

SERIOUS CRIME ACT 2007

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: Serious Crime Prevention Orders

General

Information safeguards

Section 11: Restrictions on oral answers

40. This section makes clear that these orders will not be used as a means of forcing the subject of an order to answer questions, or provide information, orally. This limits the extent to which a requirement under section 5(5) can operate.

Section 12: Restrictions for legal professional privilege

41. This section provides that an order does not override legal professional privilege. *Subsection (1)* provides that an order cannot require its subject to answer a privileged question, provide privileged information or produce a privileged document. *Subsections (2)–(4)* state that these terms refer to a privilege which the subject would be able to rely on in the High Court. *Subsection (5)* provides that, notwithstanding the protection in subsection (1), an order may require a lawyer to provide the name and address of a client.

Section 13: Restrictions on excluded material and banking information

42. This section sets out further safeguards by placing restrictions on the extent to which an order can require the production of excluded material and banking information. *Subsection (1)* provides that an order may not require a person to produce any excluded material. Excluded material in the case of England and Wales is defined with reference to section 11 of the Police and Criminal Evidence Act 1984. Section 11 provides that excluded material means:
- personal records which a person has acquired or created in the course of any trade, business, profession or other occupation or for the purposes of any paid or unpaid office and which he holds in confidence;
 - human tissue or tissue fluid which has been taken for the purposes of diagnosis or medical treatment and which a person holds in confidence; and
 - journalistic material which a person holds in confidence and which consists of documents or of records other than documents.
43. Excluded material in the case of Northern Ireland is defined with reference to article 13 of the Police and Criminal Evidence (Northern Ireland) Order 1989.
44. *Subsections (2) to (4)* are concerned with banking information. *Subsection (2)* provides that an order may not require a person to disclose any information or produce any

document which is the subject of a duty of confidence from a banking business, unless either of the conditions contained in *subsections (3) and (4)* are met. The first condition is that the person to whom the duty is owed consents to the disclosure. The second condition contains two alternatives. The first alternative is that there is specific provision in the order for the disclosure of such information, in other words an express requirement for the production of banking information in general. The second alternative is that there is a specific requirement to disclose specified information or a specified document which amounts to banking information.

Section 14: Restrictions relating to other enactments

45. This section makes provision for the interaction between an order and prohibitions on the disclosure of information contained in enactments. *Subsection (1)* provides that an order cannot require a person either to answer any questions, provide any information or produce any documents, if he is prohibited from doing so under any other enactment. *Subsection (2)* contains a number of definitions.

Section 15: Restrictions on use of information obtained

46. This section relates to the interaction between the provisions of an order and the need to protect the privilege against self-incrimination. *Subsection (1)* provides that a statement (which by virtue of section 11 can only be a written statement), provided by a person as a result of a requirement in an order, cannot be used against him in criminal proceedings except if either one of two conditions are met.
47. *Subsection (2)* sets out the first condition, namely that such a statement can be used if the criminal proceedings are in relation to the offence of failing to comply with the order itself, contained in section 25. The second condition, set out in *subsection (3)*, is that the proceedings relate to an offence other than an offence under section 25, the person gives evidence in those proceedings, when giving evidence makes a statement which is inconsistent with the statement made in response to the requirement of the order, and in the 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.