Home Office

Home Office Circular

Serious Crime Act 2015

March 2015

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Home Office Circular

Serious Crime Act 2015

From: Strategic Centre for Organised Crime – Pursue Unit

For more information contact: See Annex B for list of contacts for each policy area.

Broad subject: Serious and organised crime, criminal law

Sub-categories: proceeds of crime, cyber crime, organised crime, serious crime prevention orders, gang injunctions, drug cutting agents, child protection, prisons, female genital mutilation, counter- terrorism

This circular is addressed to: Lord Chief Justice, Justices of the Supreme Court, President of the Queen's Bench Division, Master of the Rolls, Senior Presiding Judge, Lords Justices of Appeal, Chairman of the Judicial College, High Court Judges, Presiding Judges, Resident Judges, Crown Court Judges, District Judges (Magistrates' Courts), Chairmen of the Justices, Director of Public Prosecutions, HM Chief Inspector of Constabulary, Chief Officers of Police in England and Wales, Director General of the National Crime Agency, Police and Crime Commissioners in England and Wales, Mayor's Office for Policing and Crime, College of Policing, HM Revenue and Customs, Chief Crown Prosecutors

Copies of this circular go to: Council of Circuit Judges, Magistrates' Association, Association of District Judges, Justices' Clerks' Society, Registrar of Criminal Appeals, Association of Chief Police Officers, Association of Police & Crime Commissioners, Police Superintendents' Association, Police Federation, The Law Society, the Bar Council, the Criminal Bar Association, Institute of Chartered Accountants of England and Wales, Citizens Advice Bureaux, Association of Chief Police Officers, Chief Probation Officers, Local Government Association

Contents

Dear Colleague

1. The Serious Crime Act 2015 (‘‘the 2015 Act’’) received Royal Assent on 3 March. The 2015 Act gives effect to a number of legislative proposals set out in the Serious and Organised Crime Strategy published in October 2013 and, in doing so, will ensure that the National Crime Agency, the police and other law enforcement agencies have the powers they need to pursue, disrupt and bring to justice those engaged in serious and organised crime. The 2015 Act also introduces measures to enhance the protection of vulnerable children and others, including by strengthening the law to tackle female genital mutilation (“FGM”) and domestic abuse. In addition, the 2015 Act includes provisions to tighten prison security and to guard against the threat of terrorism.

2. The 2015 Act itself provides for a small number of its provisions to come into force either on the day of Royal Assent or two months afterwards (that is, on 3 May). In addition, the Minister for Modern Slavery and Organised Crime has now made the first commencement regulations (the Serious Crime Act 2015 (Commencement No. 1) Regulations 2015) bringing other provisions of the Act into force on either 3 May or 1 June. This circular provides details of those provisions of the 2015 Act that are coming into force on or before 1 June. It will be supported by more detailed operational guidance to the police and others issued by, amongst others, the College of Policing.

3. A glossary of abbreviations used in this circular is contained in Annex A.

4. A point of contact for each of the provisions in this circular can be found in Annex B.

Part 1: Proceeds of crime (Sections 1-12, 14, 37, 39 and 40)

Commencement Date: 1 June 2015

Sections 1-12, 14: E.W

Sections 37, 39: E.W.S.NI

Section 40: E.W.NI

5. Sections 1-12, 14, 37 and 39 make amendments to the Proceeds of Crime Act 2002 ("POCA"). Section 40 amends section 97 of the Serious Organised Crime and Police Act 2005, which makes provision for confiscation orders to be made in magistrates' courts. These provisions, which come into force on 1 June, will be detailed in a subsequent Home Office circular to be issued in May. That circular will also cover other amendments to POCA (made by the Policing and Crime Act 2009 and the Crime and Courts Act 2013) which are similarly scheduled to come into force on 1 June.

Part 2: Computer misuse (Sections 41 to 44)

Commencement Date: 3 May 2015

E. W. S. NI

Introduction

6. Sections 1 to 3A of the Computer Misuse Act 1990 ("CMA") provided for a number of criminal offences to tackle cyber crime as follows:

- Section 1 – unauthorised access to computer material or data (commonly known as ''hacking'');
- Section 2 – unauthorised access with intent to commit or facilitate commission of further offences;

- Section 3 – unauthorised acts with intent to impair the operation of a computer (this offence includes circulating viruses, deleting files and inserting a ‘‘Trojan Horse’’ to steal data as well as effectively criminalising all forms of denial of service attacks in which the attacker denies the victim(s) access to a particular resource, typically by preventing legitimate users of a service accessing that service, for example by overloading an Internet Service Provider of a website with actions, such as emails);
- Section 3A – making, adapting, supplying or offering to supply an article (‘‘hacker tools’’) intending it to be used to commit, or to assist in the commission of, an offence under sections 1 or 3; supplying or offering to supply an article believing that it is likely to be used in this way; and obtaining an article with a view to its being supplied for use in this way.

7. Part 2 of the 2015 Act makes four changes to the CMA, these:

- Create a new offence to ensure that the most serious cyber attacks attract penalties commensurate with the harm caused;
- Extend the section 3A offence to cover articles (or tools) for personal use;
- Extend the extra-territorial reach of the CMA offences; and
- Clarify the savings provision for law enforcement agencies.

Section 41: Unauthorised acts causing, or creating risk of, serious damage

8. Section 41 of the 2015 Act inserts new section 3ZA into the CMA creating a new offence of unauthorised acts causing, or creating risk of serious damage. It is designed to address the most serious cyber attacks, for example those on essential systems controlling power supply, communications, food or fuel distribution. A major cyber attack of this nature could have a significant impact, resulting in loss of life, serious illness or injury, severe social disruption or serious damage to the economy, the environment or national security.

Elements of the Offence

9. The conduct element of the offence comprises of the following elements: a person must do an unauthorised act to a computer (as defined in section 17(8) of the CMA); and, that unauthorised act must result, whether directly or indirectly, in serious damage to the economy, the environment, national security or human welfare, or create a significant risk of such damage.

10. The mental element of the offence comprises of two distinct elements. The first is that, in relation to the unauthorised act, the defendant must know that the act he or she does is unauthorised (section 3ZA(1)(b) of the CMA). The second element relates to the consequences, the defendant will have intended to cause

harm (that is serious damage to the economy, environment, human welfare or national security) or have been reckless as to whether such harm was caused.

Mode of Trial: Indictment only

Sentencing:

- **Where the unauthorised act results in serious damage to human welfare or to national security, the maximum sentence is life imprisonment.**
- **Where the unauthorised act results in serious damage to the economy or the environment the maximum sentence is 14 years'**

Section 42: Obtaining articles for purposes relating to computer misuse

11. This section amends the offence of making, supplying or obtaining articles (that is "hacker tools" or malware) for use in an offence under section 1, 3 or 3ZA of the CMA.

12. Before this amendment, the prosecution was required to show that the individual obtained a tool (i.e. malware) with a view to its being *supplied* for use to commit, or assist in the commission of an offence under section 1 or 3 of the CMA. In other words the offence requires the involvement (or intended involvement) of a third party.

13. Section 42 extends the section 3A offence so that it also covers obtaining a tool for use to commit a section 1 or 3 or the new section 3ZA offence, *regardless* of an *intention to supply* that tool and therefore extends the existing offence to capture the *personal use* of tools to commit computer misuse offences. This removes the requirement of the involvement, or intended involvement, of a third party and ensures that the offence covers individuals acting alone.

Section 43: Territorial scope of computer misuse offence

14. Section 43 extends the existing territorial scope of offences in the CMA by adding "nationality" to the categories of "significant link to the domestic jurisdiction" in section 5 of the CMA. This provides a legal basis to prosecute a UK national who commits any section 1 to 3A offence whilst outside the UK, where the offence has no link to the UK other than the offender's nationality, provided that the offence was also an offence in the country where it took place. The extended extra-territorial jurisdiction arrangements also apply to conspiracy or attempt to commit offences under the CMA (section 6 and 7 of the CMA in

relation to inchoate offences). To prevent individuals potentially being prosecuted twice – outside and then inside the UK – double jeopardy applies in case of concurrent jurisdiction.

Section 44: Savings

15. Section 44 clarifies section 10 of the CMA. Section 10 of the CMA contained a savings provision whereby criminal investigations by law enforcement agencies did not fall foul of the offences in the Act. However, section 10 pre-dates a number of the powers, warrantry and oversight arrangements on which law enforcement now rely to conduct their investigations, such as those in Part 3 of the Police Act 1997. The changes do not extend law enforcement agencies' powers but merely clarify the use of existing powers (derived from other enactments, wherever exercised) in the context of the offences in the CMA.

Section 45: Offence of participating in activities of organised crime group

Commencement date: 3 May 2015

E.W

The offence

16. The new participation offence provides a new means for law enforcement agencies and prosecutors to tackle serious organised crime. The offence targets those who "oil the wheels" of organised crime by participating in activities, for example by providing materials, services, expertise or information which contributes to the overall capability of the group, but without being aware of the precise nature of the criminality in which they are involved. It also provides for the prosecution of those who head criminal organisations but who do not themselves directly participate in the commission of the criminal acts. The participation offence complements the existing offence of conspiracy; it does not change the way that conspiracy is currently used for organised crime prosecutions.

Elements of offence

17. The provision makes it an offence to participate in the criminal activities of an organised crime group. A person does this if they take part in any activities that they know or reasonably suspects are criminal activities or will help an organised crime group to carry on such activities.

Defence

18. It is a defence for a person charged with the participation offence to prove that participation was necessary for a purpose related to the prevention or detection of crime. The defence is required to protect, for example, undercover police officers who are participating in the activities of an organised crime group for the purpose of frustrating those activities or collecting sufficient information to bring the perpetrators to justice. It is also available to anyone whose actions were genuinely intended to assist law enforcement agencies.

Mode of trial: Indictment only

Maximum sentence: Five years' imprisonment and/or an unlimited fine.

Sections 47 to 50: Serious crime prevention orders

Commencement date: 3 May 2015

E. W. NI.

Background

19. Part 3 of the 2015 Act makes provision for improvements to the serious crime prevention order ("SCPO"). The SCPO is intended for use against those involved in serious offences, including drugs trafficking, fraud and money laundering. The SCPO was introduced by Part 1 of the Serious Crime Act 2007 ("the 2007 Act"). It is a court order that is used to protect the public by preventing, restricting or disrupting a person's involvement in serious crime. A 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. Detailed information on SCPOs can be found in the CPS guidance.[1]

20. The Director of Public Prosecutions or Director of the Serious Fraud Office can make applications to a court for an SCPO to be made in England and Wales. In Northern Ireland, the Director of Public Prosecutions for Northern Ireland makes

[1] http://www.cps.gov.uk/legal/s_to_u/serious_crime_prevention_orders_(scpo)_guidance/

the applications. Section 46 of and Schedule 1 to the 2015 Act also extends SCPOs to Scotland, where the Lord Advocate makes applications[2]. The court hearing the case decides whether an SCPO is necessary. There is an indicative list of ''serious offences'' in Schedule 1 to the 2007 Act for SCPO applications. An order can last for up to five years. While SCPOs can be made as 'stand alone' orders in the High Court, they have mostly been used against those convicted of a serious crime in the Crown Court.

21. Breach of a SCPO's conditions is a criminal offence under section 25 of the 2007 Act, subject to a maximum penalty of five years' imprisonment. A person can be prosecuted for the breach offence in any part of the UK, regardless of where the order was made (for example, a prosecution can take place in Scotland for breach of an SCPO made by an English court).

Section 47: Adding indicative offences for imposing an SCPO

22. Section 47 of the 2015 Act adds the cultivation of cannabis, firearms possession and cyber crime offences to the list of indicative offences for making an SCPO. The list can be found in Schedule 1 to the 2007 Act – Part 1 for England and Wales and Part 2 for Northern Ireland. The new participation offence (see section 45 above) has also been added to the list. It should be noted that the list of offences in Schedule 1 to the 2007 Act is indicative and that a court can make an order in relation to other crimes if appropriate. The new offences are listed below.

23. For England, Wales and Northern Ireland:

- An offence under section 6 of the Misuse of Drugs Act 1971 (restriction on cultivation of cannabis plants). Note that other offences relating to drugs trafficking are already SCPO indicative offences.

- Offences under the following provisions of the Computer Misuse Act 1990:

    - section 1 (unauthorised access to computer material);
    - section 2 (unauthorised access with intent to commit or facilitate commission of further offences);
    - section 3 (unauthorised acts with intent to impair, or with recklessness as to impairing the operation of computers etc);
    - section 3ZA (unauthorised acts causing, or creating risk of, serious damage to human welfare etc);
    - section 3A (making, supplying or obtaining articles for use in an offence under sections 1, 3 or 3ZA).

[2] The provisions that will extend SCPOs to Scotland are expected to be commenced later in 2015. Further information will be circulated by the Scottish Government in due course.

24. For England and Wales only.
    - Offences under the following provisions of the Firearms Act 1968. Note that offences relating to arms trafficking are already SCPO indicative offences.
        - section 1(1) (possession etc of firearms or ammunition without
        - certificate);
        - section 2(1) (possession etc of shot gun without certificate);
        - sections 5(1), (1A) or (2A) (possession, manufacture etc of prohibited weapons).

25. For Northern Ireland only.
    - An offence under any of the following provisions of the Firearms (Northern Ireland) Order 2004 (S.I. 2004/702 (N.I. 3)). Note that offences relating to arms trafficking are already SCPO indicative offences.
        - Article 3 (possession etc of firearms or ammunition without certificate);
        - Article 45 (possession, manufacture etc of prohibited weapons).

Section 48: Making a new SCPO when a person has been convicted of breaching an existing order

26. Section 48 of the 2015 Act made provision for an existing SCPO to be replaced in the event of a conviction for the offence of breaching an SCPO. Breach of an SCPO is a potential indicator of continued involvement in serious crime, but previously the Crown Court did not have the power to impose a new order following a conviction for the breach offence (although a new order could be made following conviction for another serious offence under section 19 of the 2007 Act). The prosecutor would need to make the application to the court upon conviction as with a normal application for an SCPO.

Section 49: Extending an SCPO when a person has been charged

27. If a person currently subject to a SCPO has been charged with a serious offence or the breach offence and the order is about to run out, section 49 of the 2015 Act allows the order to be kept in place until the criminal proceedings have been concluded. In England and Wales or Northern Ireland the prosecutor would need to make an application to the Crown Court for an extension of the duration of the order once the charging decision has been made. As with any other SCPO application, the prosecutor needs to demonstrate to the court that the subject is continuing to be involved in serious crime.

28. This power is of particular relevance if the subject of the SCPO has only been charged with the breach offence and the investigator is planning to obtain a replacement order under the new power described above (section 48).

Section 50: Consolidation of the Financial Reporting Order into the SCPO

29. As a result of the changes made by section 50 of the 2015 Act, the SCPO will become the means of imposing financial reporting requirements on a person following a conviction instead of the Financial Reporting Order ("FRO"). The aim of this change is to improve the use of financial reporting requirements as a means of preventing further involvement in crime.

30. The 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 was less than expected. A limitation of the FRO is that breaching the order is a summary only offence and, as such, subject to a maximum penalty of six months' imprisonment. This also restricts the powers that could be used to investigate the breach offence.

31. The SCPO was introduced after the FRO and there is 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. The starting date of an SCPO can also be delayed – for example, until the subject is released from prison.

32. Section 50 of the 2015 Act therefore repeals the FRO legislation; henceforth financial reporting requirements will be imposed through an SCPO. This change will also simplify the landscape of preventative civil orders and reduce the administrative burden on the agencies who work on applications. Section 50 also 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 a SCPO (for example, by seeking information from banks and other financial institutions).

33. Prosecutors other than the CPS (for example, the Financial Conduct Authority) previously had the power to make applications for the FRO but do not have the power to make applications for SCPOs. The CPS has agreed to make the applications on their behalf.

34. Under transitional provisions in section 86 of the 2015 Act, existing FROs will remain active until they expire, and the existing offence of breaching an FRO will remain available.

Section 51: Gang injunctions

Commencement Date: 1 June 2015

E. W.

Background

35. Gang injunctions are civil orders designed to prevent an individual from being involved in gang-related violence; the statutory framework is to be found in Part 4 of the Policing and Crime Act 2009 ("the 2009 Act"). Under the 2009 Act applications for a gang injunction may be made to the County Court, or the High Court, by the police or a local authority. Gang injunctions allow courts to place a range of prohibitions and requirements (including supportive, positive requirements) on the behaviour and activities of a person (aged 14 or over) involved in gang-related violence. These conditions could include prohibiting someone from being in a particular place or requiring them to participate in rehabilitative activities.

36. Gang injunctions for adults have been available since January 2011, and gang injunctions for 14 to 17 year olds have been available since January 2012. In deciding whether to grant a gang injunction, two conditions must currently be satisfied. The first condition is that the respondent has engaged in, assisted or encouraged "gang-related violence". Once this condition is satisfied, the court may grant an injunction if a second condition is satisfied, namely that it thinks it is necessary to do so in order "to prevent the respondent from engaging in, encouraging or assisting gang-related violence" or "to protect the respondent from gang-related violence". The 2009 Act defines gang-related violence as:

> "Violence or a threat of violence which occurs in the course of, or is otherwise related to, the activities of a group that:
>
> a) consists of at least 3 people;
>
> b) uses a name, emblem or colour or has any other characteristic that enables its members to be identified by others as a group; and
>
> c) is associated with a particular area."

37. The way gangs operate is changing. Gangs do not always have a name, emblem or colour or other characteristic which enables its members to be identified as a group. Instead, a group of individuals may operate as a group and engage in criminality with some degree of organisation without these features.

38. In addition, gangs are increasingly involved in criminality beyond their own areas and can be less associated with a particular area. Moreover, gang structures change over time such that it is possible for gangs to disappear from certain locations and re-appear in other locations relatively quickly.

39. Gangs also tend to be engaged in a wider range of criminality than simply violence. In addition to violence, street level gangs are involved in drug dealing. In recognition of these changes to the way gangs operate, section 51 of the 2015 Act revises the test for the grant of a gang injunction. In particular, expanding the range of activities to include any involvement in support of the illegal drugs market will allow gang injunctions to be used to prevent individuals from engaging in such activity and to protect people from being further drawn into this illegal activity. This change will also enable local agencies to address the cross-over between urban street gangs and street drug dealing controlled by organised criminal groups.

Revised test for the grant of gang injunctions

40. Section 51 of the 2015 Act recasts the key features of a gang, for the purposes of the 2009 Act, to be a group which:

- Consists of at least three people;
- Has one or more characteristics that enable its members to be identified by others as a group; and
- Engages in gang-related violence or is involved in the illegal drug market.

41. The identifying characteristics of a gang may, but need not, relate to any of the following:

- The use by the group of a common name, emblem or colour;
- The group's leadership or command structure;
- The group's association with a particular area;
- The group's involvement with a particular unlawful activity.

42. As now, the court will be able to attach prohibitions or requirements to an injunction. Such prohibitions or requirements may, for example, bar the respondent from going to a particular place or area or from associating with and/or contacting a specified person or persons, or requiring him or her to participate in set activities on specified days.

43. Alongside the amendments made to the 2009 Act by the 2015 Act, the provisions in section 18 of and Schedule 12 to the Crime and Courts Act 2013 also come into force on 1 June. These provisions will transfer proceedings, in respect of gang injunctions, in relation to respondents under 18 years, from the County Court to the Youth Court.

Part 4: Seizure and forfeiture of drug cutting agents

Commencement Date: 3 May 2015

E. W. S. NI

Power of seizure

44. These powers will be available to UK police forces (including the British Transport Police and Ministry of Defence Police); Border Force and the National Crime Agency. Law enforcement officers will have the power to seize and detain any substances suspected of being intended for use as a drug cutting agent. They will be able to do this in two ways: while legally on premises (for example at a port), or with a new cutting agents warrant. It is anticipated that many of these seizures will occur at the border, where large shipments of suspicious substances are often imported under false labelling. This is not likely to affect legitimate businesses, since seizures of suspected cutting agents are currently undertaken in a targeted manner using existing criminal or customs powers. The new powers will be used in a similar intelligence-led fashion.

Power of forfeiture

45. Once the suspected cutting agents have been seized under the new powers, they can be detained for up to 30 days while investigations proceed (with a possible further 30 days extension upon application to a court[3]). The responsible officer must make reasonable efforts to give proper notice of the seizure and the consequences of this to the person from whom the substances were seized and the owner of the substances (if they may belong to a different person).

46. There will be further judicial oversight if the law enforcement agency wishes to destroy the substances, since it will need to apply to a magistrates' court for forfeiture. The court must grant forfeiture if satisfied, to the civil standard of proof, that the substance was intended for use as a drug cutting agent. Once the court has ordered the substances either to be returned or forfeited, a 'party to the

[3] For the purposes of Part 4 in respect of Scotland, references to a court mean a sheriff

proceedings' (most likely either the relevant law enforcement agency or the owner of the substances) or a person entitled to the substances (if not a party to those proceedings) will have 30 days to appeal against the decision.

47. In the unlikely event that the property of a legitimate business is seized under these powers (that is, where substances are seized but no forfeiture is granted), the owner will be able to apply for compensation. The compensation would be paid by the law enforcement agency which made the seizure. To prevent unreasonable claims, the value of the compensation will be no more than the wholesale value of the substances seized (unless exceptional circumstances exist).

Section 66: Child cruelty offence

Commencement Date: 3 May 2015

E.W

Children and Young Persons Act 1933

48. Section 1 of the Children and Young Persons Act 1933 ("the 1933 Act") provides for an offence of child cruelty. This offence is committed where a person age 16 or over, who has responsibility for a child under that age, willfully (i.e. intentionally or recklessly) assaults, ill-treats, neglects, abandons, or exposes that child in a manner likely to cause "unnecessary suffering or injury to health"; or causes or procures someone else to treat a child in that manner. The maximum penalty for the offence is ten years' imprisonment or a fine or both.

49. Section 1(2)(b) of the 1933 Act provides that, in a case where the death of a child under three is proved to have been caused by suffocation while the child was in bed with a person aged 16 or over, that person is deemed, for the purposes of the child cruelty offence, to have neglected the child in a manner likely to cause injury to its health, if he or she went to bed under the influence of drink.

Section 66 amendments

50. Section 66 clarifies, updates and modernises some of the language of, section 1 of the 1933 Act. The effect of the changes made by section 66 are to:

(a) make it absolutely clear – by substituting for the current list of examples of relevant harm (which includes the outdated term "mental derangement") the words "whether the suffering or injury is of a physical or psychological nature" – that cruelty which causes psychological or physical suffering or injury is covered under section 1 of the 1933 Act;

(b) make it absolutely clear that the behaviour necessary to establish the ill-treatment limb of the offence can be non-physical (for example a sustained course of non-physical conduct, including, for instance, isolation, humiliation or bullying, if it is likely to cause unnecessary suffering or injury to health);

(c) replace the outdated reference to 'misdemeanour' with 'offence'; and

(d) amend section 1(2)(b) (see paragraph 49 above) so that:

a. a person is also deemed to have neglected a child in the relevant manner where the person concerned is under the influence of 'prohibited drugs';
b. it is clear that the provision applies where the person comes under the influence of the substance in question at any time before the suffocation occurs; and
c. it applies irrespective of where the adult and child were sleeping (for example if they were asleep on a sofa).

Section 68: Child sexual exploitation

Commencement Date: 3 May 2015

E.W

Amendments to sections 47 to 51 of the Sexual Offences Act 2003

51. Section 68(1) to (6) amends the Sexual Offences Act 2003 ("the 2003 Act") to remove references to child prostitution and child pornography. These terms are referred to in the titles of sections 48 (causing or inciting child prostitution or pornography), 49 (controlling a child prostitute or a child involved in pornography) and 50 (arranging or facilitating child prostitution or pornography) of the 2003 Act, and in the body of those sections (and also in section 51, which contains definitions). The amendments to those sections replace these terms with references to the sexual exploitation of children, but do not alter the scope of the relevant offences. The changes to the terminology used are intended to reflect a modern understanding of the position of children involved in such activities. They

do not however change the behaviour to which the offences apply, which remains the recording of an indecent image of a person or the offer or provision of sexual services to another person in return for payment or a promise of payment.

Amendment to section 1 of the Street Offences Act 1959

52. Section 1 of the Street Offences Act 1959 ("the 1959 Act") makes it an offence for a common prostitute to loiter or solicit in a street or public place for the purpose of prostitution. The offence currently applies to both adults and children and young persons aged 10 years or over.

53. Section 68(7) amends section 1 of the 1959 Act so that the offence of loitering or soliciting for the purposes of prostitution applies only to persons aged 18 and over. It, in effect, decriminalises under-18s selling sex in the street and in doing so again recognises children as victims in such circumstances rather than consenting participants (buying sex from an under-18 in any circumstances would remain illegal).

Section 69: Possession of a paedophile manual

Commencement date: 3 May 2015

E. W. NI.

The offence

54. This section creates a new offence of possession of a paedophile manual, which is any item that contains advice or guidance about abusing children sexually. For these purposes an ‘‘item" includes anything in which information of any description is recorded (and could therefore include, for example, an electronic audio/video file).

55. There are already a number of criminal offences that seek to prevent the possession, creation and distribution of indecent images of children, and the dissemination of obscene material. However, existing offences do not criminalise mere possession of material containing advice and guidance about grooming and abusing a child sexually. The new offence plugs the gap in the law by criminalising this behaviour.

Defence

56. Possible defences include that the individual concerned had a legitimate reason for being in possession of the material, or that he had not himself seen the material; and did not know, nor had any cause to suspect it to be a paedophile manual. A further defence would be that the person had received the material unsolicited and did not keep it for an unreasonable time.

57. Further, in recognition of the sensitivity of this type of offence, the consent of the Director of Public Prosecutions (in England and Wales), or the Director of Public Prosecutions for Northern Ireland (in Northern Ireland) is required before a prosecution can be brought.

Mode of trial: Either way (that is, the offence may be tried in either a magistrates' court or the Crown Court)

Maximum sentence:

- **On summary conviction – six months' imprisonment and/or an unlimited fine.**
- **On conviction on indictment - three years' imprisonment and/or an unlimited fine.**

Forfeiture

58. The offence allows for the most commonly used and broad power of forfeiture, which is contained in section 143 of the Powers of Criminal Courts (Sentencing) Act 2000. Section 143 provides a general power of forfeiture allowing the courts to make an order depriving an offender of his or her rights to articles used, or intended to be used, in the commission or facilitating of an offence and conferring power on the police to take possession of the property. In addition, section 5 of and the Schedule to the Protection of Children Act 1978 confers on the police the power to forfeit any indecent photograph or pseudo-photograph of a child, and any property which it is not reasonably practicable to separate from that property following any lawful seizure. These powers will also apply to paedophile manuals.

Section 70: FGM extension of extra-territorial jurisdiction

Commencement date: 3 May 2015

E. W. S. NI

Female Genital Mutilation Act 2003

59. Under the Female Genital Mutilation Act 2003 (''the FGM Act'') it is an offence for any person in England, Wales or Northern Ireland (regardless of their nationality or residence status) to perform female genital mutilation (FGM) (section 1); or to assist a girl to carry out FGM on herself (section 2). It is also an offence to assist (from England, Wales or Northern Ireland) a non-UK national or resident to carry out FGM outside the UK on a UK national or permanent UK resident (section 3).

60. Section 4 of the FGM Act extends sections 1 to 3 to extra-territorial acts, making it also an offence for a UK national or permanent UK resident to: perform FGM abroad; assist a girl to perform FGM on herself outside the UK; and assist (from outside the UK) a non-UK national or resident to carry out FGM outside the UK on a UK national or permanent UK resident.

The amendment

61. Section 70(1) of the 2015 Act amends section 4 of the FGM Act so that the extra-territorial jurisdiction extends to prohibited acts done outside the UK *by* a UK national or any UK resident. Consistent with that change, section 70(1) also amends section 3 of the 2003 Act so it extends to acts of FGM done *to* a UK national or any UK resident.

62. "UK resident" is defined as "an individual who is habitually resident in the UK". The term 'habitually resident' covers a person's ordinary residence, as opposed to a short, temporary stay in a country.

63. These changes will mean that the FGM Act can capture offences of FGM committed abroad by or against those who are at the time habitually resident in the UK, irrespective of whether they are subject to immigration restrictions. It will be for the courts to determine on the facts of individual cases whether or not those involved are habitually resident in the UK and thus covered by the FGM Act.

64. Section 70(2) of the 2015 Act makes equivalent amendments to the Prohibition of Female Genital Mutilation (Scotland) Act 2005.

Section 71: Anonymity for victims of FGM

Commencement Date: 3 May 2015

E. W. NI

Protection for victims of FGM

65. Section 71 of the 2015 Act inserts a new section 4A and Schedule 1 into the FGM Act which make provision for the anonymity of victims of FGM. The provisions are modelled on those in the Sexual Offences (Amendment) Act 1992 which provides for a scheme to protect the anonymity of victims of certain sexual offences, such as rape. The effect of these provisions is to prohibit the publication of any matter that would be likely to lead members of the public to identify a person as the alleged victim of an offence under the FGM Act (including the new offence provided for in section 72, as well as aiding, abetting, counselling and procuring the "principal offence"). The prohibition lasts for the lifetime of the alleged victim. The prohibition covers not just more immediate identifying information, such as the name and address or a photograph of the alleged victim, but any other information which, whether on its own or pieced together with other information, would be likely to lead members of the public to identify the alleged victim. "Publication" is given a broad meaning and would include traditional print media, broadcasting and social media such as Twitter or Facebook.

Exemptions

66. There are two limited circumstances where the court may disapply the restrictions on publication:

- The first is where a person being tried for an FGM offence, could have their defence substantially prejudiced if the restriction to prevent identification of the person against whom the allegation of FGM was committed is not lifted.

- The second circumstance is where preventing identification of the person against whom the allegation of FGM was committed, could be seen as a substantial and unreasonable restriction on the reporting of the proceedings and it is considered in the public interest to remove the restriction.

Breach of the restrictions

67. Contravention of the prohibition on publication is an offence. It will not be necessary for the prosecution to show that the defendant intended to identify the victim. In relation to newspapers or other periodicals (whether in print form or online editions) and radio and television programmes, the offence is directed at proprietors, editors, publishers or broadcasters rather than individual journalists. Any prosecution for the offence requires the consent of the Attorney General or the Director of Public Prosecutions for Northern Ireland as the case may be.

Defence

68. There are two defences. The first is where the defendant had no knowledge (and no reason to suspect) that the publication included content that would be likely to identify a victim or that a relevant allegation had been made. The second is where the victim (where aged 16 or over) had freely given written consent to the publication. These defences impose a reverse burden on the defendant, that is, it is for the defendant to prove that the defence is made out on a balance of probabilities, rather than imposing a requirement on the prosecution to show, beyond reasonable doubt, that the defence does not apply.

Mode of Trial: Summary only

Maximum penalty: An unlimited fine (in Northern Ireland, a level five fine (currently £5,000)).

Section 72: Offence of failing to protect girl from risk of genital mutilation

Commencement Date: 3 May 2015

E. W. NI

The offence

69. Section 72 of the 2015 Act inserts a new section 3A into the FGM Act which creates a new offence of failing to protect a girl from FGM. This means that if an offence under section 1, 2 or 3 of the FGM Act (see paragraph 59 above) is committed against a girl under the age of 16, each person who is responsible for the girl at the time of FGM occurred will be liable under the new offence.

Elements of the offence

70. To be "responsible" for a girl, the person will either:

- have 'parental responsibility' for the girl (for example, mothers, fathers married to the mothers at the time of birth, and guardians) and have 'frequent contact' with her); or

- be a person aged 18 or over who has assumed responsibility for caring for the girl "in the manner of a parent" (for example family members to whom parents might send their child during the summer holidays).

71. The requirement in the first case for "frequent contact" is intended to ensure that a person who, in law, has parental responsibility for a girl, but who in practice has little or no contact with her, would not be liable. Similarly, the requirement in the second case that the person should be caring for the girl "in the manner of a parent" is intended to ensure that a person who is looking after a girl for a very short period – such as a baby sitter – would not be liable.

Defence

72. It would be a defence for a defendant to show that at the relevant time, either:

- they did not think that there was a significant risk of FGM being committed, and could not reasonably have been expected to be aware that there was any such risk; or

- they took such steps as he or she could reasonably have been expected to take to protect the girl from being the victim of FGM.

73. A defendant would only need to produce evidence to support either defence. The onus would then be on the prosecution to prove, to the normal criminal standard of beyond reasonable doubt that the defence did not apply. It would be for the jury or magistrate, in any particular case, to decide what was reasonable in the circumstances.

Mode of trial: Either way (that is, the offence may be tried in either a magistrates' court or the Crown Court)

Maximum sentence:

- **On summary conviction – six months' imprisonment and/or an unlimited fine.**
- **On conviction on indictment - seven years' imprisonment and/or unlimited fine.**

Section 78: Unauthorised possession of knives and other offensive weapons in prisons

Commencement date: 1 June 2015

E. W

The offence

74. Section 78 makes it an offence to possess any article which has a blade or is sharply pointed, or other offensive weapon in prison without authorisation. This includes makeshift weapons manufactured by prisoners from everyday items.

75. The main aim of the new offence is to address the disparity in the criminal law as, while it is a criminal offence to possess such articles in a public place or school, it is not currently a criminal offence to possess such articles within a prison establishment. Instead the unauthorised possession of weapons by prisoners is currently dealt with internally through the prison adjudication system or, for staff, as part of internal disciplinary procedures.

76. The new legislation will ensure that there are adequate measures available to deal with such crimes with punishments proportionate to both the seriousness of the offence and comparable to that available in the community. It will allow longer sentences for more serious offences, provide a greater deterrent effect for prisoners, and allow stronger public confidence in the fairness of the justice system. It will also enable more serious weapon possession offences to be punished through the criminal justice system.

Elements of offence

77. The conduct element of the offensive is satisfied if the person is in possession of an article which has a blade or is sharply pointed or other offensive weapon in prison without authorisation. The Prison Act 1952 (section 40E) enables authorisation to be given in certain circumstances when it is deemed necessary for persons in prison (including prisoners) to be in possession of a knife or other offensive weapon.

Defence

78. It is a defence for the person to show that either he or she reasonably believed that he or she had authorisation to be in possession of the article in question, or

in all the circumstances there was an overriding public interest which justified his or her possession of the article.

Mode of Trial: Either way (that is, the offence may be tried in either a magistrates' court or the Crown Court)

Maximum sentence:

- **On summary conviction – six months' imprisonment and/or an unlimited fine.**
- **On conviction on indictment - four years' imprisonment and/or an unlimited fine.**

Section 81: Preparation and training for terrorism

Commencement Date: 3 March 2015

E. W. S. NI

79. Under section 5 of the Terrorism Act 2006 ("the 2006 Act"), it is 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 for section 5 and, from 13 April 2015, life imprisonment for section 6.[4]

80. Section 17 of the 2006 Act provides for extra-territorial jurisdiction in respect of certain terrorism offences, allowing those offences to be tried in this country in respect of acts committed abroad. The relevant offences are: 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.

[4] Until 13 April 2015, the maximum penalty for training for terrorism under section 6 is 10 years' imprisonment. The change in maximum tariff was made by the Criminal Justice and Courts Act 2015, which received Royal Assent on 12 February 2015.

81. 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 Council of Europe 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 was no previous extra-territorial jurisdiction.

82. Section 81 of the 2015 Act amends section 17(2) of the 2006 Act to provide for extra-territorial jurisdiction for the section 5 offence and to extend the existing extra-territorial jurisdiction of 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.

ANNEX A

GLOSSARY

1933 Act	**Children and Young Persons Act 1933**
1959 Act	**Street Offences Act 1959**
2003 Act	**Sexual Offenders Act 2003**
2006 Act	**Terrorism Act 2006**
2007 Act	**Serious Crime Act 2007**
2009 Act	**Policing and Crime Act 2009**
2015 Act	**Serious Crime Act 2015**
CMA	**Computer Misuse Act**
CPS	**Crown Prosecution Service**
E. W. S. NI	**England, Wales, Scotland and Northern Ireland**
FGM	**Female genital mutilation**
FGM Act	**Female Genital Mutilation Act 2003**
FRO	**Financial Reporting Order**
POCA	**Proceeds of Crime Act 2002**
SCPO	**Serious Crime Prevention Order**

ANNEX B

POINTS OF CONTACT

Provision:	Contact:	Telephone:	Email:
Part 1: Proceeds of crime	Alison Moore	0207 035 1717	Alison.Moore@homeoffice.x.gsi.gov.uk
Part 2: Computer misuse	Catherine Crowe	0207 035 1150	Catherine.Crowe@homeoffice.x.gsi.gov.uk
Section 45: Offence of participating in activities of an organised crime group	Caroline Johnson	0207 035 1562	Caroline.Johnson@homeoffice.x.gsi.gov.uk
Sections 47 to 50: Serious crime prevention orders	Anthony Townsin	0207 035 8105	Anthony.Townsin@homeoffice.x.gsi.gov.uk
Section 51: Gang injunctions	Esperanza Gomez	0207 035 0264	Esperanza.Gomez@homeoffice.gsi.gov.uk
Part 4: Seizure and forfeiture of drug cutting agents	Lisa Dillon	0207 035 0936	Lisa.Dillon2@homeoffice.gsi.gov.uk
Section 66: Child cruelty offence	Jean McMahon	0203 334 3208	jean.mcmahon@justice.gsi.gov.uk
Section 68: Child sexual exploitation	Wayne Jones	0207 035 3236	wayne.jones@homeoffice.gsi.gov.uk
Section 69: Possession of a paedophile manual	David Pearson	0203 334 5005	dave.pearson@justice.gsi.gov.uk
Section 70: FGM extension of extra-territorial jurisdiction	Louise Douglas	0203 334 5013	Louise.Douglas@justice.gsi.gov.uk
Section 71: Anonymity for victims of FGM	Nadia Rosun	07580 701510	Nadia.Rosun@justice.gsi.gov.uk
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