

SERIOUS CRIME ACT 2015

EXPLANATORY NOTES

TERRITORIAL EXTENT

Part 6: Miscellaneous and General

Commentary on Sections

Section 78: Knives and offensive weapons in prison

314. It is not currently a criminal offence to possess an offensive weapon within prison. The offence of having an article with blade or point (or offensive weapon) in section 1 of the Prevention of Crime Act 1953 and section 139 and 139A of the Criminal Justice Act 1988 is confined to public places or schools. The term “public place” is defined in section 1(4) of the Prevention of Crime Act 1953 and section 139(7) of the Criminal Justice Act 1988 to include any place to which the public have, or are permitted to have access. A prison does not fall within the definition of a public place and possession of a weapon there is not therefore a criminal offence.
315. Whilst the possession of an offensive weapon is currently dealt with as a disciplinary offence within prison (for possession of an unauthorised article – see Rule 51(12)(a) of the [Prison Rules 1999 \(SI 1999/728\)](#)) the maximum penalty for the internal disciplinary offence is 42 added days served in prison (Rule 55(1) of the Prison Rules 1999) compared to the four years’ maximum for the equivalent offence in the community.
316. This section inserts a new section 40CA into the Prison Act 1952 to provide for a new offence of unauthorised possession in prison of a knife or any other offensive weapon. Liability for the offence arises where a person has in his or her possession any article in prison that has a blade or is sharply pointed or any other offensive weapon (as defined in section 1(9) of the Police and Criminal Evidence Act 1984, namely any article made or adapted for causing injury to persons or intended by the person having it with him for such use by him or some other person). The term “possession” goes wider than a person having a relevant prohibited article with him or her, and also covers, for example, circumstances where a prisoner has hidden a knife in his or her cell. As a result of section 43(5) and (5A) of the Prison Act 1952, the offence also applies to possession of such articles in a young offender institution or secure training centre.
317. Under subsection (1) of new section 40CA, the offence is only committed where a person possesses a knife or other offensive weapon “without authorisation”. New section 40CA(5) applies the provisions in section 40E(1) to (3) of the Prison Act 1952 which defines “authorisation” for the purposes of the offences relating to prison security in section 40D of that Act. Section 40E(1) to (3) of the Prison Act 1952 provides that authorisation for the purposes of section 40D means authorisation given in relation to all prisons or prisons of a specified description by Prison Rules or administratively by the Secretary of State or, in relation to a particular prison, by the Secretary of State or the governor, director of the prison or by a person authorised by the governor or director for this purpose. No provision in respect of authorisations under section 40E

is currently made in Prison Rules. Annex 2 to Prison Service Instruction 10/2012¹ sets out authorisations given by the Secretary of State under sections 40B (which relates to the conveyance of unauthorised articles into and out of prison) and 40E of the Prison Act 1952. In relation to the conveyance of offensive weapons into and out of prison, Annex 2 authorises, amongst other things, Sikh members of the Chaplaincy carrying the Kirpan and police officers carrying extendable batons. It is envisaged that a Prison Service Instruction will authorise the possession of knives and other sharply pointed articles in a limited range of circumstances, including for the preparation of food and for use in workshops.

318. New section 40CA(3) provides for a defence where the accused individual reasonably believes that he or she had authorisation to possess the article or that there was an overriding public interest which justified possession of the article; the latter defence would cover, for example, where a prisoner takes a knife from a fellow inmate to prevent him or her using it.
319. New section 40CA(4) provides for the maximum penalty for the offence, namely four years' imprisonment or a fine, or both, on conviction on indictment and 12 months' imprisonment or a fine, or both, on summary conviction. Section 86(14)(f) reduces the maximum custodial sentence available on summary conviction to six months' imprisonment until such time as magistrates' courts sentencing powers are increased on the coming into force of section 154(1) of the Criminal Justice Act 2003.

Section 79: Throwing articles into prisons

320. This section inserts new section 40CB into the Prison Act 1952 which provides for a new offence of throwing any article or substance into a prison without authorisation (new section 40CB(1) of the Prison Act 1952). The offence would not apply where the article or substance in question was one specified in List A (which covers controlled drugs, explosives, firearms, ammunition or any other offensive weapon), List B (alcohol, mobile phones, cameras and sound recording devices) or List C (tobacco, money, clothing, food, drink, letters, paper, books, tools and information technology equipment). Under sections 40A to 40C of the Prison Act 1952 it is already an offence for a person without authorisation to convey List A, B or C articles into a prison (which includes throwing them into prison). Articles or substances that may be caught by the new offence would include new psychoactive substances not already controlled under the Misuse of Drugs Act 1971 and other non-controlled drugs frequently abused by prisoners. By virtue of new section 40CB(4), and the transitional provision in section 86(14)(g), the maximum penalty on summary conviction of the offence will be six months' imprisonment. On the commencement of section 154(1) of the Criminal Justice Act 2003, the maximum sentence on summary conviction will rise to 12 months. The maximum penalty on conviction on indictment is two years' imprisonment.
321. Under subsection (1) of new section 40CB, the offence would only be committed where a person throws any article or substances into a prison "without authorisation". New section 40CB(5) would apply the provisions in section 40E(1) to (3) of the Prison Act 1952 which defines "authorisation" for the purposes of the offences relating to prison security in section 40D of that Act. Section 40E(1) to (3) of the Prison Act 1952 provides that authorisation for the purposes of section 40D means authorisation given in relation to all prisons or prisons of a specified description by Prison Rules or administratively the Secretary of State or, in relation to a particular prison, by the Secretary of State or the governor, director of the prison or by a person authorised by the governor or director for this purpose. Examples where authorisation might be given would include contractors doing building works where it may be necessary to throw articles into prison.

¹ <http://www.justice.gov.uk/downloads/offenders/psipso/psi-2012/psi-10-2012-conveyance-prohibited.doc>

322. New section 40CB(3) provides for a defence where the accused individual reasonably believes that he or she had authorisation to throw the article or substance into prison or that there was an overriding public interest which justified the act.

Section 80: Prevention or restriction of use of communication devices by prisoners etc

323. Under section 40D(3A) of the Prison Act 1952 it is an offence to possess a mobile phone in prison without authorisation. Unauthorised mobile phones in prisons enable organised criminals to carry on offending from prison, and can facilitate a range of other activity such as radicalisation, harassment or drug dealing. The National Offender Management Service takes a range of approaches to tackle this problem including measures to stop phones getting into prisons and measures to find and seize phones in prisons (in 2013/14 over 7,400 SIM cards and phones were seized in prisons in England and Wales). This section provides a further mechanism to deal with this problem.
324. *Subsection (1)* confers on the Secretary of State and the Scottish Ministers a power to make regulations, subject to the affirmative procedure (*subsection (7)*), which would, in turn, confer power on the civil courts to make a telecommunications restriction order. The effect of such an order would be to require the relevant communications provider(s) to blacklist unauthorised mobile phone handsets and block SIM cards in prison (or other custodial institutions, namely (in England and Wales) young offender institutions, secure training centres and secure colleges). Applications for such orders could be made by any person specified in regulations (for example, the National Offender Management Service), following the identification of unauthorised phones and SIM cards that are in use in a particular prison. *Subsection (3)* sets out the matters that must be addressed in any regulations, including provision conferring rights on persons to make representations and provision about appeals. *Subsection (4)* identifies further matters which may be provided for in any regulations, for example provision about the enforcement of orders (it would not be necessary to make provision about contempt of court).

Section 81: Preparation or training abroad for terrorism

325. Section 5 of the Terrorism Act 2006 makes it an offence to engage in any conduct in preparation for giving effect to an intention to commit, or assist another to commit, one or more acts of terrorism. Section 6 of the 2006 Act makes it an offence to provide or receive training for terrorism. The maximum penalty for these offences is life imprisonment and 10 years' imprisonment respectively². Section 17 of the 2006 Act provides for extra-territorial jurisdiction (that is, the offence may be tried in this country in respect of acts committed abroad) in respect of certain other offences under that Act, namely the offences in sections 1 (encouragement of terrorism), 6 (training for terrorism), 8 (attendance at a place used for terrorism training) and 9 to 11 (offences involving radioactive devices and materials and nuclear facilities) of the 2006 Act, and sections 11 (membership of proscribed organisations) and 54 (weapons training) of the Terrorism Act 2000. However, in the case of the section 1 and 6 offences, the extra-territoriality is limited in that it only applies insofar as those offences are committed in relation to the commission, preparation, or instigation of one or more "Convention offences". "Convention offences" are those to which EU Member States are required to extend extra-territorial jurisdiction as a result of Article 14 of the Council of Europe Convention on the Prevention of Terrorism (May 2005); the relevant offences are set out in Schedule 1 to the 2006 Act. In the case of the section 5 offence, there is no extra-territorial jurisdiction.
326. This section (together with the consequential amendments in paragraph 74 of Schedule 4) amends section 17(2) to provide for extra-territorial jurisdiction for the

² Section 1(3) of the Criminal Justice and Courts Act 2015 increases the maximum penalty for the offence in section 6 of the 2006 Act to life imprisonment (this provision is not yet in force).

section 5 offence and to extend the existing extra-territorial jurisdiction for the section 6 offence. As a result, a person who does anything outside of the UK which would constitute an offence under section 5 or 6 (whether in relation to a Convention offence or terrorism more widely) could be tried in the UK courts were they to return to this country. Extra-territorial jurisdiction is appropriate for these offences because the places where training or preparation for terrorism are taking place are increasingly likely to be located abroad. Extending the territorial jurisdiction in respect of these offences may allow for prosecutions of people preparing or training more generally for terrorism who have, for example, travelled from the UK to fight in Syria, where various terrorist groups, including Al-Qaida affiliated groups, are involved in the conflict.

Section 82: Approval of draft decisions under Article 352 of TFEU relating to serious crime

327. This section provides, for the purposes of section 8 of the European Union Act 2011, for the approval of two draft Decisions of the Council of the European Union under Article 352 of the Treaty on the Functioning of the European Union (“TFEU”).
328. Section 8 of the European Union Act 2011 sets out that a Minister of the Crown may not support an Article 352 Decision unless one of subsections (3) to (5) is complied with in relation to the draft Decision. Subsection (3) is complied with if the draft Decision is approved by Act of Parliament. Neither subsection (4) (urgent approval) nor (5) (exempt purposes) is applicable to the draft Decisions which are the subject of this section. Therefore, an Act of Parliament is required before the UK may vote in favour of either Decision in the Council of the European Union. Article 352 of the TFEU is a legal base for measures that are in line with the objectives set out in the Treaties, but for which the Treaties have not explicitly provided the necessary powers. Article 352 requires unanimity in the Council of the European Council and the consent of the European Parliament.
329. *Subsection (2)(a)* provides for the approval of the draft Decision to repeal Council Decision [2007/124/EC](#), Euratom³ (“the 2007 Decision”). The 2007 Decision established, for the period 2007 to 2013, an EU funding programme to protect people and critical infrastructure against terrorist attacks and other security-related incidents. As the period covered by this programme has now expired, the 2007 Decision is due to be repealed; it is the draft Council Decision⁴ effecting that repeal which is the subject of subsection (2)(a). The funding programme provided for by the 2007 Decision has been replaced by the Internal Security Fund (Police)⁵. The Internal Security Fund (Police) will continue to fund many of the activities foreseen by the 2007 Decision including the protection of people and critical infrastructure and the management of security-related risks and crises. The UK has not opted in to the Internal Security Fund (Police) measure pre-adoption; no decision has been taken by the Government on whether to do so post-adoption.
330. The Commission published the draft Council Decision on 8 September 2013 (document number 15187/13). The European Parliament gave its consent to the repeal on 4 December 2013. The next step will be for the Council to act unanimously to adopt the text. The Council will only vote after all Member States have completed their domestic procedures and are in a position to vote in favour of repeal.
331. The House of Commons European Scrutiny Committee considered this draft Decision in their 17th, 23rd and 33rd Reports of Session 2013-14. The draft Decision has now cleared scrutiny. The House of Lords European Union Committee cleared the draft Decision in their report Progress of Scrutiny 5th Edition Session 2013-14.

3 [http://www.biicl.org/files/4276_decision_2007-124-](http://www.biicl.org/files/4276_decision_2007-124-ec_est_spec_prog_on_prevention_preparedness_and_consequence_mgmt_of_terrorism.pdf)

[ec_est_spec_prog_on_prevention_preparedness_and_consequence_mgmt_of_terrorism.pdf](http://www.biicl.org/files/4276_decision_2007-124-ec_est_spec_prog_on_prevention_preparedness_and_consequence_mgmt_of_terrorism.pdf)

4 <http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2015187%202013%20INIT>

5 Regulation (EU) No 513/2014 of the European Parliament and of the Council of 16 April 2014 http://ec.europa.eu/dgs/home-affairs/financing/fundings/pdf/overview/regulation_eu_no_5132014_of_the_european_parliament_and_of_the_council_en.pdf

332. *Subsection (2)(b)* provides for the approval of the draft Decision of the Council of the European Union relating to the “Pericles 2020” programme. Council Regulation 1338/2001 established a harmonised framework for protecting the euro against counterfeiting. The effects of that Regulation were extended to those Member States which had not adopted the euro by Council Regulation 1339/2001. Those Regulations were supplemented by Council Decision 2001/923, which established a detailed action programme for the protection of the Euro against counterfeiting (“the Pericles Programme”). Council Decision 2001/924 extended the effect of Decision 2001/923 to those Member States that had not adopted the euro. In 2011, the European Commission concluded that the Pericles Programme should be renewed. The renewed programme (“the Pericles 2020 programme”) runs from 1 January 2014 to 31 December 2020 and is established by Council Regulation 331/2014⁶. The legal basis for this Regulation is Article 133 of the TFEU. This provides that “the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall lay down the measures necessary for the use of the euro as the single currency”. In the same way as the effect of Council Regulation 1338/2001 and Council Decision 2001/923 was extended to those Member States which had not adopted the Euro, the effect of Council Regulation 331/2014 will be extended to those same Member States. That will be done by way of a measure the legal basis for which is Article 352 of the TFEU. The Council agreed the text of the draft Regulation on 29 November 2013 (document number 16616/13)⁷. The European Parliament gave its consent to the draft Regulation on 12 March 2014. The Council will vote on the final Regulation by unanimity once all Member States have completed their domestic procedures and are in a position to vote in favour.
333. The House of Commons European Scrutiny Committee considered the draft Regulation in its 56th Report of Session 2010-12, 2nd Report of Session 2012-13 and 1st Report of Session 2014-15. The draft Regulation has now cleared scrutiny by that Committee. The House of Lords European Union Committee has also cleared the document⁸.

Section 83: Codes of practice about investigatory powers: journalistic sources

334. This section inserts new subsection (2A) into section 71 of RIPA. Section 71 of RIPA requires the Secretary of State (in practice, the Home Secretary) to issue one or more codes of practice relating to the exercise and performance of, amongst other things, the powers and duties conferred under Part 1 of that Act. Part 1 of RIPA makes provision in respect of the interception of communications (Chapter 1 of Part 1) and the acquisition and use of communications data (Chapter 2 of Part 1). Communications data is the “who, where, when and how” of a communication but not its content. New section 71(2A) requires that a code of practice in connection with the exercise of powers in Part 1 of RIPA in relation to the prevention or detection of serious crime must include provision to protect the public interest in the confidentiality of journalistic sources. Under RIPA, a serious crime is one for which an adult with no previous convictions could expect to receive a custodial sentence of three years or more. New section 71(2A) further requires the Secretary of State to consult the Interception of Communications Commissioner and to have regard to any relevant reports which he or she has made.
335. The section responds, in part, to a report, published on 4 February 2015, by the Interception of Communications Commissioner of his inquiry into the police access to communications data of journalists⁹. The report recommended that “judicial authorisation must be obtained in cases where communications data is sought to determine the source of journalistic information”. Pending possible further legislation in the next Parliament, the Home Secretary intends to revise the code of practice under section 71 of RIPA to require law enforcement agencies (such as, the police, the

⁶ <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32014R0331&qid=1399564678498&from=EN>

⁷ http://www.europarl.europa.eu/meetdocs/2009_2014/documents/cls/cons_cons%282013%2916616_/cons_cons%282013%2916616_en.pdf

⁸ *Progress of Scrutiny* 1st Edition Session 2012-13

⁹ <http://iocco-uk.info/docs/IOCCO%20Communications%20Data%20Journalist%20Inquiry%20Report%204Feb15.pdf>

NCA and HM Revenue and Customs) to use production orders, which are judicially authorised, under the Police and Criminal Evidence Act 1984 (or the equivalents in Scotland and Northern Ireland) for applications for communications data to determine journalistic sources.

Section 84: Termination of pregnancy on grounds of sex of foetus

336. Section 1 of the Abortion Act 1967 sets out the grounds for an abortion and, in so doing, provides a defence to the abortion offences in sections 58 and 59 of the Offences against the Person Act 1861. The Government's view is that the Abortion Act 1967 does not allow a pregnancy to be terminated on the grounds of the sex of the foetus alone. In response to concerns that abortions may be taking place solely on such grounds, this section imposes two duties on the Secretary of State (in practice, the Health Secretary). First, the Secretary of State is required to arrange for an assessment to be made of the evidence of termination of pregnancy on the grounds of the sex of the foetus and to publish the outcome of such an assessment within six months of Royal Assent (that is, by 3 September 2015). The second duty is to consider the assessment and either determine and publish a strategic plan to tackle substantiated concerns identified in the assessment, or publish a statement and explanation as to why such a plan is not required. Where the Secretary of State determines that a strategic plan is needed he or she has a further six months (from the date of the publication of the assessment) to lay a copy of the plan before Parliament.

Section 85: Minor and consequential amendments

337. *Subsection (1)* introduces Schedule 4 which contains minor and consequential amendments to other enactments.
338. *Subsections (2) to (7)* enable the Secretary of State, by regulations, to make further provision consequential upon the Act, including consequential amendments to other enactments. Any such regulations which amend, repeal, revoke or otherwise modify provision in primary legislation are to be subject to the affirmative resolution procedure, otherwise the negative resolution procedure applies.

Schedule 4: Minor and consequential amendments

339. *Paragraph 1* amends the Schedule to the Visiting Forces Act 1952 which defines "offences against the person" for the purposes of section 3 of that Act. Section 3 provides that a member of a visiting force charged with certain offences, including an offence against the person, shall not be tried in a UK court if the person against whom the alleged offence was committed had an association with the visiting force of the accused or another visiting force from the same country as the accused. Paragraph (1)(b)(xi) of Schedule 1 to the Visiting Forces Act 1952 lists offences under the Female Genital Mutilation Act 2003. The amendment to paragraph (1)(b)(xi) provides that it includes only the existing offences in the 2003 Act (that is, sections 1, 2 and 3) and not the new offences inserted into the 2003 Act by sections 72 and 73.
340. *Paragraph 2* makes consequential amendments to the Street Offences Act 1959 as a result of the restriction of the offence of loitering or soliciting for the purposes of prostitution to persons aged 18 or over, as provided for in subsection (7) of section 68.
341. *Paragraph 3* amends section 50 of the Criminal Appeal Act 1968 consequential on section 3. The effect is to disapply a defendant's appeals rights under that Act against a determination made under new section 10A of POCA given that such appeal rights are separately provided for in section 3. *Paragraph 4* makes a similar amendment to the Criminal Appeal (Northern Ireland) Act 1980 consequential on section 26.
342. *Paragraph 5* adds all proceedings in respect of an FGM protection order to the list of proceedings allocated to the Family Division of the High Court as listed in paragraph 3 of Schedule 1 to the Senior Courts Act 1981.

*These notes refer to the Serious Crime Act 2015 (c.9)
which received Royal Assent on 3rd March 2015*

343. *Paragraph 6(1)* amends the Civil Jurisdiction and Judgments Act 1982 consequential upon the provisions in section 23. *Paragraph 6(1)* amends section 18(6A) of the Civil Jurisdiction and Judgments Act 1982. Section 18 of that Act provides for the enforcement of UK judgments in other parts of the UK. Section 18(5)(d) make it explicit that section 18 applies to “an interim order made in connection with the civil recovery of proceeds of unlawful conduct”; this expression is defined in section 18(6A). The effect of these provisions is that, among other things, an order appointing a receiver in connection with property freezing orders (made under section 245E of POCA) can be enforced in all parts of the UK. *Paragraph 6(1)* amends section 18(6A) of the Civil Jurisdiction and Judgments Act 1982 so as to adds orders relating to PPO receivers. *Paragraph 6(2)* enables the amendments made to the Civil Jurisdiction and Judgments Act 1982 by paragraph 6(1) to be extended to the Channel Islands, Isle of Man and British overseas territories by order made under section 52(2) of that Act.
344. *Paragraph 7* amends sections 1 to 3A of the 1990 Act to make it explicit on the face of that Act that the maximum penalty on summary conviction in Scotland for any of the offences provided for in those sections is 12 months. When the 1990 Act was originally enacted the maximum sentence for these offences on summary conviction in Scotland was six months and the text of the Act still provides as such. However, section 45(2) of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 glossed all either way offences that were on the statute book before 18 January 2007 so that they carry a maximum penalty of 12 months instead of a lesser penalty of, in this case, six months. This paragraph now makes textual amendments to the 1990 Act to reflect this glossing provision. In doing so, it will ensure that the maximum penalty of 12 months applies to any summary conviction for an offence under section 3A of the 1990 Act as amended by section 42 of the Act.
345. *Paragraph 8* makes a consequential amendment to the heading of section 3A of the 1990 Act arising from the provisions in section 42.
346. *Paragraphs 9 to 11* make consequential amendments to the 1990 Act arising from the provisions in section 41. In particular, the amendments to section 6 of that Act apply the extended extra-territorial jurisdiction provided for in section 43 to inchoate offences related to the offences under the 1990 Act (that is, the offences of conspiracy to commit or attempting to commit a 1990 Act offence).
347. *Paragraph 12* amends the heading of section 10 of the 1990 Act consequential upon section 44.
348. *Paragraph 13* amends section 58A of the Courts and Legal Services Act 1990 to add proceedings in respect of FGM protection orders to the list of family proceedings that cannot be the subject of an enforceable conditional fee agreement. Such agreements allow clients to agree with their lawyers that the lawyer will not receive all or part of his or her usual fees or expenses if the case is lost; but that, if it is won, the client will pay an uplift to the solicitor in addition to the usual fee.
349. *Paragraphs 14 to 16* make consequential amendments to the Criminal Procedure (Scotland) Act 1995. Paragraph 14 amends section 108 of that Act to enable the Lord Advocate to appeal against the refusal of a court to make an SCPO following the conviction of a person on indictment. Paragraph 15 amends section 175 of that Act to confer on the prosecution in summary proceedings a similar right to appeal against the refusal by a sheriff court to make an SCPO on conviction. Paragraph 16 amends section 222 of that Act (which relates to the enforcement in Scotland of fines imposed by a court in England and Wales) and is consequential upon the provisions in sections 10 and 32 increasing the default sentences for non payment of a confiscation order.
350. *Paragraph 17* amends section 63 of the Family Law Act 1996, which defines “family proceedings” for the purposes of that Act, so as to provide that proceedings in respect of an FGM protection order (other than orders made in the course of criminal proceedings for an offence under the 2003 Act) are to be categorised as family proceedings.

*These notes refer to the Serious Crime Act 2015 (c.9)
which received Royal Assent on 3rd March 2015*

351. *Paragraph 18* provides that the new section 71(2A) of RIPA, inserted by section 83, applies not just to a new code of practice but also to a revised code.
352. *Paragraphs 19, 35 and 46* amend sections 6, 92 and 156 of POCA, which relate to the making of confiscation orders in England and Wales, Scotland and Northern Ireland respectively, so that the duty on the court to make a confiscation order for the recoverable amount is qualified where it would be disproportionate to make an order in such terms. In such a case the court must make an order requiring the defendant to pay whatever lesser amount (if any) it thinks would be proportionate. The amendments to POCA place the Supreme Court's judgment in the case of *R v Waya* ([2012] UKSC 51) on a statutory footing as recommended by the Joint Committee on Human Rights in their report on the Serious Crime Bill (Second Report, session 2014/15).
353. *Paragraphs 209 to 26, 28 and 29* make amendments to sections 12, 14, 15, 19, 20, 21, 22, 32 and 33 of POCA consequential upon section 6 so that victim surcharge orders are treated on a similar basis to compensation orders and unlawful profits orders in the context of those sections.
354. *Paragraph 27* amends section 31 of POCA consequential on section 3. *Paragraph 27(2)* amends the title of section 31 in recognition of the fact that that section no longer deals solely with appeals by prosecutors.
355. *Paragraph 27(3)* amends section 31(3) of POCA, the effect of which is to provide that a prosecutor may not appeal under section 31 a decision of a Crown Court not to make a determination under new section 10A or the form of such a determination where made. The right of appeal for a prosecutor in such cases is instead provided for in new section 31(4) of POCA.
356. *Paragraph 30* amends section 35 of POCA consequential on section 10. The effect is to disapply the application of section 139(4) of the 2000 Act (which sets out the tariff for default sentences for failure to pay a fine) to the enforcement of unpaid confiscation orders given that section 10 now makes bespoke provision for default sentences in such cases.
357. *Paragraph 31* amends section 41 of POCA, which provides for restraint orders, consequential upon section 11. New section 41(7D) requires the court when making a restraint order to consider whether to impose a ban on the defendant's travel outside of the UK.
358. *Paragraph 32* amends section 42 of POCA to address an anomaly in the drafting of that section. Section 42(6) and (7) set out circumstances where the Crown Court must discharge a restraint order. Subsection (6) deals with the circumstances where a restraint order was made following the commencement of proceedings for an offence or was made following an application under any of sections 19 to 22, 27 or 28 of POCA (which relate to the reconsideration of a confiscation order or the decision not to make such an order and with the making of a confiscation order where the defendant absconds). In such cases, the Crown Court is required to discharge the restraint order on the conclusion of the criminal proceedings or on the determination of the application. Subsection (7) then deals with the circumstances where a restraint order was made after the start of an investigation into an offence but before charges are brought or where an application under any of sections 19 to 22, 27 or 28 of POCA was to be made. In such cases, the Crown Court is required to discharge the restraint order if within a reasonable time proceedings for the offence are not started or the application is not made. But where proceedings are started or an application is made within a reasonable time, subsection (7) places no duty on the court, akin to that in subsection (6), to discharge the restraint order on the conclusion of the proceedings or application. Paragraph 32 substitutes new section 42(7) and (8) for the existing section 42(7) and in so doing addresses this anomaly. The criminal proceedings in this context will only be concluded when the offender complies fully with the terms of the confiscation order (see section 85(5)(a) of POCA).

*These notes refer to the Serious Crime Act 2015 (c.9)
which received Royal Assent on 3rd March 2015*

359. *Paragraph 33* amends section 55 of POCA consequential upon section 6. Section 55 sets out how the designated officer responsible for fine enforcement in the magistrates' court must dispose of monies received in satisfaction of a confiscation order. The amendment ensures that all priority orders, as defined in section 6, have third call on such monies after meeting any expenses of an insolvency practitioner or receiver where one or other has been appointed.
360. *Paragraph 34* amends section 89 of POCA consequential on section 3. Section 89 establishes the general rules that apply to any appeal to the Court of Appeal under Part 2 of POCA. Section 89(4) makes provision for the award of costs at the discretion of the court. The new section 89(4)(za), inserted by paragraph 34, enables the Court of Appeal to award costs in respect of appeals against a determination under new section 10A.
361. *Paragraphs 36 to 43* make like amendments to Part 3 of POCA (Confiscation: Scotland) to those made by paragraphs 21 to 26, 30 and 32.
362. *Paragraph 44* makes a similar amendment to section 131 of POCA to that made to section 55 of that Act by paragraph 33.
363. *Paragraphs 47 to 51* make like amendments to Part 4 of POCA (confiscation: Northern Ireland) to those made by paragraphs 20, 27, 30, 31 and 32.
364. *Paragraphs 52 and 53* make consequential amendments to sections 273 and 277 of POCA as a result of the provisions in section 23. Section 273 of POCA makes provision about recoverable property consisting of rights under a pension scheme. Section 273(4) allows a recovery order covering rights under a pension scheme to provide for the scheme's trustees or managers to recover costs incurred by them in: (a) complying with a recovery order; or (b) providing information, prior to the making of the order, to the enforcement authority, receiver appointed under section 245E of POCA, interim receiver or interim administrator – the amendment made by paragraph 52 adds PPO receivers to this list. Section 277 of POCA makes further provision in relation to recoverable property which includes rights under a pension scheme, where a consent order has been made in relation to such property. A consent order stays (or in Scotland, sists) the proceedings of a recovery order where agreement is reached for the disposal of the recoverable property, and each person to whose property either the agreement or the proceedings relate is a party to both the proceedings and the agreement. Section 277(7) of POCA makes like provision to section 273(4) described above and paragraph 53 effects the same consequential amendment.
365. *Paragraph 54*, which is consequential upon section 23, adds a reference to a PPO receiver to the general interpretation section in Part 5 of POCA.
366. *Paragraph 56* amends section 416 of POCA, which defines terms used in Part 8 of POCA, so that the terms "realisable property" and "confiscation order" as used in Part 8, as a result of the amendments made by section 38, attract the appropriate definitions of those terms contained in Parts 2 (England and Wales), 3 (Scotland) and 4 (Northern Ireland) of the Act.
367. *Paragraphs 58, 64, 65, 68(3) to (5), 69, 70(3) and 90* carry through to other legislative provisions the changes to the nomenclature used in the offences in sections 48 to 50 of the Sexual Offences Act 2003, as amended by section 68.
368. *Paragraph 59*, which is consequential upon section 23, amends paragraph 1 of Schedule 10 to POCA. That paragraph disapplies sections 75 and 77 of the Taxes Management Act 1970 in relation to receivers and administrators appointed under POCA – including management receivers, interim receivers and interim administrators in civil recovery proceedings. This exempts such receivers and administrators from having to pay any income tax or capital gains tax due on any property in respect of which they are appointed. The amendment to paragraph 1 of Schedule 10 to POCA adds a reference to a PPO receiver.

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369. *Paragraph 60* provides that new sections 5B and 5C of the 2003 Act, inserted by sections 74 and 75 of the Act, extend to England and Wales only.
370. *Paragraph 62* is consequential on section 68; it amends section 54 of the Sexual Offences Act 2003 so as to preserve the existing definitions of “prostitute” and “payment” for the purposes of sections 51A to 53A of that Act.
371. *Paragraph 63* provides that the definition of “sexual” in section 78 of the Sexual Offences Act 2003 does not apply to new section 15A of that Act as inserted by section 67.
372. *Paragraph 66* amends Schedule 3 to the Sexual Offences Act 2003 consequential on sections 67 and 69. The effect is to subject a person convicted of the offence of sexual communication with a child or of possession of a paedophile manual to the notification requirements in Part 2 of the Sexual Offences Act 2003. In the latter case, the notification requirement will only be invoked if the offender was aged 18 or over when convicted or was sentenced to at least 12 months’ imprisonment. The notification requirements are to notify the police of their name and address and any subsequent changes to that information (that is, sign on the “sex offenders’ register”).
373. *Paragraph 68(2)* adds the new offence of sexual communication with a child to the list of offences in Schedule 15 to the Criminal Justice Act 2003 which specifies offences for the purposes of Chapter 5 of Part 12 of that Act. That Chapter makes provision for extended determinate sentences for dangerous offenders.
374. *Paragraph 70(2) and (4)* adds the new offences of sexual communication with a child and possession of a paedophile manual to the list of offences in Schedule 34A to the Criminal Justice Act 2003 which specifies offences to which section 327A of that Act applies. That section provides for the disclosure of information about relevant previous convictions of child sex offenders in specified circumstances.
375. *Paragraphs 71 to 73* amend Chapter 3 of Part 2 of SOCPA as a consequence of the abolition of FROs by section 50.
376. *Paragraphs 76 to 82* make consequential amendments to the 2007 Act arising from the provisions in sections 46 to 50.
377. *Paragraph 76* makes an amendment to section 9 of the 2007 Act consequential upon section 49. Section 9 of the 2007 Act provides a safeguard where the making, variation or discharge of an SCPO or not making a variation to an order or discharging it would be likely to have a significant adverse effect on someone who is not the subject of the order. Section 9 gives the court the power to allow such persons to make representations at the hearing in relation to the making, variation or discharge of an order. The amendment made to section 9(4) by this paragraph extends that right to make representations where the Crown Court is considering an application (under new section 22E) to extend the duration of an SCPO pending the outcome of criminal proceedings where the subject of an order has been charged with a serious offence or an offence of breach of an SCPO.
378. *Paragraphs 77 to 80* amend sections 16, 19, 21 and 36 of the 2007 Act to take account of new section 22E, inserted by section 49, which disapplies in the circumstances specified in that new section the five year limit on the duration of an SCPO or on a provision in an SCPO.
379. *Paragraphs 81 and 82* make consequential amendments to the 2007 Act arising from section 45. *Paragraph 81(3)* adds the new participation offence as provided for in section 45 to the list of serious offences in Part 1 of Schedule 1 to the 2007 Act; this is the list of trigger offences for an SCPO in England and Wales. *Paragraph 82* adds the new participation offence to the “listed offences” in Part 2 of Schedule 3 to the 2007 Act; a person cannot be guilty of encouraging or assisting an offence under section 45 or 46 of that Act believing that one of the offences listed in Schedule 3 will happen.

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380. *Paragraphs 83 to 85* make consequential amendments to Part 4 of the 2009 Act arising from section 51 to reflect the extension of gang injunctions to cover drug-dealing activity as well as gang-related violence. *Paragraph 86* makes a consequential repeal of section 34 of the Crime and Security Act 2010 which is now spent; that section amended section 34 of the 2009 Act so as to lower the minimum age for a gang injunction from 18 to 14 years.
381. *Paragraphs 87(2) and 88* amend Parts 1 and 3 of Schedule 1 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 to provide for legal aid to be made available for civil legal services, including certain advocacy services, provided in relation to FGM protection orders (as provided for in section 73).
382. *Paragraph 87(3) and (4)* makes consequential amendments to paragraph 38 of Schedule 1 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 which relates to the provision of civil legal aid in relation to gang injunctions.
383. *Paragraph 89* repeals consequential amendments made by the Prevention of Social Housing Fraud Act 2013 to sections 13 and 55 of POCA which are now spent as a result of the amendments to those sections by section 6 and paragraph 33 of Schedule 4.

Section 86: Transitional and saving provisions

384. This section contains various transitional provisions.
385. *Subsections (1), (3) and (4)* provide that a compliance order, as provided for in new sections 13A, 97B and 163A of POCA, may only be made in respect of confiscation orders made after commencement of sections 7, 16 and 29.
386. *Subsection (2)* provides that the ending of automatic early release for persons serving a default sentence in respect of the non-payment of a confiscation order of more than £10 million, as provided for in section 10(3), does not have retrospective effect.
387. *Subsections (5), (6) and (10)* ensure that the modifications to existing criminal offences made by the Act do not have retrospective effect.
- Subsections (7), (8) and (9)* provide that the repeal of sections 76, 77 and 78 of SOCPA, which provide for FROs, does not affect FROs made before commencement.
388. *Subsection (11)* provides that the restriction of the offence of loitering or soliciting for the purposes of prostitution to persons aged 18 or over does not apply where proceedings for such an offence have started prior to commencement of section 68(7). *Subsection (12)* ensures that section 83 applies only to a new or newly-revised code of practice under section 71 of RIPA.
389. *Subsection (13)* provides that prior to the commencement of the relevant provisions of Courts Reform (Scotland) Act 2014, the avenue of appeal in Scotland under section 62 will be to the sheriff principal rather than to the Sheriff Appeal Court.
390. *Subsection (16)* provides that the new offence of failure to protect a girl from risk of FGM does not have retrospective effect. The effect of *subsection (17)* is that the defendant is not placed under a duty before commencement to take reasonable steps to try to prevent FGM taking place.

Section 87: Extent

391. This section sets out the extent of the provisions in the Act (see paragraphs 8 to 11 for further details).

Section 88: Commencement

392. This section provides for commencement (see paragraph 394 for further details).

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393. *Subsection (8)* enables the Secretary of State, the Scottish Ministers and the Department of Justice in Northern Ireland by regulations, to make transitional, transitory or saving provisions in connection with the coming into force of the provisions of the Act. Such regulations are not subject to any parliamentary procedure.