

SERIOUS CRIME ACT 2007

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: Serious Crime Prevention Orders

General

Duration, variation and discharge of orders

Section 16: Duration of orders

48. This section makes provision for how long an order will be in force and for a requirement to stipulate when its provisions come into force. It provides that an order can last for a maximum of 5 years from the date of its first provision coming into force, but that it can specify that provisions come into force, or cease to have effect, at different times, and these must be specified in the order. A court is able to make a new order replicating an order, or any part of it, which has ended, provided that the statutory test contained in section 1(1) is still met. This can be done in anticipation of an order ceasing to have effect.

Section 17: Variation of orders

49. This section deals with how an order may be varied, either on application by the relevant applicant authority, by the subject of the order or by a third party. *Subsection (1)* for England and Wales and *subsection (2)* for Northern Ireland provide a power to the High Court to vary the terms of an order where it has reasonable grounds to believe that the new terms of the order would protect the public by preventing, restricting or disrupting involvement by the subject of the order in serious crime in England and Wales (in the case of the High Court in England and Wales) or Northern Ireland (in the case of the High Court in Northern Ireland). This is identical to the second part of the test contained in section 1(1)(b) and ensures that a varied order must continue to meet that test. Under *subsection (3)*, either the relevant applicant authority, the subject of the order or a third party can apply for a variation of the terms of the order.
50. *Subsection (4)* states that the subject of the order can only apply for a variation of the terms of the order where the court considers that there has been a change of circumstances affecting the order.
51. *Subsections (5)–(7)* relate to the rights of third parties to apply for variation of the terms of an order. The High Court can only consider an application for variation by a third party if a three stage test, set out in *subsection (5)*, is met. Firstly, a third party must show that they are significantly adversely affected by the order. Secondly, one of two conditions must be met. The first condition relates to when a third party has been given the opportunity to make representations (on an application under section 9), or has made an application otherwise than under that section, and there has been a change in circumstances affecting the order (*subsection (6)*). The second condition relates to when the third party has not made an application of any kind in earlier proceedings in

*These notes refer to the Serious Crime Act 2007 (c.27)
which received Royal Assent on 30th October 2007*

relation to the order, but he can show that it was reasonable in all the circumstances for him not to have been so involved (*subsection (7)*). The third part of the test is that third parties cannot apply for a variation of the terms of an order to make them more onerous on the subject of the order.

52. Subject to the fact that an order cannot last for more than 5 years, *subsection (8)* provides that, as a result of an application by the relevant applicant authority, the court may vary an order to increase the length of the order or of any of the provisions contained in it.

Section 18: Discharge of orders

53. Similarly to section 17, this section deals with how an order may be discharged either on application by the relevant applicant authority, by the subject of the order or by a third party. *Subsections (3)–(6)* make identical provision to section 17(4)–(7), with the exception of reference to a third party applying to make an order more onerous, which is not relevant in relation to the discharge of an order.