

Serious Crime Act 2015

Fact sheet: Offence of participating in activities of organised crime group

Background

1. For too long, too many serious and organised criminals have been able to remain one step ahead and out of law enforcement's reach. The Government made a commitment in the Serious and Organised Crime Strategy (October 2013) to do everything at its disposal to disrupt and prosecute them. In particular, the strategy included a commitment to ensure that effective legal powers are available better to tackle people who actively support, and benefit from participating in organised crime. One such power is the new offence of participation in the activities of an organised crime group provided for in section 45 of the Act.
2. As of 31 December 2014, UK law enforcement agencies estimated that there were around 5,800 organised crime groups causing harm to the UK, comprising about 40,600 people. The new offence provides the National Crime Agency and the police with a further means relentlessly to pursue the known 40,600 individuals associated with organised criminal groups. It will also send a clear signal to discourage corrupt and complicit professionals and others who provide the materials, services, infrastructure, information and other support that organised crime groups need.
3. The existing offence of conspiracy is widely-used and central to the majority of law enforcement investigations into organised crime. It will remain so. It is one of the two legislative models set out in the UN Convention against Transnational Organised Crime ("[UNTOC](#)") which the UK ratified in 2006. The essential element of the crime of conspiracy is the agreement by two or more people to carry out a criminal act. However, this makes it difficult to pursue people in the wider criminal group and beyond who 'ask no questions'. The result is that a significant number of people within the '40,600' and beyond can engage in and benefit from organised crime with limited risk of being prosecuted.
4. The benefit of the participation offence is that it reflects how 'modern' organised criminal groups facilitate their criminal enterprises. By focusing on the active relationship with organised crime, the participation offence will increase the risk to a higher proportion of those who currently support organised crime at arm's length. Moreover, the mental threshold for the offence, that the person 'knows or 'reasonably suspects' that their actions will help an organised crime group, will better overcome the 'network' that offers protection for those at the top of such groups who instruct others to act on their behalf but who do not themselves carry out criminal acts and therefore prove difficult to prosecute.

The offence of participating in activities of an organised crime group

5. The new participation offence, which applies in England and Wales, is intended to provide a new means by which the National Crime Agency, the police and prosecutors can tackle serious and organised crime. The elements of the offence are drawn from the second of the two legislative models in UNTOC, and are complementary to the existing offence of conspiracy. Other governments are increasingly adopting this combined approach. This carries the potential to prosecute effectively the full spectrum of criminality engaged in organised crime.
6. The conduct element of the participation offence is satisfied if a person takes part in any activities which are criminal activities of an organised crime group, or helps an organised crime group to carry on criminal activities. These criminal activities must attract a sentence of at least seven years for the participation offence to be applicable. This captures the various activities organised criminals are engaged in including (but not limited to) drug trafficking, human trafficking, organised illegal immigration, firearms offences, fraud, child sexual exploitation and cybercrime.
7. The definition of an organised crime group is three or more persons who act (or agree to act) together to further the carrying on of criminal activities (set out above). The mental element of the offence is satisfied if it can be shown that the person knew or reasonably suspected that he or she was engaging in such activities. The offence is triable on indictment only – that is, in the Crown Court - and subject to a maximum penalty of five years' imprisonment.
8. As such, the participation offence is significantly different to the existing offences of encouraging and assisting crime (in sections 44 to 46 of the Serious Crime Act 2007). 'Encouraging and assisting' requires the prosecution to prove that the individual charged undertook an act which was capable of encouraging or assisting the commission of any offence (not just organised crime), and that they believed that an offence would be committed. While there are circumstances relating to organised crime in which it is appropriate to prosecute 'encouraging and assisting', the participation offence goes beyond these offences to address better all those helping an organised crime group to carry on criminal activities.