (“the new order”) is made the offender is subject to another criminal behaviour order (“the previous order”), the new order may be made so as to take effect on the day on which the previous order ceases to have effect. Duties of responsible officer etc.

ASBCPA 2014 s.24⁹⁴⁷: Requirements included in orders

- s.24(4) - it is the duty of a person specified under subsection (1):
- (a) to make any necessary arrangements in connection with the requirements for which the person has responsibility (the “relevant requirements”);
 - (b) to promote the offender's compliance with the relevant requirements;
 - (c) if the person considers that the offender:
 - (i) has complied with all the relevant requirements, or
 - (ii) has failed to comply with a relevant requirement,to inform the prosecution and the appropriate chief officer of police.
- s.24(5) - in subsection (4)(c) “the appropriate chief officer of police” means:
- (a) the chief officer of police for the police area in which it appears to the person specified under subsection (1) that the offender lives, or
 - (b) if it appears to that person that the offender lives in more than one police area, whichever of the relevant chief officers of police that person thinks it most appropriate to inform.

Duties of the offender

ASBCPA 2014 s.24⁹⁴⁸: Requirements included in orders

- s.24(6) - an offender subject to a requirement in a criminal behaviour order must:
- (a) keep in touch with the person specified under subsection (1) in relation to that requirement, in accordance with any instructions given by that person from time to time;
 - (b) notify the person of any change of address.

These obligations have effect as requirements of the order.

⁹⁴⁶ Commencement: 20 October 2014, SI 2014/2590 art.3(a).

⁹⁴⁷ Commencement: 20 October 2014, SI 2014/2590 art.3(a).

⁹⁴⁸ Commencement: 20 October 2014, SI 2014/2590 art.3(a).

3.4.1.7. Interaction with other sentencing orders

Can only be made in conjunction with “a sentence”

ASBCPA 2014 s.22⁹⁴⁹: Power to make orders

- s.22(6) - the court may make a criminal behaviour order against the offender only if it is made in addition to:
- (a) a sentence imposed in respect of the offence, or
 - (b) an order discharging the offender conditionally.

Conditional discharges

ASBCPA 2014 s.22⁹⁵⁰: Power to make orders

- s.22(6) - the court may make a criminal behaviour order against the offender only if it is made in addition to:
- (a) a sentence imposed in respect of the offence, or
 - (b) an order discharging the offender conditionally.

Imprisonment

Magistrates’ Courts Sentencing Guidelines, Sentencing Guidelines Council

[...] [W]here a custodial sentence of 12 months or more is imposed and the offender is liable to be released on licence and thus subject to recall, an order will not generally be necessary. There might be cases where geographical restraints could supplement licence conditions.

Note: The excerpt from the guidelines concerns ASBOs, not CBOs, however it is likely the guidance would be considered to apply to CBOs due to the similarity in the nature of the two orders.

Parenting orders

CDA 1998 s.9⁹⁵¹: Parenting orders: supplemental

- s.9(1) - where a person under the age of 16 is convicted of an offence, the court: (a) if it is satisfied that the relevant condition is fulfilled, shall make a parenting order; and (b) if it is not so satisfied, shall state in open court that it is not and why it is not.
- s.9(1B) - if an injunction under the Anti-social Behaviour, Crime and Policing Act 2014 s.1 is granted or a criminal behaviour order is made under s.22 of that Act in respect of a person under the age of 16 the court: (a) must make a parenting order if it is satisfied that the relevant condition is fulfilled; (b) if it is not so satisfied, must state in open court that it is not and why it is not.

⁹⁴⁹ Commencement: 20 October 2014, SI 2014/2590 art.3(a).

⁹⁵⁰ Commencement: 20 October 2014, SI 2014/2590 art.3(a).

⁹⁵¹ Commencement: 30 September 1998, SI 1998/2327 art.2(1)(a)

3.4.1.8. Variation or discharge of orders

General

ASBCPA 2014 s.27⁹⁵²: Variation or discharge of orders

s.27(6) - in the case of a criminal behaviour order made by a magistrates' court, the references in this section to the court which made the order include a reference to any magistrates' court acting in the same local justice area as that court.

Power

ASBCPA 2014 s.27⁹⁵³: Variation or discharge of orders

s.27(1) - a criminal behaviour order may be varied or discharged by the court which made it on the application of:

- (a) the offender, or
- (b) the prosecution.

Extent of power

ASBCPA 2014 s.27⁹⁵⁴: Variation or discharge of orders

s.27(4) - the power to vary an order includes power to include an additional prohibition or requirement in the order or to extend the period for which a prohibition or requirement has effect.

s.27(5) - Section 24 (requirements) applies to additional requirements included under subsection (4) as it applies to requirements included in a new order.

No further application after dismissal of previous application

ASBCPA 2014 s.27⁹⁵⁵: Variation or discharge of orders

s.27(2) - if an application by the offender under this section is dismissed, the offender may make no further application under this section without:

- (a) the consent of the court which made the order, or
- (b) the agreement of the prosecution.

s.27(3) - if an application by the prosecution under this section is dismissed, the prosecution may make no further application under this section without:

- (a) the consent of the court which made the order, or
- (b) the agreement of the offender.

⁹⁵² Commencement: 20 October 2014, SI 2014/2590 art.3(a).

⁹⁵³ Commencement: 20 October 2014, SI 2014/2590 art.3(a).

⁹⁵⁴ Commencement: 20 October 2014, SI 2014/2590 art.3(a).

⁹⁵⁵ Commencement: 20 October 2014, SI 2014/2590 art.3(a).

3.4.1.9. Reviews of orders

ASBCPA 2014 s.28⁹⁵⁶: Review of orders

Applicability

s.28(1) - if:

- (a) a person subject to a criminal behaviour order will be under the age of 18 at the end of a review period (see subsection (2)),
- (b) the term of the order runs until the end of that period or beyond, and
- (c) the order is not discharged before the end of that period,

a review of the operation of the order must be carried out before the end of that period.

Review periods

ASBCPA 2014 s.28⁹⁵⁷: Review of orders

s.28(2) - the “review periods” are:

- (a) the period of 12 months beginning with:
 - (i) the day on which the criminal behaviour order takes effect, or
 - (ii) if during that period the order is varied under section 27, the day on which it is varied (or most recently varied, if the order is varied more than once);
- (b) a period of 12 months beginning with:
 - (i) the day after the end of the previous review period, or
 - (ii) if during that period of 12 months the order is varied under section 27, the day on which it is varied (or most recently varied, if the order is varied more than once).

Contents of review

ASBCPA 2014 s.28⁹⁵⁸: Review of orders

s.28(3) - a review under this section must include consideration of:

- (a) the extent to which the offender has complied with the order;
- (b) the adequacy of any support available to the offender to help him or her comply with it;
- (c) any matters relevant to the question whether an application should be made for the order to be varied or discharged.

⁹⁵⁶ Commencement: 20 October 2014, SI 2014/2590 art.3(a).

⁹⁵⁷ Commencement: 20 October 2014, SI 2014/2590 art.3(a).

⁹⁵⁸ Commencement: 20 October 2014, SI 2014/2590 art.3(a).

Carrying out reviews

ASBCPA 2014 s.29⁹⁵⁹: Carrying out and participating in reviews

- s.29(1) - a review under section 28 is to be carried out by the chief officer of police of the police force maintained for the police area in which the offender lives or appears to be living.
- s.29(2) - the chief officer, in carrying out a review under section 28, must act in co-operation with the council for the local government area in which the offender lives or appears to be living; and the council must co-operate in the carrying out of the review.
- s.29(3) - the chief officer may invite the participation in the review of any other person or body.
- s.29(4) - in this section “local government area” means:
 - (a) in relation to England, a district or London borough, the City of London, the Isle of Wight and the Isles of Scilly;
 - (b) in relation to Wales, a county or a county borough.For the purposes of this section, the council for the Inner and Middle Temples is the Common Council of the City of London.

Guidance

ASBCPA 2014 s.28⁹⁶⁰: Review of orders

- s.28(4) - those carrying out or participating in a review under this section must have regard to any relevant guidance issued by the Secretary of State under section 32 when considering:
 - (a) how the review should be carried out;
 - (b) what particular matters the review should deal with;
 - (c) what action (if any) it would be appropriate to take as a result of the findings of the review.

3.4.1.10. Interim orders

ASBCPA 2014 s.26⁹⁶¹: Interim orders

- s.26(1) - this section applies where a court adjourns the hearing of an application for a criminal behaviour order.
- s.26(2) - the court may make a criminal behaviour order that lasts until the final hearing of the application or until further order (“an interim order”) if the court thinks it just to do so.
- s.26(3) - Section 22(6) to (8) and section 25(3) to (5) do not apply in relation to the making of an interim order.
- s.26(4) - subject to that, the court has the same powers whether or not the criminal behaviour order is an interim order.

⁹⁵⁹ Commencement: 20 October 2014, SI 2014/2590 art.3(a).

⁹⁶⁰ Commencement: 20 October 2014, SI 2014/2590 art.3(a).

⁹⁶¹ Commencement: 20 October 2014, SI 2014/2590 art.3(a).

3.4.1.11. Breach

Offence

ASBCPA 2014 s.30⁹⁶²: Breach of order

- s.30(1) - a person who without reasonable excuse:
- (a) does anything he or she is prohibited from doing by a criminal behaviour order, or
 - (b) fails to do anything he or she is required to do by a criminal behaviour order, commits an offence.

Penalty

ASBCPA 2014 s.30⁹⁶³: Breach of order

- s.30(2) - a person guilty of an offence under this section is liable:
- (a) on summary conviction, to imprisonment for a period not exceeding 6 months or to a fine, or to both;
 - (b) on conviction on indictment, to imprisonment for a period not exceeding 5 years or to a fine, or to both.

Restriction on imposing absolute or conditional discharge

ASBCPA 2014 s.30⁹⁶⁴: Breach of order

- s.30(3) - if a person is convicted of an offence under this section, it is not open to the court by or before which the person is convicted to make an order under subsection (1)(b) of section 12 of the Powers of Criminal Courts (Sentencing) Act 2000 (conditional discharge).

Procedural requirements

ASBCPA 2014 s.30⁹⁶⁵: Breach of order

- s.30(4) - in proceedings for an offence under this section, a copy of the original criminal behaviour order, certified 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.

Reporting restrictions

ASBCPA 2014 s.30⁹⁶⁶: Breach of order

- s.30(5) - in relation to any proceedings for an offence under this section that are brought against a person under the age of 18:

⁹⁶² Commencement: 20 October 2014, SI 2014/2590 art.3(a).

⁹⁶³ Commencement: 20 October 2014, SI 2014/2590 art.3(a).

⁹⁶⁴ Commencement: 20 October 2014, SI 2014/2590 art.3(a).

⁹⁶⁵ Commencement: 20 October 2014, SI 2014/2590 art.3(a).

⁹⁶⁶ Commencement: 20 October 2014, SI 2014/2590 art.3(a).

- (a) section 49 of the Children and Young Persons Act 1933 (restrictions on reports of proceedings in which children and young persons are concerned) does not apply in respect of the person;
- (b) section 45 of the Youth Justice and Criminal Evidence Act 1999 (power to restrict reporting of criminal proceedings involving persons under 18) does so apply.

s.30(6) - if, in relation to any proceedings mentioned in subsection (5), the court does exercise its power to give a direction under section 45 of the Youth Justice and Criminal Evidence Act 1999, it must give its reasons for doing so.

3.4.2. Disqualification from being the director of a company

3.4.2.1. General

Note: There are a number of civil powers under the 1986 Act, for obvious reasons, these are not included in this document. Below are details of the orders a court can make upon a conviction for a relevant offence and, for context, the provision setting out a disqualification undertaking.

Taking account of matters other than criminal convictions

Company Directors Disqualification Act 1986 s.1⁹⁶⁷: Disqualification orders: general

s.1(4) - a disqualification order may be made on grounds which are or include matters other than criminal convictions, notwithstanding that the person in respect of whom it is to be made may be criminally liable in respect of those matters.

3.4.2.2. Effect

What is a disqualification order?

Company Directors Disqualification Act 1986 s.1⁹⁶⁸: Disqualification orders: general

s.1(1) - in the circumstances specified below in this Act a court may, and under sections 6 and 9A shall, make against a person a disqualification order, that is to say an order that for a period specified in the order:

- (a) he shall not be a director of a company, act as receiver of a company's property or in any way, whether directly or indirectly, be concerned or take part in the promotion, formation or management of a company unless (in each case) he has the leave of the court, and
- (b) he shall not act as an insolvency practitioner.

R. v Cole 1998 BCC 87

A judge cannot pick and choose which disqualification applies; the legislation envisages one disqualification with a number of consequences, not five different types of disqualification.

Note: The Act has been amended since this decision but there is no reason to suspect that the position is any different now.

R. v Ward [2001] EWCA Crim 1648

There is no power to limit the disqualification; the disqualification applies to all categories listed in section 1.

When does the disqualification begin?

Company Directors Disqualification Act 1986 s.1⁹⁶⁹: Disqualification orders: general

s.1(2) - in each section of this Act which gives to a court power or, as the case may be, imposes on it the duty to make a disqualification order there is specified the maximum (and, in section 6, the minimum) period of disqualification which may or (as the case

⁹⁶⁷ Commencement: 29 December 1986, CDDA 1986 s.25, IA 1986 s.443 and SI 1986/1924 art.3.

⁹⁶⁸ Commencement: 29 December 1986, CDDA 1986 s.25, IA 1986 s.443 and SI 1986/1924 art.3.

⁹⁶⁹ Commencement: 29 December 1986, CDDA 1986 s.25, IA 1986 s.443 and SI 1986/1924 art.3.

may be) must be imposed by means of the order and, unless the court otherwise orders, the period of disqualification so imposed shall begin at the end of the period of 21 days beginning with the date of the order.

3.4.2.3. Disqualification following conviction for indictable offence

Discretionary power

Company Directors Disqualification Act 1986 s.2⁹⁷⁰: Disqualification on conviction of indictable offence

s.2(1) - the court may make a disqualification order against a person where he is convicted of an indictable offence (whether on indictment or summarily) in connection with the promotion, formation, management, liquidation or striking off of a company with the receivership of a company's property or with his being an administrative receiver of a company.

Maximum length

Company Directors Disqualification Act 1986 s.2⁹⁷¹: Disqualification on conviction of indictable offence

s.2(3) The maximum period of disqualification under this section is:

- (a) where the disqualification order is made by a court of summary jurisdiction, 5 years, and
- (b) in any other case, 15 years.

Interpretation

Company Directors Disqualification Act 1986 s.2⁹⁷²: Disqualification on conviction of indictable offence

s.2(2) - “The court” for this purpose means:

- (a) any court having jurisdiction to wind up the company in relation to which the offence was committed, or
- (b) the court by or before which the person is convicted of the offence, or
- (c) in the case of a summary conviction in England and Wales, any other magistrates' court acting in the same local justice area;

and for the purposes of this section the definition of “*indictable offence*” in Schedule 1 to the Interpretation Act 1978 applies for Scotland as it does for England and Wales.

⁹⁷⁰ Commencement: 29 December 1986, CDDA 1986 s.25, IA 1986 s.443 and SI 1986/1924 art.3.

⁹⁷¹ Commencement: 29 December 1986, CDDA 1986 s.25, IA 1986 s.443 and SI 1986/1924 art.3.

⁹⁷² Commencement: 29 December 1986, CDDA 1986 s.25, IA 1986 s.443 and SI 1986/1924 art.3.

3.4.2.4. Disqualification following conviction for a summary offence

Availability

Company Directors Disqualification Act 1986 s.5⁹⁷³: Disqualification on summary conviction

- s.5(1) - an offence counting for the purposes of this section is one of which a person is convicted (either on indictment or summarily) in consequence of a contravention of, or failure to comply with, any provision of the companies legislation requiring a return, account or other document to be filed with, delivered or sent, or notice of any matter to be given, to the registrar of companies (whether the contravention or failure is on the person's own part or on the part of any company).

Power

Company Directors Disqualification Act 1986 s.5⁹⁷⁴: Disqualification on summary conviction

- s.5(2) - where a person is convicted of a summary offence counting for those purposes, the court by which he is convicted (or, in England and Wales, any other magistrates' court acting in the same local justice area) may make a disqualification order against him if the circumstances specified in the next subsection are present.
- s.5(3) - those circumstances are that, during the 5 years ending with the date of the conviction, the person has had made against him, or has been convicted of, in total not less than 3 default orders and offences counting for the purposes of this section; and those offences may include that of which he is convicted as mentioned in subsection (2) and any other offence of which he is convicted on the same occasion.

Maximum length

Company Directors Disqualification Act 1986 s.5⁹⁷⁵: Disqualification on summary conviction

- s.5(5) - the maximum period of disqualification under this section is 5 years.

Interpretation

Company Directors Disqualification Act 1986 s.5⁹⁷⁶: Disqualification on summary conviction

- s.5(4) - for the purposes of this section:
- (a) the definition of “summary offence” in Schedule 1 to the Interpretation Act 1978 applies for Scotland as for England and Wales, and
 - (b) “default order” means the same as in section 3(3)(b).
- s.5(4A) - in this section “the companies legislation” means the Companies Acts and Parts 1 to 7 of the Insolvency Act 1986 (company insolvency and winding up).

⁹⁷³ Commencement: 29 December 1986, CDDA 1986 s.25, IA 1986 s.443 and SI 1986/1924 art.3.

⁹⁷⁴ Commencement: 29 December 1986, CDDA 1986 s.25, IA 1986 s.443 and SI 1986/1924 art.3.

⁹⁷⁵ Commencement: 29 December 1986, CDDA 1986 s.25, IA 1986 s.443 and SI 1986/1924 art.3.

⁹⁷⁶ Commencement: 29 December 1986, CDDA 1986 s.25, IA 1986 s.443 and SI 1986/1924 art.3.

3.4.2.5. Disqualification undertakings

Company Directors Disqualification Act 1986 s.1A⁹⁷⁷: Disqualification undertakings: general

- s.1A(1) - in the circumstances specified in sections 7 and 8 the Secretary of State may accept a disqualification undertaking, that is to say an undertaking by any person that, for a period specified in the undertaking, the person:
- (a) will not be a director of a company, act as receiver of a company's property or in any way, whether directly or indirectly, be concerned or take part in the promotion, formation or management of a company unless (in each case) he has the leave of a court, and
 - (b) will not act as an insolvency practitioner.
- s.1A(2) - the maximum period which may be specified in a disqualification undertaking is 15 years; and the minimum period which may be specified in a disqualification undertaking under section 7 is two years.
- s.1A(3) - where a disqualification undertaking by a person who is already subject to such an undertaking or to a disqualification order is accepted, the periods specified in those undertakings or (as the case may be) the undertaking and the order shall run concurrently.
- s.1A(4) - in determining whether to accept a disqualification undertaking by any person, the Secretary of State may take account of matters other than criminal convictions, notwithstanding that the person may be criminally liable in respect of those matters.

3.4.2.6. Interaction with other sentencing orders

Compensation orders

R. v Holmes (1992) 13 Cr. App. R. (S.) 29

A sentencer who imposes a compensation order should be careful not to reduce or inhibit the defendant's means to pay the order. When a compensation order is made it is generally wrong in principle to inhibit a defendant from freely engaging in business activities which must have been contemplated as necessary for the purposes of fulfilling his obligations under the compensation order, by disqualifying him from acting as a director of a company.

Discharges

PCC(S)A 2000 s.12⁹⁷⁸: Absolute and conditional discharge

- s.12(7) - nothing in this section shall be construed as preventing a court, on discharging an offender absolutely or conditionally in respect of any offence, from [...] imposing any disqualification on him [...]

⁹⁷⁷ Commencement: 2 April 2001, as inserted by IA 2000 s.6(2), SI 2001/766 art.2(1)(a).

⁹⁷⁸ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

Disqualification undertakings

Company Directors Disqualification Act 1986 s.1⁹⁷⁹: Disqualification orders: general

s.1(3) - where a disqualification order is made against a person who is already subject to such an order or to a disqualification undertaking, the periods specified in those orders or, as the case may be, in the order and the undertaking shall run concurrently.

3.4.2.7. Breach

Company Directors Disqualification Act 1986 s.13⁹⁸⁰: Criminal penalties

s.13 - if a person acts in contravention of a disqualification order or disqualification undertaking or in contravention of section 12(2), 12A or 12B, or is guilty of an offence under section 11, he is liable:

- (a) on conviction on indictment, to imprisonment for not more than 2 years or a fine, or both; and
- (b) on summary conviction, to imprisonment for not more than 6 months or a fine not exceeding the statutory maximum, or both.

⁹⁷⁹ Commencement: 29 December 1986, CDDA 1986 s.25, IA 1986 s.443 and SI 1986/1924 art.3.

⁹⁸⁰ Commencement: 29 December 1986, CDDA 1986 s.25, IA 1986 s.443 and SI 1986/1924 art.3.

3.4.3. Exclusion Orders

3.4.3.1. Power to order and availability

Power

LP(ECP)A 1980 s.1⁹⁸¹: Exclusion orders

- s.1(1) - where a court by or before which a person is convicted of an offence committed on licensed premises is satisfied that in committing that offence he resorted to violence or offered or threatened to resort to violence, the court may, subject to subsection (2) below, make an order (in this Act referred to as an “*exclusion order*”) prohibiting him from entering those premises or any other specified premises, without the express consent of the licensee of the premises or his servant or agent.

Availability

LP(ECP)A 1980 s.1⁹⁸²: Exclusion orders

- s.1(2) - an exclusion order may be made either:
- (a) in addition to any sentence which is imposed in respect of the offence of which the person is convicted; or
 - (b) where the offence was committed in England and Wales, notwithstanding the provisions of section 12 and 14 of the Powers of Criminal Courts (Sentencing) Act 2000 (cases in which absolute and conditional discharges may be made, and their effect), in addition to an order discharging him absolutely or conditionally;
 - (c) where the offence was committed in Scotland, notwithstanding the provisions of [sections 228,246(2) and (3) and 247 of the Criminal Procedure (Scotland) Act 1995 (cases in which probation orders and absolute discharges may be made, and their effect), in addition to a probation order or an order discharging him absolutely;
- but not otherwise.

Length of the order

LP(ECP)A 1980 s.1⁹⁸³: Exclusion orders

- s.1(3) - an exclusion order shall have effect for such period, not less than three months or more than two years, as is specified in the order, unless it is terminated under section 2(2) below.

⁹⁸¹ Commencement: 30 June 1980. entirety of the 1980 Act is repealed by VCRA 2006 Sch.5, however the provision has not yet been commenced for that purpose.

⁹⁸² Commencement: 30 June 1980. The entirety of the 1980 Act is repealed by VCRA 2006 Sch.5, however the provision has not yet been commenced for that purpose.

⁹⁸³ Commencement: 30 June 1980. The entirety of the 1980 Act is repealed by VCRA 2006 Sch.5, however the provision has not yet been commenced for that purpose.

3.4.3.2. Power to expel individuals from premises where licensee believes they are in breach of an exclusion order

LP(ECP)A 1980 s.3⁹⁸⁴: Power to expel person from licensed premises

- s.3 - without prejudice to any other right to expel a person from premises, the licensee of licensed premises or his servant or agent may expel from those premises any person who has entered or whom he reasonably suspects of having entered the premises in breach of an exclusion order; and a constable shall on the demand of the licensee or his servant or agent help to expel from licensed premises any person whom the constable reasonably suspects of having entered in breach of an exclusion order.

3.4.3.3. Interpretation

LP(ECP)A 1980 s.4⁹⁸⁵: Supplemental

- s.4(1) - in this Act:
- “licensed premises”*, in relation to England and Wales, means premises in respect of which there is in force a premises licence under the Licensing Act 2003 authorising the supply of alcohol (within the meaning of section 14 of that Act) for consumption on the premises and, in relation to Scotland, means premises in respect of which a licence under the Licensing (Scotland) Act 1976, other than an off-sales licence or a licence under Part III of that Act (licences for seamen's canteens), is in force; and
- “licensee”* in relation to any licensed premises means the holder of the licence granted in respect of those premises; and
- “specified premises”*, in relation to an exclusion order, means any licensed premises which the court may specify by name and address in the order.
- s.4(2) - in the application of section 1 above to Scotland, the reference in subsection (1) of that section to a person's being convicted of an offence shall, in relation to proceedings in a court of summary jurisdiction in which the court, without proceeding to conviction, discharges him absolutely under section 383 of the Criminal Procedure (Scotland) Act 1975 or makes a probation order under section 384 of that Act, shall be construed as a reference to the court's being satisfied that he committed the offence.
- s.4(3) - where a court makes an exclusion order or an order terminating or varying an exclusion order, the proper officer of the court shall send a copy of the order to the licensee of the premises to which the order relates.
- s.4(4) - for the purposes of subsection (3) above:
- (a) the proper officer of a magistrates' court in England and Wales is the designated officer for the court;
 - (b) the proper officer of the Crown Court is the appropriate officer; and
 - (c) the proper officer of a court in Scotland is the clerk of the court.

⁹⁸⁴ Commencement: 30 June 1980. The entirety of the 1980 Act is repealed by VCRA 2006 Sch.5, however the provision has not yet been commenced for that purpose.

⁹⁸⁵ Commencement: 30 June 1980. The entirety of the 1980 Act is repealed by VCRA 2006 Sch.5, however the provision has not yet been commenced for that purpose.

3.4.3.4. Breach

LP(ECP)A 1980 s.2⁹⁸⁶: Penalty for non-compliance with exclusion order

- s.2(1) - a person who enters any premises in breach of an exclusion order shall be guilty of an offence and shall be liable on summary conviction or, in Scotland, on conviction in a court of summary jurisdiction to a fine not exceeding [level 4 on the standard scale]¹ or to imprisonment for a term not exceeding one month or both.
- s.2(2) - the court by which a person is convicted of an offence under subsection (1) above shall consider whether or not the exclusion order should continue in force, and may, if it thinks fit, by order terminate the exclusion order or vary it by deleting the name of any specified premises, but an exclusion order shall not otherwise be affected by a person's conviction for such an offence.

⁹⁸⁶ Commencement: 30 June 1980. The entirety of the 1980 Act is repealed by VCRA 2006 Sch.5, however the provision has not yet been commenced for that purpose.

3.4.4. Football Banning Orders

3.4.4.1. General

Definitions

F(S)A 1989 s.14⁹⁸⁷: Main definitions

- s.14(1) - this section applies for the purposes of this Part.
- s.14(2) - “*Regulated football match*” means an association football match (whether in the United Kingdom or elsewhere) which is a prescribed match or a match of a prescribed description .
- s.14(3) - “*External tournament*” means a football competition which includes regulated football matches outside the United Kingdom.
- s.14(4) - “*Banning order*” means an order made by the court under this Part which:
- (a) in relation to regulated football matches in [the United Kingdom, prohibits the person who is subject to the order from entering any premises for the purpose of attending such matches, and
 - (b) in relation to regulated football matches outside [the United Kingdom, requires that person to report at a police station in accordance with this Part.
- s.14(5) - “*Control period*”, in relation to a regulated football match outside the United Kingdom, means the period:
- (a) beginning five days before the day of the match, and
 - (b) ending when the match is finished or cancelled.
- s.14(6) - “*Control period*”, in relation to an external tournament, means any period described in an order made by the Secretary of State:
- (a) beginning five days before the day of the first football match outside the United Kingdom which is included in the tournament, and
 - (b) ending when the last football match outside the United Kingdom which is included in the tournament is finished or cancelled,
- but, for the purposes of paragraph (a), any football match included in the qualifying or pre-qualifying stages of the tournament is to be left out of account.
- s.14(7) - references to football matches are to football matches played or intended to be played.
- s.14(8) - “*Relevant offence*” means an offence to which Schedule 1 to this Act applies.

F(S)A 1989 s.14C⁹⁸⁸: Banning orders supplementary

- s.14C(1) - in this Part, “*violence*” means violence against persons or property and includes threatening violence and doing anything which endangers the life of any person.

⁹⁸⁷ Commencement: 22 March 1990, SI 1990/690 art.2

⁹⁸⁸ Commencement: 28 August 2000, as inserted by F(D)A 2000 Sch.1 para.2, SI 2000/2125 art.2.

s.14C(2) - in this Part, “disorder” includes:

- (a) stirring up hatred against a group of persons defined by reference to colour, race, nationality (including citizenship) or ethnic or national origins, or against an individual as a member of such a group,
- (b) using threatening, abusive or insulting words or behaviour or disorderly behaviour,
- (c) displaying any writing or other thing which is threatening, abusive or insulting.

s.14C(3) - in this Part, “violence” and “disorder” are not limited to violence or disorder in connection with football.

Photographs

POA 1986 s.35⁹⁸⁹: Photographs

s.35(1) - the court by which a banning order is made may make an order which—

- (a) requires a constable to take a photograph of the person to whom the banning order relates or to cause such a photograph to be taken, and
- (b) requires that person to go to a specified police station not later than 7 clear days after the day on which the order under this section is made, and at a specified time of day or between specified times of day, in order to have his photograph taken.

s.35(2) - in subsection (1) “specified” means specified in the order made under this section and “banning order” has the same meaning as in Part II of the football spectators act 1989.

s.35(3) - no order may be made under this section unless an application to make it is made to the court by or on behalf of the person who is the prosecutor in respect of the offence leading to the banning order or (in the case of a banning order made under section 14B of the Football Spectators Act 1989) the complainant.

s.35(4) - if the person to whom the banning order relates fails to comply with an order under this section a constable may arrest him without warrant in order that his photograph may be taken.

Note: There is a power under POA 1986 s.37 to extend s.35 to other sporting events.

3.4.4.2. Banning orders made on conviction

3.4.4.2.1 Availability

F(S)A 1989 s.14A⁹⁹⁰: Banning orders made on conviction of an offence

s.14A(1) - this section applies where a person (the “offender”) is convicted of a relevant offence.

s.14A(4) - a banning order may only be made under this section:

- (a) in addition to a sentence imposed in respect of the relevant offence, or
- (b) in addition to an order discharging him conditionally.

⁹⁸⁹ Commencement: 1 August 1987, SI 1987/852 art.2 and Sch.1

⁹⁹⁰ Commencement: 28 August 2000, as inserted by F(D)A 2000 Sch.1 para.2, SI 2000/2125 art.2.

s.14A(5) - a banning order may be made as mentioned in subsection (4)(b) above in spite of anything in sections 12 and 14 of the Powers of the Criminal Courts (Sentencing) Act 2000 (which relate to orders discharging a person absolutely or conditionally and their effect).

F(S)A 1989 s.14⁹⁹¹: Main definitions

s.14(8) - “*Relevant offence*” means an offence to which Schedule 1 to this Act applies.

3.4.4.2.2 Declarations of relevance

What is a declaration of relevance?

F(S)A 1989 s.23⁹⁹²: Further provision about, and appeals against, declarations of relevance

s.23(5) - in this section “*declaration of relevance*” means a declaration by a court for the purposes of Schedule 1 to this Act that an offence related to football matches, or that it related to one or more particular football matches.

F(S)A 1989 Sch.1⁹⁹³

Note: The schedule lists the relevant offences for the purposes of football banning orders. The schedule has not been reproduced here.

Making a declaration of relevance

F(S)A 1989 s.23⁹⁹⁴: Further provision about, and appeals against, declarations of relevance

s.23(1) - subject to subsection (2) below, a court may not make a declaration of relevance as respects any offence unless it is satisfied that the prosecutor gave notice to the defendant, at least five days before the first day of the trial, that it was proposed to show that the offence related to football matches, to a particular football match or to particular football matches (as the case may be).

s.23(2) - a court may, in any particular case, make a declaration of relevance notwithstanding that notice to the defendant as required by subsection (1) above has not been given if he consents to waive the giving of full notice or the court is satisfied that the interests of justice do not require more notice to be given.

Appeals

F(S)A 1989 s.23⁹⁹⁵: Further provision about, and appeals against, declarations of relevance

s.23(3) - a person convicted of an offence as respects which the court makes a declaration of relevance may appeal against the making of the declaration of relevance as if the declaration were included in any sentence passed on him for the offence, and accordingly:

⁹⁹¹ Commencement: 22 March 1990, SI 1990/690 art.2

⁹⁹² Commencement: 24 April 1990, SI 1990/690 art.3.

⁹⁹³ Commencement: 24 April 1990, SI 1990/690 art.2.

⁹⁹⁴ Commencement: 24 April 1990, SI 1990/690 art.3.

⁹⁹⁵ Commencement: 24 April 1990, SI 1990/690 art.3.

- (a) in section 10(3) of the Criminal Appeal Act 1968 (appeals against sentence by Crown Court), in paragraph (c), after the sub-paragraph (iv) inserted by section 15(7) above there shall be inserted
“or
(v) a declaration of relevance under the Football Spectators Act 1989”;
- (b) in section 50(1) of that Act (meaning of “sentence”), at the end there shall be inserted the words “and a declaration of relevance under the Football Spectators Act 1989”; and
- (c) in section 108(3) of the Magistrates' Courts Act 1980 (right of appeal to the Crown Court), at the end there shall be inserted the words “and also includes a declaration of relevance under the Football Spectators Act 1989”

Convictions quashed on appeals

F(S)A 1989 s.23⁹⁹⁶: Further provision about, and appeals against, declarations of relevance

s.23(4) - a banning order made upon a person's conviction of a relevant offence shall be quashed if the making of a declaration of relevance as respects that offence is reversed on appeal.

3.4.4.2.3 Making the order

Test to apply

F(S)A 1989 s.14A⁹⁹⁷: Banning orders made on conviction of an offence

s.14A(2) - if the court is satisfied that there are reasonable grounds to believe that making a banning order would help to prevent violence or disorder at or in connection with any regulated football matches, it must make such an order in respect of the offender.

R. v Hughes [2005] EWCA Crim 2537; [2006] 1 Cr. App. R. (S.) 107 (p.632)

“[Under section 14A] the first element—the conviction of a relevant offence—will already have been established to the criminal standard. [...] [T]he legislature expected, in a normal case, that the conviction itself would be sufficient to satisfy the court under subs.(2) , but that if there were something in the particular case that meant that the judge was not so satisfied then he should explain what it was in open court. There is clearly no requirement under s.14A for either repetition or propensity.” (HHJ Gordon at [13])

Evidence and standard of proof

F(S)A 1989 s.14A⁹⁹⁸: Banning orders made on conviction of an offence

s.14A(3A) -for the purpose of deciding whether to make an order under this section the court may consider evidence led by the prosecution and the defence.

s.14A(3B) -it is immaterial whether evidence led in pursuance of subsection (3A) would have been admissible in the proceedings in which the offender was convicted.

⁹⁹⁶ Commencement: 24 April 1990, SI 1990/690 art.3.

⁹⁹⁷ Commencement: 28 August 2000, as inserted by F(D)A 2000 Sch.1 para.2, SI 2000/2125 art.2.

⁹⁹⁸ Commencement: 28 August 2000, as inserted by F(D)A 2000 Sch.1 para.2, SI 2000/2125 art.2.

Duty to give reasons where test not satisfied

F(S)A 1989 s.14A⁹⁹⁹: Banning orders made on conviction of an offence

s.14A(3) - if the court is not so satisfied, it must in open court state that fact and give its reasons.

Power to adjourn

F(S)A 1989 s.14A¹⁰⁰⁰: Banning orders made on conviction of an offence

s.14A(4A) - the court may adjourn any proceedings in relation to an order under this section even after sentencing the offender.

s.14A(4B) - if the offender does not appear for any adjourned proceedings, the court may further adjourn the proceedings or may issue a warrant for his arrest.

s.14A(4BA) - if the court adjourns or further adjourns any proceedings under subsection (4A) or (4B), the court may remand the offender.

s.14A(4BB) - a person who, by virtue of subsection (4BA), is remanded on bail may be required by the conditions of his bail:

- (a) not to leave England and Wales before his appearance before the court, and
- (b) if the control period relates to a regulated football match outside the United Kingdom or to an external tournament which includes such matches, to surrender his passport to a police constable, if he has not already done so.

s.14A(4C) - the court may not issue a warrant under subsection (4B) above for the offender's arrest unless it is satisfied that he has had adequate notice of the time and place of the adjourned proceedings.

Length of orders

F(S)A 1989 s.14F¹⁰⁰¹: Period of banning orders.

s.14F(1) - subject to the following provisions of this Part, a banning order has effect for a period beginning with the day on which the order is made.

s.14F(2) - the period must not be longer than the maximum or shorter than the minimum.

s.14F(3) - where the order is made under section 14A above in addition to a sentence of imprisonment taking immediate effect, the maximum is ten years and the minimum is six years; and in this subsection "*imprisonment*" includes any form of detention.

s.14F(4) - in any other case where the order is made under section 14A above, the maximum is five years and the minimum is three years.

⁹⁹⁹ Commencement: 28 August 2000, as inserted by F(D)A 2000 Sch.1 para.2, SI 2000/2125 art.2.

¹⁰⁰⁰ Commencement: 28 August 2000, as inserted by F(D)A 2000 Sch.1 para.2, SI 2000/2125 art.2.

¹⁰⁰¹ Commencement: 28 August 2000, as inserted by F(D)A 2000 Sch.1 para.2, SI 2000/2125 art.2.

Power to make additional requirements

F(S)A 1989 s.14G¹⁰⁰²: Additional requirements of orders

s.14G(1) - a banning order may, if the court making the order thinks fit, impose additional requirements on the person subject to the order in relation to any regulated football matches.

Duty to explain the order

F(S)A 1989 s.14E¹⁰⁰³: Banning orders: general

s.14E(1) - on making a banning order, a court must in ordinary language explain its effect to the person subject to the order.

Duty of the court when making an order

F(S)A 1989 s.18¹⁰⁰⁴: Information

s.18(1) - where a court makes a banning order, the designated officer for the court (in the case of a magistrates' court) or the appropriate officer (in the case of the Crown Court):

- (a) shall give a copy of it to the person to whom it relates;
- (b) shall (as soon as reasonably practicable) send a copy of it to the enforcing authority and to any prescribed person;
- (c) shall (as soon as reasonably practicable) send a copy of it to the police station (addressed to the officer responsible for the police station) at which the person subject to the order is to report initially; and
- (d) in a case where the person subject to the order is detained in legal custody, shall (as soon as reasonably practicable) send a copy of it to the person in whose custody he is detained.

Obligations under the order

F(S)A 1989 s.14E¹⁰⁰⁵: Banning orders: general

s.14E(2) - a banning order must require the person subject to the order to report initially at a police station specified in the order within the period of five days beginning with the day on which the order is made.

s.14E(2A) - a banning order must require the person subject to the order to give notification of the events mentioned in subsection (2B) to the enforcing authority.

s.14E(2B) - the events are:

- (a) a change of any of his names;
- (b) the first use by him after the making of the order of a name for himself that was not disclosed by him at the time of the making of the order;

¹⁰⁰² Commencement: 28 August 2000, as inserted by F(D)A 2000 Sch.1 para.2, SI 2000/2125 art.2.

¹⁰⁰³ Commencement: 28 August 2000, as inserted by F(D)A 2000 Sch.1 para.2, SI 2000/2125 art.2.

¹⁰⁰⁴ Commencement: 24 April 1990, SI 1990/690 art.3.

¹⁰⁰⁵ Commencement: 28 August 2000, as inserted by F(D)A 2000 Sch.1 para.2, SI 2000/2125 art.2.

- (c) a change of his home address;
- (d) his acquisition of a temporary address;
- (e) a change of his temporary address or his ceasing to have one;
- (f) his becoming aware of the loss of his passport;
- (g) receipt by him of a new passport;
- (h) an appeal made by him in relation to the order;
- (i) an application made by him under section 14H(2) for termination of the order;
- (j) an appeal made by him under section 23(3) against the making of a declaration of relevance in respect of an offence of which he has been convicted.

s.14E(2C) - a notification required by a banning order by virtue of subsection (2A) must be given before the end of the period of seven days beginning with the day on which the event in question occurs and–

- (a) in the case of a change of a name or address or the acquisition of a temporary address, must specify the new name or address;
- (b) in the case of a first use of a previously undisclosed name, must specify that name; and
- (c) in the case of a receipt of a new passport, must give details of that passport.

s.14E(3) - a banning order must impose a requirement as to the surrender in accordance with this Part, in connection with regulated football matches outside the United Kingdom, of the passport of the person subject to the order.

s.14E(5) - in the case of a person detained in legal custody:

- (a) the requirement under this section to report at a police station, and
 - (b) any requirement imposed under section 19 below,
- is suspended until his release from custody.

s.14E(6) - if:

- (a) he is released from custody more than five days before the expiry of the period for which the order has effect, and
 - (b) he was precluded by his being in custody from reporting initially,
- the order is to have effect as if it required him to report initially at the police station specified in the order within the period of five days beginning with the date of his release.

F(S)A 1989 s.20¹⁰⁰⁶: Exemptions from requirement to report as respects a match

s.20(1) - a person who is subject to a banning order may:

- (a) as respects a particular regulated football match, or
- (b) as respects regulated football matches played during a period,

¹⁰⁰⁶ Commencement: 24 April 1990, SI 1990/690 art.3.

apply to the authority empowered to grant exemptions under this section (“the exempting authority”;) to be exempt from the requirements imposed by or under this Part, or any of them as respects that match or matches played during that period.

- s.20(2) - the enforcing authority may grant exemptions under this section in all cases; but where the application is made during the control period in relation to any match to which the application applies, the officer responsible for a police station may grant the exemption as respects that match, subject to subsection (3) below.
- s.20(3) - the officer responsible for a police station shall not grant an exemption without referring the question of exemption to the enforcing authority, unless he considers that it is not reasonably practicable to do so.
- s.20(4) - the exempting authority shall exempt the applicant from the requirements imposed by or under this Part, or any of them, as respects any match or matches to which the application relates if he shows to the authority's satisfaction:
 - (a) that there are special circumstances which justify his being so exempted; and
 - (b) that, because of those circumstances, he would not attend the match or matches if he were so exempted.
- s.20(5) - the exempting authority shall, in taking any decision under subsection (4) above, have regard to any guidance issued by the Secretary of State under section 21 below.
- s.20(6) - where an exemption is granted by the exempting authority to a person under subsection (4) above the banning order is to have effect subject to the exemption and, accordingly, no requirement is to be imposed under section 19 which is inconsistent with the exemption.
- s.20(7) - a person who is aggrieved by the refusal of the exempting authority to grant him an exemption under subsection (4) above may, after giving the authority notice in writing of his intention to do so, appeal to a magistrates' court.
- s.20(8) - on any appeal under subsection (7) above the court may make such order as it thinks fit.
- s.20(9) - the court may order the appellant to pay all or any part of the costs of an appeal under subsection (7) above.
- s.20(10) - any person commits an offence who, in connection with an application under this section to be exempted from the requirements imposed by or under this Part, or any of them:
 - (a) makes a statement which he knows to be false or misleading in a material particular or recklessly makes a statement which is false or misleading in a material particular, or
 - (b) produces, furnishes, signs or otherwise makes use of a document which he knows to be false or misleading in a material particular or recklessly produces, furnishes, signs or otherwise makes use of a document which is false or misleading in a material particular.
- s.20(11) - a person guilty of an offence under subsection (10) above shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

F(S)A 1989 s.18¹⁰⁰⁷: Information

- s.18(3) - where a person subject to a banning order is released from custody and, in the case of a person who has not reported initially to a police station, is released more than five days before the expiry of the banning order, the person in whose custody he is shall (as soon as reasonably practicable) give notice of his release to the enforcing authority.

3.4.4.2.4 Power to vary the order

F(S)A 1989 s.14G¹⁰⁰⁸: Additional requirements of orders

- s.14G(2) - the court by which a banning order was made may, on an application made by:
- (a) the person subject to the order, or
 - (b) the person who applied for the order or who was the prosecutor in relation to the order,
- vary the order so as to impose, replace or omit any such requirements.
- s.14G(3) - in the case of a banning order made by a magistrates' court, the reference in subsection (2) above to the court by which it was made includes a reference to any magistrates' court acting in the same local justice area as that court.

3.4.4.2.5 Termination of orders

F(S)A 1989 s.14H¹⁰⁰⁹: Termination of orders

- s.14H(1) - if a banning order has had effect for at least two-thirds of the period determined under section 14F above, the person subject to the order may apply to the court by which it was made to terminate it.
- s.14H(2) - on the application, the court may by order terminate the banning order as from a specified date or refuse the application.
- s.14H(3) - in exercising its powers under subsection (2) above, the court must have regard to the person's character, his conduct since the banning order was made, the nature of the offence or conduct which led to it and any other circumstances which appear to it to be relevant.
- s.14H(4) - where an application under subsection (1) above in respect of a banning order is refused, no further application in respect of the order may be made within the period of six months beginning with the day of the refusal.
- s.14H(5) - the court may order the applicant to pay all or any part of the costs of an application under this section.
- s.14H(6) - in the case of a banning order made by a magistrates' court, the reference in subsection (1) above to the court by which it was made includes a reference to any magistrates' court acting in the same local justice area as that court.

¹⁰⁰⁷ Commencement: 24 April 1990, SI 1990/690 art.3.

¹⁰⁰⁸ Commencement: 28 August 2000, as inserted by F(D)A 2000 Sch.1 para.2, SI 2000/2125 art.2.

¹⁰⁰⁹ Commencement: 28 August 2000, as inserted by F(D)A 2000 Sch.1 para.2, SI 2000/2125 art.2.

Duty of the court when terminating the order

F(S)A 1989 s.18¹⁰¹⁰: Information

- s.18(2) - where a court terminates a banning order under section 14H above, the designated officer for the court (in the case of a magistrates' court) or the appropriate officer (in the case of the Crown Court):
- (a) shall give a copy of the terminating order to the person to whom the banning order relates;
 - (b) shall (as soon as reasonably practicable) send a copy of it to the enforcing authority and to any prescribed person; and
 - (c) in a case where the person subject to the banning order is detained in legal custody, shall (as soon as reasonably practicable) send a copy of the terminating order to the person in whose custody he is detained.

3.4.4.2.6 Appeals

F(S)A 1989 s.14A¹⁰¹¹: Banning orders made on conviction of an offence

- s.14A(5A) - the prosecution has a right of appeal against a failure by the court to make a banning order under this section:
- (a) where the failure is by a magistrates' court, to the Crown Court; and
 - (b) where it is by the Crown Court, to the Court of Appeal.
- s.14A(5B) - an appeal under subsection (5A)(b) may be brought only if the Court of Appeal gives permission or the judge who decided not to make an order grants a certificate that his decision is fit for appeal.
- s.14A(5C) - an order made on appeal under this section (other than one directing that an application be re-heard by the court from which the appeal was brought) is to be treated for the purposes of this Part as if it were an order of the court from which the appeal was brought.

3.4.4.2.7 Definitions

F(S)A 1989 s.14A¹⁰¹²: Banning orders made on conviction of an offence

- s.14A(6) - in this section, "*the court*" in relation to an offender means:
- (a) the court by or before which he is convicted of the relevant offence, or
 - (b) if he is committed to the Crown Court to be dealt with for that offence, the Crown Court.

¹⁰¹⁰ Commencement: 24 April 1990, SI 1990/690 art.3.

¹⁰¹¹ Commencement: 28 August 2000, as inserted by F(D)A 2000 Sch.1 para.2, SI 2000/2125 art.2.

¹⁰¹² Commencement: 28 August 2000, as inserted by F(D)A 2000 Sch.1 para.2, SI 2000/2125 art.2.

F(S)A 1989 s.14E¹⁰¹³: Banning orders: general

s.14E(8) - in this section:

“*declaration of relevance*” has the same meaning as in section 23;

“*home address*”, in relation to any person, means the address of his sole or main residence;

“*loss*” includes theft or destruction;

“*new*” includes replacement;

“*temporary address*”, in relation to any person, means the address (other than his home address) of a place at which he intends to reside, or has resided, for a period of at least four weeks.

3.4.4.3. Banning orders made on complaint

3.4.4.3.1 Applications

Making an application

F(S)A 1989 s.14B¹⁰¹⁴: Banning orders made on a complaint

s.14B(3) - the application is to be made by complaint to a magistrates' court.

Who may make an application?

F(S)A 1989 s.14B¹⁰¹⁵: Banning orders made on a complaint

s.14B(1) - an application for a banning order in respect of any person may be made by:

- (a) the relevant chief officer, or
- (b) the Director of Public Prosecutions,

if it appears to him that the condition in subsection (2) is met.

s.14B(1A) -in subsection (1) “*the relevant chief officer*” means:

- (a) the chief officer of police of any police force maintained for a police area; or
- (b) the chief constable of the British Transport Police Force.

s.14B(2) - that condition is that the respondent has at any time caused or contributed to any violence or disorder in the United Kingdom or elsewhere.

¹⁰¹³ Commencement: 28 August 2000, as inserted by F(D)A 2000 Sch.1 para.2, SI 2000/2125 art.2.

¹⁰¹⁴ Commencement: 28 August 2000, as inserted by F(D)A 2000 Sch.1 para.2, SI 2000/2125 art.2.

¹⁰¹⁵ Commencement: 28 August 2000, as inserted by F(D)A 2000 Sch.1 para.2, SI 2000/2125 art.2.

3.4.4.3.2 Making the order

Test to apply

F(S)A 1989 s.14B¹⁰¹⁶: Banning orders made on a complaint

s.14B(4) - if:

- (a) it is proved on the application that the condition in subsection (2) above is met, and
- (b) the court is satisfied that there are reasonable grounds to believe that making a banning order would help to prevent violence or disorder at or in connection with any regulated football matches,

the court must make a banning order in respect of the respondent.

What evidence etc. can magistrates consider?

F(S)A 1989 s.14C¹⁰¹⁷: Banning orders supplementary

s.14C(4) - the magistrates' court may take into account the following matters (among others), so far as they consider it appropriate to do so, in determining whether to make an order under section 14B above:

- (a) any decision of a court or tribunal outside the United Kingdom,
- (b) deportation or exclusion from a country outside the United Kingdom,
- (c) removal or exclusion from premises used for playing football matches, whether in the United Kingdom or elsewhere,
- (d) conduct recorded on video or by any other means.

s.14C(5) - in determining whether to make such an order:

- (a) the magistrates' court may not take into account anything done by the respondent before the beginning of the period of ten years ending with the application under section 14B(1) above, except circumstances ancillary to a conviction,
- (b) before taking into account any conviction for a relevant offence, where a court made a statement under section 14A(3) above (or section 15(2A) below or section 30(3) of the Public Order Act 1986), the magistrates' court must consider the reasons given in the statement,

and in this subsection "*circumstances ancillary to a conviction*" has the same meaning as it has for the purposes of section 4 of the Rehabilitation of Offenders Act 1974 (effect of rehabilitation).

s.14C(6) - subsection (5) does not prejudice anything in the Rehabilitation of Offenders Act 1974.

¹⁰¹⁶ Commencement: 28 August 2000, as inserted by F(D)A 2000 Sch.1 para.2, SI 2000/2125 art.2.

¹⁰¹⁷ Commencement: 28 August 2000, as inserted by F(D)A 2000 Sch.1 para.2, SI 2000/2125 art.2.

Power to adjourn

F(S)A 1989 s.14B¹⁰¹⁸: Banning orders made on a complaint

- s.14B(5) - if the magistrates' court adjourns proceedings on an application under this section, the court may remand the person in respect of whom the application is made.
- s.14B(6) - a person who, by virtue of subsection (5) above, is remanded on bail under section 128 of the Magistrates' Courts Act 1980 may be required by the conditions of his bail:
- (a) not to leave England and Wales before his appearance before the court, and
 - (b) if the control period relates to a regulated football match outside the United Kingdom or to an external tournament which includes such matches, to surrender his passport to a police constable, if he has not already done so.

Length of orders

F(S)A 1989 s.14F¹⁰¹⁹: Period of banning orders.

- s.14F(1) - subject to the following provisions of this Part, a banning order has effect for a period beginning with the day on which the order is made.
- s.14F(2) - the period must not be longer than the maximum or shorter than the minimum.
- s.14F(5) - where the order is made under section 14B above, the maximum is five years and the minimum is three years.

Power to make additional requirements

F(S)A 1989 s.14G¹⁰²⁰: Additional requirements of orders

- s.14G(1) - a banning order may, if the court making the order thinks fit, impose additional requirements on the person subject to the order in relation to any regulated football matches.

Duty to explain the order

F(S)A 1989 s.14E¹⁰²¹: Banning orders: general

- s.14E(1) - on making a banning order, a court must in ordinary language explain its effect to the person subject to the order.

¹⁰¹⁸ Commencement: 28 August 2000, as inserted by F(D)A 2000 Sch.1 para.2, SI 2000/2125 art.2.

¹⁰¹⁹ Commencement: 28 August 2000, as inserted by F(D)A 2000 Sch.1 para.2, SI 2000/2125 art.2.

¹⁰²⁰ Commencement: 28 August 2000, as inserted by F(D)A 2000 Sch.1 para.2, SI 2000/2125 art.2.

¹⁰²¹ Commencement: 28 August 2000, as inserted by F(D)A 2000 Sch.1 para.2, SI 2000/2125 art.2.

Duty of the court when making an order

F(S)A 1989 s.18¹⁰²²: Information

- s.18(1) - where a court makes a banning order, the designated officer for the court (in the case of a magistrates' court) or the appropriate officer (in the case of the Crown Court):
- (a) shall give a copy of it to the person to whom it relates;
 - (b) shall (as soon as reasonably practicable) send a copy of it to the enforcing authority and to any prescribed person;
 - (c) shall (as soon as reasonably practicable) send a copy of it to the police station (addressed to the officer responsible for the police station) at which the person subject to the order is to report initially; and
 - (d) in a case where the person subject to the order is detained in legal custody, shall (as soon as reasonably practicable) send a copy of it to the person in whose custody he is detained.

Obligations under the order

F(S)A 1989 s.14E¹⁰²³: Banning orders: general

s.14E(2) - a banning order must require the person subject to the order to report initially at a police station specified in the order within the period of five days beginning with the day on which the order is made.

s.14E(2A) - a banning order must require the person subject to the order to give notification of the events mentioned in subsection (2B) to the enforcing authority.

s.14E(2B) - the events are:

- (a) a change of any of his names;
- (b) the first use by him after the making of the order of a name for himself that was not disclosed by him at the time of the making of the order;
- (c) a change of his home address;
- (d) his acquisition of a temporary address;
- (e) a change of his temporary address or his ceasing to have one;
- (f) his becoming aware of the loss of his passport;
- (g) receipt by him of a new passport;
- (h) an appeal made by him in relation to the order;
- (i) an application made by him under section 14H(2) for termination of the order;
- (j) an appeal made by him under section 23(3) against the making of a declaration of relevance in respect of an offence of which he has been convicted.

¹⁰²² Commencement: 24 April 1990, SI 1990/690 art.3.

¹⁰²³ Commencement: 28 August 2000, as inserted by F(D)A 2000 Sch.1 para.2, SI 2000/2125 art.2.

- s.14E(2C) - a notification required by a banning order by virtue of subsection (2A) must be given before the end of the period of seven days beginning with the day on which the event in question occurs and–
- (a) in the case of a change of a name or address or the acquisition of a temporary address, must specify the new name or address;
 - (b) in the case of a first use of a previously undisclosed name, must specify that name; and
 - (c) in the case of a receipt of a new passport, must give details of that passport.
- s.14E(3) - a banning order must impose a requirement as to the surrender in accordance with this Part, in connection with regulated football matches outside the United Kingdom, of the passport of the person subject to the order.
- s.14E(5) - in the case of a person detained in legal custody:
- (a) the requirement under this section to report at a police station, and
 - (b) any requirement imposed under section 19 below,
- is suspended until his release from custody.
- s.14E(6) - if:
- (a) he is released from custody more than five days before the expiry of the period for which the order has effect, and
 - (b) he was precluded by his being in custody from reporting initially,
- the order is to have effect as if it required him to report initially at the police station specified in the order within the period of five days beginning with the date of his release.

F(S)A 1989 s.20¹⁰²⁴: Exemptions from requirement to report as respects a match

- s.20(1) - a person who is subject to a banning order may:
- (a) as respects a particular regulated football match, or
 - (b) as respects regulated football matches played during a period,
- apply to the authority empowered to grant exemptions under this section (“the exempting authority”;) to be exempt from the requirements imposed by or under this Part, or any of them as respects that match or matches played during that period.
- s.20(2) - the enforcing authority may grant exemptions under this section in all cases; but where the application is made during the control period in relation to any match to which the application applies, the officer responsible for a police station may grant the exemption as respects that match, subject to subsection (3) below.
- s.20(3) - the officer responsible for a police station shall not grant an exemption without referring the question of exemption to the enforcing authority, unless he considers that it is not reasonably practicable to do so.
- s.20(4) - the exempting authority shall exempt the applicant from the requirements imposed by or under this Part, or any of them, as respects any match or matches to which the application relates if he shows to the authority's satisfaction:

¹⁰²⁴ Commencement: 24 April 1990, SI 1990/690 art.3.

- (a) that there are special circumstances which justify his being so exempted; and
 - (b) that, because of those circumstances, he would not attend the match or matches if he were so exempted.
- s.20(5) - the exempting authority shall, in taking any decision under subsection (4) above, have regard to any guidance issued by the Secretary of State under section 21 below.
- s.20(6) - where an exemption is granted by the exempting authority to a person under subsection (4) above the banning order is to have effect subject to the exemption and, accordingly, no requirement is to be imposed under section 19 which is inconsistent with the exemption.
- s.20(7) - a person who is aggrieved by the refusal of the exempting authority to grant him an exemption under subsection (4) above may, after giving the authority notice in writing of his intention to do so, appeal to a magistrates' court.
- s.20(8) - on any appeal under subsection (7) above the court may make such order as it thinks fit.
- s.20(9) - the court may order the appellant to pay all or any part of the costs of an appeal under subsection (7) above.
- s.20(10) - any person commits an offence who, in connection with an application under this section to be exempted from the requirements imposed by or under this Part, or any of them:
- (a) makes a statement which he knows to be false or misleading in a material particular or recklessly makes a statement which is false or misleading in a material particular, or
 - (b) produces, furnishes, signs or otherwise makes use of a document which he knows to be false or misleading in a material particular or recklessly produces, furnishes, signs or otherwise makes use of a document which is false or misleading in a material particular.
- s.20(11) - a person guilty of an offence under subsection (10) above shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

F(S)A 1989 s.18¹⁰²⁵: Information

- s.18(3) - where a person subject to a banning order is released from custody and, in the case of a person who has not reported initially to a police station, is released more than five days before the expiry of the banning order, the person in whose custody he is shall (as soon as reasonably practicable) give notice of his release to the enforcing authority.

¹⁰²⁵ Commencement: 24 April 1990, SI 1990/690 art.3.

3.4.4.3.3 Definitions

F(S)A 1989 s.14E¹⁰²⁶: Banning orders: general

s.14E(8) - in this section:

“*declaration of relevance*” has the same meaning as in section 23;

“*home address*”, in relation to any person, means the address of his sole or main residence;

“*loss*” includes theft or destruction;

“*new*” includes replacement;

“*temporary address*”, in relation to any person, means the address (other than his home address) of a place at which he intends to reside, or has resided, for a period of at least four weeks.

3.4.4.3.4 Power to vary the order

F(S)A 1989 s.14G¹⁰²⁷: Additional requirements of orders

s.14G(2) - the court by which a banning order was made may, on an application made by:

(a) the person subject to the order, or

(b) the person who applied for the order or who was the prosecutor in relation to the order,

vary the order so as to impose, replace or omit any such requirements.

s.14G(3) - in the case of a banning order made by a magistrates' court, the reference in subsection (2) above to the court by which it was made includes a reference to any magistrates' court acting in the same local justice area as that court.

3.4.4.3.5 Termination of orders

F(S)A 1989 s.14H¹⁰²⁸: Termination of orders

s.14H(1) - if a banning order has had effect for at least two-thirds of the period determined under section 14F above, the person subject to the order may apply to the court by which it was made to terminate it.

s.14H(2) - on the application, the court may by order terminate the banning order as from a specified date or refuse the application.

s.14H(3) - in exercising its powers under subsection (2) above, the court must have regard to the person's character, his conduct since the banning order was made, the nature of the offence or conduct which led to it and any other circumstances which appear to it to be relevant.

s.14H(4) - where an application under subsection (1) above in respect of a banning order is refused, no further application in respect of the order may be made within the period of six months beginning with the day of the refusal.

¹⁰²⁶ Commencement: 28 August 2000, as inserted by F(D)A 2000 Sch.1 para.2, SI 2000/2125 art.2.

¹⁰²⁷ Commencement: 28 August 2000, as inserted by F(D)A 2000 Sch.1 para.2, SI 2000/2125 art.2.

¹⁰²⁸ Commencement: 28 August 2000, as inserted by F(D)A 2000 Sch.1 para.2, SI 2000/2125 art.2.

- s.14H(5) - the court may order the applicant to pay all or any part of the costs of an application under this section.
- s.14H(6) - in the case of a banning order made by a magistrates' court, the reference in subsection (1) above to the court by which it was made includes a reference to any magistrates' court acting in the same local justice area as that court.

Duty of the court when terminating the order

F(S)A 1989 s.18¹⁰²⁹: Information

- s.18(2) - where a court terminates a banning order under section 14H above, the designated officer for the court (in the case of a magistrates' court) or the appropriate officer (in the case of the Crown Court):
- (a) shall give a copy of the terminating order to the person to whom the banning order relates;
 - (b) shall (as soon as reasonably practicable) send a copy of it to the enforcing authority and to any prescribed person; and
 - (c) in a case where the person subject to the banning order is detained in legal custody, shall (as soon as reasonably practicable) send a copy of the terminating order to the person in whose custody he is detained.

3.4.4.3.6 Appeals

F(S)A 1989 s.14D¹⁰³⁰: Banning orders made on a complaint: appeals

- s.14D(1) - an appeal lies to the Crown Court against the making by a magistrates' court of a banning order under section 14B above.
- s.14D(1A) - an appeal lies to the Crown Court against the dismissal by a magistrates' court of an application for the making of a banning order under section 14B above.
- s.14D(2) - on an appeal under this section the Crown Court:
- (a) may make any orders necessary to give effect to its determination of the appeal, and
 - (b) may also make any incidental or consequential orders which appear to it to be just.
- s.14D(3) - an order of the Crown Court made on an appeal under this section (other than one directing that an application be re-heard by a magistrates' court) is to be treated for the purposes of this Part as if it were an order of the magistrates' court from which the appeal was brought.

¹⁰²⁹ Commencement: 24 April 1990, SI 1990/690 art.3.

¹⁰³⁰ Commencement: 28 August 2000, as inserted by F(D)A 2000 Sch.1 para.2, SI 2000/2125 art.2.

3.4.4.4. Breach

F(S)A 1989 s.14J¹⁰³¹: Offences

- s.14J(1) - a person subject to a banning order who fails to comply with:
- (a) any requirement imposed by the order, or
 - (b) any requirement imposed under section 19(2B) or (2C) below (Functions of enforcing authority and local police),
- is guilty of an offence.
- s.14J(2) - a person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding six months, or a fine not exceeding level 5 on the standard scale, or both.

3.4.4.5. Offences outside of the UK

Corresponding offences

FSA 1989 s.22¹⁰³²: Restriction orders arising out of offences outside England and Wales.

- s.22(1) - Her Majesty may, by Order in Council, specify offences (“corresponding offences”); under the law of any country outside England and Wales which appear to Her to correspond to any offence to which Schedule 1 to this Act applies.
- s.22(1A) - for the purposes of subsection (1) above, an offence specified in an Order in Council under that subsection shall be regarded as corresponding to an offence to which Schedule 1 to this Act applies notwithstanding that any period specified in the Order is longer than any corresponding period specified in that Schedule.

Procedure

FSA 1989 s.22¹⁰³³: Restriction orders arising out of offences outside England and Wales.

- s.22(2) - upon an information being laid before a justice of the peace that a person has been convicted of a corresponding offence in a country outside England and Wales, the justice may—
- (a) issue a summons directed to that person requiring him to appear before a magistrates' court to answer to the information; or
 - (b) subject to subsection (3) below, issue a warrant to arrest that person and bring him before a magistrates' court.

¹⁰³¹ Commencement: 28 August 2000, as inserted by F(D)A 2000 Sch.1 para.2, SI 2000/2125 art.2.

¹⁰³² Commencement: Section 22(1), (9) and (12) in force 22 March 1990, SI 1990/690 art.2. Section 22(2)-(5), (6)-(8), (10) and (11) in force 24 April 1990, SI 1990/690 art.3. Section 22(5A) in force 27 September 1999, as inserted by Football (Offences and Disorder) Act 1999 s.5(3), Football (Offences and Disorder) Act 1999 s.12(2).

¹⁰³³ Commencement: Section 22(1), (9) and (12) in force 22 March 1990, SI 1990/690 art.2. Section 22(2)-(5), (6)-(8), (10) and (11) in force 24 April 1990, SI 1990/690 art.3. Section 22(5A) in force 27 September 1999, as inserted by Football (Offences and Disorder) Act 1999 s.5(3), Football (Offences and Disorder) Act 1999 s.12(2).

s.22(3) - no warrant shall be issued under subsection (2) above unless the information is in writing and substantiated on oath.

Test to apply and power to order

FSA 1989 s.22¹⁰³⁴: Restriction orders arising out of offences outside England and Wales.

s.22(4) - where a person appears or is brought before a magistrates' court in pursuance of subsection (2) above, the court, if satisfied that—

- (a) he is ordinarily resident in England and Wales, and
- (b) has been convicted in the country outside England and Wales of the corresponding offence,

may, unless it appears that the conviction is the subject of proceedings in a court of law in that country questioning the conviction, make a banning order in relation to him.

s.22(6) - in proceedings under subsection (4) above, the court shall have the like powers, including power to adjourn the proceedings and meanwhile to remand the defendant on bail (but not in custody), and the proceedings shall be conducted as nearly as may be in the like manner, as if the proceedings were the trial of an information for a summary offence.

Duty to make an order

FSA 1989 s.22¹⁰³⁵: Restriction orders arising out of offences outside England and Wales.

s.22(5) - a magistrates' court which has power to make a banning order in relation to a person shall be under a duty to make the order in relation to him if it is satisfied that there are reasonable grounds to believe that making the order would help to prevent violence or disorder at or in connection with regulated football matches.

Must give reasons when not making an order

FSA 1989 s.22¹⁰³⁶: Restriction orders arising out of offences outside England and Wales.

s.22(5A) - where a magistrates' court has power to make a banning order in relation to a person but does not do so, it shall state in open court that it is not satisfied that there are such reasonable grounds as are mentioned in subsection (5) above and give reasons why it is not satisfied.

¹⁰³⁴ Commencement: Section 22(1), (9) and (12) in force 22 March 1990, SI 1990/690 art.2. Section 22(2)-(5), (6)-(8), (10) and (11) in force 24 April 1990, SI 1990/690 art.3. Section 22(5A) in force 27 September 1999, as inserted by Football (Offences and Disorder) Act 1999 s.5(3), Football (Offences and Disorder) Act 1999 s.12(2).

¹⁰³⁵ Commencement: Section 22(1), (9) and (12) in force 22 March 1990, SI 1990/690 art.2. Section 22(2)-(5), (6)-(8), (10) and (11) in force 24 April 1990, SI 1990/690 art.3. Section 22(5A) in force 27 September 1999, as inserted by Football (Offences and Disorder) Act 1999 s.5(3), Football (Offences and Disorder) Act 1999 s.12(2).

¹⁰³⁶ Commencement: Section 22(1), (9) and (12) in force 22 March 1990, SI 1990/690 art.2. Section 22(2)-(5), (6)-(8), (10) and (11) in force 24 April 1990, SI 1990/690 art.3. Section 22(5A) in force 27 September 1999, as inserted by Football (Offences and Disorder) Act 1999 s.5(3), Football (Offences and Disorder) Act 1999 s.12(2).

Appeals

FSA 1989 s.22¹⁰³⁷: Restriction orders arising out of offences outside England and Wales.

s.22(7) - any person aggrieved by the decision of a magistrates' court making a banning order under this section may appeal to the Crown Court against the decision.

Application of provisions concerning banning order on conviction

FSA 1989 s.22¹⁰³⁸: Restriction orders arising out of offences outside England and Wales.

s.22(8) - Sections 14E to 14J and 18 to 21 shall apply in relation to a person subject to a banning order under this section as they apply in relation to a person subject to a banning order made by a magistrates' court under section 14A.

Orders in Council

FSA 1989 s.22¹⁰³⁹: Restriction orders arising out of offences outside England and Wales.

- s.22(9) - an Order in Council under subsection (1) above relating to any country may include provision specifying the documentary form in which details are to be given of—
- the conviction of a person in that country of a corresponding offence,
 - the nature and circumstances of the offence, and
 - whether or not the conviction is the subject of proceedings in that country questioning it.
- s.22(10) - a document in the form so specified—
- shall be admissible in any proceedings under this Part of this Act as evidence of the facts stated in it unless the contrary is proved, and
 - shall be taken as such a document unless the contrary is proved.
- s.22(11) - in proceedings against a person under this section, the facts stated in a document in the form so specified shall, on production of the document and proof that that person is the person whose conviction is set out in the document, be taken to be proved unless the contrary is proved.
- s.22(12) - any statutory instrument containing an Order under subsection (1) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.

¹⁰³⁷ Commencement: Section 22(1), (9) and (12) in force 22 March 1990, SI 1990/690 art.2. Section 22(2)-(5), (6)-(8), (10) and (11) in force 24 April 1990, SI 1990/690 art.3. Section 22(5A) in force 27 September 1999, as inserted by Football (Offences and Disorder) Act 1999 s.5(3), Football (Offences and Disorder) Act 1999 s.12(2).

¹⁰³⁸ Commencement: Section 22(1), (9) and (12) in force 22 March 1990, SI 1990/690 art.2. Section 22(2)-(5), (6)-(8), (10) and (11) in force 24 April 1990, SI 1990/690 art.3. Section 22(5A) in force 27 September 1999, as inserted by Football (Offences and Disorder) Act 1999 s.5(3), Football (Offences and Disorder) Act 1999 s.12(2).

¹⁰³⁹ Commencement: Section 22(1), (9) and (12) in force 22 March 1990, SI 1990/690 art.2. Section 22(2)-(5), (6)-(8), (10) and (11) in force 24 April 1990, SI 1990/690 art.3. Section 22(5A) in force 27 September 1999, as inserted by Football (Offences and Disorder) Act 1999 s.5(3), Football (Offences and Disorder) Act 1999 s.12(2).

3.4.5. Restraining Orders

3.4.5.1. General

Interpretation

PHA 1997 s.7¹⁰⁴⁰: Interpretation of this group of sections

- s.7(1) - this section applies for the interpretation of sections 1 to 5A.
- s.7(2) - references to harassing a person include alarming the person or causing the person distress.
- s.7(3) - a “*course of conduct*” must involve:
 - (a) in the case of conduct in relation to a single person (see section 1(1)), conduct on at least two occasions in relation to that person, or
 - (b) in the case of conduct in relation to two or more persons (see section 1(1A)), conduct on at least one occasion in relation to each of those persons.
- s.7(3A) - a person's conduct on any occasion shall be taken, if aided, abetted, counselled or procured by another:
 - (a) to be conduct on that occasion of the other (as well as conduct of the person whose conduct it is); and
 - (b) to be conduct in relation to which the other's knowledge and purpose, and what he ought to have known, are the same as they were in relation to what was contemplated or reasonably foreseeable at the time of the aiding, abetting, counselling or procuring.
- s.7(4) - “*Conduct*” includes speech.
- s.7(5) - references to a person, in the context of the harassment of a person, are references to a person who is an individual.

European orders

Note: There exists an order giving magistrates’ courts and, in certain circumstances, the Crown Court, the power to make a European protection order (“EPO”). An EPO may impose prohibitions or restrictions upon an individual and may be made after an application by an individual who is “protected” by a court order in England and Wales (most likely to be a restraining order) and who resides or is going to reside in another member state. The EPO requests that the relevant member state recognises the protection order. See Criminal Justice (European Protection Order) (England and Wales) Regulations 2014 (SI 2014/3300).

The SI also makes provision for the recognition of an EPO made in another member state, which involves a magistrates’ court imposing a restraining order under s.5 of the Protection from Harassment Act 1997 which replicates the provisions contained in the EPO as closely as possible (see reg. 13).

¹⁰⁴⁰ Commencement: 16 June 1997, SI 1997/1418 art.2.

3.4.5.2. On conviction

Availability

PHA 1997 s.5¹⁰⁴¹: Restraining orders on conviction

s.5(1) - a court sentencing or otherwise dealing with a person (“the defendant”) convicted of an offence may (as well as sentencing him or dealing with him in any other way) make an order under this section.

Evidence

PHA 1997 s.5¹⁰⁴²: Restraining orders on conviction

s.5(3A) - in proceedings under this section both the prosecution and the defence may lead, as further evidence, any evidence that would be admissible in proceedings for an injunction under section 3.

Contents of the order

PHA 1997 s.5¹⁰⁴³: Restraining orders on conviction

s.5(2) - the order may, for the purpose of protecting the victim or victims of the offence, or any other person mentioned in the order, from conduct which:

- (a) amounts to harassment, or
- (b) will cause a fear of violence,

prohibit the defendant from doing anything described in the order.

Length of the order

PHA 1997 s.5¹⁰⁴⁴: Restraining orders on conviction

s.5(3) - the order may have effect for a specified period or until further order.

Variation or discharge of the order

PHA 1997 s.5¹⁰⁴⁵: Restraining orders on conviction

s.5(4) - the prosecutor, the defendant or any other person mentioned in the order may apply to the court which made the order for it to be varied or discharged by a further order.

s.5(4A) - Any person mentioned in the order is entitled to be heard on the hearing of an application under subsection (4).

¹⁰⁴¹ Commencement: 16 June 1997, SI 1997/1418 art.2.

¹⁰⁴² Commencement: 16 June 1997, SI 1997/1418 art.2.

¹⁰⁴³ Commencement: 16 June 1997, SI 1997/1418 art.2.

¹⁰⁴⁴ Commencement: 16 June 1997, SI 1997/1418 art.2.

¹⁰⁴⁵ Commencement: 16 June 1997, SI 1997/1418 art.2.

3.4.5.3. On acquittal

General

PHA 1997 s.5A¹⁰⁴⁶: Restraining orders on acquittal

s.5A(2) - Subsections (3) to (7) of section 5 apply to an order under this section as they apply to an order under that one.

Power to order

PHA 1997 s.5A¹⁰⁴⁷: Restraining orders on acquittal

s.5A(1) - a court before which a person (“the defendant”) is acquitted of an offence may, if it considers it necessary to do so to protect a person from harassment by the defendant, make an order prohibiting the defendant from doing anything described in the order.

Evidence

PHA 1997 s.5¹⁰⁴⁸: Restraining orders on conviction

s.5(3A) - in proceedings under this section both the prosecution and the defence may lead, as further evidence, any evidence that would be admissible in proceedings for an injunction under section 3.

Length of the order

PHA 1997 s.5¹⁰⁴⁹: Restraining orders on conviction

s.5(3) - the order may have effect for a specified period or until further order.

Variation or discharge of the order

PHA 1997 s.5¹⁰⁵⁰: Restraining orders on conviction

s.5(4) - the prosecutor, the defendant or any other person mentioned in the order may apply to the court which made the order for it to be varied or discharged by a further order.

s.5(4A) - any person mentioned in the order is entitled to be heard on the hearing of an application under subsection (4).

¹⁰⁴⁶ Commencement: 30 September 2009, as inserted by Domestic Violence, Crime and Victims Act 2004 s.12(5), SI 2009/2501 art.2(a).

¹⁰⁴⁷ Commencement: 30 September 2009, as inserted by Domestic Violence, Crime and Victims Act 2004 s.12(5), SI 2009/2501 art.2(a).

¹⁰⁴⁸ Commencement: 16 June 1997, SI 1997/1418 art.2.

¹⁰⁴⁹ Commencement: 16 June 1997, SI 1997/1418 art.2.

¹⁰⁵⁰ Commencement: 16 June 1997, SI 1997/1418 art.2.

3.4.5.4. Appeals

Right of appeal

PHA 1997 s.5A¹⁰⁵¹: Restraining orders on acquittal

- s.5A(5) - a person made subject to an order under this section has the same right of appeal against the order as if:
- (a) he had been convicted of the offence in question before the court which made the order, and
 - (b) the order had been made under section 5.

Court of Appeal allows appeal against conviction: Power to make order on acquittal

PHA 1997 s.5A¹⁰⁵²: Restraining orders on acquittal

- s.5A(3) - where the Court of Appeal allow an appeal against conviction they may remit the case to the Crown Court to consider whether to proceed under this section.

Crown Court allows appeal against conviction: Power to make order on acquittal

PHA 1997 s.5A¹⁰⁵³: Restraining orders on acquittal

- s.5A(4) - where:
- (a) the Crown Court allows an appeal against conviction, or
 - (b) a case is remitted to the Crown Court under subsection (3),
- the reference in subsection (1) to a court before which a person is acquitted of an offence is to be read as referring to that court.

3.4.5.5. Breach

Post-conviction

PHA 1997 s.5¹⁰⁵⁴: Restraining orders on conviction

- s.5(5) - if without reasonable excuse the defendant does anything which he is prohibited from doing by an order under this section, he is guilty of an offence.
- s.5(6) - a person guilty of an offence under this section is liable:
- (a) on conviction on indictment, to imprisonment for a term not exceeding five years, or a fine, or both, or
 - (b) on summary conviction, to imprisonment for a term not exceeding six months, or a fine not exceeding the statutory maximum, or both.

¹⁰⁵¹ Commencement: 30 September 2009, as inserted by Domestic Violence, Crime and Victims Act 2004 s.12(5), SI 2009/2501 art.2(a).

¹⁰⁵² Commencement: 30 September 2009, as inserted by Domestic Violence, Crime and Victims Act 2004 s.12(5), SI 2009/2501 art.2(a).

¹⁰⁵³ Commencement: 30 September 2009, as inserted by Domestic Violence, Crime and Victims Act 2004 s.12(5), SI 2009/2501 art.2(a).

¹⁰⁵⁴ Commencement: 16 June 1997, SI 1997/1418 art.2.

s.5(7)¹⁰⁵⁵ - a court dealing with a person for an offence under this section may vary or discharge the order in question by a further order.

3.4.5.6. Other sources

Breach of Protective Order Guideline 2006, Sentencing Guidelines Council

¹⁰⁵⁵ The Explanatory Note to Domestic Violence, Crime and Victims Act 2004 para.1(57) states: Subsection (4) allows a court when dealing with a person for the offence of breach of a restraining order under section 5 of the 1997 Act to vary or discharge the order in question irrespective of whether it was the court that made the original order.

3.4.6. Serious Crime Prevention Orders

3.4.6.1. General

What is a Serious Crime Prevention Order?

SCA 2007 s.1¹⁰⁵⁶: Serious Crime Prevention Orders

- s.1(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).
- s.1(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.

SCA 2007 s.19¹⁰⁵⁷: Orders by Crown Court on conviction

- s.19(8) - an order under this section is also called a serious crime prevention order.

Nature of proceedings

SCA 2007 s.35¹⁰⁵⁸: Proceedings in the High Court

- s.35(1) - proceedings before the High Court in relation to serious crime prevention orders are civil proceedings.
- s.35(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.

SCA 2007 s.36¹⁰⁵⁹: Proceedings in the Crown Court

- s.36(1) - proceedings before the Crown Court arising by virtue of section 19, 20, 21 or 22E are civil proceedings.
- s.36(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.
- s.36(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
 - (b) may adjourn any proceedings in relation to a serious crime prevention order even after sentencing the person concerned.

¹⁰⁵⁶ Commencement: 6 April 2008, SI 2008/755 art.15(1)(a).

¹⁰⁵⁷ Commencement: 6 April 2008, SI 2008/755 art.15(1)(d).

¹⁰⁵⁸ Commencement: 6 April 2008, SI 2008/755 art.15(1)(f).

¹⁰⁵⁹ Commencement: 6 April 2008, SI 2008/755 art.15(1)(f).

s.36(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).

Interpretation and definitions

SCA 2007 s.42¹⁰⁶⁰: Interpretation Part 1

s.42 - 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);

“the public” includes a section of the public or a particular member of the public.

SCA 2007 s.43¹⁰⁶¹: Index of defined expressions: Part 1

Expression	Provision
act	<u>section 42</u>
committed a serious offence	<u>section 4(1)</u>
conduct	<u>section 42</u>
conducts oneself in a way likely to facilitate the commission by oneself or another person of a serious offence	<u>section 4(3)</u>
country	<u>section 42</u>
Director of Public Prosecutions, Director of the Serious Fraud Office and Director of Public Prosecutions for Northern Ireland	<u>[Paragraphs 2(2), 13(2) and 17 of Schedule 2]</u>
document	<u>section 5(7)</u>
facilitates the commission by another person of a serious offence	<u>section 4(2)</u>
involvement in serious crime: England and Wales orders	<u>sections 2, 4 and 31(3)</u>
involvement in serious crime: Northern Ireland orders	<u>sections 3, 4 and 31(3)</u>
law enforcement officer	<u>section 5(7)</u>
modifications (and modify)	<u>section 42</u>
person who is the subject of a serious crime prevention order	<u>section 1(6)</u>
premises	<u>section 5(7)</u>
production of documents	<u>section 5(8)</u>
the public	<u>section 42</u>
relevant applicant authority	<u>section 10(4)</u>
serious crime prevention order	<u>section 1(5)</u>
serious offence in England and Wales	<u>section 2(2)</u>
serious offence in Northern Ireland	<u>section 3(2)</u>

¹⁰⁶⁰ Commencement: 6 April 2008, SI 2008/755 art.15(1)(k).

¹⁰⁶¹ Commencement: 6 April 2008, SI 2008/755 art.15(1)(k).

3.4.6.2. Availability

Restrictions on making an order

SCA 2007 s.6¹⁰⁶²: 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.

SCA 2007 s.7¹⁰⁶³: Other exceptions

- s.7(1) - a person may not be made the subject of a serious crime prevention order in England and Wales if the person falls within a description specified by order of the Secretary of State.
- s.7(2) - a person may not be made the subject of a serious crime prevention order in Northern Ireland if the person falls within a description specified by order of the Department of Justice in Northern Ireland.

Who may make an application?

SCA 2007 s.8¹⁰⁶⁴: Limited class of applicants for making of orders

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

- (a) in the case of an order in England and Wales:
 - (i) the Director of Public 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.

3.4.6.3. Applications

Functions of applicant authorities

SCA 2007 s.37¹⁰⁶⁵: Functions of applicant authorities

s.37 - Schedule 2 (functions of applicant authorities under this Part) has effect.

SCA 2007 Sch.2¹⁰⁶⁶: Functions of applicant authorities under Part 1

The provisions of the Schedule are not reproduced here. The Explanatory Note about s.37 and Sch.2 is as follows.

126. This section gives effect to Schedule 2 which provides for the functions of the applicant authorities that can make applications for orders (Director of Public Prosecutions, Director of Revenue and Customs Prosecutions, Director of the Serious Fraud Office and Director of Public Prosecutions for Northern Ireland). These functions include

¹⁰⁶² Commencement: 6 April 2008, SI 2008/755 art.15(1)(d).

¹⁰⁶³ Commencement: 6 April 2008, SI 2008/755 art.15(1)(d).

¹⁰⁶⁴ Commencement: 6 April 2008, SI 2008/755 art.15(1)(d).

¹⁰⁶⁵ Commencement: In force 1 March 2008 to the extent that Sch.2 paras.4 and 18 are also in force, SI 2008/219 art.3(b) and (c). Otherwise, 6 April 2008, SI 2008/755 art.15(1)(g).

¹⁰⁶⁶ Commencement: Sch. 2 paras.4 and 18 in force 1 March 2008, SCA 2007 s.37, SI 2008/219 art.3(b) and (c). Otherwise, 6 April 2008, SI 2008/755 art.15(1)(g).

applying for serious crime prevention orders, or the variation or discharge of an order; appearing on applications by others for the variation or discharge of an order; having the conduct of or appearing in any other proceedings about a serious crime prevention order; providing advice about any proceedings or possible proceedings in connection with a serious crime prevention order; or anything for the purposes of, or in connection with, these functions. Special provision has to be made because functions in relation to serious crime prevention orders fall outside the usual prosecutorial functions of the Directors.

127. Paragraphs 1 to 5 of Schedule 2 list the functions of the Director of Public Prosecutions under Part 1 of the Act and provide that he can delegate his functions to a Crown Prosecutor (paragraph 2). Paragraphs 6 to 11 of this Schedule list the functions of the Director of Revenue and Customs Prosecutions under Part 1 of the Act and provide that he can delegate his functions to a Revenue and Customs Prosecutor (paragraph 7). Paragraphs 12 to 15 of this Schedule list the functions of the Director of the Serious Fraud Office under Part 1 of the Act and provide that he can delegate his functions to a member of the Serious Fraud Office (paragraph 13). The powers to delegate alter the usual position in relation to the carrying out of functions on behalf of the Directors by their staff. A Director must expressly delegate his functions rather than it occurring automatically. This is intended to ensure that the exercise of the powers is kept under tight control by the Directors.
128. Paragraphs 3, 8 and 14 provide that the functions of the Directors are exercisable under the superintendence of the Attorney General.
129. Paragraphs 16 to 20 of this Schedule list the functions of the Director of Public Prosecutions for Northern Ireland under Part 1 of the Act and make provision about the exercising of those functions.

Note: The role of the Director of Revenue and Customs Prosecutions (DRCP) was merged with the Director of Public Prosecutions (DPP) and therefore reference to the DRCP in the explanatory note should be read as a reference to the DPP, see SI 2014/834 art.3 for more details. The SI amended primary and secondary legislation where appropriate but did not amend the explanatory notes.

3.4.6.4. Power to order

Safeguards

SCA 2007 s.1¹⁰⁶⁷: Serious Crime Prevention Orders

- s.1(4) - the powers of the court in respect of an order under this section are subject to sections 6 to 15 (safeguards).

SCA 2007 s.19¹⁰⁶⁸: Orders by Crown Court on conviction

- s.19(6) - the powers of the court in respect of an order under this section are subject to sections 6 to 15 (safeguards).

¹⁰⁶⁷ Commencement: 6 April 2008, SI 2008/755 art.15(1)(a).

¹⁰⁶⁸ Commencement: 6 April 2008, SI 2008/755 art.15(1)(d).

High Court

SCA 2007 s.1¹⁰⁶⁹: Serious Crime Prevention Orders

- s.1(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
 - (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.
- s.1(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
 - (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.

SCA 2007 s.2¹⁰⁷⁰: Involvement in serious crime: England and Wales orders

- s.2(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
 - (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).
- s.2(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:
- (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.
- s.2(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;
 - (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).

¹⁰⁶⁹ Commencement: 6 April 2008, SI 2008/755 art.15(1)(a).

¹⁰⁷⁰ Commencement: 6 April 2008, SI 2008/755 art.15(1)(b).

- s.2(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:
- (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).
- s.2(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:
- (a) would be an offence under the law of England and Wales if committed in or as regards England and Wales; and
 - (b) either:
 - (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).
- s.2(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.
- s.2(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.

SCA 2007 s.3¹⁰⁷¹: *Involvement in serious crime: Northern Ireland orders*

- s.3(1) - for the purposes of this Part, a person has been involved in serious crime in Northern Ireland if he–
- (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).
- s.3(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–
- (a) is specified, or falls within a description specified, in Part 2 of Schedule 1; or

¹⁰⁷¹ Commencement: 6 April 2008, SI 2008/755 art.15(1)(c).

(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.

s.3(3) - for the purposes of this Part, involvement in serious crime in Northern Ireland is any one or more of the following–

- (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).

s.3(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
- (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).

s.3(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
- (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
 - (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).

s.3(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.

s.3(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.

Crown Court

SCA 2007 s.19¹⁰⁷²: Orders by Crown Court on conviction

- s.19(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
 - (b) has been convicted by or before the Crown Court of having committed a serious offence in England and Wales.
- s.19(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.
- s.19(2A) - a court that makes an order by virtue of subsection (2) in the case of a person who is already the subject of a serious crime prevention order in England and Wales must discharge the existing order.
- s.19(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.
- s.19(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.
- s.19(4A) - a court that makes an order by virtue of subsection (4) in the case of a person who is already the subject of a serious crime prevention order in Northern Ireland must discharge the existing order.
- s.19(7) - an order must not be made under this section except—
- (a) in addition to a sentence imposed in respect of the offence concerned; or
 - (b) in addition to an order discharging the person conditionally.

“Serious offences”

SCA 2007 Sch.1¹⁰⁷³: Serious offences

Note: Part 1 details serious offences in England and Wales. Part 2 details serious offences in Northern Ireland. The individual paragraphs have not been specified here as they are simply a list of offences. The Schedule was amended by SCA 2015 s.47(2)-(4), as commenced by SI 2015/820 reg.2(f) and (r)(xvi) on 3 May 2015 and MSA 2015 Sch.5 para.7 as commenced by SI 2015/1476 reg.2(j).

¹⁰⁷² Commencement: 6 April 2008, SI 2008/755 art.15(1)(d).

¹⁰⁷³ Commencement: 6 April 2008, SI 2008/755 art.15(1)(d).

“Involvement in serious crime”

SCA 2007 s.4¹⁰⁷⁴: Involvement in serious crime: supplementary

- s.4(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
 - (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.
- s.4(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:
- (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.
- s.4(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:
- (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.
- s.4(4) - the Secretary of State may by order amend Part 1 of Schedule 1.
- s.4(5) - the Department of Justice in Northern Ireland may by order amend Part 2 of Schedule 1.

3.4.6.5. Making the order

Right to make representations

SCA 2007 s.9¹⁰⁷⁵: Right of third parties to make representations

- s.9(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.
- s.9(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 21 or 22E 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.

¹⁰⁷⁴ Commencement: 6 April 2008, SI 2008/755 art.15(1)(d).

¹⁰⁷⁵ Commencement: 6 April 2008, SI 2008/755 art.15(1)(a).

Contents of the order

SCA 2007 s.1¹⁰⁷⁶: Serious Crime Prevention Orders

s.1(3) - 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.

SCA 2007 s.19¹⁰⁷⁷: Orders by Crown Court on conviction

s.19(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.

SCA 2007 s.5¹⁰⁷⁸: Type of provision that may be made by orders

s.5(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.

s.5(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.

s.5(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;
- (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;
- (f) an individual's travel (whether within the United Kingdom, between the United Kingdom and other places or otherwise).

¹⁰⁷⁶ Commencement: 6 April 2008, SI 2008/755 art.15(1)(d).

¹⁰⁷⁷ Commencement: 6 April 2008, SI 2008/755 art.15(1)(d).

¹⁰⁷⁸ Commencement: 6 April 2008, SI 2008/755 art.15(1)(d).

- s.5(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—
- (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;
 - (e) the use of any premises or item by such persons;
 - (f) the employment of staff by such persons.
- s.5(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—
 - (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; 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—
 - (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; notified to the person by a law enforcement officer specified or described in the order.
- s.5(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).
- s.5(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:
- (a) a constable;
 - (b) a National Crime Agency officer who is for the time being designated under section 9 or 10 of the Crime and Courts Act 2013;
 - (c) an officer of Revenue and Customs; or
 - (d) a member of the Serious Fraud Office; and
- “*premises*” includes any land, vehicle, vessel, aircraft or hovercraft.

- s.5(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.

Restrictions on the effect of the order

SCA 2007 s.11¹⁰⁷⁹: Restrictions on oral answers

- s.11 - a serious crime prevention order may not require a person to answer questions, or provide information, orally.

SCA 2007 s.12¹⁰⁸⁰: Restrictions for legal professional privilege

- s.12(1) - a serious crime prevention order may not require a person–
- (a) to answer any privileged question;
 - (b) to provide any privileged information; or
 - (c) to produce any privileged document.
- s.12(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.
- s.12(3) - “*Privileged information*” is information which the person would be entitled to refuse to provide on grounds of legal professional privilege in such proceedings.
- s.12(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.
- s.12(5) - but subsection (1) does not prevent an order from requiring a lawyer to provide the name and address of a client of his.

SCA 2007 s.13¹⁰⁸¹: Restrictions on excluded material and banking information

- s.13(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
 - (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)).
- s.13(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.
- s.13(3) - condition A is that the person to whom the obligation of confidence is owed consents to the disclosure or production.

¹⁰⁷⁹ Commencement: 6 April 2008, SI 2008/755 art.15(1)(d).

¹⁰⁸⁰ Commencement: 6 April 2008, SI 2008/755 art.15(1)(d).

¹⁰⁸¹ Commencement: 6 April 2008, SI 2008/755 art.15(1)(d).

- s.13(4) - condition B is that the order contains a requirement–
- (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.

SCA 2007 s.14¹⁰⁸²: Restrictions relating to other enactments

- s.14(1) - a serious crime prevention order may not require a person–
- (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.
- s.14(2) - in this section:
- “*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–
- (a) an Act of the Scottish Parliament; or
 - (b) Northern Ireland legislation.

SCA 2007 s.15¹⁰⁸³: Restrictions on use of information obtained

- s.15(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.
- s.15(2) - condition A is that the criminal proceedings relate to an offence under section 25.
- s.15(3) - condition B is that:
- (a) the criminal proceedings relate to another offence;
 - (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.

¹⁰⁸² Commencement: 6 April 2008, SI 2008/755 art.15(1)(d).

¹⁰⁸³ Commencement: 6 April 2008, SI 2008/755 art.15(1)(d).

Duration of the order

SCA 2007 s.16¹⁰⁸⁴: Duration of orders

- s.16(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.
- s.16(2) - an order is not to be in force for more than 5 years beginning with the coming into force of the order.
- s.16(3) - an order can specify different times for the coming into force, or ceasing to be in force, of different provisions of the order.
- s.16(4) - where it specifies different times in accordance with subsection (3), the order–
 - (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.
- s.16(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.
- s.16(6) - a new order may be made in anticipation of an earlier order or provision ceasing to be in force.
- s.16(7) - Subsections (2) and (4)(b) have effect subject to section 22E.

Duty to serve notice on individual subject to order

SCA 2007 s.10¹⁰⁸⁵: Notice requirements in relation to orders

- s.10(1) - the subject of a serious crime prevention order is bound by it or a variation of it only if:
 - (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.
- s.10(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).
- s.10(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
 - (b) search those premises for him.

¹⁰⁸⁴ Commencement: 6 April 2008, SI 2008/755 art.15(1)(d).

¹⁰⁸⁵ Commencement: 6 April 2008, SI 2008/755 art.15(1)(d).

- s.10(4) - in this Part “the relevant applicant authority” means:
- (a) in relation to a serious crime prevention order in England and Wales—
 - (i) where the order was applied for by the Director of Public Prosecutions, the Director of Public 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
 - (b) in relation to a serious crime prevention order in Northern Ireland, the Director of Public Prosecutions for Northern Ireland.

3.4.6.6. Compliance with orders

SCA 2007 s.38¹⁰⁸⁶: Disclosure of information in accordance with orders

- s.38(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
 - (b) any other restriction on making the disclosure concerned (however imposed).
- s.38(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).

SCA 2007 s.5A¹⁰⁸⁷: Verification and disclosure of information

- s.5A(1) - this section applies where information is provided to a law enforcement officer in response to an information requirement imposed by a serious crime prevention order.
“*Information requirement*” means a requirement of the kind referred to in section 5(5)(a) or (b).
- s.5A(2) - the law enforcement officer may, for the purpose of—
- (a) checking the accuracy of the information, or
 - (b) discovering the true position,
- disclose the information to any person who the officer reasonably believes may be able to contribute to doing either of those things.
- s.5A(3) - any other person may disclose information to—
- (a) the law enforcement officer, or
 - (b) a person to whom the law enforcement officer has disclosed information under subsection (2),
- for the purpose of contributing to doing either of the things mentioned in subsection (2)(a) and (b).

¹⁰⁸⁶ Commencement: 6 April 2008, SI 2008/755 art.15(1)(i).

¹⁰⁸⁷ Commencement: 3 May 2015, as inserted by Serious Crime Act 2015 s.50(2), SI 2015/820 art.2

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

SCA 2007 s.39¹⁰⁸⁸: Compliance with orders: authorised monitors

- s.39(1) - a serious crime prevention order against a body corporate, partnership or unincorporated association may authorise a law enforcement agency to enter into arrangements with—
- (a) a specified person; or
 - (b) any person who falls within a specified description of persons;
- to perform specified monitoring services or monitoring services of a specified description.
- s.39(2) - a person with whom the agency has entered into arrangements in accordance with such an authorisation is known for the purposes of this section as an authorised monitor.
- s.39(3) - a serious crime prevention order which provides for an authorised monitor may, for the purpose of enabling the performance of monitoring services, impose requirements of the type mentioned in section 5(5) as if the references in paragraph (a)(iv) and (b)(iv) of that provision to a law enforcement officer included references to an authorised monitor.
- s.39(4) - a serious crime prevention order which provides for an authorised monitor may require any body corporate, partnership or unincorporated association which is the subject of the order to pay to the law enforcement agency concerned some or all of the costs incurred by the agency under the arrangements with the authorised monitor.
- s.39(5) - any such order—
- (a) must specify the period, or periods, within which payments are to be made;
 - (b) may require the making of payments on account;
 - (c) may include other terms about the calculation or payment of costs.

¹⁰⁸⁸ Commencement: 6 April 2008, SI 2008/755 art.15(1)(i).

- s.39(6) - the tests for making or varying a serious crime prevention order in sections 1(1)(b), (2)(b) and (3), 17(1) and (2), 19(2), (4) and (5), 20(2) and (4) and 21(2) and (4) do not operate in relation to an order so far as the order contains terms of the kind envisaged by subsections (4) and (5) above (or by subsection (1) above for the purposes of those subsections).
- s.39(7) - but a court must not include in a serious crime prevention order (whether initially or on a variation) terms of the kind envisaged by subsection (4) or (5) unless it considers that it is appropriate to do so having regard to all the circumstances including, in particular–
- (a) the means of the body corporate, partnership or unincorporated association concerned;
 - (b) the expected size of the costs; and
 - (c) the effect of the terms on the ability of any body corporate, partnership or unincorporated association which is carrying on business to continue to do so.
- s.39(8) - a law enforcement agency must inform the subject of a serious crime prevention order which provides for an authorised monitor of the name of, and an address for, any person with whom the agency has entered into arrangements in accordance with the authorisation in the order.
- s.39(9) - nothing in this section affects the ability of law enforcement agencies to enter into arrangements otherwise than in accordance with an authorisation under this section.
- s.39(10) - in this section–
- “*law enforcement agency*” means–
- (za) the chief constable of a police force maintained under section 2 of the Police Act 1996;
 - (zb) the Commissioner of Police of the Metropolis;
 - (zc) the Common Council of the City of London in its capacity as police authority;
 - (a) the Northern Ireland Policing Board;
 - (b) the National Crime Agency;
 - (c) the Commissioners for Her Majesty's Revenue and Customs; or
 - (d) the Director of the Serious Fraud Office;
- “*monitoring services*” means–
- (a) analysing some or all information received in accordance with a serious crime prevention order;
 - (b) reporting to a law enforcement officer as to whether, on the basis of the information and any other information analysed for this purpose, the subject of the order appears to be complying with the order or any part of it; and
 - (c) any related services; and
- “*specified*”, in relation to a serious crime prevention order, means specified in the order.

SCA 2007 s.41¹⁰⁸⁹: Powers of law enforcement officers to retain documents

- s.41(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
 - (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.
- s.41(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.

3.4.6.7. Costs

SCA 2007 s.40¹⁰⁹⁰: Costs in relation to authorised monitors

- s.40(1) - the appropriate authority may by order make provision about the practice and procedure for determining the amount of–
- (a) any costs payable by virtue of section 39(4) and (5); and
 - (b) any interest payable in respect of those costs.
- s.40(2) - such provision may, in particular, include provision about appeals.
- s.40(3) - where any amounts required to be paid by virtue of section 39(4) and (5) have not been paid within a required period, the law enforcement agency concerned must take reasonable steps to recover them and any interest payable in respect of them.
- s.40(4) - the appropriate authority must by order provide for what are reasonable steps for the purposes of subsection (3).
- s.40(5) - any amounts which have not been recovered despite the taking of the reasonable steps are recoverable as if due to the law enforcement agency concerned by virtue of a civil order or judgment.
- s.40(6) - where any amounts required to be paid by virtue of section 39(4) and (5) are, in the case of an order of the Crown Court, not paid within a required period, the unpaid balance from time to time carries interest at the rate for the time being specified in section 17 of the Judgments Act 1838 (c. 110) (interest on civil judgment debts).
- s.40(7) - for the purposes of section 25, a failure to comply with a requirement imposed by virtue of section 39(4) and (5) to make payments occurs when the amounts become recoverable as mentioned in subsection (5) above (and not before).
- s.40(8) - in this section “*law enforcement agency*” has the same meaning as in section 39.

¹⁰⁸⁹ Commencement: 6 April 2008, SI 2008/755 art.15(1)(k).

¹⁰⁹⁰ Commencement: 6 April 2008, SI 2008/755 art.15(1)(j).

- s.40(9) - in this section “*the appropriate authority*” means—
- (a) in relation to serious crime prevention orders in England and Wales, the Secretary of State;
 - (b) in relation to serious crime prevention orders in Northern Ireland, the Department of Justice in Northern Ireland.

3.4.6.8. Interaction with other sentencing orders

SCA 2007 s.19¹⁰⁹¹: Orders by Crown Court on conviction

- s.19(7) - an order must not be made under this section except—
- (a) in addition to a sentence imposed in respect of the offence concerned; or
 - (b) in addition to an order discharging the person conditionally.

SCA 2007 s.36¹⁰⁹²: Proceedings in the Crown Court

- s.36(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).

3.4.6.9. Relationship between High Court and Crown Court orders

SCA 2007 s.22¹⁰⁹³: Inter-relationship between different types of orders

- s.22(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.
- s.22(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.
- s.22(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.
- s.22(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.

¹⁰⁹¹ Commencement: 6 April 2008, SI 2008/755 art.15(1)(d).

¹⁰⁹² Commencement: 6 April 2008, SI 2008/755 art.15(1)(f).

¹⁰⁹³ Commencement: 6 April 2008, SI 2008/755 art.15(1)(d).

3.4.6.10. Variation and discharge of orders

High Court: Variation

SCA 2007 s.17¹⁰⁹⁴: Variation of orders

- s.17(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.
- s.17(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.
- s.17(3) - an application for the variation of an order under this section may be made by–
- (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.
- s.17(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.
- s.17(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.
- s.17(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
 - (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.

¹⁰⁹⁴ Commencement: 6 April 2008, SI 2008/755 art.15(1)(d).

- s.17(7) - condition B is that–
- (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.
- s.17(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)).

High Court: Discharge

SCA 2007 s.18¹⁰⁹⁵: Discharge of orders

- s.18(1) - on an application under this section:
- (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.
- s.18(2) - an application for the discharge of an order may be made by–
- (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.
- s.18(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.
- s.18(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
 - (b) condition A or B is met.
- s.18(5) - condition A is that–
- (a) the person–
 - (i) has, on an application under section 9, been given an opportunity to make representations; or
 - (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.

¹⁰⁹⁵ Commencement: 6 April 2008, SI 2008/755 art.15(1)(d).

- s.18(6) - condition B is that–
- (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.

High Court: Right to make representations

SCA 2007 s.9¹⁰⁹⁶: Right of third parties to make representations

- s.9(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.
- s.9(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.

Crown Court: Variation

SCA 2007 s.20¹⁰⁹⁷: Powers of Crown Court to vary orders on conviction

- s.20(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
 - (b) has been convicted by or before the Crown Court of having committed a serious offence in England and Wales.
- s.20(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
 - (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.

¹⁰⁹⁶ Commencement: 6 April 2008, SI 2008/755 art.15(1)(a).

¹⁰⁹⁷ Commencement: 6 April 2008, SI 2008/755 art.15(1)(d).

- s.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.
- s.20(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
 - (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.
- s.20(5) - a variation under this section may be made only on an application by the relevant applicant authority.
- s.20(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.
- s.20(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)).

SCA 2007 s.36¹⁰⁹⁸: Proceedings in the Crown Court

- s.36(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 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).

3.4.6.11. Appeals

From High Court

SCA 2007 s.23¹⁰⁹⁹: Additional right of appeal from High Court

- s.23(1) - an appeal may be made to the Court of Appeal in relation to a decision of the High Court–
- (a) to make a serious crime prevention order;
 - (b) to vary, or not to vary, such an order; or
 - (c) to discharge or not to discharge such an order;
- 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).

¹⁰⁹⁸ Commencement: 6 April 2008, SI 2008/755 art.15(1)(f).

¹⁰⁹⁹ Commencement: 6 April 2008, SI 2008/755 art.15(1)(d).

- s.23(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.

From the Crown Court

SCA 2007 s.24¹¹⁰⁰: Appeals from Crown Court

- s.24(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—
- (a) the person who is the subject of the order; or
 - (b) the relevant applicant authority.
- s.24(2) - in addition, an appeal may be made to the Court of Appeal in relation to a decision of the Crown Court—
- (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).
- s.24(3) - subject to subsection (4), an appeal under subsection (1) or (2) lies only with the leave of the Court of Appeal.
- s.24(4) - an appeal under subsection (1) or (2) lies without the leave of the Court of Appeal if the judge who made the decision grants a certificate that the decision is fit for appeal under this section.
- s.24(5) - subject to any rules of court made under section 53(1) of the Senior Courts Act 1981 (c. 54) (distribution of business between civil and criminal divisions), the criminal division of the Court of Appeal is the division which is to exercise jurisdiction in relation to an appeal under subsection (1) or (2) from a decision of the Crown Court in the exercise of its jurisdiction in England and Wales under this Part.
- s.24(6) - an appeal against a decision of the Court of Appeal on an appeal to that court under subsection (1) or (2) may be made to the Supreme Court by any person who was a party to the proceedings before the Court of Appeal.
- s.24(7) - an appeal under subsection (6) lies only with the leave of the Court of Appeal or the Supreme Court.
- s.24(8) - such leave must not be granted unless—
- (a) it is certified by the Court of Appeal that a point of law of general public importance is involved in the decision; and
 - (b) it appears to the Court of Appeal or (as the case may be) the Supreme Court that the point is one which ought to be considered by the Supreme Court.

¹¹⁰⁰ Commencement: Subsections (9) and (10) in force 1 March 2008, SI 2008/219 art.3(a). Subsections (1) to (8) and (11) and (12) in force 6 April 2008, SI 2008/755 art.15(1)(d).

- s.24(9) - the Secretary of State may for the purposes of this section by order make provision corresponding (subject to any specified modifications) to that made by or under an enactment and relating to—
- (a) appeals to the Court of Appeal under Part 1 of—
 - (i) the Criminal Appeal Act 1968 (c. 19); or
 - (ii) the Criminal Appeal (Northern Ireland) Act 1980 (c. 47);
 - (b) appeals from any decision of the Court of Appeal on appeals falling within paragraph (a); or
 - (c) any matter connected with or arising out of appeals falling within paragraph (a) or (b).
- s.24(9A) - the power to make an order under subsection (9) is exercisable by the Department of Justice in Northern Ireland (and not by the Secretary of State) so far as the power may be used to make provision which could be made by an Act of the Northern Ireland Assembly without the consent of the Secretary of State (see sections 6 to 8 of the Northern Ireland Act 1998).
- s.24(10) - an order under subsection (9) may, in particular, make provision about the payment of costs.
- s.24(11) - the power to make an appeal to the Court of Appeal under subsection (1)(a) operates instead of any power for the person who is the subject of the order to make an appeal against a decision of the Crown Court in relation to a serious crime prevention order by virtue of—
- (a) section 9 or 10 of the Criminal Appeal Act 1968; or
 - (b) section 8 of the Criminal Appeal (Northern Ireland) Act 1980.
- s.24(12) - section 33(3) of the Criminal Appeal Act 1968 (limitation on appeal from criminal division of the Court of Appeal: England and Wales) does not prevent an appeal to the Supreme Court under subsection (6) above.

Note: The Serious Crime Act 2007 (Appeals under Section 24) Order 2008 sets out provisions dealing with appeals under section 24, including orders for costs. The provisions concerning with England and Wales are set out in full below.

***Serious Crime Act 2007 (Appeals under Section 24) Order 2008 (SI 2008/1863) art.4¹¹⁰¹:
Hearing of appeal and grounds for allowing an appeal***

- art.4(1) - every appeal will be limited to a review of the decision of the Crown Court unless the Court of Appeal considers that in the circumstances of an appeal it would be in the interests of justice to hold a re-hearing.
- art.4(2) - the Court of Appeal will allow an appeal where the decision of the Crown Court was—
- (a) wrong; or
 - (b) unjust because of a serious procedural or other irregularity in the proceedings in the Crown Court.

¹¹⁰¹ Commencement: 18 August 2008, SI 2008/1863 art.1(1).

***Serious Crime Act 2007 (Appeals under Section 24) Order 2008 (SI 2008/1863) art.5¹¹⁰²:
Powers of the Court of Appeal on appeal***

- art.5(1) - the Court of Appeal has all the powers of the Crown Court.
- art.5(2) - the Court of Appeal may—
- (a) make a serious crime prevention order;
 - (b) affirm, set aside or vary any order or judgment made or given by the Crown Court;
 - (c) refer any issue for determination by the Crown Court;
 - (d) order a new hearing in the Crown Court;
 - (e) make an order for costs in accordance with Part 3;
 - (f) make an order for the payment of interest on those costs.
- art.5(3) - the Court of Appeal may exercise its powers in relation to the whole or part of an order of the Crown Court.

***Serious Crime Act 2007 (Appeals under Section 24) Order 2008 (SI 2008/1863) art.6¹¹⁰³:
Presence and live links***

- art.6(1) - a person has a right to attend a hearing in public unless—
- (a) it is a hearing preliminary or incidental to an appeal, including the hearing of an application for permission to appeal; or
 - (b) that person is in custody in consequence of—
 - (i) a verdict of not guilty by reason of insanity; or
 - (ii) a finding of disability.
- art.6(2) - at any time before the beginning of a hearing, the Court of Appeal may give a live link direction in relation to that hearing if—
- (a) a person who is a party to the appeal is expected to be in custody; and
 - (b) that person has a right to attend the hearing in accordance with paragraph (1).
- art.6(3) - for this purpose—
- (a) “live link direction” is a direction that the person concerned (if the person is being held in custody at the time of the hearing) is to attend the hearing through a live link from the place at which the person is held; and
 - (b) “live link” means an arrangement by which the person concerned is able to see and hear, and to be seen and heard by, the Court of Appeal (for this purpose any impairment of eyesight or hearing is to be disregarded).

¹¹⁰² Commencement: 18 August 2008, SI 2008/1863 art.1(1).

¹¹⁰³ Commencement: 18 August 2008, SI 2008/1863 art.1(1).

art.6(4) - the Court of Appeal—

- (a) must not give a live link direction unless the persons who are parties to the appeal have had the opportunity to make representations about the giving of such a direction; and
- (b) may rescind a live link direction at any time before or during any hearing to which it applies (whether of its own motion or on the application of a person who is a party to the appeal).

Serious Crime Act 2007 (Appeals under Section 24) Order 2008 (SI 2008/1863) art.7¹¹⁰⁴: Evidence

art.7(1) - for the purposes of an appeal, or an application for leave to appeal, the Court of Appeal may, if it thinks it necessary or expedient in the interests of justice—

- (a) order the production of any document, exhibit or other thing connected with the proceedings, the production of which appears to it necessary for the determination of the case;
- (b) order any witness to attend for examination and be examined before the Court of Appeal (whether or not the witness was called in the proceedings under section 19, 20 or 21 of the Act); and
- (c) receive any evidence which was not adduced in the proceedings under section 19, 20 or 21 of the Act.

art.7(2) - the power conferred by sub-paragraph 1(a) may be exercised so as to require the production of any document, exhibit or other thing mentioned in that sub-paragraph to—

- (a) the Court of Appeal; or
- (b) any person who is a party to the appeal.

art.7(3) - the Court of Appeal shall, in considering whether to receive evidence, have regard in particular to—

- (a) whether the evidence appears to the Court of Appeal to be capable of belief;
- (b) whether it appears to the Court of Appeal that the evidence may afford any ground for allowing the appeal;
- (c) whether the evidence would have been admissible in the proceedings under section 19, 20 or 21 of the Act on an issue which is the subject of the appeal; and
- (d) whether there is a reasonable explanation for the failure to adduce the evidence in those proceedings.

art.7(4) - sub-paragraph (1)(c) applies to any evidence of a witness (including the person who is the subject of the serious crime prevention order) who is competent but not compellable.

¹¹⁰⁴ Commencement: 18 August 2008, SI 2008/1863 art.1(1).

***Serious Crime Act 2007 (Appeals under Section 24) Order 2008 (SI 2008/1863) art.8¹¹⁰⁵:
Effect of appeal on serious crime prevention order***

art.8 - the coming into force of a serious crime prevention order shall not be affected by an appeal, subject to any direction which the Court of Appeal may give to the contrary.

***Serious Crime Act 2007 (Appeals under Section 24) Order 2008 (SI 2008/1863) art.9¹¹⁰⁶:
Powers of the Court of Appeal under Part 2 which are exercisable by a single judge***

art.9(1) - there may be exercised by a single judge in the same manner as by the Court of Appeal and subject to the same provisions—

- (a) the powers of the Court of Appeal under this Part and Part 3 specified in paragraph (2); and
- (b) the power to give leave under section 24(3) of the Act.

art.9(2) - the powers referred to in sub-paragraph (1)(a) are—

- (a) to extend time within which notice of appeal or notice of application for leave to appeal may be given;
- (b) to order a witness to attend for examination;
- (c) to give a live link direction under article 6(2);
- (d) to make orders under article 7(1)(a) (production of documents etc.);
- (e) to give directions under article 8 (effect of appeal on serious crime prevention order); and
- (f) to make orders for the payment of costs under Part 3.

art.9(3) - if the single judge refuses an application on the part of a person who is a party to the appeal to exercise any of the powers conferred on the judge by this article, that person shall be entitled to have the application determined by the Court of Appeal.

***Serious Crime Act 2007 (Appeals under Section 24) Order 2008 (SI 2008/1863) art.10¹¹⁰⁷:
Powers of the Court of Appeal under Part 2 which are exercisable by the registrar***

art.10(1) - there may be exercised by the registrar, in the same manner as the Court of Appeal and subject to the same provisions, the powers of the Court of Appeal under this Part which are specified in paragraph (2).

art.10(2) - the powers mentioned in paragraph (1) are—

- (a) to extend the time within which notice of appeal or notice of application for leave to appeal may be given;
- (b) to order a witness to attend for examination; and
- (c) to make orders under article 7(1)(a) (production of documents etc.).

art.10(3) - if the registrar refuses an application on the part of a person who is a party to the appeal to exercise any of the powers conferred on the registrar by this article, that person shall be entitled to have the application determined by a single judge.

¹¹⁰⁵ Commencement: 18 August 2008, SI 2008/1863 art.1(1).

¹¹⁰⁶ Commencement: 18 August 2008, SI 2008/1863 art.1(1).

¹¹⁰⁷ Commencement: 18 August 2008, SI 2008/1863 art.1(1).

***Serious Crime Act 2007 (Appeals under Section 24) Order 2008 (SI 2008/1863) art.11¹¹⁰⁸:
Procedural directions: powers of single judge and registrar***

art.11(1) - the power of the Court of Appeal to determine an application for procedural directions may be exercised by—

- (a) a single judge; or
- (b) the registrar.

art.11(2) - “Procedural directions” means directions for the efficient and effective preparation of—

- (a) an application for leave to appeal; or
- (b) an appeal.

art.11(3) - a single judge may give such procedural directions as the single judge thinks fit—

- (a) when acting under paragraph (1);
- (b) on a reference from the registrar; or
- (c) of the single judge's own motion, when the single judge is exercising, or considering whether to exercise, any power of the single judge in relation to the application or appeal.

art.11(4) - the registrar may give such procedural directions as the registrar thinks fit—

- (a) when acting under paragraph (1); or
- (b) of the registrar's own motion.

***Serious Crime Act 2007 (Appeals under Section 24) Order 2008 (SI 2008/1863) art.12¹¹⁰⁹:
Appeals against procedural directions***

art.12(1) - paragraph (2) applies if the registrar gives, or refuses to give, procedural directions.

art.12(2) - a single judge may, on an application to the single judge under paragraph (3)—

- (a) confirm, set aside or vary any procedural directions given by the registrar; and
- (b) give such procedural directions as the single judge thinks fit.

art.12(3) - an application under this article may be made by a person who is a party to the appeal.

***Serious Crime Act 2007 (Appeals under Section 24) Order 2008 (SI 2008/1863) art.13¹¹¹⁰:
Interpretation and transitional provision***

art.13(1) - in this Part—

“*appeal costs order*” means an order under article 14;

“*applicant*” means—

- (a) in Chapter 3, the person in whose favour an appeal costs order has been made, and
- (b) in Chapter 5, the person who has applied for a third party costs order;

¹¹⁰⁸ Commencement: 18 August 2008, SI 2008/1863 art.1(1).

¹¹⁰⁹ Commencement: 18 August 2008, SI 2008/1863 art.1(1).

¹¹¹⁰ Commencement: 18 August 2008, SI 2008/1863 art.1(1).

“*costs judge*” means a taxing master of the Senior Courts;

“*expenses*” include compensation to a witness for the witness's trouble or loss of time and out of pocket expenses;

“*interested party*” means—

- (a) the person who is a party to the appeal benefiting from the wasted costs order or third party costs order; and
- (b) where that person was receiving services funded for that person by the Legal Services Commission or made available for that person under arrangements made for the purposes of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, or an order for the payment of costs out of central funds was made in that person's favour, shall include the authority responsible for determining costs payable in respect of those services or out of central funds as the case may be;

“*legal or other representative*” means a person who is exercising a right of audience, or a right to conduct litigation, on behalf of any person who is a party to an appeal;

“*presiding judge*” means the judge that presided at the hearing in respect of which the costs are payable under an appeal costs order;

“*proceedings before the Court of Appeal*” means any proceedings before the Court of Appeal including an application for leave to appeal and an appeal;

“*professional witness*” means a witness practising as a member of the legal or medical profession or as a dentist, veterinary surgeon or accountant who attends to give professional evidence as to matters of fact;

“*relevant amount*” has the meaning assigned to it by article 32;

“*third party*” means a person who is not a party to the proceedings before the Court of Appeal;

“*third party costs order*” means an order under article 18;

“*wasted costs order*” means an order under article 17; and

“*witness*” means any person properly attending to give evidence, whether or not the person gives evidence or is called at the instance of one of the persons who is a party to the appeal or of the Court of Appeal, but does not include—

- (c) a person attending as a witness to character only unless the Court of Appeal has certified that the interests of justice required the witness's attendance;
- (d) a member of a police force attending the Court of Appeal in the member's capacity as such;
- (e) a full-time officer of an institution to which the Prison Act 1952 applies attending the Court of Appeal in the officer's capacity as such; or
- (f) a prisoner in respect of any occasion on which the prisoner is conveyed to the Court of Appeal in custody.

art.13(2) - for the purposes of article 14, the costs of the subject of a serious crime prevention order or any party under section 24(2) shall be taken to include the expense of compensating any witness for the expenses, trouble or loss of time properly incurred in or incidental to the witness's attendance.

art.13(3) - where any person who is a party to an appeal is in receipt of services funded for that person by the Legal Services Commission or made available for that person under arrangements made for the purposes of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, then—

- (a) for the purposes of article 14, that person's costs shall be taken not to include the cost of those services; and
- (b) for the purposes of articles 15 to 20, that person's costs shall be taken to include the cost of those services.

art.13(4) - in the application of this Part before the commencement of section 59(1) of the Constitutional Reform Act 2005 (renaming of Supreme Courts of England and Wales), the reference to the Senior Courts is to be read as a reference to the Supreme Court.

Serious Crime Act 2007 (Appeals under Section 24) Order 2008 (SI 2008/1863) art.14¹¹¹¹: Award of costs in favour of subject or party under section 24(2)

art.14(1) - where the Court of Appeal—

- (a) allows an appeal by the person who is the subject of a serious crime prevention order;
- (b) dismisses an appeal by the relevant applicant authority;
- (c) hears an appeal by a party under section 24(2); or
- (d) determines an application for leave to appeal to the Supreme Court,

it may make an appeal costs order in favour of the person who is the subject of the serious crime prevention order.

art.14(2) - where the Court of Appeal—

- (a) allows an appeal by a party under section 24(2);
- (b) dismisses an appeal by the relevant applicant authority;
- (c) hears an appeal by the person who is the subject of a serious crime prevention order; or
- (d) determines an application for leave to appeal to the Supreme Court,

it may make an appeal costs order in favour of a party under section 24(2).

art.14(3) - subject to paragraphs (4) and (5), an order under this article shall be for the payment out of central funds, to the person in whose favour the order is made, of such amounts as the Court of Appeal considers reasonably sufficient to compensate that person for any expenses properly incurred by that person in the proceedings before the Court of Appeal.

art.14(4) - where the Court of Appeal makes an order under this article but is of the opinion that there are circumstances which make it inappropriate that the person in whose favour the order is made should recover the full amount mentioned in paragraph (3) it shall—

- (a) assess what amount would, in its opinion, be just and reasonable; and
- (b) specify that amount in the order.

art.14(5) - subject to paragraph (4), the amount to be paid out of central funds in pursuance of an order under this article shall—

- (a) be specified in the order, in any case where the Court of Appeal considers it appropriate for the amount to be specified and the person in whose favour the order is made agrees the amount; and

¹¹¹¹ Commencement: 18 August 2008, SI 2008/1863 art.1(1).

- (b) in any other case, be determined in accordance with Chapter 3 of this Part and article 37.

Serious Crime Act 2007 (Appeals under Section 24) Order 2008 (SI 2008/1863) art.15¹¹¹²: Award of costs against subject or party under section 24(2)

art.15(1) - where the Court of Appeal dismisses—

- (a) an appeal or an application for leave to appeal by the person who is the subject of a serious crime prevention order; or
(b) an application by that person for leave to appeal to the Supreme Court under section 24(7) of the Act,

it may make such order as to costs to be paid by that person, to such person as may be named in the order (including the relevant applicant authority or a party under section 24(2)), as it considers just and reasonable.

art.15(2) - where the Court of Appeal dismisses—

- (a) an appeal or an application for leave to appeal by a party under section 24(2); or
(b) an application by that person for leave to appeal to the Supreme Court under section 24(7) of the Act,

it may make such order as to costs to be paid by that person, to such person as may be named in the order (including the relevant applicant authority or the person who is the subject of a serious crime prevention order), as it considers just and reasonable.

art.15(3) - the amount to be paid in pursuance of an order under this article shall be specified in the order.

Serious Crime Act 2007 (Appeals under Section 24) Order 2008 (SI 2008/1863) art.16¹¹¹³: Unnecessary or improper acts and omissions

art.16(1) - where at any time during any proceedings before the Court of Appeal, the Court of Appeal is satisfied that costs have been incurred in respect of those proceedings by any person who is a party to the appeal as a result of an unnecessary or improper act or omission by, or on behalf of, another person who is a party to the appeal, the Court of Appeal may order that all or part of the costs incurred by that person shall be paid by the other person.

art.16(2) - when making an order under paragraph (1) the Court of Appeal may take into account any other order as to costs which has been made in respect of the proceedings before the Court of Appeal and may take the order into account when making any other order as to costs in respect of those proceedings.

art.16(3) - the amount to be paid in pursuance of an order under this article shall be specified in the order.

art.16(4) - before making an order under paragraph (1), the Court of Appeal shall allow any person who is a party to the appeal to make representations and may hear evidence.

¹¹¹² Commencement: 18 August 2008, SI 2008/1863 art.1(1).

¹¹¹³ Commencement: 18 August 2008, SI 2008/1863 art.1(1).

***Serious Crime Act 2007 (Appeals under Section 24) Order 2008 (SI 2008/1863) art.17¹¹¹⁴:
Wasted costs order***

- art.17(1) - if in any proceedings before the Court of Appeal, costs have been incurred by a person who is a party to the appeal—
- (a) as a result of any improper, unreasonable or negligent act or omission on the part of any legal or other representative or any employee of such a representative; or
 - (b) which, in the light of any such act or omission occurring after they were incurred, the Court of Appeal considers it is unreasonable to expect that person to pay
- the Court of Appeal may disallow, or (as the case may be) order the legal or other representative to pay, the whole of any wasted costs or such part of them as may be determined in accordance with this article.
- art.17(2) - when making a wasted costs order, the Court of Appeal may take into account any other order as to costs which has been made in respect of the proceedings before the Court of Appeal and may take the wasted costs order into account when making any other order as to costs in respect of those proceedings.
- art.17(3) - the amount to be paid or disallowed in pursuance of a wasted costs order shall be specified in the order.
- art.17(4) - before making a wasted costs order, the Court of Appeal shall allow the legal or other representative and any person who is a party to the appeal to make representations and may hear evidence.
- art.17(5) - where a wasted costs order has been made the Court of Appeal shall notify any interested party of the order and the amount disallowed or ordered to be paid.
- art.17(6) - where the person required to make a payment in respect of sums due under a wasted costs order fails to do so, the payment may be recovered summarily as a sum adjudged to be paid as a civil debt by order of a magistrates' court by the person benefiting from the order, save that where that person was in receipt of services funded for that person by the Legal Services Commission or made available for that person under arrangements made for the purposes of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 or an order for the payment of costs out of central funds was made in that person's favour, the power to recover shall be exercisable by the Lord Chancellor.

***Serious Crime Act 2007 (Appeals under Section 24) Order 2008 (SI 2008/1863) art.18¹¹¹⁵:
Third party costs order***

- art.18 - if—
- (a) there has been serious misconduct (whether or not constituting a contempt of court) by a third party; and
 - (b) the Court of Appeal considers it appropriate, having regard to that misconduct, to make a third party costs order against the third party

¹¹¹⁴ Commencement: 18 August 2008, SI 2008/1863 art.1(1).

¹¹¹⁵ Commencement: 18 August 2008, SI 2008/1863 art.1(1).

the Court of Appeal may order the third party to pay the whole of any costs incurred or wasted by any person who is a party to the appeal as a result of the misconduct or such part of them as may be determined in accordance with Chapter 4 of this Part.

***Serious Crime Act 2007 (Appeals under Section 24) Order 2008 (SI 2008/1863) art.19¹¹¹⁶:
Costs of attendance at any proceedings before the Court of Appeal***

- art.19(1) - the Court of Appeal may order the payment out of central funds of such sums as appear to it to be reasonably sufficient to compensate a person who is a party to an appeal who is not in custody and who appears before it on, or in connection with, any proceedings before the Court of Appeal.
- art.19(2) - article 37 will apply for the purpose of determining the amount of any subsistence allowance or travelling expenses ordered to be paid under this article.

***Serious Crime Act 2007 (Appeals under Section 24) Order 2008 (SI 2008/1863) art.20¹¹¹⁷:
Costs of witnesses etc.***

- art.20(1) - where, in any proceedings before the Court of Appeal—
- (a) a witness attends at the instance of any person who is a party to the appeal or the Court of Appeal; or
 - (b) an interpreter is required because of the lack of English of any person who is a party to the appeal

the expenses properly incurred by that witness or interpreter shall be allowed out of central funds in accordance with Chapter 5 of this Part, unless the Court of Appeal directs that the expenses are not to be allowed out of central funds.

- art.20(2) - any entitlement to an allowance under this article shall be the same whether the witness or interpreter attends on the same day in one case or more than one case.

***Serious Crime Act 2007 (Appeals under Section 24) Order 2008 (SI 2008/1863) art.21¹¹¹⁸:
Person who is to determine costs***

- art.21(1) - costs under an appeal costs order shall be determined by the registrar in accordance with this Chapter.
- art.21(2) - the registrar may appoint or authorise the appointment of determining officers to act on the registrar's behalf under this Chapter in accordance with directions given by the registrar or on the registrar's behalf.

***Serious Crime Act 2007 (Appeals under Section 24) Order 2008 (SI 2008/1863) art.22¹¹¹⁹:
Claims for costs***

- art.22(1) - subject to article 28, no claim for costs shall be entertained unless it is submitted within three months of the date on which the appeal costs order was made.
- art.22(2) - subject to paragraph (3), a claim for costs shall be submitted to the registrar, in such form and manner as the registrar may direct and shall be accompanied by receipts or

¹¹¹⁶ Commencement: 18 August 2008, SI 2008/1863 art.1(1).

¹¹¹⁷ Commencement: 18 August 2008, SI 2008/1863 art.1(1).

¹¹¹⁸ Commencement: 18 August 2008, SI 2008/1863 art.1(1).

¹¹¹⁹ Commencement: 18 August 2008, SI 2008/1863 art.1(1).

other evidence of the applicant's payment of the costs claimed, and any receipts or other documents in support of any disbursements claimed.

art.22(3) - a claim shall—

- (a) summarise the items of work done by a solicitor;
- (b) state, where appropriate, the dates on which items of work were done, the time taken and the sums claimed; and
- (c) specify any disbursements claimed, including counsel's fees, the circumstances in which they were incurred and the amounts claimed in respect of them.

art.22(4) - where there are any special circumstances which should be drawn to the attention of the registrar, the applicant shall specify them.

art.22(5) - the applicant shall supply such further particulars, information and documents as the registrar may require.

***Serious Crime Act 2007 (Appeals under Section 24) Order 2008 (SI 2008/1863) art.23¹¹²⁰:
Determination of costs***

art.23(1) - the registrar shall consider the claim, any further particulars, information or documents submitted by the applicant under article 22 and shall allow such costs in respect of—

- (a) such work as appears to the registrar to have been actually and reasonably done; and
- (b) such disbursements as appear to the registrar to have been actually and reasonably incurred as the registrar considers reasonably sufficient to compensate the applicant for any expenses properly incurred by the applicant in the proceedings before the Court of Appeal.

art.23(2) - in determining costs under paragraph (1) the registrar shall take into account all the relevant circumstances of the case including the nature, importance, complexity or difficulty of the work and the time involved.

art.23(3) - when determining costs for the purpose of this article, there shall be allowed a reasonable amount in respect of all costs reasonably incurred and any doubts which the registrar may have as to whether the costs were reasonably incurred or were reasonable in amount shall be resolved against the applicant.

***Serious Crime Act 2007 (Appeals under Section 24) Order 2008 (SI 2008/1863) art.24¹¹²¹:
Payment of costs***

art.24(1) - when the registrar has determined the costs payable to an applicant in accordance with this Chapter, the registrar shall notify the applicant of the costs payable and authorise payment accordingly.

art.24(2) - where the costs payable under paragraph (1) are varied as a result of a re-determination under article 25, an appeal to a costs judge under article 26, or an appeal to the High Court under article 27, then—

¹¹²⁰ Commencement: 18 August 2008, SI 2008/1863 art.1(1).

¹¹²¹ Commencement: 18 August 2008, SI 2008/1863 art.1(1).

- (a) where the costs are increased, the registrar shall authorise payment of the increase;
 - (b) where the costs are decreased, the applicant shall repay the amount of such decrease; and
 - (c) where the payment of the costs of an appeal is ordered under article 26(14) or 27(8),
- the registrar shall authorise such payment to the applicant.

Serious Crime Act 2007 (Appeals under Section 24) Order 2008 (SI 2008/1863) art.25¹¹²²: Re-determination of costs by the registrar

- art.25(1) - an applicant who is dissatisfied with the costs determined under this Chapter by the registrar may apply to the registrar to re-determine them.
- art.25(2) - subject to article 28, the application shall be made within 21 days of the receipt of notification of the costs payable under article 24(1), by giving notice in writing to the registrar specifying the items in respect of which the application is made and the grounds of objection and shall be made in such form and manner as the registrar may direct.
- art.25(3) - the notice of application shall state whether the applicant wishes to appear or to be represented and, if the applicant so wishes, the registrar shall notify the applicant of the time of a hearing to hear the applicant or the applicant's representative.
- art.25(4) - the notice of application shall be accompanied by any particulars, information and documents supplied under article 22 and the applicant shall supply such further particulars, information and documents as the registrar may require.
- art.25(5) - the registrar shall re-determine the costs, whether by way of increase, decrease or at the level previously determined, in the light of the objections made by the applicant or on the applicant's behalf and shall notify the applicant of the decision.
- art.25(6) - the applicant may request the registrar to give reasons in writing for the decision and, if so requested, the registrar shall comply with the request.
- art.25(7) - subject to article 28, any request under paragraph (6) shall be made within 21 days of receiving notification of the decision.

Serious Crime Act 2007 (Appeals under Section 24) Order 2008 (SI 2008/1863) art.26¹¹²³: Appeals to a costs judge

- art.26(1) - where the registrar has given the reasons for the decision on a re-determination under article 25, an applicant who is dissatisfied with that decision may appeal to a costs judge.
- art.26(2) - subject to article 28, an appeal shall be instituted within 21 days of the receipt of the registrar's reasons by giving notice in writing to the Senior Costs Judge specifying the items in respect of which the appeal is brought and the grounds of objection.
- art.26(3) - the appellant shall send a copy of any notice given under paragraph (2) to the registrar.

¹¹²² Commencement: 18 August 2008, SI 2008/1863 art.1(1).

¹¹²³ Commencement: 18 August 2008, SI 2008/1863 art.1(1).

- art.26(4) - the notice of appeal shall be accompanied by—
- (a) a copy of the written notice given under article 25(2);
 - (b) any particulars, information and documents supplied to the registrar under article 25; and
 - (c) the registrar's reasons for the decision given under article 25(6).
- art.26(5) - the notice of appeal shall state whether the appellant wishes to appear or to be represented or whether the appellant will accept a decision given in the absence of the appellant.
- art.26(6) - the Senior Costs Judge may, and if so directed by the Lord Chancellor either generally or in a particular case shall, send to the Lord Chancellor a copy of the notice of appeal together with copies of such other documents as the Lord Chancellor may require.
- art.26(7) - with a view to ensuring that the public interest is taken into account, the Lord Chancellor may arrange for written or oral representations to be made on behalf of the Lord Chancellor and, if the Lord Chancellor intends to do so, the Lord Chancellor shall inform the Senior Costs Judge and the appellant.
- art.26(8) - any written representations made on behalf of the Lord Chancellor under paragraph (7) shall be sent to the Senior Costs Judge and to the appellant and, in the case of oral representations, the Senior Costs Judge and the appellant shall be informed of the grounds on which such representations will be made.
- art.26(9) - the appellant shall be permitted a reasonable opportunity to make representations in reply.
- art.26(10) - the costs judge shall inform the appellant (or the appellant's representative) and the Lord Chancellor, where representations have been or are to be made on the Lord Chancellor's behalf, of the date of any hearing and, subject to the provisions of this article, may give directions as to the conduct of the appeal.
- art.26(11) - the costs judge may consult the presiding judge, and the registrar or the determining officer who re-determined the costs on the registrar's behalf as the case may be, and may require the appellant to provide any further information which the costs judge requires for the purpose of the appeal and, unless the costs judge otherwise directs, no further evidence shall be received on the hearing of the appeal and no ground of objection shall be valid which was not raised on the re-determination under article 25.
- art.26(12) - the costs judge shall have the same powers as the registrar under this Chapter and, in the exercise of such powers, may alter the re-determination of the registrar in respect of any sum allowed, whether by increase or decrease, as the costs judge thinks fit.
- art.26(13) - the costs judge shall communicate the decision and the reasons for it in writing to the appellant, the Lord Chancellor, and the registrar or the determining officer who re-determined the costs on the registrar's behalf as the case may be.
- art.26(14) - save where the costs judge confirms or decreases the sums re-determined under article 25, the costs judge may allow the appellant a sum in respect of part or all of any reasonable costs (including any fee payable in respect of an appeal) incurred by the appellant in connection with the appeal.

Serious Crime Act 2007 (Appeals under Section 24) Order 2008 (SI 2008/1863) art.27¹¹²⁴: Appeals to the High Court

- art.27(1) - an applicant who is dissatisfied with the decision of a costs judge on an appeal under article 26 may apply to the costs judge to certify a point of principle of general importance.
- art.27(2) - subject to article 28, an application under paragraph (1) shall be made within 21 days of notification of a cost judge's decision under article 26(13).
- art.27(3) - where a costs judge certifies a point of principle of general importance, the applicant may appeal to the High Court against the decision of a costs judge on an appeal under article 26, and the Lord Chancellor shall be a respondent to the appeal.
- art.27(4) - subject to article 28, an appeal under paragraph (3) shall be instituted within 21 days of receiving a cost judge's certificate under paragraph (1).
- art.27(5) - where the Lord Chancellor is dissatisfied with the decision of a costs judge on an appeal under article 26 the Lord Chancellor may, if no appeal has been made by the applicant under paragraph (3), appeal to the High Court against that decision and the applicant shall be a respondent to the appeal.
- art.27(6) - subject to article 28, an appeal under paragraph (5) shall be instituted within 21 days of receiving notification of the cost judge's decision under article 26(13).
- art.27(7) - an appeal under paragraph (3) or (5) shall be brought in the Queen's Bench Division, follow the procedure set out in Part 52 of the Civil Procedure Rules 1998, and shall be heard and determined by a single judge whose decision shall be final.
- art.27(8) - the judge shall have the same powers as the registrar and a costs judge under this Chapter and may reverse, affirm or amend the decision appealed against or make such other order as the judge thinks fit.

Serious Crime Act 2007 (Appeals under Section 24) Order 2008 (SI 2008/1863) art.28¹¹²⁵: Time limits

- art.28(1) - subject to paragraph (2), the time limit within which there must be made or instituted—
- (a) a claim for costs by an applicant under article 22, an application for a re-determination under article 25, or a request for the registrar to give reasons for a decision on a re-determination under article 25;
 - (b) an appeal to a costs judge under article 26 or an application for a certificate under article 27(1); or
 - (c) an appeal to the High Court under article 27;
- may, for good reason, be extended by the registrar, the Senior Costs Judge or the High Court, as the case may be.
- art.28(2) - where an applicant without good reason has failed (or, if an extension were not granted, would fail) to comply with a time limit, the registrar, the Senior Costs Judge or the High Court, as the case may be, may, in exceptional circumstances, extend the

¹¹²⁴ Commencement: 18 August 2008, SI 2008/1863 art.1(1).

¹¹²⁵ Commencement: 18 August 2008, SI 2008/1863 art.1(1).

time limit and shall consider whether it is reasonable in the circumstances to reduce the costs; provided that the costs shall not be reduced unless the representative has been allowed a reasonable opportunity to show cause orally or in writing why the costs should not be reduced.

art.28(3) - an applicant may appeal to the Senior Costs Judge against a decision made under this article by a registrar and such an appeal shall be instituted within 21 days of the decision being given by giving notice in writing to the Senior Costs Judge specifying the grounds of appeal.

***Serious Crime Act 2007 (Appeals under Section 24) Order 2008 (SI 2008/1863) art.29¹¹²⁶:
Determination of a third party costs order***

art.29(1) - the Court of Appeal may make a third party costs order—

- (a) subject to paragraph (3), at any time during or after the proceedings before the Court of Appeal; and
- (b) on the application of any person who is a party to the appeal or of its own initiative.

art.29(2) - the Court of Appeal shall make a third party costs order during the proceedings before the Court of Appeal only if it decides that there are good reasons to do so, rather than making the order after the proceedings before the Court of Appeal, and it shall notify the persons who are parties to the appeal and the third party of those reasons and allow any of them to make representations.

art.29(3) - before making a third party costs order the Court of Appeal shall allow the third party and any person who is a party to the appeal to make representations and may hear evidence.

art.29(4) - when making a third party costs order the Court of Appeal may take into account any other order as to costs which has been made in respect of the proceedings before the Court of Appeal and may take the third party costs order into account when making any other order as to costs in respect of those proceedings.

art.29(5) - the amount to be paid in pursuance of a third party costs order shall be specified in the order.

art.29(6) - when a third party costs order has been made the Court of Appeal shall notify the third party and any interested party of the order and the amount ordered to be paid.

***Serious Crime Act 2007 (Appeals under Section 24) Order 2008 (SI 2008/1863) art.30¹¹²⁷:
Procedure for third party costs orders***

art.30(1) - this article applies where a person who is a party to the appeal applies to the Court of Appeal for a third party costs order or the Court of Appeal decides that it might make a third party costs order of its own initiative.

art.30(2) - an application for a third party costs order shall be in writing and shall contain—

- (a) the name and address of the applicant;

¹¹²⁶ Commencement: 18 August 2008, SI 2008/1863 art.1(1).

¹¹²⁷ Commencement: 18 August 2008, SI 2008/1863 art.1(1).

- (b) the names and addresses of the other persons who are parties to the appeal;
- (c) the name and address of the third party against whom the order is sought;
- (d) the date of the end of the proceedings before the Court of Appeal; and
- (e) a summary of the facts upon which the applicant intends to rely in making the application, including details of the alleged misconduct of the third party.

art.30(3) - the application shall be sent to the registrar and, upon receiving it, the registrar shall serve copies of it on the third party and the other persons who are parties to the appeal.

art.30(4) - where the Court of Appeal decides that it might make a third party costs order of its own initiative the registrar shall serve notice in writing accordingly on the third party and the persons who are parties to the appeal.

art.30(5) - at the same time as serving notice under paragraph (4) the registrar shall serve a summary of the reasons why the Court of Appeal might make a third party costs order, including details of the alleged misconduct of the third party.

art.30(6) - when the registrar serves copies of an application under paragraph (3) or serves notice under paragraph (4) the registrar shall at the same time serve notice on the persons who are parties to the appeal and the third party of the time and place fixed for the hearing.

art.30(7) - at the time notified the Court of Appeal may proceed in the absence of the third party and of any person who is a party to the appeal if it is satisfied that they have been duly served with the notice given under paragraph (6) and the copy of the application or (as the case may be) the notices given under paragraphs (3) and (4), but the Court of Appeal may set aside any third party costs order if it is later shown that the third party did not receive them.

***Serious Crime Act 2007 (Appeals under Section 24) Order 2008 (SI 2008/1863) art.31¹¹²⁸:
Recovery of sums due under a third party costs order***

art.31 - where the person required to make a payment in respect of sums due under a third party costs order fails to do so, the payment may be recovered summarily as a sum adjudged to be paid as a civil debt by order of a magistrates' court by the person benefiting from the order, save that where that person was in receipt of services funded for that person by the Legal Services Commission or made available for that person under arrangements made for the purposes of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 or an order for the payment of costs out of central funds was made in that person's favour, the power to recover shall be exercisable by the Lord Chancellor.

***Serious Crime Act 2007 (Appeals under Section 24) Order 2008 (SI 2008/1863) art.32¹¹²⁹:
Determination of rates or scales of allowances payable out of central funds***

art.32 - the Lord Chancellor shall, with the consent of the Treasury, determine the rates or scales of allowances payable out of central funds to witnesses or interpreters and a reference in this Chapter to the relevant amount means an amount calculated in accordance with the rates or scales so determined.

¹¹²⁸ Commencement: 18 August 2008, SI 2008/1863 art.1(1).

¹¹²⁹ Commencement: 18 August 2008, SI 2008/1863 art.1(1).

***Serious Crime Act 2007 (Appeals under Section 24) Order 2008 (SI 2008/1863) art.33¹¹³⁰:
Witnesses other than professional or expert witnesses***

- art.33(1) - a witness (other than a witness to whom article 34 or 35 applies) may be allowed—
- (a) a loss allowance not exceeding the relevant amount in respect of—
 - (i) any expenditure incurred (other than on travelling, lodging or subsistence) to which the witness would not otherwise be subject; or
 - (ii) any loss of earnings or of benefit under the enactments relating to National Insurance; and
 - (b) a subsistence allowance not exceeding the relevant amount.
- art.33(2) - any other person who in the opinion of the Court of Appeal necessarily attends for the purpose of any proceedings otherwise than to give evidence may be allowed the same allowances under paragraph (1) as if that person attended as a witness other than a professional or expert witness.
- art.33(3) - paragraph (2) shall not apply to—
- (a) a member of a police force attending the Court of Appeal in the member's capacity as such;
 - (b) a full-time officer of an institution to which the Prison Act 1952 applies attending the Court of Appeal in the officer's capacity as such; or
 - (c) a prisoner in respect of any occasion on which the prisoner is conveyed to the Court of Appeal in custody.

***Serious Crime Act 2007 (Appeals under Section 24) Order 2008 (SI 2008/1863) art.34¹¹³¹:
Professional witnesses***

- art.34 - a professional witness may be allowed a professional witness allowance not exceeding the relevant amount.

***Serious Crime Act 2007 (Appeals under Section 24) Order 2008 (SI 2008/1863) art.35¹¹³²:
Expert witnesses and interpreters***

- art.35(1) - the Court of Appeal may make an allowance in respect of an expert witness for attending to give expert evidence and for work in connection with its preparation of such an amount as it may consider reasonable having regard to the nature and difficulty of the case and the work necessarily involved.
- art.35(2) - paragraph (1) shall apply, with the necessary modifications, to an interpreter as it applies to an expert witness.

¹¹³⁰ Commencement: 18 August 2008, SI 2008/1863 art.1(1).

¹¹³¹ Commencement: 18 August 2008, SI 2008/1863 art.1(1).

¹¹³² Commencement: 18 August 2008, SI 2008/1863 art.1(1).

***Serious Crime Act 2007 (Appeals under Section 24) Order 2008 (SI 2008/1863) art.36¹¹³³:
Night Allowances***

art.36(1) - a professional or expert witness who is necessarily absent from the witness's place of residence overnight may be allowed a night allowance not exceeding the relevant amount.

art.36(2) - an interpreter who receives an allowance under article 35 may be allowed the same night allowance as if the interpreter attended as a professional or expert witness.

***Serious Crime Act 2007 (Appeals under Section 24) Order 2008 (SI 2008/1863) art.37¹¹³⁴:
Expenses of subject or party under section 24(2)***

art.37 - a person in whose favour an order is made under article 14 or 19 may be allowed the same subsistence allowance and travelling expenses as if that person attended as a witness other than a professional or expert witness.

***Serious Crime Act 2007 (Appeals under Section 24) Order 2008 (SI 2008/1863) art.38¹¹³⁵:
Travelling expenses***

art.38(1) - subject to paragraphs (2) and (3), a witness who travels to or from the Court of Appeal by public transport (including by air) may be allowed the fare actually paid.

art.38(2) - unless the Court of Appeal otherwise directs, only the second class fare shall be allowed under paragraph (1) for travel by railway.

art.38(3) - a witness who travels to or from the Court of Appeal by air may be allowed the fare actually paid only if—

- (a) there was no reasonable alternative to travel by air and the class of fare paid was reasonable in all the circumstances; or
- (b) travel by air was more economical in the circumstances taking into account any savings of time resulting from the adoption of such mode of travel and its consequent effect in reducing the amount of allowances payable under the other provisions of this Chapter,

and, where the air fare is not allowed, there may be allowed such amount as the Court of Appeal considers reasonable.

art.38(4) - a witness who travels to or from the Court of Appeal by hired vehicle may be allowed—

- (a) the fare actually paid and any reasonable gratuity so paid in a case of urgency or where public transport is not reasonably available; or
- (b) in any other case, the amount of fare for travel by public transport,

art.38(5) - a witness who travels to or from the Court of Appeal by private vehicle may be allowed an appropriate private vehicle allowance not exceeding the relevant amount.

¹¹³³ Commencement: 18 August 2008, SI 2008/1863 art.1(1).

¹¹³⁴ Commencement: 18 August 2008, SI 2008/1863 art.1(1).

¹¹³⁵ Commencement: 18 August 2008, SI 2008/1863 art.1(1).

art.38(6) - where—

- (a) a witness is in the opinion of the Court of Appeal suffering from a serious illness; or
 - (b) heavy exhibits have to be taken to the Court of Appeal,
- the Court of Appeal may allow reasonable additional sums in excess of those allowed under paragraphs (1) to (5).

art.38(7) - an interpreter who incurs travelling expenses in providing the Court of Appeal with a report otherwise than in writing may be allowed a travelling allowance not exceeding the relevant amount.

***Serious Crime Act 2007 (Appeals under Section 24) Order 2008 (SI 2008/1863) art.39¹¹³⁶:
Application for leave to appeal***

art.39(1) - an application to the Supreme Court for leave to appeal shall be made in writing within 28 days beginning with the date on which the application for leave to appeal is refused by the Court of Appeal.

art.39(2) - the Supreme Court may, upon an application made at any time by a person who was a party to the appeal before the Court of Appeal, extend the time within which an application may be made by that person to the Supreme Court under paragraph (1).

***Serious Crime Act 2007 (Appeals under Section 24) Order 2008 (SI 2008/1863) art.40¹¹³⁷:
Hearing and disposal of appeal***

art.40 - for the purposes of disposing of an appeal, the Supreme Court may exercise any powers of the Court of Appeal or may remit the case to the Court of Appeal.

***Serious Crime Act 2007 (Appeals under Section 24) Order 2008 (SI 2008/1863) art.41¹¹³⁸:
Powers of Court of Appeal under Part 4 which are exercisable by a single judge***

art.41- the powers of the Court of Appeal under this Part to extend the time for making an application for leave to appeal, may be exercised by a single judge but where the judge refuses an application on the part of a person who is party to the appeal to exercise this power that person shall be entitled to have the application determined by the Court of Appeal.

***Serious Crime Act 2007 (Appeals under Section 24) Order 2008 (SI 2008/1863) art.42¹¹³⁹:
Award of costs in favour of subject or party under section 24(2)***

art.42(1) - where the Supreme Court determines an appeal to which the person who is the subject of the serious crime prevention order was a party it may make a costs order in favour of that person.

art.42(2) - where the Supreme Court determines an appeal to which a party under section 24(2) was a party it may make a costs order in favour of that person.

¹¹³⁶ Commencement: 18 August 2008, SI 2008/1863 art.1(1).

¹¹³⁷ Commencement: 18 August 2008, SI 2008/1863 art.1(1).

¹¹³⁸ Commencement: 18 August 2008, SI 2008/1863 art.1(1).

¹¹³⁹ Commencement: 18 August 2008, SI 2008/1863 art.1(1).

- art.42(3) Subject to paragraphs (4) and (5), an order under this article shall be for the payment out of central funds of such amounts as the Supreme Court considers reasonably sufficient to compensate the person in whose favour the order is made for any expenses that person has properly incurred in the appeal.
- art.42(4) - where the Supreme Court makes an order under this article but is of the opinion that here are circumstances which make it inappropriate that the person in whose favour the order is made should recover the full amount mentioned in paragraph (3) it shall—
- (a) assess what amount would, in its opinion, be just and reasonable; and
 - (b) specify that amount in the order.
- art.42(5) - subject to paragraph (4), the amount to be paid out of central funds in pursuance of an order under this article shall—
- (a) be specified in the order, in any case where the Supreme Court considers it appropriate for the amount to be specified and the person in whose favour the order is made agrees the amount; and
 - (b) in any other case, shall be determined by such officer as may be prescribed by order of the Supreme Court.

Serious Crime Act 2007 (Appeals under Section 24) Order 2008 (SI 2008/1863) art.43¹¹⁴⁰: Transitional provisions in relation to the Supreme Court

- art.43(1) - in the application of Parts 2 to 4 before the commencement of paragraph 16(3)(b) of Schedule 9 to the Constitutional Reform Act 2005 (amendment of section 33(2) of the Criminal Appeal Act 1968), references to the Supreme Court are to be read as references to the House of Lords.
- art.43(2) - during the time that this Part is to be read as referring to the House of Lords in accordance with paragraph (1)—
- (a) an appeal shall not be heard and determined by the House of Lords unless there are present at least three of the persons designated Lords of Appeal by section 5 of the Appellate Jurisdiction Act 1876; and
 - (b) any order of the House of Lords which provides for the hearing of applications for leave to appeal by a committee constituted in accordance with section 5 of that Act may direct that the decision of that committee shall be taken on behalf of the House.

Right to make representations

SCA 2007 s.9¹¹⁴¹: Right of third parties to make representations

- s.9(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.

¹¹⁴⁰ Commencement: 18 August 2008, SI 2008/1863 art.1(1).

¹¹⁴¹ Commencement: 6 April 2008, SI 2008/755 art.15(1)(a).

3.4.6.12. Particular types of person etc.

Bodies corporate

SCA 2007 s.30¹¹⁴²: Bodies corporate including limited liability partnerships

- s.30(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–
 - (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
 - (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.
- s.30(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.
- s.30(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.
- s.30(4) - in this section–
- “*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.

¹¹⁴² Commencement: 6 April 2008, SI 2008/755 art.15(1)(f).

Other partnerships

SCA 2007 s.31¹¹⁴³: Other partnerships

- s.31(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).
- s.31(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.
- s.31(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.
- s.31(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.
- s.31(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).
- s.31(6) - for the purposes of such proceedings—
- (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);
 - (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)).
- s.31(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.

¹¹⁴³ Commencement: 6 April 2008, SI 2008/755 art.15(1)(f).

- s.31(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.
- s.31(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
 - (b) subsection (5) is not to be read as prejudicing any liability of a partner under subsection (8).
- s.31(10) - nothing in this section prevents a serious crime prevention order from being made against–
- (a) a particular partner; or
 - (b) a senior officer or employee of a partnership or any other person associated with a partnership.
- s.31(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
- “partnership”* does not include a limited liability partnership.

Unincorporated associations

SCA 2007 s.32¹⁴⁴: Unincorporated associations

- s.32(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).
- s.32(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.
- s.32(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–
- (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
 - (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.

¹⁴⁴ Commencement: 6 April 2008, SI 2008/755 art.15(1)(f).

- s.32(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).
- s.32(5) - for the purposes of such proceedings–
- (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);
 - (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)).
- s.32(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.
- s.32(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.
- s.32(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
 - (b) subsection (4) is not to be read as prejudicing any liability of an officer of an unincorporated association under subsection (7).
- s.32(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.
- s.32(10) - in this section:
- “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.

Overseas bodies

SCA 2007 s.33¹¹⁴⁵: Overseas bodies

- s.33 - 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.

Providers of information society services

SCA 2007 s.34¹¹⁴⁶: Providers of information society services

- s.34(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.
- s.34(2) - the condition in this subsection is that the court concerned considers that the terms–
- (a) are necessary for the objective of protecting the public by preventing, restricting or disrupting involvement in–
 - (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;
 - (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.
- s.34(3) - the conditions in this subsection are that–
- (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
 - (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.
- s.34(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.
- s.34(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).

¹¹⁴⁵ Commencement: 6 April 2008, SI 2008/755 art.15(1)(f).

¹¹⁴⁶ Commencement: 6 April 2008, SI 2008/755 art.15(1)(f).

- s.34(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—
- (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.

s.34(7) - for the purposes of this section—

- (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 54 of the treaty on the Functioning of the European Union;
- (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;
- (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;

and references to a person being established in an EEA state are to be read accordingly.

s.34(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);

“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
- (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”;

“intermediary services” means an information society service which—

- (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—
 - (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

- (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
“service provider” means a person providing an information society service.

- s.34(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.
- s.34(10) - subsection (9) does not apply if the information is stored for longer than is reasonably necessary for the transmission.

3.4.6.13. Breach and offences committed during the currency of the order

Breach

Offence

SCA 2007 s.25¹¹⁴⁷: Offence of failing to comply with order

- s.25(1) - a person who, without reasonable excuse, fails to comply with a serious crime prevention order commits an offence.

Penalty

SCA 2007 s.25¹¹⁴⁸: Offence of failing to comply with order

- s.25(2) - a person who commits an offence under this section 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 5 years or to a fine or to both.
- s.25(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.

Evidence

SCA 2007 s.25¹¹⁴⁹: Offence of failing to comply with order

- s.25(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.

¹¹⁴⁷ Commencement: 6 April 2008, SI 2008/755 art.15(1)(f).

¹¹⁴⁸ Commencement: 6 April 2008, SI 2008/755 art.15(1)(f).

¹¹⁴⁹ Commencement: 6 April 2008, SI 2008/755 art.15(1)(f).

Forfeiture

SCA 2007 s.26¹¹⁵⁰: Powers of forfeiture in respect of offence

- s.26(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.
- s.26(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 to the convicted person) who claims to be the owner of that thing or otherwise to have an interest in it.
- s.26(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.
- s.26(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.
- s.26(5) - that provision may, in particular, include provision relating to the retention, handling, destruction or other disposal of what is forfeited.
- s.26(6) - provision made by virtue of this section may be varied at any time by the court that made it.

Crown Court: Power to vary

SCA 2007 s.21¹¹⁵¹: Powers of Crown Court to vary or replace orders on breach

- s.21(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
 - (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.
- s.21(2) - the Crown Court may–
 - (a) in the case of an order in England and Wales; and
 - (b) in addition to dealing with the person in relation to the offence;vary or replace the order if it has reasonable grounds to believe that the terms of the order as varied, or the new order, would protect the public by preventing, restricting or disrupting involvement by the person in serious crime in England and Wales.
- s.21(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.

¹¹⁵⁰ Commencement: 6 April 2008, SI 2008/755 art.15(1)(f).

¹¹⁵¹ Commencement: 6 April 2008, SI 2008/755 art.15(1)(d).

- s.21(4) - the Crown Court may–
- (a) in the case of an order in Northern Ireland; and
 - (b) in addition to dealing with the person in relation to the offence;
- vary or replace the order if it has reasonable grounds to believe that the terms of the order as varied, or the new order, would protect the public by preventing, restricting or disrupting involvement by the person in serious crime in Northern Ireland.
- s.21(5) - an order may be varied or replaced under this section only on an application by the relevant applicant authority.
- s.21(6) - a variation or new order must not be made except–
- (a) in addition to a sentence imposed in respect of the offence concerned; or
 - (b) in addition to an order discharging the person conditionally.
- s.21(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)).
- s.21(8) - a reference in this section to replacing a serious crime prevention order is to making a new serious crime prevention order and discharging the existing one.

Petition for winding up of company

SCA 2007 s.27¹¹⁵²: Powers to wind up companies etc: England and Wales and Scotland

- s.27(1) - the Director of Public 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–
- (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.
- s.27(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).
- s.27(3) - s.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 or the Director of the Serious Fraud Office.

¹¹⁵² Commencement: 6 April 2008, SI 2008/755 art.15(1)(f).

- s.27(4) - the court may make an order under section 125 of the Act of 1986 (powers of court on hearing of petition) to wind up the company only if–
- (a) the company has been convicted of an offence under section 25 in relation to a serious crime prevention order; and
 - (b) the court considers that it is just and equitable for the company to be wound up.
- s.27(5) - s.240 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.
- s.27(6) - the appropriate Minister may by order provide for the Act of 1986 to apply, with such modifications as that person considers appropriate, in relation to a petition under this section for the winding up of a relevant body and the relevant body's winding up.
- s.27(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.
- s.27(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).
- s.27(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.
- s.27(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.
- s.27(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.
- s.27(12) - in this section–
- “*appropriate Minister*” means–
- (a) in relation to a relevant body falling within paragraphs (a) to (c) of the definition of “relevant body” below, the Treasury; and
 - (b) in relation to any other relevant body, the Secretary of State;
- “*company*” means—
- (a) a company registered under the Companies Act 2006 in England and Wales or Scotland, or
 - (b) an unregistered company within the meaning of Part 5 of the Insolvency Act 1986 (see section 220 of that Act),
- but does not include a relevant body;
- “*the court*”, in relation to a company, means a court in England and Wales or Scotland having jurisdiction to wind up the company;

“partnership” does not include a relevant body; 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) a registered society within the meaning of the Co-operative and Community Benefit Societies Act 2014;
- (d) a limited liability partnership; or
- (e) such other description of person as may be specified by order made by the Secretary of State;

and the references to sections 124 to 125 of the Insolvency Act 1986 (c. 45) include references to those sections as applied by section 221(1) of that Act (unregistered companies).

SCA 2007 s.28¹¹⁵³: Powers to wind up companies etc: Northern Ireland

- s.28(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–
- (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.
- s.28(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;
- 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).
- s.28(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.
- s.28(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
 - (b) the court considers that it is just and equitable for the company to be wound up.
- s.28(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.

¹¹⁵³ Commencement: 6 April 2008, SI 2008/755 art.15(1)(f).

- s.28(6) - the appropriate Minister may by order provide for the Order of 1989 to apply, with such modifications as that person considers appropriate, in relation to a petition under this section for the winding up of a relevant body and the relevant body's winding up.
- s.28(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.
- s.28(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
 - (b) the period during which such an appeal may be made has not expired.
- s.28(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.
- s.28(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.
- s.28(11) - in this section:
- “*appropriate Minister*” means:
- (a) in relation to a relevant body falling within paragraph (a) or (b) of the definition of “relevant body” below, the Treasury; and
 - (b) in relation to any other relevant body, the Department of Justice in Northern Ireland;
- “*company*” means:
- (a) a company registered under the Companies Act 2006 in Northern Ireland, or
 - (b) an unregistered company within the meaning of Part 6 of the Insolvency (Northern Ireland) Order 1989 (see Article 184 of that Order),
- but does not include a relevant body;
- “*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;
- “*partnership*” does not include a relevant body; 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;
 - (d) a limited liability partnership; or
 - (e) such other description of person as may be specified by order made by the Department of Justice in Northern Ireland;

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).

SCA 2007 s.29¹¹⁵⁴: Powers to wind up companies etc: Supplementary

- s.29(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).
- s.29(1A) - the Department of Justice in Northern Ireland may by order make such modifications as the Department considers appropriate to the application of the Insolvency (Northern Ireland) Order 1989³ by virtue of section 28(2).
- s.29(2) - any modifications made by virtue of subsection (1) or (1A) are in addition to the modifications made by section 27(3) and (4) or (as the case may be) section 28(3) and (4).
- s.29(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).
- s.29(3A) - the Department of Justice in Northern Ireland may by order make such consequential or supplementary provision, applying with or without modifications any provision made by or under an enactment, as the Department considers appropriate in connection with section 28(2) to (4).
- s.29(4) - an order made by virtue of section 27(5) or (6), section 28(5) or (6) or subsection (1) or (1A) above may, in particular, contain consequential or supplementary provision applying, with or without modifications, any provision made by or under an enactment.

Extension of order where defendant charged with offence during currency of order

SCA 2007 s.22E¹¹⁵⁵: Extension of orders pending outcome of criminal proceedings

- s.22E(1) - this section applies where a person subject to a serious crime prevention order is charged with—
 - (a) a serious offence, or
 - (b) an offence under section 25 of failing to comply with the serious crime prevention order.
- s.22E(2) - the relevant applicant authority may make an application under this section to—
 - (a) the Crown Court in England and Wales, in the case of a serious crime prevention order in England and Wales;
 - (b) the High Court of Justiciary or the sheriff, in the case of a serious crime prevention order in Scotland;
 - (c) the Crown Court in Northern Ireland, in the case of a serious crime prevention order in Northern Ireland.

¹¹⁵⁴ Commencement: 6 April 2008, SI 2008/755 art.15(1)(f).

¹¹⁵⁵ Commencement: 3 May 2015, as inserted by Serious Crime Act 2015 s.49, SI 2015/820 art.2

s.22E(3) - on an application under this section, the court or sheriff may vary the serious crime prevention order so that it continues in effect until one of the events listed in subsection (4) occurs (if the order would otherwise cease to have effect before then).

s.22E(4) - the events are—

- (a) following the person's conviction of the offence mentioned in subsection (1)—
 - (i) the order is varied under section 20 or 21, or under section 22B or 22C, by reference to the offence,
 - (ii) a new serious crime prevention order is made under section 19 or 21, or under section 22A or 22C, by reference to the offence, or
 - (iii) the court or sheriff deals with the person for the offence without varying the order or making a new one;
- (b) the person is acquitted of the offence;
- (c) the charge is withdrawn;
- (d) in the case of a serious crime prevention order in England and Wales or Northern Ireland—
 - (i) proceedings in respect of the charge are discontinued, or
 - (ii) an order is made for the charge to lie on the file;
- (e) in the case of a serious crime prevention order in Scotland—
 - (i) proceedings against the person are deserted *simpliciter*,
 - (ii) proceedings against the person are deserted *pro loco et tempore* and no trial diet is appointed,
 - (iii) the indictment or complaint relating to the person falls or for any other reason does not proceed to trial, or
 - (iv) the diet not having been continued, adjourned or postponed, no further proceedings are in contemplation in relation to the person.

s.22E(5) - an order may be made under this section only if—

- (a) the serious crime prevention order is still in force, and
- (b) the court or sheriff has reasonable grounds for believing that the order would protect the public by preventing, restricting or disrupting involvement by the person in serious crime.

s.22E(6) - in subsection (5)(b) “*serious crime*” means—

- (a) serious crime in England and Wales, in the case of a serious crime prevention order in England and Wales;
- (b) serious crime in Scotland, in the case of a serious crime prevention order in Scotland;
- (c) serious crime in Northern Ireland, in the case of a serious crime prevention order in Northern Ireland.

3.4.6.14. Case law

See *R. v Hancox and Duffy* [2010] EWCA Crim 102; [2010] 2 Cr. App. R. (S.) 74 (p.484). The headnote to which reads, in part:

A serious crime prevention order must be proportionate. The interference which it will create with the defendant's freedom of action must be justified by the public benefit which the order will have in achieving the statutory purpose, and the provisions of the order must be commensurate with the risk that the defendant will commit further serious offences in England and Wales.

Like other forms of preventive order, a serious crime prevention order is not an additional or alternative form of sentence. It is not designed to punish and is not to be imposed because it is thought that the defendant deserves it. Preventive orders of this kind must be expressed in terms from which the defendant, and any police officer contemplating enforcement, can readily know what he may and may not do

3.4.7. Sexual Harm Prevention Orders

3.4.7.1. General

Note: There is still a power to make a SOPO where an application was made before the commencement date. Otherwise, there is a power to make a SHPO; the difference of note is that the test for imposing the order is lowered, from “serious sexual harm” to “sexual harm”.

Commencement, amendment of SOA 2003 and transitional provisions

ASBCPA 2014 s.113¹¹⁵⁶: Sexual harm prevention orders and sexual risk orders, etc

s.113(1) - Schedule 5 (amendments of Parts 2 and 3 of the Sexual Offences Act 2003) has effect.

s.113(2) - in section 142 of the Sexual Offences Act 2003 (extent etc)—

- (a) in subsection (2) (provisions that extend to Northern Ireland, as well as England and Wales), for paragraph (c) there is substituted—

“(c) sections 80 to 85, 86 to 88, 89 to 91, 92 to 96, 96B to 103, 122F and 130 to 136ZD;

(ca) Part 2A;”;

- (b) after that subsection there is inserted—

“(2A) Sections 85A, 96A, 96AA, 110, 117A, 119 and 123 to 129 and Schedule 3A extend only to Northern Ireland.”

- (c) In subsection (3) (provisions that extend to Scotland, as well as England and Wales) for paragraph (a) there is substituted—

“(a) sections 80 to 85, 86 to 88, 89 to 91, 92, 94 to 96, 97 to 103, 122F, 130 to 132 and 133 to 136ZB;”;

- (d) after that subsection there is inserted—

“(3A) Sections 88A to 88I, 96A, 111A, 117B, 120 and 121 extend only to Scotland.

s.113(3B) - sections 104 to 109, 111, 112 to 117, 118 and 122 extend to Northern Ireland and Scotland but not to England and Wales.

s.113(3C) - the references to section 96A in subsections (2A) and (3A) are references respectively to—

- (a) the section 96A inserted by the Criminal Justice Act (Northern Ireland) 2013, and
(b) the section 96A inserted by the Police, Public Order and Criminal Justice (Scotland) Act 2006.”

ASBCPA 2014 Sch.5¹¹⁵⁷: Amendments of Parts 2 and 3 of the Sexual Offences Act 2003

para.1 - Part 2 of the Sexual Offences Act 2003 (notification and orders) is amended as set out in paragraphs 2 to 6.

para.2 - after section 103 there is inserted [SOA 2003 ss.103A to 103K]

¹¹⁵⁶ Commencement: 8 March 2015, SI 2015/373 art.2(a).

¹¹⁵⁷ Commencement: 8 March 2015, SI 2015/373 art.2(a).

Note: the sections inserted to the 2003 Act have not been listed here as they are listed below.

para.3(1) - sections 104 to 122 (sexual offences prevention orders and foreign travel orders) are repealed.

para.3(2) - this paragraph extends only to England and Wales.

ASBCPA 2014 s.114¹¹⁵⁸: Saving and transitional provision

s.114(1) - in this section:

“the 2003 Act” means the Sexual Offences Act 2003;

“existing order” means:

- (a) a sexual offences prevention order under section 104 of the 2003 Act;
- (b) a foreign travel order under section 114 of that Act;
- (c) a risk of sexual harm order under section 123 of that Act;

“new order” means:

- (a) a sexual harm prevention order (made under section 103A of the 2003 Act, inserted by Schedule 5);
- (b) a sexual risk order (made under section 122A of that Act, inserted by that Schedule);

“old order” means:

- (a) a restraining order under section 5A of the Sex Offenders Act 1997;
- (b) a sex offender order under section 2 of the Crime and Disorder Act 1998.

s.114(2) - the repeal or amendment by this Act of sections 104 to 122 or sections 123 to 129 of the 2003 Act does not apply in relation to:

- (a) an application made before the commencement day for an existing order;
- (b) an existing order (whether made before or after that day) applied for before that day;
- (c) anything done in connection with such an application or order.

s.114(3) - the following sections of the 2003 Act inserted by Schedule 5 apply (as appropriate) to an old order as they apply to a new order:

- (a) section 103E (variation, renewal and discharge of sexual harm prevention order);
- (b) section 103I (offence of breach of sexual harm prevention order);
- (c) section 122D (variation, renewal and discharge of sexual risk order);
- (d) section 122H (offence of breach of sexual risk order).

s.114(4) - as from the commencement day there may be no variation of an existing order or an old order that extends the period of the order or of any of its provisions.

¹¹⁵⁸ Commencement: 8 March 2015, SI 2015/373 art.2(a).

- s.114(5) - at the end of the period of 5 years beginning with the commencement day:
- (a) in relation to any existing order or old order that is still in force, sections 103E and 103I of the 2003 Act or sections 122D and 122H of that Act (as appropriate) have effect, with any necessary modifications (and with any modifications specified in an order under section 185(7) of this Act), as if the provisions of the order were provisions of a new order;
 - (b) subsections (2) and (3) cease to have effect.
- s.114(6) - in this section “*commencement day*” means the day on which this section comes into force.

Age

SOA 2003 s.103K¹¹⁵⁹: SHPOs and interim SHPOs: supplementary

s.103K(2) - a person's age is treated for the purposes of sections 103A to 103J and this section as being that which it appears to the court to be after considering any available evidence.”

Applications to the Youth Court

SOA 2003 s.103K¹¹⁶⁰: SHPOs and interim SHPOs: supplementary

- s.103K(1) - rules of court:
- (a) may provide for a youth court to give permission for an application under section 103A(4) against a person aged 18 or over to be made to the youth court if:
 - (i) an application to the youth court has been made, or is to be made, under that section against a person aged under 18, and
 - (ii) the youth court thinks that it would be in the interests of justice for the applications to be heard together;
 - (b) may, in relation to a person attaining the age of 18 after proceedings against that person by virtue of section 103A, 103E, 103F or 103G(6) or (7) have begun:
 - (i) prescribe circumstances in which the proceedings may or must remain in the youth court;
 - (ii) make provision for the transfer of the proceedings from the youth court to a magistrates’ court that is not a youth court (including provision applying section 103F with modifications).

¹¹⁵⁹ Commencement: 8 March 2015 as inserted by ASBCPA 2014 s.113 and Sch.5 para.2, SI 2015/373 art.2(a).

¹¹⁶⁰ Commencement: 8 March 2015 as inserted by ASBCPA 2014 s.113 and Sch.5 para.2, SI 2015/373 art.2(a).

General: Definitions

SOA 2003 s.103B¹¹⁶¹: Section 103A: supplemental

s.103B(5) - for the purposes of section 103A, acts, behaviour, convictions and findings include those occurring before the commencement of this Part.

s.103B(8) - subsection (9) applies for the purposes of section 103A and this section.

s.103B(9) - in construing any reference to an offence listed in Schedule 3, any condition subject to which an offence is so listed that relates:

- (a) to the way in which the defendant is dealt with in respect of an offence so listed or a relevant finding (as defined by section 132(9)), or
- (b) to the age of any person,
is to be disregarded.

3.4.7.2. Post-conviction

Post-conviction orders: Availability

SOA 2003 s.103A¹¹⁶²: Sexual harm prevention orders: applications and grounds

s.103A(1) - a court may make an order under this section (a “sexual harm prevention order”) in respect of a person (“the defendant”) where subsection (2) or (3) applies to the defendant.

s.103A(2) - this subsection applies to the defendant where:

- (a) the court deals with the defendant in respect of:
 - (i) an offence listed in Schedule 3 or 5, or
 - (ii) a finding that the defendant is not guilty of an offence listed in Schedule 3 or 5 by reason of insanity, or
 - (iii) a finding that the defendant is under a disability and has done the act charged against the defendant in respect of an offence listed in Schedule 3 or 5,

and

- (b) the court is satisfied that it is necessary to make a sexual harm prevention order, for the purpose of:
 - (i) protecting the public or any particular members of the public from sexual harm from the defendant, or
 - (ii) protecting children or vulnerable adults generally, or any particular children or vulnerable adults, from sexual harm from the defendant outside the United Kingdom.

¹¹⁶¹ Commencement: 8 March 2015 as inserted by ASBCPA 2014 s.113 and Sch.5 para.2, SI 2015/373 art.2(a).

¹¹⁶² Commencement: 8 March 2015 as inserted by ASBCPA 2014 s.113 and Sch.5 para.2, SI 2015/373 art.2(a).

SOA 2003 Sch.3 and 5

These schedules specify the sexual offences for the purposes of part 2 of the Act (notification and orders)

Note: There is a power under SOA 2003 s.130 for the Secretary of State to amend the schedules.

SOA 2003 Sch.3¹¹⁶³: Sexual offences for the purposes of Part 2

- 1 An offence under section 1 of the Sexual Offences Act 1956 (c. 69) (rape).
- 2 An offence under section 5 of that Act (intercourse with girl under 13).
- 3 An offence under section 6 of that Act (intercourse with girl under 16), if the offender was 20 or over.
- 4 An offence under section 10 of that Act (incest by a man), if the victim or (as the case may be) other party was under 18.
- 5 An offence under section 12 of that Act (buggery) if–
 - (a) the offender was 20 or over, and
 - (b) the victim or (as the case may be) other party was under 18.
- 6 An offence under section 13 of that Act (indecenty between men) if–
 - (a) the offender was 20 or over, and
 - (b) the victim or (as the case may be) other party was under 18.
- 7 An offence under section 14 of that Act (indecent assault on a woman) if–
 - (a) the victim or (as the case may be) other party was under 18, or
 - (b) the offender, in respect of the offence or finding, is or has been–
 - (i) sentenced to imprisonment for a term of at least 30 months; or
 - (ii) admitted to a hospital subject to a restriction order.
- 8 An offence under section 15 of that Act (indecent assault on a man) if–
 - (a) the victim or (as the case may be) other party was under 18, or
 - (b) the offender, in respect of the offence or finding, is or has been–
 - (i) sentenced to imprisonment for a term of at least 30 months; or
 - (ii) admitted to a hospital subject to a restriction order.
- 9 An offence under section 16 of that Act (assault with intent to commit buggery), if the victim or (as the case may be) other party was under 18.
- 10 An offence under section 28 of that Act (causing or encouraging the prostitution of, intercourse with or indecent assault on girl under 16).
- 11 An offence under section 1 of the Indecency with Children Act 1960 (c. 33) (indecent conduct towards young child).

¹¹⁶³ Commencement: 1 May 2004, SI 2004/874 art.2.

- 12 An offence under section 54 of the Criminal Law Act 1977 (c. 45) (inciting girl under 16 to have incestuous sexual intercourse).
- 13 An offence under section 1 of the Protection of Children Act 1978 (c. 37) (indecent photographs of children), if the indecent photographs or pseudo-photographs showed persons under 16 and–
- (a) the conviction, finding or caution was before the commencement of this Part, or
 - (b) the offender–
 - (i) was 18 or over, or
 - (ii) is sentenced in respect of the offence to imprisonment for a term of at least 12 months.
- 14 An offence under section 170 of the Customs and Excise Management Act 1979 (c. 2) (penalty for fraudulent evasion of duty etc.) in relation to goods prohibited to be imported under section 42 of the Customs Consolidation Act 1876 (c. 36) (indecent or obscene articles), if the prohibited goods included indecent photographs of persons under 16 and–
- (a) the conviction, finding or caution was before the commencement of this Part, or
 - (b) the offender–
 - (i) was 18 or over, or
 - (ii) is sentenced in respect of the offence to imprisonment for a term of at least 12 months.
- 15 An offence under section 160 of the Criminal Justice Act 1988 (c. 33) (possession of indecent photograph of a child), if the indecent photographs or pseudo-photographs showed persons under 16 and–
- (a) the conviction, finding or caution was before the commencement of this Part, or
 - (b) the offender–
 - (i) was 18 or over, or
 - (ii) is sentenced in respect of the offence to imprisonment for a term of at least 12 months.
- 16 An offence under section 3 of the Sexual Offences (Amendment) Act 2000 (c. 44) (abuse of position of trust), if the offender was 20 or over.
- 17 An offence under section 1 or 2 of this Act (rape, assault by penetration).
- 18 An offence under section 3 of this Act (sexual assault) if–
- (a) where the offender was under 18, he is or has been sentenced, in respect of the offence, to imprisonment for a term of at least 12 months;
 - (b) in any other case–
 - (i) the victim was under 18, or
 - (ii) the offender, in respect of the offence or finding, is or has been–
 - (a) sentenced to a term of imprisonment,
 - (b) detained in a hospital, or
 - (c) made the subject of a community sentence of at least 12 months.

- 19 An offence under any of sections 4 to 6 of this Act (causing sexual activity without consent, rape of a child under 13, assault of a child under 13 by penetration).
- 20 An offence under section 7 of this Act (sexual assault of a child under 13) if the offender–
- (a) was 18 or over, or
 - (b) is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months.
- 21 An offence under any of sections 8 to 12 of this Act (causing or inciting a child under 13 to engage in sexual activity, child sex offences committed by adults).
- 22 An offence under section 13 of this Act (child sex offences committed by children or young persons), if the offender is or has been sentenced, in respect of the offence, to imprisonment for a term of at least 12 months.
- 23 An offence under section 14 of this Act (arranging or facilitating the commission of a child sex offence) if the offender–
- (a) was 18 or over, or
 - (b) is or has been sentenced, in respect of the offence, to imprisonment for a term of at least 12 months.
- 24 An offence under section 15 of this Act (meeting a child following sexual grooming etc).
- 25 An offence under any of sections 16 to 19 of this Act (abuse of a position of trust) if the offender, in respect of the offence, is or has been–
- (a) sentenced to a term of imprisonment,
 - (b) detained in a hospital, or
 - (c) made the subject of a community sentence of at least 12 months.
- 26 An offence under section 25 or 26 of this Act (familial child sex offences) if the offender–
- (a) was 18 or over, or
 - (b) is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months.
- 27 An offence under any of sections 30 to 37 of this Act (offences against persons with a mental disorder impeding choice, inducements etc. to persons with mental disorder).
- 28 An offence under any of sections 38 to 41 of this Act (care workers for persons with mental disorder) if–
- (a) where the offender was under 18, he is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months;
 - (b) in any other case, the offender, in respect of the offence or finding, is or has been–
 - (i) sentenced to a term of imprisonment,
 - (ii) detained in a hospital, or
 - (iii) made the subject of a community sentence of at least 12 months.

- 29 An offence under section 47 of this Act (paying for sexual services of a child) if the victim or (as the case may be) other party was under 16, and the offender–
- (a) was 18 or over, or
 - (b) is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months.
- 29A An offence under section 48 of this Act (causing or inciting child prostitution or pornography) if the offender–
- (a) was 18 or over, or
 - (b) is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months.
- 29B An offence under section 49 of this Act (controlling a child prostitute or a child involved in pornography) if the offender–
- (a) was 18 or over, or
 - (b) is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months.
- 29C An offence under section 50 of this Act (arranging or facilitating child prostitution or pornography) if the offender–
- (a) was 18 or over, or
 - (b) is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months.
- 30 An offence under section 61 of this Act (administering a substance with intent).
- 31 An offence under section 62 or 63 of this Act (committing an offence or trespassing, with intent to commit a sexual offence) if–
- (a) where the offender was under 18, he is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months;
 - (b) in any other case–
 - (i) the intended offence was an offence against a person under 18, or
 - (ii) the offender, in respect of the offence or finding, is or has been–
 - (a) sentenced to a term of imprisonment,
 - (b) detained in a hospital, or
 - (c) made the subject of a community sentence of at least 12 months.
- 32 An offence under section 64 or 65 of this Act (sex with an adult relative) if–
- (a) where the offender was under 18, he is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months;
 - (b) in any other case, the offender, in respect of the offence or finding, is or has been–
 - (i) sentenced to a term of imprisonment, or
 - (ii) detained in a hospital.

- 33 An offence under section 66 of this Act (exposure) if–
- (a) where the offender was under 18, he is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months;
 - (b) in any other case–
 - (i) the victim was under 18, or
 - (ii) the offender, in respect of the offence or finding, is or has been–
 - (a) sentenced to a term of imprisonment,
 - (b) detained in a hospital, or
 - (c) made the subject of a community sentence of at least 12 months.
- 34 An offence under section 67 of this Act (voyeurism) if–
- (a) where the offender was under 18, he is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months;
 - (b) in any other case–
 - (i) the victim was under 18, or
 - (ii) the offender, in respect of the offence or finding, is or has been–
 - (a) sentenced to a term of imprisonment,
 - (b) detained in a hospital, or
 - (c) made the subject of a community sentence of at least 12 months.
- 35 An offence under section 69 or 70 of this Act (intercourse with an animal, sexual penetration of a corpse) if–
- (a) where the offender was under 18, he is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months;
 - (b) in any other case, the offender, in respect of the offence or finding, is or has been–
 - (i) sentenced to a term of imprisonment, or
 - (ii) detained in a hospital.
- 35A An offence under section 63 of the Criminal Justice and Immigration Act 2008 (possession of extreme pornographic images) if the offender—
- (a) was 18 or over, and
 - (b) is sentenced in respect of the offence to imprisonment for a term of at least 2 years.
- 35B An offence under section 62(1) of the Coroners and Justice Act 2009 (possession of prohibited images of children) if the offender—
- (a) was 18 or over, and
 - (b) is sentenced in respect of the offence to imprisonment for a term of at least 2 years.
- 35C An offence under section 69 of the Serious Crime Act 2015 (possession of paedophile manual) if the offender—
- (a) was 18 or over, or
 - (b) is sentenced in respect of the offence to imprisonment for a term of at least 12 months.

SOA 2003 Sch.5¹¹⁶⁴: Other offences for purposes of Part 2

- 1 Murder.
- 2 Manslaughter.
- 3 Kidnapping.
- 4 False imprisonment.
- 4A Outraging public decency.
- 5 An offence under section 4 of the Offences against the Person Act 1861 (c. 100) (soliciting murder).
- 6 An offence under section 16 of that Act (threats to kill).
- 7 An offence under section 18 of that Act (wounding with intent to cause grievous bodily harm).
- 8 An offence under section 20 of that Act (malicious wounding).
- 9 An offence under section 21 of that Act (attempting to choke, suffocate or strangle in order to commit or assist in committing an indictable offence).
- 10 An offence under section 22 of that Act (using chloroform etc. to commit or assist in the committing of any indictable offence).
- 11 An offence under section 23 of that Act (maliciously administering poison etc. so as to endanger life or inflict grievous bodily harm).
- 12 An offence under section 27 of that Act (abandoning children).
- 13 An offence under section 28 of that Act (causing bodily injury by explosives).
- 14 An offence under section 29 of that Act (using explosives etc. with intent to do grievous bodily harm).
- 15 An offence under section 30 of that Act (placing explosives with intent to do bodily injury).
- 16 An offence under section 31 of that Act (setting spring guns etc. with intent to do grievous bodily harm).
- 17 An offence under section 32 of that Act (endangering the safety of railway passengers).
- 18 An offence under section 35 of that Act (injuring persons by furious driving).
- 19 An offence under section 37 of that Act (assaulting officer preserving wreck).
- 20 An offence under section 38 of that Act (assault with intent to resist arrest).
- 21 An offence under section 47 of that Act (assault occasioning actual bodily harm).

¹¹⁶⁴ Commencement: 1 May 2004, SI 2004/874 art.2.

- 22 An offence under section 2 of the Explosive Substances Act 1883 (c. 3) (causing explosion likely to endanger life or property).
- 23 An offence under section 3 of that Act (attempt to cause explosion, or making or keeping explosive with intent to endanger life or property).
- 24 An offence under section 1 of the Infant Life (Preservation) Act 1929 (c. 34) (child destruction).
- 25 An offence under section 1 of the Children and Young Persons Act 1933 (c. 12) (cruelty to children).
- 26 An offence under section 1 of the Infanticide Act 1938 (c. 36) (infanticide).
- 27 An offence under section 16 of the Firearms Act 1968 (c. 27) (possession of firearm with intent to endanger life).
- 28 An offence under section 16A of that Act (possession of firearm with intent to cause fear of violence).
- 29 An offence under section 17(1) of that Act (use of firearm to resist arrest).
- 30 An offence under section 17(2) of that Act (possession of firearm at time of committing or being arrested for offence specified in Schedule 1 to that Act).
- 31 An offence under section 18 of that Act (carrying a firearm with criminal intent).
- 31A An offence under section 1 of the Theft Act 1968 (c.60) (theft).
- 32 An offence under section 8 of that Act (robbery or assault with intent to rob).
- 33 An offence under section 9(1)(a) of that Act (burglary with intent to steal, inflict grievous bodily harm or do unlawful damage).
- 34 An offence under section 10 of that Act (aggravated burglary).
- 35 An offence under section 12A of that Act (aggravated vehicle-taking) involving an accident which caused the death of any person.
- 36 An offence of arson under section 1 of the Criminal Damage Act 1971 (c. 48).
- 37 An offence under section 1(2) of that Act (destroying or damaging property) other than an offence of arson.
- 38 An offence under section 1 of the Taking of Hostages Act 1982 (c. 28) (hostage-taking).
- 39 An offence under section 1 of the Aviation Security Act 1982 (c. 36) (hijacking).
- 40 An offence under section 2 of that Act (destroying, damaging or endangering safety of aircraft).
- 41 An offence under section 3 of that Act (other acts endangering or likely to endanger safety of aircraft).
- 42 An offence under section 4 of that Act (offences in relation to certain dangerous articles).

- 43 An offence under section 127 of the Mental Health Act 1983 (c. 20) (ill-treatment of patients).
- 43A An offence under section 1 of the Child Abduction Act 1984 (c. 37) (offence of abduction of child by parent, etc).
- 43B An offence under section 2 of that Act (offence of abduction of child by other persons).
- 44 An offence under section 1 of the Prohibition of Female Circumcision Act 1985 (c. 38) (prohibition of female circumcision).
- 45 An offence under section 1 of the Public Order Act 1986 (c. 64) (riot).
- 46 An offence under section 2 of that Act (violent disorder).
- 47 An offence under section 3 of that Act (affray).
- 48 An offence under section 134 of the Criminal Justice Act 1988 (c. 33) (torture).
- 49 An offence under section 1 of the Road Traffic Act 1988 (c. 52) (causing death by dangerous driving).
- 50 An offence under section 3A of that Act (causing death by careless driving when under influence of drink or drugs).
- 51 An offence under section 1 of the Aviation and Maritime Security Act 1990 (c. 31) (endangering safety at aerodromes).
- 52 An offence under section 9 of that Act (hijacking of ships).
- 53 An offence under section 10 of that Act (seizing or exercising control of fixed platforms).
- 54 An offence under section 11 of that Act (destroying fixed platforms or endangering their safety).
- 55 An offence under section 12 of that Act (other acts endangering or likely to endanger safe navigation).
- 56 An offence under section 13 of that Act (offences involving threats).
- 56A An offence under section 2 or 2A of the Protection from Harassment Act 1997 (c. 40)(offences of harassment and stalking)
- 57 An offence under section 4 or 4A of that Act (putting people in fear of violence and stalking involving fear of violence or serious alarm or distress).
- 58 An offence under section 29 of the Crime and Disorder Act 1998 (c. 37) (racially or religiously aggravated assaults).
- 59 An offence falling within section 31(1)(a) or (b) of that Act (racially or religiously aggravated offences under section 4 or 4A of the Public Order Act 1986 (c. 64)).
- 60 An offence under Part II of the Channel Tunnel (Security) Order 1994 (S.I. 1994/570) (offences relating to Channel Tunnel trains and the tunnel system).

- 60ZA An offence under section 53 or 54 of the Regulation of Investigatory Powers Act 2000 (contravention of notice relating to encrypted information or tipping off in connection with such a notice).
- 60A An offence under section 85(3) or (4) of the Postal Services Act 2000 (c. 26) (prohibition on sending certain articles by post).
- 61 An offence under section 51 or 52 of the International Criminal Court Act 2001 (c. 17) (genocide, crimes against humanity, war crimes and related offences), other than one involving murder.
- 61A An offence under section 127(1) of the Communications Act 2003 (c. 21) (improper use of public electronic communications network).
- 62 An offence under section 47 of this Act, where the victim or (as the case may be) other party was 16 or over.
- 63 An offence under any of sections 51 to 53 or 57 to 59A of this Act.
- 63A An offence under section 5 of the Domestic Violence, Crime and Victims Act 2004 (causing or allowing a child or vulnerable adult to die or suffer serious physical harm).
- 63B An offence under section 2 of the Modern Slavery Act 2015 (human trafficking).
- 173 A reference in a preceding paragraph to an offence includes—
- (a) a reference to an attempt, conspiracy or incitement to commit that offence, and
 - (b) a reference to aiding, abetting, counselling or procuring the commission of that offence.
- 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.
- 174 A reference in a preceding paragraph to a person's age is a reference to his age at the time of the offence.

Note: Paras. 64-111 apply to Scotland, paras. 112-171C apply to Northern Ireland, paras. 172 and 172A apply to service offences and are not listed in this document.

Child defendants

SOA 2003 s.103A¹¹⁶⁵: Sexual harm prevention orders: applications and grounds

s.103A(8) - where the defendant is a child, a reference in this section to a magistrates' court is to be taken as referring to a youth court (subject to any rules of court made under section 103K(1)).

¹¹⁶⁵ Commencement: 8 March 2015 as inserted by ASBCPA 2014 s.113 and Sch.5 para.2, SI 2015/373 art.2(a).

3.4.7.3. Stand-alone orders (on complaint)

Stand-alone orders: Power to order

SOA 2003 s.103A¹¹⁶⁶: Sexual harm prevention orders: applications and grounds

- s.103A(1) - a court may make an order under this section (a “sexual harm prevention order”) in respect of a person (“the defendant”) where subsection (2) or (3) applies to the defendant.
- s.103A(3) - this subsection applies to the defendant where:
- (a) an application under subsection (4) has been made in respect of the defendant and it is proved on the application that the defendant is a qualifying offender, and
 - (b) the court is satisfied that the defendant's behaviour since the appropriate date makes it necessary to make a sexual harm prevention order, for the purpose of:
 - (i) protecting the public or any particular members of the public from sexual harm from the defendant, or
 - (ii) protecting children or vulnerable adults generally, or any particular children or vulnerable adults, from sexual harm from the defendant outside the United Kingdom.
- s.103A(4) - a chief officer of police or the Director General of the National Crime Agency (“the Director General”) may by complaint to a magistrates’ court apply for a sexual harm prevention order in respect of a person if it appears to the chief officer or the Director General that:
- (a) the person is a qualifying offender, and
 - (b) the person has since the appropriate date acted in such a way as to give reasonable cause to believe that it is necessary for such an order to be made.
- s.103A(5) - a chief officer of police may make an application under subsection (4) only in respect of a person:
- (a) who resides in the chief officer's police area, or
 - (b) who the chief officer believes is in that area or is intending to come to it.
- s.103A(6) - an application under subsection (4) may be made to any magistrates’ court acting for a local justice area that includes:
- (a) any part of a relevant police area, or
 - (b) any place where it is alleged that the person acted in a way mentioned in subsection (4)(b).
- s.103A(7) - the Director General must as soon as practicable notify the chief officer of police for a relevant police area of any application that the Director has made under subsection (4).
- s.103A(9) - in this section “*relevant police area*” means:
- (a) where the applicant is a chief officer of police, the officer's police area;
 - (b) where the applicant is the Director General:

¹¹⁶⁶ Commencement: 8 March 2015 as inserted by ASBCPA 2014 s.113 and Sch.5 para.2, SI 2015/373 art.2(a).

- (i) the police area where the person in question resides, or
- (ii) a police area which the Director General believes the person is in or is intending to come to.

Stand alone order: Definitions

SOA 2003 s.103B¹¹⁶⁷: Section 103A: supplemental

s.103B(1) In section 103A:

“appropriate date”, in relation to a qualifying offender, means the date or (as the case may be) the first date on which the offender was convicted, found or cautioned as mentioned in subsection (2) or (3) below;

“child” means a person under 18;

“the public” means the public in the United Kingdom;

“sexual harm” from a person means physical or psychological harm caused:

- (a) by the person committing one or more offences listed in Schedule 3, or
- (b) (in the context of harm outside the United Kingdom) by the person doing, outside the United Kingdom, anything which would constitute an offence listed in Schedule 3 if done in any part of the United Kingdom;

“qualifying offender” means a person within subsection (2) or (3) below;

“vulnerable adult” means a person aged 18 or over whose ability to protect himself or herself from physical or psychological harm is significantly impaired through physical or mental disability or illness, through old age or otherwise.

s.103B(2) - a person is within this subsection if, whether before or after the commencement of this Part, the person:

- (a) has been convicted of an offence listed in Schedule 3 (other than at paragraph 60) or in Schedule 5,
- (b) has been found not guilty of such an offence by reason of insanity,
- (c) has been found to be under a disability and to have done the act charged against him in respect of such an offence, or
- (d) has been cautioned in respect of such an offence.

s.103B(3) - a person is within this subsection if, under the law in force in a country outside the United Kingdom and whether before or after the commencement of this Part:

- (a) the person has been convicted of a relevant offence (whether or not the person has been punished for it),
- (b) a court exercising jurisdiction under that law has made in respect of a relevant offence a finding equivalent to a finding that the person is not guilty by reason of insanity,
- (c) such a court has made in respect of a relevant offence a finding equivalent to a finding that the person is under a disability and did the act charged against the person in respect of the offence, or

¹¹⁶⁷ Commencement: 8 March 2015 as inserted by ASBCPA 2014 s.113 and Sch.5 para.2, SI 2015/373 art.2(a).

- (d) the person has been cautioned in respect of a relevant offence.

s.103B(4) - in subsection (3), “*relevant offence*” means an act which:

- (a) constituted an offence under the law in force in the country concerned, and
- (b) would have constituted an offence listed in Schedule 3 (other than at paragraph 60) or in Schedule 5 if it had been done in any part of the United Kingdom.

For this purpose an act punishable under the law in force in a country outside the United Kingdom constitutes an offence under that law, however it is described in that law.

s.103B(6) - subject to subsection (7), on an application under section 103A(4) the condition in subsection (4)(b) above (where relevant) is to be taken as met unless, not later than rules of court may provide, the defendant serves on the applicant a notice:

- (a) stating that, on the facts as alleged with respect to the act concerned, the condition is not in the defendant’s opinion met,
- (b) showing the grounds for that opinion, and
- (c) requiring the applicant to prove that the condition is met.

s.103B(7) - the court, if it thinks fit, may permit the defendant to require the applicant to prove that the condition is met without service of a notice under subsection (6).

3.4.7.4. Making the order

Contents of the order

SOA 2003 s.103C¹¹⁶⁸: SHPOs: Effect

s.103B(3) - a sexual harm prevention order:

- (a) may specify that some of its prohibitions have effect until further order and some for a fixed period;
- (b) may specify different periods for different prohibitions.

Test for imposing prohibitions

SOA 2003 s.103C¹¹⁶⁹: SHPOs: Effect

s.103C(4) - the only prohibitions that may be included in a sexual harm prevention order are those necessary for the purpose of:

- (a) protecting the public or any particular members of the public from sexual harm from the defendant, or
- (b) protecting children or vulnerable adults generally, or any particular children or vulnerable adults, from sexual harm from the defendant outside the United Kingdom.

¹¹⁶⁸ Commencement: 8 March 2015 as inserted by ASBCPA 2014 s.113 and Sch.5 para.2, SI 2015/373 art.2(a).

¹¹⁶⁹ Commencement: 8 March 2015 as inserted by ASBCPA 2014 s.113 and Sch.5 para.2, SI 2015/373 art.2(a).

s.103C(5) - in subsection (4) "*the public*", "*sexual harm*", "*child*" and "*vulnerable adult*" each has the meaning given in section 103B(1).

(6) Where a court makes a sexual harm prevention order in relation to a person who is already subject to such an order (whether made by that court or another), the earlier order ceases to have effect.

Length of the order

SOA 2003 s.103C¹¹⁷⁰: SHPOs: Effect

s.103C(2) - subject to section 103D(1), a prohibition contained in a sexual harm prevention order has effect:

- (a) for a fixed period, specified in the order, of at least 5 years, or
- (b) until further order.

Prohibitions on foreign travel: Length

SOA 2003 s.103D¹¹⁷¹: SHPOs: prohibitions on foreign travel

s.103D(1) - a prohibition on foreign travel contained in a sexual harm prevention order must be for a fixed period of not more than 5 years.

s.103D(3) - subsection (1) does not prevent a prohibition on foreign travel from being extended for a further period (of no more than 5 years each time) under section 103E.

3.4.7.5. Effect of order

What is an SHPO?

SOA 2003 s.103C¹¹⁷²: SHPOs: Effect

s.103C(1) - a sexual harm prevention order prohibits the defendant from doing anything described in the order.

s.103C(2) - subject to section 103D(1), a prohibition contained in a sexual harm prevention order has effect:

- (a) for a fixed period, specified in the order, of at least 5 years, or
- (b) until further order.

¹¹⁷⁰ Commencement: 8 March 2015 as inserted by ASBCPA 2014 s.113 and Sch.5 para.2, SI 2015/373 art.2(a).

¹¹⁷¹ Commencement: 8 March 2015 as inserted by ASBCPA 2014 s.113 and Sch.5 para.2, SI 2015/373 art.2(a).

¹¹⁷² Commencement: 8 March 2015 as inserted by ASBCPA 2014 s.113 and Sch.5 para.2, SI 2015/373 art.2(a).

What is a foreign travel prohibition?

SOA 2003 s.103D¹¹⁷³: SHPOs: prohibitions on foreign travel

s.103D(2) - a “prohibition on foreign travel” means:

- (a) a prohibition on travelling to any country outside the United Kingdom named or described in the order,
- (b) a prohibition on travelling to any country outside the United Kingdom other than a country named or described in the order, or
- (c) a prohibition on travelling to any country outside the United Kingdom.

Prohibitions on foreign travel: Effect

SOA 2003 s.103D¹¹⁷⁴: SHPOs: prohibitions on foreign travel

s.103D(4) - a sexual harm prevention order that contains a prohibition within subsection (2)(c) must require the defendant to surrender all of the defendant's passports at a police station specified in the order:

- (a) on or before the date when the prohibition takes effect, or
- (b) within a period specified in the order.

Prohibitions on foreign travel: Return of passports

SOA 2003 s.103D¹¹⁷⁵: SHPOs: prohibitions on foreign travel

s.103D(5) - any passports surrendered must be returned as soon as reasonably practicable after the person ceases to be subject to a sexual harm prevention order containing a prohibition within subsection (2)(c) (unless the person is subject to an equivalent prohibition under another order).

s.103D(6) - subsection (5) does not apply in relation to:

- (a) a passport issued by or on behalf of the authorities of a country outside the United Kingdom if the passport has been returned to those authorities;
- (b) a passport issued by or on behalf of an international organisation if the passport has been returned to that organisation.

¹¹⁷³ Commencement: 8 March 2015 as inserted by ASBCPA 2014 s.113 and Sch.5 para.2, SI 2015/373 art.2(a).

¹¹⁷⁴ Commencement: 8 March 2015 as inserted by ASBCPA 2014 s.113 and Sch.5 para.2, SI 2015/373 art.2(a).

¹¹⁷⁵ Commencement: 8 March 2015 as inserted by ASBCPA 2014 s.113 and Sch.5 para.2, SI 2015/373 art.2(a).

Prohibitions on foreign travel: Definition of “passport”

SOA 2003 s.103D¹¹⁷⁶: SHPOs: prohibitions on foreign travel

s.103D(7) - in this section “*passport*” means:

- (a) a United Kingdom passport within the meaning of the Immigration Act 1971;
- (b) a passport issued by or on behalf of the authorities of a country outside the United Kingdom, or by or on behalf of an international organisation;
- (c) a document that can be used (in some or all circumstances) instead of a passport.

3.4.7.6. Notification requirements

Relevant offender prior to making SHPO

SOA 2003 s.103G¹¹⁷⁷: SHPOs and interim SHPOs: notification requirements

s.103G(1) - where:

- (a) a sexual harm prevention order is made in respect of a defendant who was a relevant offender immediately before the making of the order, and
- (b) the defendant would (apart from this subsection) cease to be subject to the notification requirements of this Part while the order (as renewed from time to time) has effect,

the defendant remains subject to the notification requirements.

Not a relevant offender prior to making SHPO

SOA 2003 s.103G¹¹⁷⁸: SHPOs and interim SHPOs: notification requirements

s.103G(2) - where a sexual harm prevention order is made in respect of a defendant who was not a relevant offender immediately before the making of the order:

- (a) the order causes the defendant to become subject to the notification requirements of this Part from the making of the order until the order (as renewed from time to time) ceases to have effect, and
- (b) this Part applies to the defendant, subject to the modification set out in subsection (3).

s.103G(3) - the “*relevant date*” is the date of service of the order.

¹¹⁷⁶ Commencement: 8 March 2015 as inserted by ASBCPA 2014 s.113 and Sch.5 para.2, SI 2015/373 art.2(a).

¹¹⁷⁷ Commencement: 8 March 2015 as inserted by ASBCPA 2014 s.113 and Sch.5 para.2, SI 2015/373 art.2(a).

¹¹⁷⁸ Commencement: 8 March 2015 as inserted by ASBCPA 2014 s.113 and Sch.5 para.2, SI 2015/373 art.2(a).

Interim orders

SOA 2003 s.103G¹¹⁷⁹: SHPOs and interim SHPOs: notification requirements

s.103G(4) -subsections (1) to (3) apply to an interim sexual harm prevention order as if references to a sexual harm prevention order were references to an interim sexual harm prevention order, and with the omission of “(as renewed from time to time)” in both places.

“Relevant sex offenders”

SOA 2003 s.103G¹¹⁸⁰: SHPOs and interim SHPOs: notification requirements

s.103G(5) -where:

- (a) a sexual harm prevention order is in effect in relation to a relevant sex offender (within the meaning of section 88A), and
- (b) by virtue of section 88F or 88G the relevant sex offender ceases to be subject to the notification requirements of this Part,

the sexual harm prevention order ceases to have effect.

Notification orders

SOA 2003 s.103G¹¹⁸¹: SHPOs and interim SHPOs: notification requirements

s.103G(6) -on an application for a sexual harm prevention order made by a chief officer of police, the court must make a notification order in respect of the defendant (either in addition to or instead of a sexual harm prevention order) if:

- (a) the applicant invites the court to do so, and
- (b) it is proved that the conditions in section 97(2) to (4) are met.

s.103G(7) -on an application for an interim sexual harm prevention order made by a chief officer of police, the court may, if it considers it just to do so, make an interim notification order (either in addition to or instead of an interim sexual harm prevention order).

3.4.7.7. Interaction with other sentencing orders

Note: Smith, below, was decided in relation to SOPOs not SHPOs, however the principle should apply to the new orders due to their similar nature.

General

R. v Smith [2011] EWCA Crim 1772; [2012] 1 Cr. App. R. (S.) 82 (p.468) para.[9]

“[...] [I]t must be remembered that a defendant convicted of sexual offences is likely to be subject to at least three other relevant regimes [notification, disqualification from

¹¹⁷⁹ Commencement: 8 March 2015 as inserted by ASBCPA 2014 s.113 and Sch.5 para.2, SI 2015/373 art.2(a).

¹¹⁸⁰ Commencement: 8 March 2015 as inserted by ASBCPA 2014 s.113 and Sch.5 para.2, SI 2015/373 art.2(a).

¹¹⁸¹ Commencement: 8 March 2015 as inserted by ASBCPA 2014 s.113 and Sch.5 para.2, SI 2015/373 art.2(a).

working with children, licence]. No SOPO is needed if it merely duplicates such a regime. Nor must a SOPO interfere with such a regime.” (Hughes LJ, at [9])

Extended or Determinate term of imprisonment

R. v Smith [2011] EWCA Crim 1772; [2012] 1 Cr. App. R. (S.) 82 (p.468) para.[14]

“[...] [A] SOPO may plainly be necessary if the sentence is a determinate term or an extended term. In each of those cases, whilst conditions may be attached to the licence, that licence will have a defined and limited life. The SOPO by contrast can extend beyond it and this may be necessary to protect the public from further offences and serious sexual harm as a result.” (Hughes LJ, at [14])

Life sentences

R. v Smith [2011] EWCA Crim 1772; [2012] 1 Cr. App. R. (S.) 82 (p.468) para.[13]

“The usual rule ought to be that an indeterminate sentences needs so SOPO, at least unless there is some very unusual feature which means that such an order could add something useful and did not run the risk of undesirably tying the hands of the offender managers later.” (Hughes LJ, at [13])

Notification

R. v Smith [2011] EWCA Crim 1772; [2012] 1 Cr. App. R. (S.) 82 (p.468) para.[17]

“[...] [I]t is not normally a proper use of the power to impose a SOPO to use it to extend notification requirements beyond the period prescribed by law. Absent some unusual feature, it would therefore be wrong to add to a SOPO terms which although couched as prohibitions amounted in effect to no more than notification requirements, but for a period longer than the law provides for. But it does not follow that the duration of a SOPO ought generally to be the same as the duration of notification requirements. Notification requirements and the conditions of a SOPO are generally two different things. The first require positive action by the defendant, who must report his movements to the police. The second prohibit him from doing specified things. Ordinarily there ought to be little or no overlap between them. If the circumstances require it, we can see no objection to the prohibitory provisions of a SOPO extending beyond the notification requirements of the statute. It may also be possible that a SOPO for less than an indefinite period might be found to be the right order in a case where the notification requirements endure for ever; that also is permissible in law.” (Hughes LJ, at [17])

Parenting orders

CDA 1998 s.8¹¹⁸²: Parenting orders

- s.8(1) - application of section: [...] (b) a Sexual Harm Prevention Order is made in respect of a child or young person; [...]
- s.8(2) - subject to s.8(3) and s.9(1), if in the proceedings the court is satisfied that the relevant condition is fulfilled, it may make a parenting order in respect of a person who is a parent or guardian of the child or young person or, as the case may be, the person convicted of the offence under ss.443 or 444 (“*the parent*”).

¹¹⁸² Commencement: 30 September 1998, SI 1998/2327 art.2(1)(a)

- s.8(3) - a court shall not make a parenting order unless it has been notified by the Secretary of State that arrangements for implementing such orders are available in the area in which it appears to the court that the parent resides or will reside and the notice has not been withdrawn
- s.8(6) - The relevant condition is that the parenting order would be desirable in the interests of preventing:
- (1) in a case falling within paragraph (a), (aa) or (b) of s.8(1), any repetition of the kind of behaviour which led to the order being made or the injunction granted;
 - (2) in a case falling within paragraph (c), the commission of any further offence by the child or young person;
 - (3) in a case falling within paragraph (d), the commission of any further offence under Education Act 1996 ss.443 or 444.

Suspended sentences

R. v Smith [2011] EWCA Crim 1772; [2012] 1 Cr. App. R. (S.) 82 (p.468) para.[14] and [15]

[...] [A] SOPO may plainly be necessary if the sentence is a determinate term or an extended term. In each of those cases, whilst conditions may be attached to the licence, that licence will have a defined and limited life. The SOPO by contrast can extend beyond it and this may be necessary to protect the public from further offences and serious sexual harm as a result.

The same is true, only more clearly, where the sentence is a suspended sentence. The SOPO serves a different purpose from the suspension of the sentence, and its duration is certain to be longer, since it cannot be made unless prohibitions for at least five years are called for: s 107(1)(b). (Hughes LJ, [14]-[15])

3.4.7.8. Variation, renewal and discharge of orders

Who may apply?

SOA 2003 s.103E¹¹⁸³: SHPOs: variations, renewals and discharges

s.103E(1) - a person within subsection (2) may apply to the appropriate court for an order varying, renewing or discharging a sexual harm prevention order.

s.103E(2) - the persons are:

- (a) the defendant;
- (b) the chief officer of police for the area in which the defendant resides;
- (c) a chief officer of police who believes that the defendant is in, or is intending to come to, that officer's police area;
- (d) where the order was made on an application by a chief officer of police under section 103A(4), that officer.

¹¹⁸³ Commencement: 8 March 2015 as inserted by ASBCPA 2014 s.113 and Sch.5 para.2, SI 2015/373 art.2(a).

Procedure

SOA 2003 s.103E¹¹⁸⁴: SHPOs: variations, renewals and discharges

s.103E(3) - an application under subsection (1) may be made:

- (a) where the appropriate court is the Crown Court, in accordance with rules of court;
- (b) in any other case, by complaint.

Power to vary etc.

SOA 2003 s.103E¹¹⁸⁵: SHPOs: variations, renewals and discharges

s.103E(4) - subject to subsections (5) and (7), on the application the court, after hearing the person making the application and (if they wish to be heard) the other persons mentioned in subsection (2), may make any order, varying, renewing or discharging the sexual harm prevention order, that the court considers appropriate.

s.103E(5) - an order may be renewed, or varied so as to impose additional prohibitions on the defendant, only if it is necessary to do so for the purpose of:

- (a) protecting the public or any particular members of the public from sexual harm from the defendant, or
- (b) protecting children or vulnerable adults generally, or any particular children or vulnerable adults, from sexual harm from the defendant outside the United Kingdom.

Any renewed or varied order may contain only such prohibitions as are necessary for this purpose.

s.103E(6) - in subsection (5) "*the public*", "*sexual harm*", "*child*" and "*vulnerable adult*" each has the meaning given in section 103B(1).

Prohibition on discharging an order

SOA 2003 s.103E¹¹⁸⁶: SHPOs: variations, renewals and discharges

s.103E(7) - the court must not discharge an order before the end of 5 years beginning with the day on which the order was made, without the consent of the defendant and:

- (a) where the application is made by a chief officer of police, that chief officer, or
- (b) in any other case, the chief officer of police for the area in which the defendant resides.

s.103E(8) - subsection (7) does not apply to an order containing a prohibition on foreign travel and no other prohibitions.

¹¹⁸⁴ Commencement: 8 March 2015 as inserted by ASBCPA 2014 s.113 and Sch.5 para.2, SI 2015/373 art.2(a).

¹¹⁸⁵ Commencement: 8 March 2015 as inserted by ASBCPA 2014 s.113 and Sch.5 para.2, SI 2015/373 art.2(a).

¹¹⁸⁶ Commencement: 8 March 2015 as inserted by ASBCPA 2014 s.113 and Sch.5 para.2, SI 2015/373 art.2(a).

Variation, renewal and discharge: Definitions

SOA 2003 s.103E¹¹⁸⁷: SHPOs: variations, renewals and discharges

s.103E(9) - in this section “*the appropriate court*” means:

- (a) where the Crown Court or the Court of Appeal made the sexual harm prevention order, the Crown Court;
- (b) where an adult magistrates’ court made the order, that court, an adult magistrates’ court for the area in which the defendant resides or, where the application is made by a chief officer of police, any adult magistrates’ court acting for a local justice area that includes any part of the chief officer's police area;
- (c) where a youth court made the order and the defendant is under the age of 18, that court, a youth court for the area in which the defendant resides or, where the application is made by a chief officer of police, any youth court acting for a local justice area that includes any part of the chief officer's police area;
- (d) where a youth court made the order and the defendant is aged 18 or over, an adult magistrates’ court for the area in which the defendant resides or, where the application is made by a chief officer of police, any adult magistrates’ court acting for a local justice area that includes any part of the chief officer's police area.

In this subsection “*adult magistrates’ court*” means a magistrates’ court that is not a youth court.

3.4.7.9. Interim orders

SOA 2003 s.103F¹¹⁸⁸: Interim SHPOs

s.103F(1) - this section applies where an application under section 103A(4) (“the main application”) has not been determined.

s.103F(2) - an application for an order under this section (“an interim sexual harm prevention order”):

- (a) may be made by the complaint by which the main application is made, or
- (b) if the main application has been made, may be made by the person who has made that application, by complaint to the court to which that application has been made.

s.103F(3) - the court may, if it considers it just to do so, make an interim sexual harm prevention order, prohibiting the defendant from doing anything described in the order.

s.103F(4) - such an order:

- (a) has effect only for a fixed period, specified in the order;
- (b) ceases to have effect, if it has not already done so, on the determination of the main application.

¹¹⁸⁷ Commencement: 8 March 2015 as inserted by ASBCPA 2014 s.113 and Sch.5 para.2, SI 2015/373 art.2(a).

¹¹⁸⁸ Commencement: 8 March 2015 as inserted by ASBCPA 2014 s.113 and Sch.5 para.2, SI 2015/373 art.2(a).

s.103F(5) - the applicant or the defendant may by complaint apply to the court that made the interim sexual harm prevention order for the order to be varied, renewed or discharged.

3.4.7.10. Appeals

Power to appeal

SOA 2003 s.103H¹¹⁸⁹: SHPOs and interim SHPOs: appeals

s.103H(1) - a defendant may appeal against the making of a sexual harm prevention order:

- (a) where the order was made by virtue of section 103A(2)(a)(i), as if the order were a sentence passed on the defendant for the offence;
- (b) where the order was made by virtue of section 103A(2)(a)(ii) or (iii), as if the defendant had been convicted of the offence and the order were a sentence passed on the defendant for that offence;
- (c) where the order was made on an application under section 103A(4), to the Crown Court.

Power to appeal against interim orders

SOA 2003 s.103H¹¹⁹⁰: SHPOs and interim SHPOs: appeals

s.103H(2) - a defendant may appeal to the Crown Court against the making of an interim sexual harm prevention order.

Power to appeal against variations, renewals and discharges

SOA 2003 s.103H¹¹⁹¹: SHPOs and interim SHPOs: appeals

s.103H(3) - a defendant may appeal against the making of an order under section 103E, or the refusal to make such an order:

- (a) where the application for such an order was made to the Crown Court, to the Court of Appeal;
- (b) in any other case, to the Crown Court.

Powers on appeal

SOA 2003 s.103H¹¹⁹²: SHPOs and interim SHPOs: appeals

s.103H(4) - on an appeal under subsection (1)(c), (2) or (3)(b), the Crown Court may make such orders as may be necessary to give effect to its determination of the appeal, and may also make such incidental or consequential orders as appear to it to be just.

¹¹⁸⁹ Commencement: 8 March 2015 as inserted by ASBCPA 2014 s.113 and Sch.5 para.2, SI 2015/373 art.2(a).

¹¹⁹⁰ Commencement: 8 March 2015 as inserted by ASBCPA 2014 s.113 and Sch.5 para.2, SI 2015/373 art.2(a).

¹¹⁹¹ Commencement: 8 March 2015 as inserted by ASBCPA 2014 s.113 and Sch.5 para.2, SI 2015/373 art.2(a).

¹¹⁹² Commencement: 8 March 2015 as inserted by ASBCPA 2014 s.113 and Sch.5 para.2, SI 2015/373 art.2(a).

s.103H(5) - any order made by the Crown Court on an appeal under subsection (1)(c) or (2) (other than an order directing that an application be re-heard by a magistrates' court) is for the purposes of section 103E(9) or 103F(5) (respectively) to be treated as if it were an order of the court from which the appeal was brought (and not an order of the Crown Court).

3.4.7.11. Breach

Offence

SOA 2003 s.103I¹¹⁹³: Offence: breach of SHPO or interim SHPO etc

s.103I(1) - a person who, without reasonable excuse, does anything that the person is prohibited from doing by:

- (a) a sexual harm prevention order,
- (b) an interim sexual harm prevention order,
- (c) a sexual offences prevention order,
- (d) an interim sexual offences prevention order, or
- (e) a foreign travel order,

commits an offence.

s.103I(2) - a person commits an offence if, without reasonable excuse, the person fails to comply with a requirement imposed under section 103D(4).

Penalty

SOA 2003 s.103I¹¹⁹⁴: Offence: breach of SHPO or interim SHPO etc

s.103I(3) - a person guilty of an offence under this section is liable:

- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years.

Restriction on imposing discharge

SOA 2003 s.103I¹¹⁹⁵: Offence: breach of SHPO or interim SHPO etc

s.103I(4) - where a person is convicted of an offence under this section, it is not open to the court by or before which the person is convicted to make, in respect of the offence, an order for conditional discharge.

¹¹⁹³ Commencement: 8 March 2015 as inserted by ASBCPA 2014 s.113 and Sch.5 para.2, SI 2015/373 art.2(a).

¹¹⁹⁴ Commencement: 8 March 2015 as inserted by ASBCPA 2014 s.113 and Sch.5 para.2, SI 2015/373 art.2(a).

¹¹⁹⁵ Commencement: 8 March 2015 as inserted by ASBCPA 2014 s.113 and Sch.5 para.2, SI 2015/373 art.2(a).

3.4.7.12. Guidance

SOA 2003 s.103J¹¹⁹⁶: Guidance

- s.103J(1) - the Secretary of State must issue guidance to chief officers of police and to the Director General of the National Crime Agency in relation to the exercise by them of their powers with regard to sexual harm prevention orders and interim sexual harm prevention orders.
- s.103(2) - the Secretary of State may, from time to time, revise the guidance issued under subsection (1).
- s.103J(3) - the Secretary of State must arrange for any guidance issued or revised under this section to be published in such manner as the Secretary of State considers appropriate.

¹¹⁹⁶ Commencement: 8 March 2015 as inserted by ASBCPA 2014 s.113 and Sch.5 para.2, SI 2015/373 art.2(a).

3.4.8. Travel Restriction Orders

3.4.8.1. General

What is a TRO?

CJPA 2001 s.33¹¹⁹⁷: Power to make travel restriction orders

s.33(3) - a travel restriction order is an order that prohibits the offender from leaving the United Kingdom at any time in the [specified] period [...]

Interpretation

CJPA 2001 s.33¹¹⁹⁸: Power to make travel restriction orders

s.33(6) - in this section “*post-commencement*”–

- (a) except in relation to an offence that is a drug trafficking offence by virtue of an order under section 34(1)(c), means committed after the coming into force of this section; and
- (b) in relation to an offence that is a drug trafficking offence by virtue of such an order, means committed after the coming into force of that order.

s.33(7) - references in this section to the offender's release from custody are references to his first release from custody after the imposition of the travel restriction order which is neither–

- (a) a release on bail; nor
- (b) a temporary release for a fixed period.

s.33(8) - in this section “*UK passport*” means a United Kingdom passport within the meaning of the Immigration Act 1971 (see section 33(1)).

3.4.8.2. Availability

Availability

CJPA 2001 s.33¹¹⁹⁹: Power to make travel restriction orders

s.33(1) - this section applies where–

- (a) a person (“the offender”) has been convicted by any court of a post-commencement drug trafficking offence;
- (b) the court has determined that it would be appropriate to impose a sentence of imprisonment for that offence; and
- (c) the term of imprisonment which the court considers appropriate is a term of four years or more.

¹¹⁹⁷ Commencement: 1 April 2002, SI 2002/344 art.3(a).

¹¹⁹⁸ Commencement: 1 April 2002, SI 2002/344 art.3(a).

¹¹⁹⁹ Commencement: 1 April 2002, SI 2002/344 art.3(a).

R. v Alexander [2011] EWCA Crim 89; [2011] 2 Cr. App. R. (S.) 52 (p.297)

For s.33(1)(c) to be triggered, there must be a term of imprisonment of a least four years attaching to a single post-commencement drug-trafficking offence. The section has no application to consecutive sentences adding up to four years or more.

Note: This is in contrast to the approach taken with extended sentences.

3.4.8.3. Duty to consider making a TRO

Duty to consider whether TRO appropriate and give reasons if order not made

CJPA 2001 s.33¹²⁰⁰: Power to make travel restriction orders

- s.33(2) - it shall be the duty of the court, on sentencing the offender–
- (a) to consider whether it would be appropriate for the sentence for the offence to include the making of a travel restriction order in relation to the offender;
 - (b) if the court determines that it is so appropriate, to make such travel restriction order in relation to the offender as the court thinks suitable in all the circumstances (including any other convictions of the offender for post-commencement drug trafficking offences in respect of which the court is also passing sentence); and
 - (c) if the court determines that it is not so appropriate, to state its reasons for not making a travel restriction order.

Meaning of “drug trafficking offence”

CJPA 2001 s.34¹²⁰¹: Meaning of “drug trafficking offence”

- s.34(1) - in section 33 “drug trafficking offence” means any of the following offences (including one committed by aiding, abetting, counselling or procuring)–
- (a) an offence under section 4(2) or (3) of the Misuse of Drugs Act 1971 (c. 38) (production and supply of controlled drugs);
 - (b) an offence under section 20 of that Act (assisting in or inducing commission outside United Kingdom of an offence punishable under a corresponding law);
 - (c) any such other offence under that Act as may be designated by order made by the Secretary of State;
 - (d) an offence under–
 - (i) section 50(2) or (3) of the Customs and Excise Management Act 1979 (c. 2) (improper importation),
 - (ii) section 68(2) of that Act (exportation), or
 - (iii) section 170 of that Act (fraudulent evasion),in connection with a prohibition or restriction on importation or exportation having effect by virtue of section 3 of the Misuse of Drugs Act 1971 (c. 38);
 - (e) an offence under section 1 of the Criminal Law Act 1977 (c. 45) or Article 9 of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983 (S.I. 1983/1120

¹²⁰⁰ Commencement: 1 April 2002, SI 2002/344 art.3(a).

¹²⁰¹ Commencement: 1 April 2002, SI 2002/344 art.3(a).

(N.I. 13)), or in Scotland at common law, of conspiracy to commit any of the offences in paragraphs (a) to (d) above;

- (f) an offence under section 1 of the Criminal Attempts Act 1981 (c. 47) or Article 3 of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983, or in Scotland at common law, of attempting to commit any of those offences; and
- (g) an offence under section 19 of the Misuse of Drugs Act 1971 (c. 38) or at common law of inciting another person to commit any of those offences.

s.34(2) - the power to make an order under subsection (1)(c) shall be exercisable by statutory instrument; and no such order shall be made unless a draft of it has been laid before Parliament and approved by a resolution of each House.

s.34(3) - an order under subsection (1)(c) may provide, in relation to any offence designated by such an order, that it is to be treated as so designated only–

- (a) for such purposes, and
- (b) in cases where it was committed in such manner or in such circumstances, as may be described in the order.

3.4.8.4. Making the order

When does a TRO take effect?

CJPA 2001 s.33¹²⁰²: Power to make travel restriction orders

- s.33(3) - a travel restriction order [...]
- (a) begins with the offender's release from custody [...]

Minimum term

CJPA 2001 s.33¹²⁰³: Power to make travel restriction orders

- s.33(3) - a travel restriction order is an order that prohibits the offender from leaving the United Kingdom at any time in the period which–
- (a) begins with the offender's release from custody; and
 - (b) continues after that time for such period of not less than two years as may be specified in the order.

Discretion to include requirement to surrender passport

CJPA 2001 s.33¹²⁰⁴: Power to make travel restriction orders

- s.33(4) - a travel restriction order may contain a direction to the offender to deliver up, or cause to be delivered up, to the court any UK passport held by him; and where such a direction is given, the court shall send any passport delivered up in pursuance of the direction to the Secretary of State at such address as the Secretary of State may determine.

¹²⁰² Commencement: 1 April 2002, SI 2002/344 art.3(a).

¹²⁰³ Commencement: 1 April 2002, SI 2002/344 art.3(a).

¹²⁰⁴ Commencement: 1 April 2002, SI 2002/344 art.3(a).

- s.33(5) - where the offender's passport is held by the Secretary of State by reason of the making of any direction contained in a travel restriction order, the Secretary of State (without prejudice to any other power or duty of his to retain the passport)–
- (a) may retain it for so long as the prohibition imposed by the order applies to the offender, and is not for the time being suspended; and
 - (b) shall not return the passport after the prohibition has ceased to apply, or when it is suspended, except where the passport has not expired and an application for its return is made to him by the offender.

The order cannot exclude certain countries

R. v Mee [2004] EWCA Crim 629; [2004] 2 Cr. App. R. (S.) 81 (p.434)

The legislation does not contemplate a TRO that is linked to only certain parts of the world where the drug trade flourishes with its greatest potency. The drug trade is truly international.

Duty to give reasons for the order

R. v Mee [2004] EWCA Crim 629; [2004] 2 Cr. App. R. (S.) 81 (p.434)

[...] [U]nless the exchanges between counsel and the court clearly disclose why the need to make an order arises and, secondly, why a certain period is to be imposed, the judge should give succinct reasons explaining why he is imposing the order and his reasons for the period he imposes. (Newman J, at [17])

3.4.8.5. Revocation and suspension of TRO

Power to revoke or suspend order

CJPA 2001 s.35¹²⁰⁵: Revocation and suspension of a travel restriction order

- s.35(1) - subject to the following provisions of this section, the court by which a travel restriction order has been made in relation to any person under section 33 may–
- (a) on an application made by that person at any time which is–
 - (i) after the end of the minimum period, and
 - (ii) is not within three months after the making of any previous application for the revocation of the prohibition,revoke the prohibition imposed by the order with effect from such date as the court may determine; or
 - (b) on an application made by that person at any time after the making of the order, suspend the prohibition imposed by the order for such period as the court may determine.

¹²⁰⁵ Commencement: 1 April 2002, SI 2002/344 art.3(a).

Revoking the prohibition: Test to apply

CJPA 2001 s.35¹²⁰⁶: Revocation and suspension of a travel restriction order

- s.35(2) - a court to which an application for the revocation of the prohibition imposed on any person by a travel restriction order is made shall not revoke that prohibition unless it considers that it is appropriate to do so in all the circumstances of the case and having regard, in particular, to—
- (a) that person's character;
 - (b) his conduct since the making of the order; and
 - (c) the offences of which he was convicted on the occasion on which the order was made.

Suspending the prohibition: Test to apply

CJPA 2001 s.35¹²⁰⁷: Revocation and suspension of a travel restriction order

- s.35(3) - a court shall not suspend the prohibition imposed on any person by a travel restriction order for any period unless it is satisfied that there are exceptional circumstances, in that person's case, that justify the suspension on compassionate grounds of that prohibition for that period.
- s.35(4) - in making any determination on an application for the suspension of the prohibition imposed on any person by a travel restriction order, a court (in addition to considering the matters mentioned in subsection (3)) shall have regard to—
- (a) that person's character;
 - (b) his conduct since the making of the order;
 - (c) the offences of which he was convicted on the occasion on which the order was made; and
 - (d) any other circumstances of the case that the court considers relevant.

Duty where TRO suspended

CJPA 2001 s.35¹²⁰⁸: Revocation and suspension of a travel restriction order

- s.35(5) - where the prohibition imposed on any person by a travel restriction order is suspended, it shall be the duty of that person—
- (a) to be in the United Kingdom when the period of the suspension ends; and
 - (b) if the order contains a direction under section 33(4) , to surrender, before the end of that period, any passport returned or issued to that person, in respect of the suspension, by the Secretary of State;

and a passport that is required to be surrendered under paragraph (b) shall be surrendered to the Secretary of State in such manner or by being sent to such address as the Secretary of State may direct at the time when he returns or issues it.

¹²⁰⁶ Commencement: 1 April 2002, SI 2002/344 art.3(a).

¹²⁰⁷ Commencement: 1 April 2002, SI 2002/344 art.3(a).

¹²⁰⁸ Commencement: 1 April 2002, SI 2002/344 art.3(a).

Effect of suspension of TRO

CJPA 2001 s.35¹²⁰⁹: Revocation and suspension of a travel restriction order

s.35(6) - where the prohibition imposed on any person by a travel restriction order is suspended for any period under this section, the end of the period of the prohibition imposed by the order shall be treated (except for the purposes of subsection (7)) as postponed (or, if there has been one or more previous suspensions, further postponed) by the length of the period of suspension.

Interpretation

CJPA 2001 s.35¹²¹⁰: Revocation and suspension of a travel restriction order

s.35(7) - in this section “*the minimum period*”–

- (a) in the case of a travel restriction order imposing a prohibition for a period of four years or less, means the period of two years beginning at the time when the period of the prohibition began;
- (b) in the case of a travel restriction order imposing a prohibition of more than four years but less than ten years, means the period of four years beginning at that time; and
- (c) in any other case, means the period of five years beginning at that time.

3.4.8.6. Breach

Offence: Leaving UK during currency of order

CJPA 2001 s.36¹²¹¹: Offences of contravening orders

s.36(1) - a person who leaves the United Kingdom at a time when he is prohibited from leaving it by a travel restriction order is guilty of an offence and liable–

- (a) on summary conviction to imprisonment for a term not exceeding six 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 five years or to a fine, or to both.

Offence: Not returning to UK at end of suspension of order

CJPA 2001 s.36¹²¹²: Offences of contravening orders

s.36(2) - a person who is not in the United Kingdom at the end of a period during which a prohibition imposed on him by a travel restriction order has been suspended shall be guilty of an offence and liable–

- (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both;

¹²⁰⁹ Commencement: 1 April 2002, SI 2002/344 art.3(a).

¹²¹⁰ Commencement: 1 April 2002, SI 2002/344 art.3(a).

¹²¹¹ Commencement: 1 April 2002, SI 2002/344 art.3(a).

¹²¹² Commencement: 1 April 2002, SI 2002/344 art.3(a).

- (b) on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine, or to both.

Offence: Failure to surrender passport

CJPA 2001 s.36¹²¹³: Offences of contravening orders

s.36(3) - a person who fails to comply with–

- (a) a direction contained in a travel restriction order to deliver up a passport to a court, or to cause such a passport to be delivered up, or
- (b) any duty imposed on him by section 35(5)(b) to surrender a passport to the Secretary of State,

shall be guilty of an offence and liable, on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale, or to both.

CJPA 2001 s.36¹²¹⁴: Offences of contravening orders

s.36(4) - this section has effect subject to section 37(3).

CJPA 2001 s.37¹²¹⁵: Saving for powers to remove a person from the United Kingdom

s.37(3) - no person shall be guilty of an offence under section 36 in respect of any act or omission required of him by an obligation imposed in the exercise of a prescribed removal power.

s.37(4) - in this section “a prescribed removal power” means any such power conferred by or under any enactment as–

- (a) consists in a power to order or direct the removal of a person from the United Kingdom; and
- (b) is designated for the purposes of this section by an order made by the Secretary of State.

Travel Restriction Order (Prescribed Removal Powers) Order 2002 (SI 2002/313)

art.1 - this Order may be cited as the Travel Restriction Order (Prescribed Removal Powers) Order 2002 and shall come into force on 1st April 2002

art.2 - each of the powers set out in the Schedule to this Order is designated as a prescribed removal power for the purposes of section 37 of the Criminal Justice and Police Act 2001.

Sch.1 - [a list of statutory provisions designated as prescribed removal powers]

¹²¹³ Commencement: 1 April 2002, SI 2002/344 art.3(a).

¹²¹⁴ Commencement: 1 April 2002, SI 2002/344 art.3(a).

¹²¹⁵ Commencement: 19 June 2001 (for the purpose of making regulations or orders), SI 2001/2223 art.2(2)(b). Otherwise in force 1 April 2002, SI 2002/344 art.3(a).

3.4.8.7. Existing powers to remove persons from UK

CJPA 2001 s.37¹²¹⁶: Saving for powers to remove a person from the United Kingdom

- s.37(1) - a travel restriction order made in relation to any person shall not prevent the exercise in relation to that person of any prescribed removal power.
- s.37(2) - a travel restriction order made in relation to any person shall remain in force, notwithstanding the exercise of any prescribed removal power in relation to that person, except in so far as either–
 - (a) the Secretary of State by order otherwise provides; or
 - (b) the travel restriction order is suspended or revoked under section 35.
- s.37(3) - no person shall be guilty of an offence under section 36 in respect of any act or omission required of him by an obligation imposed in the exercise of a prescribed removal power.
- s.37(4) - in this section “*a prescribed removal power*” means any such power conferred by or under any enactment as–
 - (a) consists in a power to order or direct the removal of a person from the United Kingdom; and
 - (b) is designated for the purposes of this section by an order made by the Secretary of State.
- s.37(5) - an order under subsection (2)(a) or (4) shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- s.37(6) - an order under subsection (2)(a)–
 - (a) may make different provision for different cases; and
 - (b) may contain such incidental, supplemental, consequential and transitional provision as the Secretary of State thinks fit.
- s.37(7) - references in this section to a person's removal from the United Kingdom include references to his deportation, extradition, repatriation, delivery up or other transfer to a place outside the United Kingdom.

¹²¹⁶ Commencement: 19 June 2001 (for the purpose of making regulations or orders), SI 2001/2223 art.2(2)(b). Otherwise in force 1 April 2002, SI 2002/344 art.3(a).

3.4.9. Forfeiture of licence to sell alcohol

General

LA 2003 s.111¹²¹⁷: Personal licence

s.111(1) - in this Act “*personal licence*” means a licence which—

- (a) is granted by a licensing authority to an individual, and
- (b) authorises that individual to supply alcohol, or authorise the supply of alcohol, in accordance with a premises licence.

s.111(2) - in subsection (1)(b) the reference to an individual supplying alcohol is to him—

- (a) selling alcohol by retail, or
- (b) supplying alcohol by or on behalf of a club to, or to the order of, a member of the club.

LA 2003 s.113¹²¹⁸: Meaning of “relevant offence” and “foreign offence”

s.113(1) - in this Part “*relevant offence*” means an offence listed in Schedule 4.

s.113(2) - the Secretary of State may by order amend that list so as to add, modify or omit any entry.

s.113(3) - in this Part “*foreign offence*” means an offence (other than a relevant offence) under the law of any place outside England and Wales.

LA 2003 Sch.4¹²¹⁹: Personal licence: Relevant offences

Note: The schedule lists the relevant offences for the purposes of s.113. The provisions are not listed in this document.

Power to order forfeiture of licence

LA 2003 s.129¹²²⁰: Forfeiture or suspension of licence on conviction for relevant offence

s.129(1) - this section applies where the holder of a personal licence is convicted of a relevant offence by or before a court in England and Wales.

s.129(2) - the court may—

- (a) order the forfeiture of the licence, or
- (b) order its suspension for a period not exceeding six months.

s.129(3) - in determining whether to make an order under subsection (2), the court may take account of any previous conviction of the holder for a relevant offence.

¹²¹⁷ Commencement: 7 February 2005, SI 2004/2360 art.2(1) and Sch.1 para.1.

¹²¹⁸ Commencement: Section 113(1) and (3) in force 7 February 2005, SI 2004/2360 art.2(1) and Sch.1 para.1. Section 113(2) in force 16 December 2003, SI 2003/3222 art.2 and Sch.1 para.1.

¹²¹⁹ Commencement: 7 February 2005, SI 2004/2360 art.2(1) and Sch.1 para.1.

¹²²⁰ Commencement: 7 February 2005, SI 2004/2360 art.2(1) and Sch.1 para.1.

- s.129(4) - where a court makes an order under this section it may suspend the order pending an appeal against it.
- s.129(5) - subject to subsection (4) and section 130, an order under this section takes effect immediately after it is made.

Appeals

LA 2003 s.130¹²²¹: Powers of appellate court to suspend order under section 129

- s.130(1) - this section applies where—
 - (a) a person (“the offender”) is convicted of a relevant offence, and
 - (b) an order is made under section 129 in respect of that conviction (“the section 129 order”).
- s.130(2) - in this section any reference to the offender's sentence includes a reference to the section 129 order and to any other order made on his conviction and, accordingly, any reference to an appeal against his sentence includes a reference to an appeal against any order forming part of his sentence.
- s.130(3) - where the offender—
 - (a) appeals to the Crown Court, or
 - (b) appeals or applies for leave to appeal to the Court of Appeal,against his conviction or his sentence, the Crown Court or, as the case may be, the Court of Appeal may suspend the section 129 order.
- s.130(4) - where the offender appeals or applies for leave to appeal to the Supreme Court—
 - (a) under section 1 of the Administration of Justice Act 1960 (c. 65) from any decision of the High Court which is material to his conviction or sentence, or
 - (b) under section 33 of the Criminal Appeal Act 1968 (c. 19) from any decision of the Court of Appeal which is material to his conviction or sentence,the High Court or, as the case may require, the Court of Appeal may suspend the section 129 order.
- s.130(5) - where the offender makes an application in respect of the decision of the court in question under section 111 of the Magistrates' Courts Act 1980 (c. 43) (statement of case by magistrates' court) or section 28 of the Senior Courts Act 1981 (c. 54) (statement of case by Crown Court) the High Court may suspend the section 129 order.
- s.130(6) - where the offender—
 - (a) applies to the High Court for a quashing order to remove into the High Court any proceedings of a magistrates' court or of the Crown Court, being proceedings in or in consequence of which he was convicted or his sentence was passed, or
 - (b) applies to the High Court for permission to make such an application,the High Court may suspend the section 129 order.

¹²²¹ Commencement: 7 February 2005, SI 2004/2360 art.2(1) and Sch.1 para.1.

- s.130(7) - any power of a court under this section to suspend the section 129 order is a power to do so on such terms as the court thinks fit.
- s.130(8) - where, by virtue of this section, a court suspends the section 129 order it must send notice of the suspension to the relevant licensing authority.
- s.130(9) - where the section 129 order is an order for forfeiture of the licence, an order under this section to suspend that order has effect to reinstate the licence for the period of the suspension.

3.4.10. Restricted premises/sale orders

CYPA 1933 s.12A¹²²²: Restricted premises orders

- s.12A(1) - this section applies where a person (“the offender”) is convicted of a tobacco or nicotine offence (“the relevant offence”).
- s.12A(2) - the person who brought the proceedings for the relevant offence may by complaint to a magistrates' court apply for a restricted premises order to be made in respect of the premises in relation to which that offence was committed (“the relevant premises”).
- s.12A(3) - a restricted premises order is an order prohibiting the sale on the premises to which it relates of any tobacco, cigarette papers or nicotine product to any person.
- s.12A(4) - the prohibition applies to sales whether made—
- (a) by the offender or any other person, or
 - (b) by means of any machine kept on the premises or any other means.
- s.12A(5) - the order has effect for the period specified in the order, but that period may not exceed one year.
- s.12A(6) - the applicant must, after making reasonable enquiries, give notice of the application to every person appearing to the applicant to be a person affected by it.
- s.12A(7) - the court may make the order if (and only if) it is satisfied that—
- (a) on at least 2 occasions within the period of 2 years ending with the date on which the relevant offence was committed, the offender has committed other tobacco or nicotine offences in relation to the relevant premises, and
 - (b) the applicant has complied with subsection (6).
- s.12A(8) - persons affected by the application may make representations to the court as to why the order should not be made.
- s.12A(9) - if—
- (a) a person affected by an application for a restricted premises order was not given notice under subsection (6), and
 - (b) consequently the person had no opportunity to make representations to the court as to why the order should not be made,
- the person may by complaint apply to the court for an order varying or discharging it.
- s.12A(10) - on an application under subsection (9) the court may, after hearing—
- (a) that person, and
 - (b) the applicant for the restricted premises order,
- make such order varying or discharging the restricted premises order as it considers appropriate.

¹²²² Commencement: 1 April 2009, as inserted by CJIA 2008 s.143(2), SI 2009/860 art.2(1)(c) subject to transitory, transitional and savings provisions as specified in CJIA 2008 Sch.27 para.37.

- s.12A(11) - for the purposes of this section the persons affected by an application for a restricted premises order in respect of any premises are—
- (a) the occupier of the premises, and
 - (b) any other person who has an interest in the premises.

CYPA 1933 s.12B¹²²³: Restricted sale orders

- s.12B(1) - this section applies where a person (“the offender”) is convicted of a tobacco or nicotine offence (“the relevant offence”).
- s.12B(2) - the person who brought the proceedings for the relevant offence may by complaint to a magistrates' court apply for a restricted sale order to be made in respect of the offender.
- s.12B(3) - a restricted sale order is an order prohibiting the person to whom it relates—
- (a) from selling any tobacco or nicotine products, cigarette papers or nicotine product to any person,
 - (b) from having any management functions in respect of any premises in so far as those functions relate to the sale on the premises of tobacco or nicotine products, cigarette papers or nicotine products to any person,
 - (c) from keeping any machine on any premises for the purpose of selling tobacco or nicotine products or permitting any machine to be kept on any premises by any other person for that purpose, and
 - (d) from having any management functions in respect of any premises in so far as those functions relate to any machine kept on the premises for the purpose of selling tobacco or nicotine products.
- s.12B(4) - the order has effect for the period specified in the order, but that period may not exceed one year.
- s.12B(5) - the court may make the order if (and only if) it is satisfied that, on at least 2 occasions within the period of 2 years ending with the date on which the relevant offence was committed, the offender has committed other tobacco or nicotine offences.
- s.12B(6) - in this section any reference to a machine is a reference to an automatic machine for the sale of tobacco or nicotine products.

CYPA 1933 s.12C¹²²⁴: Enforcement

- s.12C(1) - if—
- (a) a person sells on any premises any tobacco, cigarette papers or nicotine product in contravention of a restricted premises order, and
 - (b) the person knew, or ought reasonably to have known, that the sale was in contravention of the order,
- the person commits an offence.

¹²²³ Commencement: 1 April 2009, as inserted by CJA 2008 s.143(2), SI 2009/860 art.2(1)(c) subject to transitory, transitional and savings provisions as specified in CJA 2008 Sch.27 para.37.

¹²²⁴ Commencement: 1 April 2009, as inserted by CJA 2008 s.143(2), SI 2009/860 art.2(1)(c) subject to transitory, transitional and savings provisions as specified in CJA 2008 Sch.27 para.37.

- s.12C(2) - if a person fails to comply with a restricted sale order, the person commits an offence.
- s.12C(3) - it is a defence for a person charged with an offence under subsection (2) to prove that the person took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.
- s.12C(4) - a person guilty of an offence under this section is liable, on summary conviction, to a fine.
- s.12C(5) - a restricted premises order is a local land charge and in respect of that charge the applicant for the order is the originating authority for the purposes of the Local Land Charges Act 1975.

CYPA 1933 s.12D¹²²⁵: Interpretation

- s.12D(1) - in sections 12A and 12B a “*tobacco or nicotine offence*” means—
- (a) an offence committed under section 7(1) on any premises (which are accordingly “the premises in relation to which the offence is committed”),
 - (b) an offence committed under section 7(2) in respect of an order relating to any machine kept on any premises (which are accordingly “the premises in relation to which the offence is committed”),
 - (c) an offence committed under section 3A of the Children and Young Persons (Protection from Tobacco) Act 1991 in respect of any machine kept on any premises (which are accordingly “the premises in relation to which the offence is committed”), or
 - (d) an offence committed under section 92 of the Children and Families Act 2014 on any premises (which are accordingly “the premises in relation to which the offence is committed”).
- s.12D(2) - in sections 12A to 12C the expressions “*tobacco*” and “*cigarette*” have the same meaning as in section 7.
- s.12D(2A) -in sections 12A to 12C “*nicotine product*” means a nicotine product within the meaning of section 92 of the Children and Families Act 2014 the sale of which to persons aged under 18 is for the time being prohibited by regulations under subsection (1) of that section.
- s.12D(3) - in sections 12A and 12B “*notice*” means notice in writing.

¹²²⁵ Commencement: 1 April 2009, as inserted by CJIA 2008 s.143(2), SI 2009/860 art.2(1)(c) subject to transitory, transitional and savings provisions as specified in CJIA 2008 Sch.27 para.37.

3.4.11. Hygiene prohibition order

Food Hygiene (England) Regulations 2013 (SI 2013/2996) reg.7¹²²⁶: Hygiene prohibition orders

- r.7(1) - if —
- (a) a food business operator is convicted of an offence under these Regulations; and
 - (b) the court by or before which the operator is so convicted is satisfied that the health risk condition is fulfilled with respect to the food business concerned,
- the court shall by an order impose the appropriate prohibition.
- r.7(2) - the health risk condition is fulfilled with respect to any food business if any of the following involves risk of injury to health (including any impairment, whether permanent or temporary), namely —
- (a) the use for the purposes of the business of any process or treatment;
 - (b) the construction of any premises used for the purposes of the business, or the use for those purposes of any equipment; and
 - (c) the state or condition of any premises or equipment used for the purposes of the business.
- r.7(3) - the appropriate prohibition is—
- (a) in a case falling within sub-paragraph (a) of paragraph (2), a prohibition on the use of the process or treatment for the purposes of the business;
 - (b) in a case falling within sub-paragraph (b) of that paragraph, a prohibition on the use of the premises or equipment for the purposes of the business or any other food business of the same class or description; and
 - (c) in a case falling within sub-paragraph (c) of that paragraph, a prohibition on the use of the premises or equipment for the purposes of any food business.
- r.7(4) - if —
- (a) a food business operator is convicted of an offence under these Regulations; and
 - (b) the court by or before which the operator is so convicted thinks it proper to do so in all the circumstances of the case,
- the court may, by an order, impose a prohibition on the food business operator participating in the management of any food business, or any food business of a class or description specified in the order.
- r.7(5) - as soon as practicable after the making of an order under paragraph (1) or (4) (in these Regulations referred to as a “*hygiene prohibition order*”), the enforcement authority shall —
- (a) serve a copy of the order on the relevant food business operator; and
 - (b) in the case of an order made under paragraph (1), affix a copy of the order in a conspicuous position on such premises used for the purposes of the food business as they consider appropriate,
- and any person who knowingly contravenes such an order commits an offence.

¹²²⁶ Commencement: 31 December 2013, SI 2013/2996 reg.1

- r.7(6) - a hygiene prohibition order ceases to have effect —
- (a) in the case of an order made under paragraph (1), on the issue by the enforcement authority of a certificate to the effect that they are satisfied that the food business operator has taken sufficient measures to secure that the health risk condition is no longer fulfilled with respect to the food business; and
 - (b) in the case of an order made under paragraph (4), on the giving by the court of a direction to that effect.
- r.7(7) - the enforcement authority must issue a certificate under sub-paragraph (a) of paragraph (6) within three days of their being satisfied as mentioned in that sub-paragraph; and on an application by the food business operator for such a certificate, the authority must —
- (a) determine, as soon as is reasonably practicable and in any event within 14 days, whether or not they are so satisfied; and
 - (b) if they determine that they are not so satisfied, give notice to the food business operator of the reasons for that determination.
- r.7(8) - the court shall give a direction under sub-paragraph (b) of paragraph (6) if, on an application by the food business operator, the court thinks it proper to do so having regard to all the circumstances of the case, including in particular the conduct of the food business operator since the making of the order; but no such application shall be entertained if it is made —
- (a) within six months of the making of the hygiene prohibition order; or
 - (b) within three months of the making by the food business operator of a previous application for such a direction.
- r.7(9) - where a magistrates' court makes an order under paragraph (2) of regulation 8 with respect to any food business, paragraph (1) shall apply as if the food business operator had been convicted by the court of an offence under these Regulations.
- r.7(10) - where the commission of an offence by a food business operator leads to the conviction of another person pursuant to regulation 11, paragraph (4) shall apply in relation to that other person as it applies in relation to the food business operator and any reference in paragraph (5) or (8) to the food business operator is to be construed accordingly.

3.4.12. Supervision orders (Street Offences Act 1959)

3.4.12.1. Making the order

Offence in respect of which an order may be made

SOA 1959 s.1¹²²⁷: Loitering or soliciting for purposes of prostitution

- s.1(1) - it shall be an offence for a person aged 18 or over (whether male or female) persistently to loiter or solicit in a street or public place for the purpose of prostitution.

Punishment

SOA 1959 s.1¹²²⁸: Loitering or soliciting for purposes of prostitution

- s.1(2) - a person guilty of an offence under this section shall be liable on summary conviction to a fine of an amount not exceeding level 2 on the standard scale, or, for an offence committed after a previous conviction, to a fine of an amount not exceeding level 3 on that scale.

Power to order

SOA 1959 s.1¹²²⁹: Loitering or soliciting for purposes of prostitution

- s.1(2A) - the court may deal with a person convicted of an offence under this section by making an order requiring the offender to attend three meetings with the person for the time being specified in the order (“the supervisor”) or with such other person as the supervisor may direct.

Purpose of the order

SOA 1959 s.1¹²³⁰: Loitering or soliciting for purposes of prostitution

- s.1(2B) - the purpose of an order under subsection (2A) is to assist the offender, through attendance at those meetings, to—
- (a) address the causes of the conduct constituting the offence, and
 - (b) find ways to cease engaging in such conduct in the future.

Order already in place

SOA 1959 s.1¹²³¹: Loitering or soliciting for purposes of prostitution

- s.1(2C) - where the court is dealing with an offender who is already subject to an order under subsection (2A), the court may not make a further order under that subsection unless it first revokes the existing order.

¹²²⁷ Commencement: 16 August 1959, SOA 1959 s.5(4).

¹²²⁸ Commencement: 16 August 1959, SOA 1959 s.5(4).

¹²²⁹ Commencement: 16 August 1959, SOA 1959 s.5(4).

¹²³⁰ Commencement: 16 August 1959, SOA 1959 s.5(4).

¹²³¹ Commencement: 16 August 1959, SOA 1959 s.5(4).

Cannot impose another penalty

SOA 1959 s.1¹²³²: Loitering or soliciting for purposes of prostitution

s.1(2D) - if the court makes an order under subsection (2A) it may not impose any other penalty in respect of the offence.

Interpretation

SOA 1959 s.1¹²³³: Loitering or soliciting for purposes of prostitution

s.1(4) - for the purposes of this section —

- (a) conduct is persistent if it takes place on two or more occasions in any period of three months;
- (b) any reference to a person loitering or soliciting for the purposes of prostitution is a reference to a person loitering or soliciting for the purposes of offering services as a prostitute;
- (c) “street” includes any bridge, road, lane, footway, subway, square, court, alley or passage, whether a thoroughfare or not, which is for the time being open to the public; and the doorways and entrances of premises abutting on a street (as hereinbefore defined), and any ground adjoining and open to a street, shall be treated as forming part of the street.

SOA 1959 s.1A¹²³⁴: Orders under section 1(2A): supplementary

s.1A(1) - this section applies to an order under section 1(2A).

Requirement for “suitable” supervisor

SOA 1959 s.1A¹²³⁵: Orders under section 1(2A): supplementary

s.1A(1) - this section applies to an order under section 1(2A).

s.1A(2) - the order may not be made unless a suitable person has agreed to act as supervisor in relation to the offender.

s.1A(3) - in subsection (2) “suitable person” means a person appearing to the court to have appropriate qualifications or experience for helping the offender to make the best use of the meetings for the purpose mentioned in section 1(2B).

¹²³² Commencement: 16 August 1959, SOA 1959 s.5(4).

¹²³³ Commencement: 16 August 1959, SOA 1959 s.5(4).

¹²³⁴ Commencement: 1 April 2010, as inserted by Policing and Crime Act 2009 s.17(3).

¹²³⁵ Commencement: 1 April 2010, as inserted by Policing and Crime Act 2009 s.17(3).

Contents of the order

SOA 1959 s.1A¹²³⁶: Orders under section 1(2A): supplementary

- s.1A(1) - this section applies to an order under section 1(2A).
- s.1A(4) - the order must specify—
- (a) a date (not more than six months after the date of the order) by which the meetings required by the order must take place;
 - (b) the local justice area in which the offender resides or will reside while the order is in force.

Duties of the supervisor

SOA 1959 s.1A¹²³⁷: Orders under section 1(2A): supplementary

- s.1A(1) - this section applies to an order under section 1(2A).
- s.1A(5) - the supervisor must determine—
- (a) the times of the meetings required by the order and their duration, and
 - (b) the places at which they are held.
- s.1A(6) - the supervisor must—
- (a) make any arrangements that are necessary to enable the meetings required by the order to take place; and
 - (b) once the order has been complied with, notify the court which made the order of that fact.

Duties of the court

SOA 1959 s.1A¹²³⁸: Orders under section 1(2A): supplementary

- s.1A(1) - this section applies to an order under section 1(2A).
- s.1A(7) - the court making the order must provide copies of it to the offender and the supervisor.
- s.1A(8) - subsection (9) applies where—
- (a) the order is made by the Crown Court, or
 - (b) the order is made by a magistrates' court but specifies a local justice area for which the court making the order does not act.
- s.1A(9) - the court must provide to a magistrates' court acting for the local justice area specified in the order—
- (a) a copy of the order, and
 - (b) any documents and information relating to the case that it considers likely to be of assistance to that court in the exercise of any functions in relation to the order.

¹²³⁶ Commencement: 1 April 2010, as inserted by Policing and Crime Act 2009 s.17(3).

¹²³⁷ Commencement: 1 April 2010, as inserted by Policing and Crime Act 2009 s.17(3).

¹²³⁸ Commencement: 1 April 2010, as inserted by Policing and Crime Act 2009 s.17(3).

Cessation of the order

SOA 1959 s.1A¹²³⁹: Orders under section 1(2A): supplementary

s.1A(1) - this section applies to an order under section 1(2A).

s.1A(10) - the order ceases to be in force (unless revoked earlier under section 1(2C) or under the Schedule to this Act)—

- (a) at the end of the day on which the supervisor notifies the court that the order has been complied with, or
- (b) at the end of the day specified in the order under subsection (4)(a), whichever first occurs.

3.4.12.2. Revocation and breach of orders

SOA 1959 s.1A¹²⁴⁰: Orders under section 1(2A): supplementary

s.1A(1) - this section applies to an order under section 1(2A).

s.1A(11) - the Schedule to this Act (which relates to failure to comply with orders under section 1(2A) and to the revocation or amendment of such orders) has effect.

SOA 1959 Sch. 1: Orders under s.1(2A): Breach, amendment etc.

para.1(1) - this Schedule applies to an order made under section 1(2A).

para.1(2) - in this Schedule, in relation to the order—

“*the offender*” means the person in respect of whom the order was made;

“*the supervisor*” means the person for the time being specified as the supervisor in the order.

para.1(3) - for the purposes of this Schedule, the offender fails to comply with the order if the offender fails to attend any of the three meetings mentioned in section 1(2A) at the time and place determined by the supervisor.

Breach of order

SOA 1959 s.1A¹²⁴¹: Orders under section 1(2A): supplementary

s.1A(1) - this section applies to an order under section 1(2A).

s.1A(11) - the Schedule to this Act (which relates to failure to comply with orders under section 1(2A) and to the revocation or amendment of such orders) has effect.

¹²³⁹ Commencement: 1 April 2010, as inserted by Policing and Crime Act 2009 s.17(3).

¹²⁴⁰ Commencement: 1 April 2010, as inserted by Policing and Crime Act 2009 s.17(3).

¹²⁴¹ Commencement: 1 April 2010, as inserted by Policing and Crime Act 2009 s.17(3).

SOA 1959 Sch.1: Orders under s.1(2A): Breach, amendment etc.

- para.2(1) - if the supervisor is of the opinion that the offender has failed without reasonable excuse to comply with the order, the supervisor must cause an information to be laid before a justice of the peace in respect of the failure.
- para.2(2) - if it appears on information to the justice of the peace that the offender has failed to comply with the order, the justice may issue a summons requiring the offender to appear at the place and time specified in it.
- para.2(3) - any such summons must direct the offender to appear before a magistrates' court acting in the relevant local justice area.
- para.2(4) - in sub-paragraph (3) "*the relevant local justice area*" means—
- (a) the local justice area for the time being specified in the order, or
 - (b) if it appears to the justice of the peace that the offender resides in another local justice area, that local justice area.
- para.3(1) - this paragraph applies where the offender does not appear in answer to a summons issued under paragraph 2.
- para.3(2) - the magistrates' court may issue a warrant for the arrest of the offender.
- para.3(3) - any such warrant must require the offender to be brought before a magistrates' court acting in the relevant local justice area.
- para.3(4) - in sub-paragraph (3) "*the relevant local justice area*" means—
- (a) the local justice area for the time being specified in the order, or
 - (b) if it appears to the magistrates' court that the offender resides in another local justice area, that local justice area.
- para.4(1) - this paragraph applies where—
- (a) the offender appears or is brought before a magistrates' court in accordance with this Part of this Schedule, and
 - (b) it is proved to the satisfaction of the court that the offender has failed without reasonable excuse to comply with the order.
- para.4(2) - the court—
- (a) must revoke the order (if it remains in force), and
 - (b) may deal with the offender in respect of the failure by dealing with the offender, for the offence in respect of which the order was made, in any way in which the court could deal with the offender if the offender had just been convicted by it of the offence.
- para.4(3) - in dealing with an offender under sub-paragraph (2)(b), the court must take into account the extent to which the offender has complied with the order.
- para.4(4) - a person sentenced under sub-paragraph (2)(b) may appeal to the Crown Court against the sentence.

Amendment of order

SOA 1959 s.1A¹²⁴²: Orders under section 1(2A): supplementary

s.1A(1) - this section applies to an order under section 1(2A).

s.1A(11) - the Schedule to this Act (which relates to failure to comply with orders under section 1(2A) and to the revocation or amendment of such orders) has effect.

SOA 1959 Sch.1: Orders under s.1(2A): Breach, amendment etc.

para.5(1) - where the supervisor is unable to continue acting in that capacity, the supervisor, a constable or the offender may apply to the relevant magistrates' court to amend the order by specifying a different person to act as supervisor.

para.5(2) - where the court is satisfied that the supervisor is unable to continue acting, the court must—

- (a) amend the order by specifying a different person to act as supervisor, or
- (b) if no such person is available, revoke the order.

para.5(3) - the person specified to act as supervisor must be a suitable person (within the meaning given by section 1A(3)).

para.5(4) - in this paragraph "*the relevant magistrates' court*" means—a magistrates' court acting in the relevant local justice area.

para.5(5) - in sub-paragraph (4) "*the relevant local justice area*" means—

- (a) the local justice area for the time being specified in the order, or
- (b) if the offender resides in another local justice area, that local justice area.

para.6(1) - where a court revokes an order under paragraph 5(2)(b), it may deal with the offender, for the offence in respect of which the order was made, in any way in which the court could deal with the offender if the offender had just been convicted by it of the offence (other than by making an order under section 1(2A)).

para.6(2) - in dealing with an offender under sub-paragraph (1), the court must take into account the extent to which the offender has complied with the order.

para.6(3) - a person sentenced under sub-paragraph (1) may appeal to the Crown Court against the sentence.

para.7(1) - the offender or the supervisor may apply to the relevant magistrates' court to amend the order by substituting another local justice area for the area specified in the order.

para.7(2) - an application under sub-paragraph (1) may only be made if the offender resides or will reside in the other local justice area.

para.7(3) - if the application is made by the supervisor, the relevant magistrates' court must amend the order by substituting the other local justice area for the area specified in the order.

¹²⁴² Commencement: 1 April 2010, as inserted by Policing and Crime Act 2009 s.17(3).

- para.7(4) - if the application is made by the offender, the relevant magistrates' court may amend the order by substituting the other local justice area for the area specified in the order.
- para.7(5) - Sub-paragraphs (4) and (5) of paragraph 5 apply for the purposes of this paragraph as they apply for the purposes of that paragraph.
- para.8(1) - where the relevant magistrates' court proposes to exercise its powers under paragraph 5, otherwise than on the application of the offender, it must summon the offender to appear before the court and, if the offender does not appear in answer to the summons, may issue a warrant for the arrest of the offender.
- para.8(2) - an order may not be amended under this Part of this Schedule while an appeal against the order is pending.

Detention and remand

SOA 1959 s.1A¹²⁴³: Orders under section 1(2A): supplementary

- s.1A(1) - this section applies to an order under section 1(2A).
- s.1A(11) - the Schedule to this Act (which relates to failure to comply with orders under section 1(2A) and to the revocation or amendment of such orders) has effect.

SOA 1959 Sch.1: Orders under s.1(2A): Breach, amendment etc.

- para.9(1) - this paragraph applies where the offender is arrested in pursuance of a warrant under this Schedule and cannot be brought immediately before the court before which the warrant directs him to be brought ("the appropriate court").
- para.9(2) - the person in whose custody the offender is must, as soon as practicable and in any event before the end of the period of 72 hours beginning with the time of the arrest, bring the offender before any magistrates' court.
- para.9(3) - that person may make arrangements for the offender to be detained until brought before the court.
- para.9(5) - a person who is detained in pursuance of arrangements made under sub-paragraph (3) is deemed to be in legal custody.
- para.10(1) - this paragraph applies where the court before which an offender is brought under paragraph 9(2) is not the appropriate court (within the meaning of paragraph 9).
- para.10(2) - the alternative court may direct that the offender is to be released forthwith or remand him to appear before the appropriate court.
- para.10(3) - for the purposes of sub-paragraph (2), section 128 of the Magistrates' Courts Act 1980 (remand in custody or on bail) applies as if the court referred to in subsections (1)(a), (3), (4)(a) and (5) were the appropriate court.
- para.10(4) - any power to remand the offender in custody which is conferred by section 128 of the Magistrates' Court Act 1980 (as modified by sub-paragraph (3)) is to be taken to be a power to remand the offender to a prison.

¹²⁴³ Commencement: 1 April 2010, as inserted by Policing and Crime Act 2009 s.17(3).

Adjournments

SOA 1959 s.1A¹²⁴⁴: Orders under section 1(2A): supplementary

s.1A(1) - this section applies to an order under section 1(2A).

s.1A(11) - the Schedule to this Act (which relates to failure to comply with orders under section 1(2A) and to the revocation or amendment of such orders) has effect.

SOA 1959 Sch.1: Orders under s.1(2A): Breach, amendment etc.

para.11(1) - this paragraph applies to any hearing relating to an offender held by a magistrates' court in any proceedings under this Schedule.

para.11(2) - the court may adjourn the hearing, and, where it does so, may—

- (a) direct that the offender be released forthwith, or
- (b) remand the offender.

para.11(3) - where the court remands the offender under sub-paragraph (2)—

- (a) it must fix the time and place at which the hearing is to be resumed, and
- (b) that time and place must be the time and place at which the offender is required to appear or be brought before the court by virtue of the remand.

para.11(4) - where the court adjourns the hearing under sub-paragraph (2) but does not remand the offender—

- (a) it may fix the time and place at which the hearing is to be resumed, but
- (b) if it does not do so, must not resume the hearing unless it is satisfied that the offender and, where appropriate, the supervisor have had adequate notice of the time and place for the resumed hearing.

para.11(5) - the powers of a magistrates' court under this paragraph may be exercised by a single justice of the peace, notwithstanding anything in the Magistrates' Courts Act 1980.

para.11(6) - this paragraph—

- (a) applies to any hearing in any proceedings under this Schedule in place of section 10 of the Magistrates' Courts Act 1980 (adjournment of trial) where that section would otherwise apply, but
- (b) is not to be taken to affect the application of that section to hearings of any other description.

¹²⁴⁴ Commencement: 1 April 2010, as inserted by Policing and Crime Act 2009 s.17(3).

Notification

SOA 1959 s.1A¹²⁴⁵: Orders under section 1(2A): supplementary

s.1A(1) - this section applies to an order under section 1(2A).

s.1A(11) - the Schedule to this Act (which relates to failure to comply with orders under section 1(2A) and to the revocation or amendment of such orders) has effect.

SOA 1959 Sch.1: Orders under s.1(2A): Breach, amendment etc.

para.12(1) - this paragraph applies where a court revokes or amends an order under any provision of this Schedule.

para.12(2) - the proper officer must—

- (a) provide copies of the revoking or amending order to the offender and the supervisor, and
- (b) in the case of an amending order which substitutes a new local justice area, provide a copy of the amending order to a magistrates' court acting for that area.

para.12(3) - if the court that revokes or amends the order is a magistrates' court acting in a local justice area other than the area specified in the order, the proper officer must provide a copy of the revoking or amending order to a magistrates' court acting in the local justice area specified in the order.

para.12(4) - where the proper officer acts under sub-paragraph (2)(b), the officer must also provide to the court such documents and information relating to the case as it considers likely to be of assistance to a court acting for that area in the exercise of any function in relation to the order.

para.12(5) - in this paragraph "*proper officer*" means the designated officer for the court.

¹²⁴⁵ Commencement: 1 April 2010, as inserted by Policing and Crime Act 2009 s.17(3), SI 2010/507 art.5(d) and 6.

3.4.13. Female Genital Mutilation Protection Orders

3.4.13.1. General

FGMA 2003 s.5A¹²⁴⁶: Female genital mutilation protection orders

s.5A(1) - Schedule 2 provides for the making of female genital mutilation protection orders.

s.5A(2) - in that Schedule—

- (a) Part 1 makes provision about powers of courts in England and Wales to make female genital mutilation protection orders;
- (b) Part 2 makes provision about powers of courts in Northern Ireland to make such orders.”

3.4.13.2. Power to order: Criminal proceedings

FGMA 2003 Sch.2 para.3¹²⁴⁷: Power to make order in criminal proceedings

para.3 - the court before which there are criminal proceedings in England and Wales for a genital mutilation offence may make an FGM protection order (without an application being made to it) if—

- (a) the court considers that an FGM protection order should be made to protect a girl (whether or not the victim of the offence in relation to the criminal proceedings), and
- (b) a person who would be a respondent to any proceedings for an FGM protection order is a defendant in the criminal proceedings.

FGMA 2003 Sch.2 para.1¹²⁴⁸: Power to make FGM protection order

para.1(1) - the court in England and Wales may make an order (an “FGM protection order”) for the purposes of—

- (a) protecting a girl against the commission of a genital mutilation offence, or
- (b) protecting a girl against whom any such offence has been committed.

para.1(2) - in deciding whether to exercise its powers under this paragraph and, if so, in what manner, the court must have regard to all the circumstances, including the need to secure the health, safety and well-being of the girl to be protected.

para.1(3) - An FGM protection order may contain—

- (a) such prohibitions, restrictions or requirements, and
- (b) such other terms,

as the court considers appropriate for the purposes of the order.

¹²⁴⁶ Commencement: 17 July 2015, SI 2015/1428 reg.2(a).

¹²⁴⁷ Commencement: 17 July 2015, SI 2015/1428 reg.2(a).

¹²⁴⁸ Commencement: 17 July 2015, SI 2015/1428 reg.2(a).

para.1(4) - the terms of an FGM protection order may, in particular, relate to—

- (a) conduct outside England and Wales as well as (or instead of) conduct within England and Wales;
- (b) respondents who are, or may become, involved in other respects as well as (or instead of) respondents who commit or attempt to commit, or may commit or attempt to commit, a genital mutilation offence against a girl;
- (c) other persons who are, or may become, involved in other respects as well as respondents of any kind.

para.1(5) - for the purposes of sub-paragraph (4) examples of involvement in other respects are—

- (a) aiding, abetting, counselling, procuring, encouraging or assisting another person to commit, or attempt to commit, a genital mutilation offence against a girl;
- (b) conspiring to commit, or to attempt to commit, such an offence.

para.1(6) - an FGM protection order may be made for a specified period or until varied or discharged (see paragraph 6).

3.4.13.3. Power to order: Ex parte orders

FGMA 2003 Sch.2 para.5¹²⁴⁹: Ex parte orders

para.5(1) - the court may, in any case where it is just and convenient to do so, make an FGM protection order even though the respondent has not been given such notice of the proceedings as would otherwise be required by rules of court.

para.5(2) - in deciding whether to exercise its powers under sub-paragraph (1), the court must have regard to all the circumstances including—

- (a) the risk to the girl, or to another person, of becoming a victim of a genital mutilation offence if the order is not made immediately,
- (b) whether it is likely that an applicant will be deterred or prevented from pursuing an application if an order is not made immediately, and
- (c) whether there is reason to believe that—
 - (i) the respondent is aware of the proceedings but is deliberately evading service, and
 - (ii) the delay involved in effecting substituted service will cause serious prejudice to the girl to be protected or (if different) an applicant.

para.5(3) - the court must give the respondent an opportunity to make representations about an order made by virtue of sub-paragraph (1).

para.5(4) - the opportunity must be—

- (a) as soon as just and convenient, and
- (b) at a hearing of which notice has been given to all the parties in accordance with rules of court.

¹²⁴⁹ Commencement: 17 July 2015, SI 2015/1428 reg.2(a).

3.4.13.4. Variation and discharge of orders

FGMA 2003 Sch.2 para.6¹²⁵⁰: Variation and discharge of orders

para.6(1) - the court may vary or discharge an FGM protection order on an application by—

- (a) any party to the proceedings for the order,
- (b) the girl being protected by the order (if not a party to the proceedings for the order), or
- (c) any person affected by the order.

para.6(2) - in the case of an order made in criminal proceedings under paragraph 3, the reference in sub-paragraph (1)(a) to a party to the proceedings for the order is to be read as a reference to the prosecution and the defendant.

para.6(3) - in addition, the court may vary or discharge an FGM protection order made by virtue of paragraph 2(1)(b) or 3 even though no application under sub-paragraph (1) above has been made to the court.

para.6(4) - paragraph 5 applies to a variation of an FGM protection order as it applies to the making of such an order (and references in that paragraph to the making of an FGM protection order are to be read accordingly).

3.4.13.5. Breach

Offence

FGMA 2003 Sch.2 para.4¹²⁵¹: Offence of breaching order

para.4(1) - a person who without reasonable excuse does anything that the person is prohibited from doing by an FGM protection order is guilty of an offence.

para.4(2) - in the case of an FGM protection order made by virtue of paragraph 5(1), a person can be guilty of an offence under this paragraph only in respect of conduct engaged in at a time when the person was aware of the existence of the order.

para.4(3) - where a person is convicted of an offence under this paragraph in respect of any conduct, the conduct is not punishable as a contempt of court.

para.4(4) - a person cannot be convicted of an offence under this paragraph in respect of any conduct which has been punished as a contempt of court.

para.4(5) - a person guilty of an offence under this paragraph is liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding five years, or a fine, or both;
- (b) on summary conviction, to imprisonment for a term not exceeding 12 months, or a fine, or both.

¹²⁵⁰ Commencement: 17 July 2015, SI 2015/1428 reg.2(a).

¹²⁵¹ Commencement: 17 July 2015, SI 2015/1428 reg.2(a).

para.4(6) - a reference in any enactment to proceedings under this Part of this Schedule, or to an order under this Part of this Schedule, does not include a reference to proceedings for an offence under this paragraph or to an order made in proceedings for such an offence.

para.4(7) - “*Enactment*” includes an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978.

Arrest and remand for suspected breach

FGMA 2003 Sch.2 para.7¹²⁵²: Arrest under warrant

para.7(1) - an interested party may apply to the relevant judge for the issue of a warrant for the arrest of a person if the interested party considers that the person has failed to comply with an FGM protection order or is otherwise in contempt of court in relation to such an order.

para.7(2) - the relevant judge must not issue a warrant on an application under sub-paragraph (1) unless—

- (a) the application is substantiated on oath, and
- (b) the relevant judge has reasonable grounds for believing that the person to be arrested has failed to comply with the order or is otherwise in contempt of court in relation to the order.

para.7(3) - in this paragraph “*interested party*”, in relation to an FGM protection order, means—

- (a) the girl being protected by the order,
- (b) (if a different person) the person who applied for the order, or
- (c) any other person;

but no application may be made under sub-paragraph (1) by a person falling within paragraph (c) without leave of the relevant judge.

FGMA 2003 Sch.2 para.8¹²⁵³: Remand: general

para.8(1) - the court before which an arrested person is brought by virtue of a warrant under paragraph 7 may, if the matter is not then disposed of immediately, remand the person concerned.

para.8(2) - paragraphs 9 to 14 contain further provision about the powers of a court to remand under this paragraph.

para.8(3) - sub-paragraph (4) applies if a person remanded under this paragraph is granted bail under paragraphs 10 to 14.

para.8(4) - the person may be required by the relevant judge to comply, before release on bail or later, with such requirements as appear to the judge to be necessary to secure that the person does not interfere with witnesses or otherwise obstruct the course of justice.

¹²⁵² Commencement: 17 July 2015, SI 2015/1428 reg.2(a).

¹²⁵³ Commencement: 17 July 2015, SI 2015/1428 reg.2(a).

FGMA 2003 Sch.2 para.9¹²⁵⁴: Remand: medical examination and report

- para.9(1) - any power to remand a person under paragraph 8(1) may be exercised for the purpose of enabling a medical examination and report to be made if the relevant judge has reason to consider that a medical report will be required.
- para.9(2) - if such a power is so exercised, the adjournment must not be for more than four weeks at a time unless the relevant judge remands the accused in custody.
- para.9(3) - if the relevant judge remands the accused in custody, the adjournment must not be for more than three weeks at a time.
- para.9(4) - sub-paragraph (5) applies if there is reason to suspect that a person who has been arrested under a warrant issued on an application under paragraph 7(1) is suffering from mental disorder within the meaning of the Mental Health Act 1983.
- para.9(5) - the relevant judge has the same power to make an order under section 35 of the Mental Health Act 1983 (remand for report on accused's mental condition) as the Crown Court has under section 35 of that Act in the case of an accused person within the meaning of that section.

FGMA 2003 Sch.2 para.10¹²⁵⁵: Remand: further provision

- para.10(1) - where a court has power to remand a person under paragraph 8, the court may remand the person in custody or on bail.
- para.10(2) - if remanded in custody, the person is to be committed to custody to be brought before the court—
- (a) at the end of the period of remand, or
 - (b) at such earlier time as the court may require.
- para.10(3) - the court may remand a person on bail—
- (a) by taking from the person a recognizance (with or without sureties) conditioned as provided in paragraph 11, or
 - (b) by fixing the amount of the recognizances with a view to their being taken subsequently in accordance with paragraph 14 and, in the meantime, committing the person to custody as mentioned in sub-paragraph (2) above.
- para.10(4) - where a person is brought before the court after remand the court may further remand the person.
- para.10(5) - in this paragraph and in paragraphs 11 to 14, references to “*the court*” includes a reference to a judge of the court or, in the case of proceedings in a magistrates’ court, a justice of the peace.

¹²⁵⁴ Commencement: 17 July 2015, SI 2015/1428 reg.2(a).

¹²⁵⁵ Commencement: 17 July 2015, SI 2015/1428 reg.2(a).

FGMA 2003 Sch.2 para.11¹²⁵⁶

para.11(1) - where a person is remanded on bail, the court may direct that the person's recognizance be conditioned for his or her appearance—

- (a) before the court at the end of the period of remand, or
- (b) at every time and place to which during the course of the proceedings the hearing may from time to time be adjourned.

para.11(2) - where a recognizance is conditioned for a person's appearance as mentioned in sub-paragraph (1), the fixing of any time for the person next to appear is to be treated as a remand.

para.11(3) - nothing in this paragraph deprives the court of power at any subsequent hearing to remand a person afresh.

FGMA 2003 Sch.2 para.12¹²⁵⁷

para.12(1) - the court may not remand a person for a period exceeding 8 clear days unless—

- (a) the court adjourns a case under paragraph 9(1), or
- (b) the person is remanded on bail and both that person and the other party to the proceedings (or, in the case of criminal proceedings, the prosecution) consent.

para.12(2) - if sub-paragraph (1)(a) applies, the person may be remanded for the period of the adjournment.

para.12(3) - where the court has power to remand a person in custody, the person may be committed to the custody of a constable if the remand is for a period not exceeding 3 clear days.

FGMA 2003 Sch.2 para.13¹²⁵⁸

para.13(1) - if the court is satisfied that a person who has been remanded is unable by reason of illness or accident to appear before the court at the end of the period of remand, the court may further remand the person in his or her absence.

para.13(2) - the power in sub-paragraph (1) may, in the case of a person who was remanded on bail, be exercised by enlarging the person's recognizance and those of any sureties to a later time.

para.13(3) - where a person remanded on bail is bound to appear before the court at any time and the court has no power to remand the person under sub-paragraph (1), the court may, in the person's absence, enlarge the person's recognizance and those of any sureties for the person to a later time.

para.13(4) - the enlargement of a person's recognizance is to be treated as a further remand.

para.13(5) - paragraph 12(1) (limit of remand) does not apply to the exercise of the powers conferred by this paragraph.

¹²⁵⁶ Commencement: 17 July 2015, SI 2015/1428 reg.2(a).

¹²⁵⁷ Commencement: 17 July 2015, SI 2015/1428 reg.2(a).

¹²⁵⁸ Commencement: 17 July 2015, SI 2015/1428 reg.2(a).

FGMA 2003 Sch.2 para.14¹²⁵⁹

para.14(1) - this paragraph applies where under paragraph 10(3)(b) the court fixes the amount in which the principal and the sureties (if any) are to be bound.

para.14(2) - the recognizance may afterwards be taken by a person prescribed by rules of court (with the same consequences as if it had been entered into before the court).

FGMA 2003 Sch.2 para.15¹²⁶⁰: Contempt proceedings

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

3.4.13.6. Effect of FGM protection order on other powers of the court

FGMA 2003 Sch.2 para.16¹²⁶¹: Other protection or assistance against female genital mutilation

para.16(1) - nothing in this Part of this Schedule affects any other protection or assistance available to a girl who is or may become the victim of a genital mutilation offence.

para.16(2) - in particular, it does not affect—

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

3.4.13.7. Interpretation of Sch.2 Part 1

FGMA 2003 Sch.2 para.17¹²⁶²: Interpretation

para.17(1) - in this Part of this Schedule—

“*the court*”, except as provided in sub-paragraph (2), means the High Court, or the family court, in England and Wales;

“*FGM protection order*” means an order under paragraph 1;

“*genital mutilation offence*” means an offence under section 1, 2 or 3;

¹²⁵⁹ Commencement: 17 July 2015, SI 2015/1428 reg.2(a).

¹²⁶⁰ Commencement: 17 July 2015, SI 2015/1428 reg.2(a).

¹²⁶¹ Commencement: 17 July 2015, SI 2015/1428 reg.2(a).

¹²⁶² Commencement: 17 July 2015, SI 2015/1428 reg.2(a).

“the relevant judge”, in relation to an FGM protection order, means—

- (a) where the order was made by the High Court, a judge of that court;
- (b) where the order was made by the family court, a judge of that court;
- (c) where the order was made by a court in criminal proceedings under paragraph 3—
 - (i) a judge of that court, or
 - (ii) a judge of the High Court or of the family court.

para.17(2) - where the power to make an FGM protection order is exercisable by a court in criminal proceedings under paragraph 3, references in this Part of this Schedule to *“the court”* (other than in paragraph 2) are to be read as references to that court.

para.17(3) - in paragraph (c)(i) of the definition of *“relevant judge”* in sub-paragraph (1), the reference to a judge of the court that made the order includes, in the case of criminal proceedings in a magistrates' court, a reference to a justice of the peace.

3.4.14. Slavery and trafficking prevention orders

3.4.14.1. General

Note: There is a power to make a slavery and trafficking prevention order on application, however as that order is not made in relation to a sentencing hearing, the details are not included in this document. See MSA 215 s.15 for details.

What is a slavery and trafficking prevention order?

MSA 2015 s.17¹²⁶³: Effect of slavery and trafficking prevention orders

s.17(1) - a slavery and trafficking prevention order is an order prohibiting the defendant from doing anything described in the order.

Interpretation etc.

MSA 2015 s.14¹²⁶⁴: Slavery and trafficking prevention orders on sentencing

s.14(3) - a “slavery or human trafficking offence” means an offence listed in Schedule 1.

s.14(5) - for the purposes of this section, convictions and findings include those taking place before this section comes into force.

3.4.14.2. Making the order

Availability

MSA 2015 s.14¹²⁶⁵: Slavery and trafficking prevention orders on sentencing

s.14(1) - a court may make a slavery and trafficking prevention order against a person (“the defendant”) where it deals with the defendant in respect of—

- (a) a conviction for a slavery or human trafficking offence,
- (b) a finding that the defendant is not guilty of a slavery or human trafficking offence by reason of insanity, or
- (c) a finding that the defendant is under a disability and has done the act charged against the defendant in respect of a slavery or human trafficking offence.

Trigger offences

MSA 2015 Sch.1¹²⁶⁶: Slavery and Human Trafficking Offences

1 Nationality, Immigration and Asylum Act 2002 (c. 41)
An offence under section 145 of the Nationality, Immigration and Asylum Act 2002 (trafficking for prostitution).

¹²⁶³ Commencement: 31 July 2015, SI 2015/1476 reg.2(b).

¹²⁶⁴ Commencement: 31 July 2015, SI 2015/1476 reg.2(b).

¹²⁶⁵ Commencement: 31 July 2015, SI 2015/1476 reg.2(b).

¹²⁶⁶ Commencement: 31 July 2015, SI 2015/1476 reg.2(g).

- 2 Sexual Offences Act 2003 (c. 42)
- (1) An offence under section 57, 58, 58A, 59 or 59A of the Sexual Offences Act 2003 (trafficking for sexual exploitation).
- (2) An offence under section 62 of that Act (committing offence with intent to commit relevant sexual offence), where the relevant sexual offence the person in question intended to commit was an offence under section 57, 58, 58A, 59 or 59A of that Act.
- 3 Criminal Justice (Scotland) Act 2003 (asp 7)
- An offence under section 22 of the Criminal Justice (Scotland) Act 2003 (traffic in prostitution etc).
- 4 Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19)
- An offence under section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (trafficking for exploitation).
- 5 Coroners and Justice Act 2009 (c. 25)
- An offence under section 71 of the Coroners and Justice Act 2009 (slavery, servitude and forced or compulsory labour).
- 6 Criminal Justice and Licensing (Scotland) Act 2010 (asp 13)
- An offence under section 47 of the Criminal Justice and Licensing (Scotland) Act 2010 (slavery, servitude and forced or compulsory labour).
- 7 Modern Slavery Act 2015 (c. 30)
- An offence under section 1, 2 or 4 of this Act.
- 8 Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 (c. 2 (N.I.))
- An offence under section 1, 2 or 4 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 (slavery, servitude and forced or compulsory labour; human trafficking).
- 9 Ancillary offences
- (1) An offence of attempting or conspiring to commit an offence listed in this Schedule.
- (2) An offence committed by aiding, abetting, counselling, procuring or inciting the commission of an offence listed in this Schedule.
- (3) An offence under Part 2 of the Serious Crime Act 2007 (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 listed in this Schedule.

Power of Secretary of State to amend Schedule 1

MSA 2015 s.14¹²⁶⁷: Slavery and trafficking prevention orders on sentencing

s.14(4) - the Secretary of State may by regulations amend Schedule 1.

¹²⁶⁷ Commencement: 31 July 2015, SI 2015/1476 reg.2(b).

Test to apply

MSA 2015 s.14¹²⁶⁸: Slavery and trafficking prevention orders on sentencing

- s.14(2) - the court may make the order only if it is satisfied that—
- (a) there is a risk that the defendant may commit a slavery or human trafficking offence, and
 - (b) it is necessary to make the order for the purpose of protecting persons generally, or particular persons, from the physical or psychological harm which would be likely to occur if the defendant committed such an offence.

3.4.14.3. Contents of the order

Test for imposing prohibitions under the order

MSA 2015 s.17¹²⁶⁹: Effect of slavery and trafficking prevention orders

- s.17(2) - the only prohibitions that may be included in the order are those which the court is satisfied are necessary for the purpose of protecting persons generally, or particular persons, from the physical or psychological harm which would be likely to occur if the defendant committed a slavery or human trafficking offence.

Prohibitions

MSA 2015 s.17¹²⁷⁰: Effect of slavery and trafficking prevention orders

- s.17(3) - the order may prohibit the defendant from doing things in any part of the United Kingdom, and anywhere outside the United Kingdom.

MSA 2015 s.18¹²⁷¹: Prohibitions on foreign travel

- s.18(2) - a “prohibition on foreign travel” means—
- (a) a prohibition on travelling to any country outside the United Kingdom named or described in the order,
 - (b) a prohibition on travelling to any country outside the United Kingdom other than a country named or described in the order, or
 - (c) a prohibition on travelling to any country outside the United Kingdom.
- s.18(4) - a slavery and trafficking prevention order that contains a prohibition within subsection (2)(c) must require the defendant to surrender all of the defendant's passports at a police station specified in the order—
- (a) on or before the date when the prohibition takes effect, or
 - (b) within a period specified in the order.

¹²⁶⁸ Commencement: 31 July 2015, SI 2015/1476 reg.2(b).

¹²⁶⁹ Commencement: 31 July 2015, SI 2015/1476 reg.2(b).

¹²⁷⁰ Commencement: 31 July 2015, SI 2015/1476 reg.2(b).

¹²⁷¹ Commencement: 31 July 2015, SI 2015/1476 reg.2(b).

- s.18(5) - any passports surrendered must be returned as soon as reasonably practicable after the person ceases to be subject to a slavery and trafficking prevention order containing a prohibition within subsection (2)(c).
- s.18(6) - subsection (5) does not apply in relation to—
- (a) a passport issued by or on behalf of the authorities of a country outside the United Kingdom if the passport has been returned to those authorities;
 - (b) a passport issued by or on behalf of an international organisation if the passport has been returned to that organisation.

MSA 2015 s.19¹²⁷²: Requirement to provide name and address

- s.19(1) - a slavery and trafficking prevention order may (as well as imposing prohibitions on the defendant) require the defendant to comply with subsections (3) to (6).
- s.19(2) - it may do so only if the court is satisfied that the requirement is necessary for the purpose of protecting persons generally, or particular persons, from the physical or psychological harm which would be likely to occur if the defendant committed a slavery or human trafficking offence.
- s.19(3) - before the end of the period of 3 days beginning with the day on which a slavery and trafficking prevention order requiring the defendant to comply with subsections (3) to (6) is first served the defendant must, in the way specified in the order, notify the person specified in the order of the relevant matters.
- s.19(4) - the relevant matters are—
- (a) the defendant's name and, where the defendant uses one or more other names, each of those names, and
 - (b) the defendant's home address.
- s.19(5) - if while the defendant is subject to the order the defendant—
- (a) uses a name which has not been notified under the order, or
 - (b) changes home address,
- the defendant must, in the way specified in the order, notify the person specified in the order of the new name or the new home address.
- s.19(6) - the notification must be given before the end of the period of 3 days beginning with the day on which the defendant uses the name or changes home address.
- s.19(7) - where the order requires the defendant to notify the Director General of the National Crime Agency or an immigration officer, the Director General or the officer must give details of any notification to the chief officer of police for each relevant police area.
- s.19(8) - “Relevant police area” means—
- (a) where the defendant notifies a new name, the police area where the defendant lives;

¹²⁷² Commencement: 31 July 2015, SI 2015/1476 reg.2(b).

- (b) where the defendant notifies a change of home address, the police area where the defendant lives and (if different) the police area where the defendant lived before the change of home address.

Length of the order

MSA 2015 s.17¹²⁷³: Effect of slavery and trafficking prevention orders

- s.17(4) - subject to section 18(1), a prohibition contained in a slavery and trafficking prevention order has effect—
 - (a) for a fixed period, specified in the order, of at least 5 years, or
 - (b) until further order.
- s.17(5) - a slavery and trafficking prevention order—
 - (a) may specify that some of its prohibitions have effect until further order and some for a fixed period;
 - (b) may specify different periods for different prohibitions.

MSA 2015 s.18¹²⁷⁴: Prohibitions on foreign travel

- s.18(1) - a prohibition on foreign travel contained in a slavery and trafficking prevention order must be for a fixed period of not more than 5 years.
- s.18(3) - subsection (1) does not prevent a prohibition on foreign travel from being extended for a further period (of no more than 5 years each time) under section 20.

Court imposes order on defendant already subject to an order

MSA 2015 s.17¹²⁷⁵: Effect of slavery and trafficking prevention orders

- s.17(6) - if a court makes a slavery and trafficking prevention order in relation to a person who is already subject to such an order (whether made by that court or another), the earlier order ceases to have effect.

3.4.14.4. Variation, renewal, discharge

Interpretation

MSA 2015 s.20¹²⁷⁶: Variation, renewal and discharge

- s.20(10) - in this section “*the appropriate court*” means—
 - (a) where the Crown Court or the Court of Appeal made the slavery and trafficking prevention order, the Crown Court;
 - (b) where an adult magistrates' court made the order—
 - (i) that court,

¹²⁷³ Commencement: 31 July 2015, SI 2015/1476 reg.2(b).

¹²⁷⁴ Commencement: 31 July 2015, SI 2015/1476 reg.2(b).

¹²⁷⁵ Commencement: 31 July 2015, SI 2015/1476 reg.2(b).

¹²⁷⁶ Commencement: 31 July 2015, SI 2015/1476 reg.2(b).

- (ii) an adult magistrates' court for the area in which the defendant lives, or
- (iii) where the application is made by a chief officer of police, any adult magistrates' court acting for a local justice area that includes any part of the chief officer's police area;
- (c) where a youth court made the order and the defendant is under 18—
 - (i) that court,
 - (ii) a youth court for the area in which the defendant lives, or
 - (iii) where the application is made by a chief officer of police, any youth court acting for a local justice area that includes any part of the chief officer's police area;
- (d) where a youth court made the order and the defendant is 18 or over—
 - (i) an adult magistrates' court for the area in which the defendant lives, or
 - (ii) where the application is made by a chief officer of police, any adult magistrates' court acting for a local justice area that includes any part of the chief officer's police area.

Who may apply?

MSA 2015 s.20¹²⁷⁷: Variation, renewal and discharge

- s.20(1) - a person within subsection (2) may apply to the appropriate court for an order varying, renewing or discharging a slavery and trafficking prevention order.
- s.20(2) - the persons are—
- (a) the defendant;
 - (b) the chief officer of police for the area in which the defendant lives;
 - (c) a chief officer of police who believes that the defendant is in, or is intending to come to, that officer's police area;
 - (d) where the order was made on an application under section 15 by a chief officer of police, that officer;
 - (e) where the order was made on an application under section 15 by an immigration officer, an immigration officer;
 - (f) where the order was made on an application under section 15 by the Director General of the National Crime Agency (“the Director General”), the Director General.

Making the application

MSA 2015 s.20¹²⁷⁸: Variation, renewal and discharge

- s.20(8) - an application under this section may be made—
- (a) where the appropriate court is the Crown Court, in accordance with rules of court;
 - (b) in any other case, by complaint.

¹²⁷⁷ Commencement: 31 July 2015, SI 2015/1476 reg.2(b).

¹²⁷⁸ Commencement: 31 July 2015, SI 2015/1476 reg.2(b).

- s.20(9) - where an immigration officer or the Director General makes an application under this section, the officer or the Director General must give notice of the application to the chief officer of police for—
- (a) the police area where the defendant lives, or
 - (b) a police area which the immigration officer or the Director General believes the defendant is in or is intending to come to.

Court's powers

MSA 2015 s.20¹²⁷⁹: Variation, renewal and discharge

- s.20(3) - on the application the court, after hearing—
- (a) the person making the application, and
 - (b) the other persons mentioned in subsection (2) (if they wish to be heard), may make any order varying, renewing or discharging the slavery and trafficking prevention order that the court considers appropriate.

Test to apply

MSA 2015 s.20¹²⁸⁰: Variation, renewal and discharge

- s.20(4) - an order may be renewed, or varied so as to impose additional prohibitions on the defendant or require the defendant to comply with section 19(3) to (6), only if the court is satisfied that—
- (a) there is a risk that the defendant may commit a slavery or human trafficking offence, and
 - (b) it is necessary to renew or vary the order for the purpose of protecting persons generally, or particular persons, from the physical or psychological harm which would be likely to occur if the defendant committed such an offence.

Extent of renewed or varied order

MSA 2015 s.20¹²⁸¹: Variation, renewal and discharge

- s.20(5) - any renewed or varied order—
- (a) may contain only those prohibitions which the court is satisfied are necessary for that purpose,
 - (b) may require the defendant to comply with section 19(3) to (6) only if the court is satisfied that the requirement is necessary for that purpose.

¹²⁷⁹ Commencement: 31 July 2015, SI 2015/1476 reg.2(b).

¹²⁸⁰ Commencement: 31 July 2015, SI 2015/1476 reg.2(b).

¹²⁸¹ Commencement: 31 July 2015, SI 2015/1476 reg.2(b).

Limit on discharging orders

MSA 2015 s.20¹²⁸²: Variation, renewal and discharge

- s.20(6) - the court must not discharge an order before the end of 5 years beginning with the day on which the order was made, without the consent of—
- (a) the defendant and the chief officer of police for the area in which the defendant lives, or
 - (b) where the application is made by a chief officer of police, the defendant and that chief officer.
- s.20(7) - subsection (6) does not apply to an order containing a prohibition on foreign travel and no other prohibitions.

3.4.14.5. Interim orders

MSA 2015 s.21¹²⁸³: Interim slavery and trafficking prevention orders

- s.21(1) - this section applies where an application under section 15 (“the main application”) has not been determined.
- s.21(2) - an application for an interim slavery and trafficking prevention order—
- (a) may be made by the complaint by which the main application is made, or
 - (b) if the main application has been made, may be made by the person who has made that application, by complaint to the court to which that application has been made.
- s.21(3) - the court may, if it considers it just to do so, make an interim slavery and trafficking prevention order.
- s.21(4) - an interim slavery and trafficking prevention order is an order which prohibits the defendant from doing anything described in the order.
- s.21(5) - the order may prohibit the defendant from doing things in any part of the United Kingdom, and anywhere outside the United Kingdom.
- s.21(6) - the order may (as well as imposing prohibitions on the defendant) require the defendant to comply with subsections (3) to (6) of section 19.
- If it does, those subsections apply as if references to a slavery and trafficking prevention order were to an interim slavery and trafficking prevention order.
- s.21(7) - the order—
- (a) has effect only for a fixed period, specified in the order;
 - (b) ceases to have effect, if it has not already done so, on the determination of the main application.

¹²⁸² Commencement: 31 July 2015, SI 2015/1476 reg.2(b).

¹²⁸³ Commencement: 31 July 2015, SI 2015/1476 reg.2(b).

- s.21(8) - the applicant or the defendant may by complaint apply to the court that made the interim slavery and trafficking prevention order for the order to be varied, renewed or discharged.

3.4.14.6. Appeals

Order (and interim orders) appealable as if it were a sentence

MSA 2015 s.22¹²⁸⁴: Appeals

- s.22(1) - a defendant may appeal against the making of a slavery and trafficking prevention order—
- (a) where the order was made under section 14(1)(a), as if the order were a sentence passed on the defendant for the offence;
 - (b) where the order was made under section 14(1)(b) or (c), as if the defendant had been convicted of the offence and the order were a sentence passed on the defendant for the offence;
 - (c) where the order was made on an application under section 15, to the Crown Court.
- s.22(2) - a defendant may appeal to the Crown Court against the making of an interim slavery and trafficking prevention order.

Variations, renewals and discharges

MSA 2015 s.22¹²⁸⁵: Appeals

- s.22(3) - a defendant may appeal against the making of an order under section 20, or the refusal to make such an order—
- (a) where the application for such an order was made to the Crown Court, to the Court of Appeal;
 - (b) in any other case, to the Crown Court.

Powers on appeal

MSA 2015 s.22¹²⁸⁶: Appeals

- s.22(4) - on an appeal under subsection (1)(c), (2) or (3)(b), the Crown Court may make such orders as may be necessary to give effect to its determination of the appeal, and may also make such incidental or consequential orders as appear to it to be just.

¹²⁸⁴ Commencement: 31 July 2015, SI 2015/1476 reg.2(b).

¹²⁸⁵ Commencement: 31 July 2015, SI 2015/1476 reg.2(b).

¹²⁸⁶ Commencement: 31 July 2015, SI 2015/1476 reg.2(b).

Effect of orders made on appeal

MSA 2015 s.22¹²⁸⁷: Appeals

- s.22(5) - any order made by the Crown Court on an appeal under subsection (1)(c) or (2) is for the purposes of section 20(10) or 21(8) (respectively) to be treated as if it were an order of the court from which the appeal was brought.

- s.22(6) - subsection (5) does not apply to an order directing that an application be reheard by a magistrates' court.

¹²⁸⁷ Commencement: 31 July 2015, SI 2015/1476 reg.2(b).