

Serious Crime Act 2015

Fact sheet: Improvements to Serious Crime Prevention Orders

Background

1. Civil orders are an important and cost-effective means of preventing and disrupting serious and organised crime. The Government's Serious and Organised Crime Strategy, published in October 2013, made a commitment for law enforcement agencies to make better use of these orders, to deter people already engaging in serious and organised crime.
2. Part 3 of the Act makes provision for improvements to the serious crime prevention order ("SCPO"). The SCPO is intended for use against those involved in the most serious offences, including drugs trafficking, fraud and money laundering.

Serious Crime Prevention Orders

3. The SCPO was introduced by Part 1 of the Serious Crime Act 2007. It is a court order that is used to protect the public by preventing, restricting or disrupting a person's involvement in serious crime. An SCPO can prevent involvement in serious crime by imposing various conditions on a person; for example, restricting who he or she can associate with, restricting his or her travel, or placing an obligation to report his or her financial affairs to the police.
4. The Director of Public Prosecutions or Director of the Serious Fraud Office can make applications to a court for an SCPO to be imposed in England and Wales. In Northern Ireland, the Director of Public Prosecutions for Northern Ireland makes the applications. The court hearing the case decides whether an SCPO is necessary. There is an indicative list of 'serious offences' in Schedule 1 to the Serious Crime Act 2007 to which an SCPO can be applied. An order can last for up to five years, and breach of its conditions is a criminal offence, subject to a maximum penalty of five years' imprisonment.
5. While SCPOs can be imposed as 'stand alone' orders in the High Court, they have mostly been used against those convicted of a serious crime in the Crown Court. As at 31 March 2014, a total of 182 SCPOs have been obtained by the National Crime Agency ("NCA") and its predecessor the Serious Organised Crime Agency ("SOCA"). A further 136 have been obtained by police forces or other agencies and notified to the NCA/SOCA¹. The law enforcement agencies who use these orders find them to be a very effective tool against serious and organised crime.

¹ This number may not be the complete picture of SCPOs secured by other law enforcement agencies, as some may not have been reported to NCA/SOCA. One order has been obtained in the High Court and the rest in the Crown Court.

SCPOs: Case Study

An offender was part of a highly sophisticated international criminal operation that smuggled 11 million counterfeit cigarettes, five tonnes of hand-rolling tobacco and thousands of litres of wine into the UK. The group evaded over £4 million in excise duty. The operation was run from offices in the East End of London and used purported companies to conceal and facilitate the criminal activity.

The offender was sentenced to 10 years' in prison for cheating the public revenue. An SCPO lasting five years was activated when he was released from prison. The terms of the order are tailored to the offender and the nature of his offending: it is intended to prevent the offender from engaging in business activities that would give him the opportunity to commit further excise fraud offences. He is prohibited from any involvement in businesses dealing in beer, wine, spirits or tobacco. There are further strict restrictions on his business dealings connected to the storage of goods for third parties as this activity was integral to his criminality. The order also places limits on the quantity of cash or excise goods that he is allowed in his possession.

Consolidation of the Financial Reporting Order into the Serious Crime Prevention Order

6. The financial reporting order ("FRO") was a 'post conviction' order introduced by Chapter 3 of Part 2 of the Serious Organised Crime and Police Act 2005. While FROs have been used by law enforcement agencies, the total usage is less than expected.
7. A limitation of the FRO was that, unlike other 'post conviction' civil orders, breaching the order is a summary only offence and, as such, subject to a maximum penalty of six months' imprisonment. This is not consistent with comparable preventative civil orders. The operational experience of the NCA is that this limited the ability of law enforcement agencies to make sure people comply with the order, and discourages its use.
8. The SCPO was introduced after the FRO and there was overlap between the two civil orders. The large majority of FRO and SCPO qualifying offences are the same, they can both be used to impose financial reporting requirements, and they are both used 'post conviction'. However, breach of an SCPO is an either way offence (that is, it can be dealt with by a magistrates' court or the Crown Court) and therefore does not have the drawbacks of the FRO.
9. Section 50 of the Act therefore repealed the FRO legislation; henceforth financial reporting requirements will be imposed through an SCPO. This change also simplified the landscape of preventative civil orders and reduced the administrative burden on the agencies who work on applications. Section 50 replicates the information sharing provisions in the Serious Organised Crime and Police Act 2005 so that law enforcement officers can verify the reports of individuals subject to an

SCPO (for example, by seeking information from banks and other financial institutions).

FROs: Case Study

An individual was convicted of money laundering in 2008 and sentenced to three years' imprisonment. Upon his conviction, a confiscation order for £1.3 million pounds was granted and he was made the subject of an FRO.

This individual was released from prison in 2010 and officers from the then Serious Organised Crime Agency met with this individual to explain in detail the requirements imposed upon him under the FRO. He was required to provide the following information on a six monthly basis:

- Details of all bank accounts held including copies of bank statements for the relevant six month reporting period;
- Details of employment including payslips;
- Details of any other forms of income, including rent;
- Details of any expenditure incurred over £1000 during the relevant six month period;
- Details of any assets acquired or transferred to the individual valued at over £1000 during the relevant six month period.

In January 2013, the defendant submitted a report providing details of his employment and bank accounts held over the previous six months. No other information was provided. Routine checks revealed that in November 2012, a vehicle (valued at approximately £10,000) had been transferred to this individual. He was prosecuted and convicted for breach of the terms of the FRO; the offender was sentenced to eight weeks imprisonment, suspended for two years.

Imposing a new SCPO when a person has been convicted of breaching an existing order

10. Breach of an SCPO is a potential indicator of continued involvement in serious crime, but the Crown Court currently does not have the power to impose a new order following a conviction for the breach offence. Although the court can extend an order's duration, this is only up to the five year limit of an order. Section 48 of the Act therefore makes provision for an existing SCPO to be replaced in the event of a conviction for the offence of breaching an SCPO.
11. If someone currently subject to an SCPO has been charged with a relevant offence and the order is about to run out, section 49 makes provision for the Crown Court to

be able to keep the order in place until the criminal proceedings have been concluded.

Adding indicative offences for imposing an SCPO

12. Following consultation with law enforcement agencies on the operation of the SCPO, became apparent that there were important gaps in the list of indicative serious offences that a court uses when deciding whether to impose an order (listed in Schedule 1 to the Serious Crime Act 2007). Section 47 of the Act adds to the list offences relating to cyber crime, possession of firearms and the cultivation of cannabis plants.

Extension of the SCPO to Scotland

13. The SCPO is a devolved matter and applies in England and Wales and Northern Ireland, although the offence of breaching a SCPO is UK-wide. Following a public consultation, the Scottish Government asked the UK Government to bring forward the necessary legislation to extend the SCPO to Scotland (section 46 of and Schedule 1 to the Act). As a result, for the first time, there will be a consistent UK-wide regime for SCPOs.

Home Office
March 2015