

The Serious Organised Crime and Police Act 2005

'New Investigatory Powers'

- **General Overview**
- **Summary of Parts and Sections most relevant, with particular reference to:**
 - **Disclosure notices**
 - **Immunity and undertakings**
 - **Powers of arrest**
 - **Powers of search and seizure**

OVERVIEW

The Serious Organised Crime and Police Act 2005 received the Royal Assent on 7th April 2005. It has 6 parts, 179 sections and 17 schedules, a mere shadow of the CJA 2003. 6 commencement orders have already been made.

The Government published the White Paper, "One Step Ahead: A 21st Century Strategy to Defeat Organised Crime", in March 2004. The Act arises out of that White Paper. The paper proposed the establishment of a single powerful agency to lead the fight against organised crime – The Serious Organised Crime Agency.

The raft of measures in SOCPA have far-reaching consequences for organised crime and serious implications for crime in general.

General remarks:

- SOCPA rushed through Parliament;
- Despite title, many of SOCPA's provisions equally relevant to minor offenders whose crimes lack elaborate planning;
- 'Organised crime' – not defined!
- Self-professed desire to tilt the balance away from defendants.

PART 1

“The Serious Organised Crime Agency”

Part 1 establishes the Agency, provides for its constitution and defines its functions and general powers and its relationship with ministers. In essence the agency brings together the National Crime Squad, the National Intelligence Service, the investigative and intelligence work of Her Majesty’s Customs and Excise on serious drug trafficking, and the Immigration Service’s responsibilities for organised immigration crime. Its remit will extend throughout the UK. Part 1 came into force, and the Agency has been operational since 1st April 2006.

Section 2(1) defines SOCA’s functions as a) preventing and detecting serious organised crime, and b) contributing to the reduction of such crime in other ways and to the mitigation of its consequences. A very broad remit.

Section 3 sets out the other part of SOCA’s functions in respect of ‘information relating to crime’. Section 3(1) provides that SOCA has the function of ‘gathering, storing, analysing and disseminating information relevant to a) the prevention, detection, investigation or prosecution of offences, or b) the reduction of crime in other ways or the mitigation of its consequences’. Functions even broader than section 2 since not limited to “serious organised crime”.

PART 2

“Investigations, Prosecutions, Proceedings and Proceeds of Crime”

Sections 60-70 - Disclosure notices

Ordinarily the failure to prevent or report the criminal activities of other persons is not an offence. The effect of these sections is to impose a positive duty on the citizen, in certain circumstances, to help the investigating authority (a term which itself is widely defined). Disclosure notices may be given only in relation to certain offences, those offences being set out in section 61 (includes lifestyle offences, terrorist fund-raising

and money laundering offences, fraudulent evasion of duty, false accounting and the corresponding inchoate offences).

By section 62(1), if it appears to the investigating authority –

- (a) that there are reasonable grounds for suspecting that a relevant offence has been committed,
- (b) that any person has information (whether or not contained in a document) which relates to a matter relevant to the investigation of that offence, and
- (c) that there are reasonable grounds for believing that information which may be provided by that person in compliance with a disclosure notice is likely to be of substantial value (whether or not by itself) to that investigation,

he may give a disclosure notice to that person.

The use of the word “person” makes it clear that both suspects and non-suspects are included.

What is a disclosure notice?

By section 62(3) a disclosure notice means a notice in writing requiring the person to whom it is given to answer questions with respect to any matter relevant to the investigation, to provide information with respect to matters specified in the notice and/or to produce relevant documents.

This is a powerful weapon in the hands of the investigating authority (includes senior CPS Prosecutors):

- no application to the court for the issue of the disclosure notice is required;
- no provisions in the Act enabling the person to whom it is given to apply to set it aside;
- failure to comply with a requirement of a disclosure notice without reasonable excuse is punishable summarily with up to 51 weeks’ imprisonment; and,

- the making of a false or misleading statement in purported compliance with a disclosure notice is punishable on indictment with up to 2 years' imprisonment.

There are, however, some **restrictions** on the operation of the notice. Section 64 protects from disclosure, information which is the subject of legal professional privilege and section 65 provides that, with certain exceptions, a statement made by a person in response to a disclosure notice may not be used in evidence against him in any criminal proceedings.

By virtue of the first commencement order sections 60-70 came into force in England and Wales on 1st April 2006.

Sections 71-75 - Immunity Notices, Undertakings and 'Brown Envelopes'

An important aim of the Act is to encourage offenders to assist in investigations and prosecutions. Sections 71-75 are the means by which this aim is supposedly achieved. In force on 1st April 2006.

Undertakings of immunity from prosecution may on occasions have to be given in the public interest (the courts have dealt with the matter as part of the common law). Section 71 places immunity from prosecution on a statutory basis.

Section 71(1) provides that, if a specified prosecutor thinks that for the purposes of the investigation or prosecution of any offence it is appropriate to offer any person immunity from prosecution, he may give the person a written notice called an "immunity notice".

However, it is not necessarily intended that any such immunity should be a blanket immunity. By subsection (2) the effect of the immunity notice is that no proceedings for an offence of a description specified in the notice may be brought against the person "except in circumstances specified in the notice". Further, by subsection (3) the notice ceases to have effect if the person fails to comply with any conditions specified in it.

Section 72 enables a prosecutor to give a person a form of security falling short of full immunity. By section 72(1) if a specified prosecutor thinks that for the purposes of the investigation or prosecution of any offence it is appropriate to offer any person an undertaking that information of any description will not be used against the person in criminal proceedings, he may give the person a written notice called a “**restricted use undertaking**”.

By subsection (2) the effect of such an undertaking is that the information described in it must not be used against that person in criminal proceedings. Again, however, the undertaking is subject to the exceptions specified in it and ceases to have effect if the person fails to comply with any conditions specified in it.

Section 73 deals with “**brown envelope**” cases, as they have become known. It applies if a defendant (1) pleads guilty to an offence in the Crown Court or is committed to the Crown Court for sentence and (2) has pursuant to a written agreement made with a specified prosecutor assisted or offered to assist the investigator or prosecutor in relation to that or any other offence. Note the need for a written agreement. Note also that the section applies even if the defendant has merely *offered* to assist. “Assistance” is not defined and is not, therefore, limited to those who become prosecution witnesses.

Section 73(2) provides that in determining what sentence to pass on the defendant, the court may take into account the extent and the nature of the assistance given or offered. There is nothing new there. Section 73(3) is at first sight surprising. It provides that, if the court passes a sentence which is less than it would have passed but for the assistance given or offered, it must state *in open court* both that it has passed a lesser sentence and what the greater sentence would have been.

In the ordinary case, where it is anything but well known that the defendant has given information, section 73(4) comes into play. It states that the open court requirement does not apply if the court thinks that it would not be in the public interest to disclose that the sentence has been discounted. Even then the court must give written notice of both the lesser and the putative greater sentence to the prosecutor and the defendant.

Section 74 enables the prosecutor to refer the case back to the court and empowers the court to review the sentence upwards. However, the reviewing court is limited to the sentence it would have passed if there had been no offer of assistance in the first place.

Section 74 also applies to two other situations:

1. Having received a discounted sentence, the defendant gives or offers to give further assistance beyond that contemplated by the original written agreement;
2. Having received a sentence which is not discounted at all, he later gives or offers to give assistance for the first time.

In each of these two situations the prosecutor may refer the case back to the court and the court may review the original sentence downwards.

These provisions therefore provide a fairly strong statutory incentive for defendants to help the authorities, whether before or after the original sentence. In a sense they complement the sentence indication guidelines found in *R v Goodyear*. It remains to be seen whether defendants will be tempted by them!

Sections 76-81 - Financial Reporting Orders

They empower the court to make such an order in relation to a lifestyle criminal who has been convicted of one of a wide range of offences specified in ss.76 (3) (Theft Act 1968 offences e.g. Obtaining property by deception), only if the court is satisfied that that risk of the offender committing another offence on the list is sufficiently high to justify the making of the order. The effect of the order is that the offender must provide, on a regular basis, details of his income, assets and expenditure.

The order operates for a maximum of 15 years from the point of sentence (20 years if imprisonment for life, 5 years in the Magistrates). It is an ancillary order whose purpose is to enable the financial affairs of serious acquisitive criminals to be monitored. Not surprisingly a failure to comply with the order is an offence and is

punishable on summary conviction by imprisonment, a fine or both. The provisions came into force on 1st April 2006.

Sections 82-94 - Protection of Witnesses and Others

Existing arrangements now on a statutory footing. They impose a duty on public authorities to assist protection providers and introduce offences in connection with the unauthorised disclosure of information about protected persons or protection arrangements. In force from 1st April 2006.

Other sections of Part 2 deal with other provisions relating to the Proceeds of Crime, money laundering and related matters.

PART 3

'Police Powers etc'

Sections 110-111 - Arrest and Search

Section 110 is particularly important. Hitherto a constable's powers of arrest without warrant have depended on whether an offence is arrestable or non-arrestable. In other words they have depended on the seriousness of the offence. Section 110 replaces the test of seriousness with a test of necessity, which applies to *all* offences. Section 110 came into force on 1st January 2006. New powers apply to arrests after the commencement of the Act, regardless of when the relevant offence was committed.

Section 110 operates by substituting a new section 24 of PACE (ss.25 now repealed). By section 24(1), as substituted, a constable may arrest without warrant anyone who is about to commit *an offence*, anyone who is in the act of committing an offence, anyone whom he has reasonable grounds for suspecting to be about to commit an offence, and anyone whom he has reasonable grounds for suspecting to be committing an offence. Subsections (2) and (3) provide similarly wide powers where an offence has been committed or there are reasonable grounds for suspecting that is the case.

The restriction to the exercise of these powers, such as it is, is found in subsections (4) and (5). By subsection (4) the power of summary arrest is exercisable only if the constable has reasonable grounds for believing that for any of the reasons mentioned in subsection (5) it is *necessary* to arrest the person in question. Subsection (5) then sets out 6 such reasons. These reasons are very broad, for example “to prevent any prosecution for the offence from being hindered by the disappearance of the person in question”.

In reality a constable’s powers of arrest without a warrant are now much more extensive. With the abolition of the arrestable offence, citizens are susceptible to arrest for minor offences which hitherto were not considered serious enough to justify it.

In addition a new section 24A of PACE applies a similar necessity test to arrest without warrant by a person other than a constable, the citizen’s arrest.

Sections 113-114 – Search Warrants

In force from January 1 2006.

Warrants under s.8 may now be applied for in respect of any indictable offence.

Widens their scope considerably

2 types of warrant:

1. **Specific Premises Warrant** – addresses to be searched must be specified, but more than one set of premises can be included in the information and warrant;
2. **All Premises Warrant** – premises that are occupied or controlled by a person named in the information must be specified in the information, but in addition any premises that are in his control or occupation may also be included even if the details are at that stage unknown.

Under amended s.8, a warrant may now authorise multiple entries.

Section 115 – stop and search powers in relation to prohibited fireworks.

Sections 116 to 118 – Evidential Provisions

Sections 116 to 118 allow the Police to take **photographs and fingerprints** away from a police station and to take impressions of a person's footwear at a police station. Section 116(1) to (3) and (5) came into force on 1st August 2005. The remainder of section 116 and section 118 came into force on 1st January 2006.

Other Provisions allow for **more civilian staff** to be deployed by the police, e.g. replacing custody sergeants at police stations where designated civilian staff can exercise the duties of custody officers.

PART 4

'Public Order and Conduct in Public Places'

Sections 125-127 – Intimidating Conduct

Sections 125-127 amend the Protection from Harassment Act 1997 and the Criminal Justice and Police Act 2001 to prohibit intimidating conduct designed to stop persons going about their lawful business, introduce a new offence of harassment of a person in his home, and confer additional powers on the police to issue directions for the purpose of stopping harassment of a person in his home. All these sections came into force on 1st July 2005.

Sections 128-131 introduce a new offence of trespass on a site designated by the Secretary of State and sections 132-138 confer additional powers on the police to control demonstrations in Parliament Square or its environs and were all in force by 1st August 2005.

Sections 139-143 - Anti-Social Behaviour Orders

- Lift on automatic reporting restrictions in Youth Courts in relation to proceedings for breach of such an order ;

- Special measures provisions now apply to proceedings under sections 1, 1C and 1D of the Crime and Disorder Act 1998 in the Crown Court and the magistrates' courts (ASBO applications);
- Parental Compensation Orders in the Magistrates Court; where court is satisfied to the civil standard that a child under age of 10 has taken or caused loss or damage to property in the course of behaving anti-socially or committing an act that would have constituted a criminal offence if he were 10 or over (not yet in force).

Sections 139-143 came into force on 1st July 2005.

PART 5

'Miscellaneous provisions'

For example: new criminal offences to protect the activities of specified organisations (Animal Research organisations); offence of using an incorrectly registered vehicle; new police powers to seize and remove vehicles; evidential breath tests at the roadside.

Section 169 relates to the powers of the Crown Court and a magistrates' court to issue a **witness summons**. It came into force on 1st July 2005 and amends section 2(1) of the Criminal Procedure (Attendance of Witnesses) Act 1965. By section 2(1) in its un-amended form a witness summons could only be issued if the Crown Court was satisfied both that a person was likely to be able to give material evidence and that the person would not voluntarily attend as a witness. Section 169 substitutes for the second of these two requirements a requirement that it is in the '*interest of justice*' to issue a summons to secure the attendance of the witness.

Section 169 also makes similar amendments to the Magistrates' Courts Act 1990.

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