

# **SERIOUS CRIME ACT 2015**

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## **EXPLANATORY NOTES**

### **TERRITORIAL EXTENT**

#### **Part 3: Organised, Serious and Gang-Related Crime**

##### **Summary and Background**

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

140. In the Serious and Organised Crime Strategy, the Government undertook to bring forward proposals to “better tackle people who actively support, and benefit from, participating in organised crime, learning from legislation that is already being used elsewhere in the world<sup>1</sup>” (paragraph 4.60).
141. In 2006, the UK ratified the UN Convention against Transnational Organised Crime<sup>2</sup>. Article 5(1) of the Convention (criminalisation of participation in an organized criminal group) provides -
- (1) “Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:
    - (a) Either or both of the following as criminal offences distinct from those involving the attempt or completion of the criminal activity:
      - (i) Agreeing with one or more other persons to commit a serious crime for a purpose relating directly or indirectly to the obtaining of a financial or other material benefit and, where required by domestic law, involving an act undertaken by one of the participants in furtherance of the agreement or involving an organized criminal group;
      - (ii) Conduct by a person who, with knowledge of either the aim and general criminal activity of an organized criminal group or its intention to commit the crimes in question, takes an active part in:
        - a. Criminal activities of the organized criminal group;
        - b. Other activities of the organized criminal group in the knowledge that his or her participation will contribute to the achievement of the above-described criminal aim;
    - (b) Organising, directing, aiding, abetting, facilitating or counselling the commission of serious crime involving an organized criminal group.”
142. Article 5 of the Convention therefore provides for either a conspiracy offence or a participation offence, or both, to be implemented into domestic law. The elements

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1 Legislative Guide for the United Nations Convention against Transnational Organized Crime and the Protocols thereto (United Nations Office on Drugs and Crime 2004) [http://www.unodc.org/pdf/crime/legislative\\_guides/02%20Legislative%20guide\\_TOC%20Convention.pdf](http://www.unodc.org/pdf/crime/legislative_guides/02%20Legislative%20guide_TOC%20Convention.pdf)

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

of the offence specified in Article 5(1)(a)(i) are based on a conspiracy offence. The requirements of this offence include the intentional agreement with one or more other persons to commit a serious crime for a purpose relating directly or indirectly to obtaining a financial or other material benefit. This requirement criminalises the mere agreement to commit serious crime for the purpose of obtaining a financial or other material benefit, irrespective of whether that agreement is acted upon. In England and Wales, section 1 of the Criminal Justice Act 1977 provides for the offence of conspiracy in the following terms –

- “(1) Subject to the following provisions of this Part of this Act, if a person agrees with any other person or persons that a course of conduct shall be pursued which, if the agreement is carried out in accordance with their intentions, either—
- (a) will necessarily amount to or involve the commission of any offence or offences by one or more of the parties to the agreement, or
  - (b) would do so but for the existence of facts which render the commission of the offence or any of the offences impossible,

he is guilty of conspiracy to commit the offence or offences in question.

143. The elements of the offence specified in Article 5(1)(a)(ii) are based on active participation. This type of offence was initially considered more suitable for civil law jurisdictions whose laws do not recognise conspiracy or do not allow criminalisation of a mere agreement to commit a crime, but increasingly Governments are adopting a combined approach. For example, sections 71 and 72 of the Republic of Ireland’s Criminal Justice Act 2006<sup>3</sup> provide for an offence of conspiracy and of participation in a criminal organisation.
144. Serious organised crime is often carried out by groups of individuals working together to maximise the benefits they derive from their criminal activity. By acting in combination it allows individuals to obtain a greater benefit from their criminal conduct than they might do if working alone and outside an established criminal group. Working through an organised criminal group can also provide protection for those at the very top of such groups who can instruct or direct others to carry out activity on their behalf but who do not themselves carry out criminal acts and therefore prove difficult to prosecute.
145. The new participation offence in England and Wales is intended to provide a new means by which the NCA, the police and prosecutors can tackle serious organised crime. The new offence can be used to target not only those who head a criminal organisation and who plan, coordinate and manage, but do not always directly participate in the commission of the final criminal acts; but also the other members of the group and associates who participate in activities such as the provision of materials, services, infrastructure and information that contribute to the overall criminal capacity and capability of the organised crime group.

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