



SERIOUS CRIME PREVENTION ORDERS

MEMORANDUM OF UNDERSTANDING

BETWEEN

CROWN PROSECUTION SERVICE

&

OTHER PROSECUTING AUTHORITIES

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1. Introduction

1. The Government has continued to encourage and improve the use of civil orders, both standalone and on conviction, to manage offenders, in particular the use of Serious Crime Prevention Orders (SCPOs) and Financial Reporting Orders (FROs).
2. FROs were repealed by the Serious Crime Act 2015 and those provisions have now been incorporated into the SCPO in order to maximise the deterrent effect on offenders.
3. Part of the Home Affairs Committee clearance process for the changes to the SCPO legislation, which was agreed by the Attorney General and the Director of Public Prosecutions, was for the CPS to oversee and apply for SCPOs on behalf of other prosecuting authorities.
4. This MoU was signed by the Director of Public Prosecutions and the following prosecuting authorities and published on 29 September 2016.



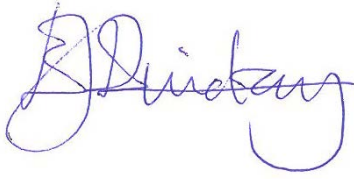
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Food Standards Agency**



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Competition and Markets Authority



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2. Purpose of this Memorandum of Understanding

5. To establish a robust operational process between agencies, to enable the CPS to apply for SCPOs on behalf of other prosecuting authorities within the Whitehall Prosecutors' Group.
6. All information shared between agencies pursuant to this Memorandum of Understanding will be for the sole purpose of applying for SCPOs.
7. This Memorandum of Understanding will be reviewed 6 months from its initial publication and on an annual basis thereafter.
8. This Memorandum of Understanding is not a legally enforceable instrument, but the parties to it will act in good faith and nevertheless consider themselves to be bound by its terms.
9. The parties to this Memorandum of Understanding will endeavour to act in a timely, reasonable and proportionate manner.
10. This MoU will be reviewed in six months and updated as necessary.

3. Operational Process

11. The CPS will make applications on behalf of other prosecutors for SCPOs, including those incorporating terms previously sought under an FRO. Applications for an SCPO are made to either the Crown Court or the High Court.
12. For an application to be made to the Crown Court the defendant must have been convicted of a 'serious crime' as defined in section 2(2) and Schedule 1 of the Serious Crime Act 2007¹. Schedule 1 provides a list of serious offences. The list is not exclusive and it is open to a Judge to rule that the facts of a case are equivalent to a Schedule 1 offence. However, the list in Schedule 1 should be seen as strong guidance of the level of offending that the orders are intended to prevent.²
13. The court can make an order if satisfied there are 'reasonable grounds to believe that the order would protect the public by preventing, restricting or disrupting involvement by the defendant in serious crime in England and Wales'³. The order must be in addition to and not a substitute for sentence for the offence.
14. An SCPO can be made against a body corporate, partnership or unincorporated association. If an SCPO is made against a body corporate, partnership or unincorporated association this does not prevent an SCPO also being made against one of its officers or employees or another person associated with it, provided the requirements in section 1 (High Court SCPO) or section 19 (Crown Court SCPO) of the Serious Crime Act are met.

Process for Crown Court Applications

- ¹ The court cannot make a finding that the person has committed a serious offence in England and Wales or elsewhere unless he/she has been convicted of it.
- ² Schedule 1 of Serious Crime Act 2007 has been amended by Section 47 of the Serious Crime Act 2015, Schedule 5 of the Modern Slavery Act 2015 and other subsequent legislation.
- ³ When considering whether a person has facilitated the commission by another of a serious offence, or whether a person has conducted himself in a way that was likely to facilitate a serious offence, the court must ignore any act which the person can show was reasonable in the circumstances and, subject to that, also ignore his/her intentions or any other aspect of his/her mental state at the time. [s 4(2) and (3)]. This is an objective test.

15. Typically an application for an SCPO will be made at the hearing following a guilty plea or conviction. Notwithstanding this, consideration of an SCPO should be made at an early stage of the case by the prosecutor and prior to the Plea and Trial Preparation Hearing (PTPH). If an SCPO is deemed to be appropriate the CPS should be alerted at the earliest opportunity and consulted with regards to drafting the order.
16. Prosecuting authorities should consider the CPS legal guidance on SCPOs, which sets out the considerations that must be taken into account when considering and drafting an SCPO.
17. The standard authorisation document and draft order, which can be found in the annexes, should be completed and forwarded to the CPS Single Point of Contact (SPOC) at National.SCPOmailbox@cps.gsi.gov.uk at least 28 days prior to the hearing where the application will be made. The SPOC will provide a response within 10 days to enable the prosecutor to serve the notice on the defence prior to the hearing.
18. As required by the standard authorisation document, prosecutors must consult with investigators to ensure the restrictions in the draft order can be enforced.
19. If the CPS approves the application, the prosecuting authority will then facilitate instructing counsel, on behalf of the CPS, and bear the cost. The same counsel as used by the prosecution in the original proceedings may be instructed. If the application is refused, the prosecuting authority has a right to appeal the decision and the application will be passed to the CPS Director of Legal Services to be reconsidered.
20. If the application is approved the prosecuting authority will serve the Notice of Intention to Apply for a Serious Crime Prevention Order on all relevant parties.
21. Counsel for the prosecution will make an application at the Crown Court following the plea or verdict. The full argument may take place at a separate hearing if skeleton arguments are required or if adjourned by the judge.
22. In the event that a Crown Court SCPO is not applied for in error, it is not appropriate to correct this by way of a High Court SCPO.

Process for High Court applications

23. An application for a civil SCPO differs in that the application will be made at the High Court at any time upon proof of involvement in serious crime. A conviction is not required when the involvement is said to be an act likely to facilitate serious crime. A High Court SCPO is likely to be inappropriate while a criminal

investigation is in progress. It is in effect an order that can either prohibit or restrict people from doing things, or require them to do things, or include such other terms, as the court considers appropriate for the purpose of preventing restricting or disrupting involvement by the person concerned in serious crime in England and Wales.

24. Civil High Court SCPOs should be referred to the Head of CPS Proceeds of Crime (POC) via a Chief Crown Prosecutor (or a Whitehall prosecutor of equivalent seniority, or law enforcement officer) as CPS POC holds the CPS lead for civil proceedings. If the Head of CPS POC is unavailable, the application can be considered by the Deputy Head of CPS POC. The application will also be shared with the International Justice and Organised Crime Division.
25. When referring a case, a full file with supporting evidence should be submitted together with a short referral form setting out the basic facts of the case and the reasons underlying the recommended course of action. A template referral form is available at Annex B. The papers should be accompanied by a copy of any report from the investigator and all other relevant information which the Head of CPS POC will need to take into account. Details of the conditions it is suggested are appropriate and the reasons in support should also be included.
26. The Head or Deputy Head of CPS POC is required to refer any High Court application to the Director prior to the making of the application. The Director must consult the Attorney General before any application is made to the High Court. In the circumstances adequate time must be allowed for in the process for this to take place.
27. An application to the High Court is subject to the Civil Procedure Rules.
28. If the Head or Deputy Head of CPS POC approves the application, the prosecuting authority will then facilitate instructing counsel, on behalf of the CPS and bear the cost. The same counsel as used by the prosecution in the original proceedings may be instructed. If the application is refused, the prosecuting authority has a right to appeal the decision and the application will be passed to the Director of Legal Services to be reconsidered.

Variation and discharge

29. In the event that a prosecuting authority wishes to vary or discharge an order, details explaining the reasons for the variation or discharge must be forwarded to the National.SCPOmailbox@cps.qsi.gov.uk.
30. The request must include:

- Summary of the facts of the case
 - Details of the order currently in place and reasons for the variation or discharge
 - Explanation as to why the proposed variations to the restrictions are justified, in terms of real, or significant risk of future serious offences
 - Explanation of why the proposed variations to the restrictions are proportionate in the circumstances
31. The SPOC will provide a response within 14 days and prosecutors must consult with investigators to ensure the restrictions as varied can be enforced.
 32. Should the CPS receive notification of an application by the subject of an order or third party to vary or discharge an SCPO in the High Court, it will inform the prosecuting authority responsible for the original order within 3 days of notification so that the prosecuting authority might consider its response.
 33. The prosecuting authority must then continue to liaise with the CPS regarding its approach to the application to vary or discharge in sufficient time to allow the CPS to instruct counsel at the cost of the prosecuting authority.

ANNEX A: Standard Authorisation Document – Crown Court



REQUEST FOR AN APPLICATION FOR A CROWN COURT SERIOUS CRIME PREVENTION ORDER (SCPO)

OPERATION NAME	
DEFENDANT(S)	
COURT	
STAGE OF PROCEEDINGS	

FACTS
<ul style="list-style-type: none">• <i>Give a brief summary of the facts</i>• <i>Explain the role of each defendant highlighting the alleged criminality</i>

THE DEFENDANT

- *Give an overview of each defendant for whom an order is sought giving their age, employment and relevant previous convictions.*
- *If relevant outline the domestic, lifestyle and financial circumstances of each defendant*

THE STATUTORY CRITERIA

- *Explain why each defendant meets the statutory criteria for an SCPO*

OTHER ORDERS

- *What other orders will be appropriate for each defendant*
- *Explain why other orders are insufficient to address future offending requiring the imposition of an SCPO*

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JUSTIFICATION OF RESTRICTIONS

- *Explain why each restriction is justified in terms of real, or significant, risk of future serious offences*
- *Explain why the restriction is proportionate in the circumstances i.e. why the interference which it will create with the defendant's freedom of action is justified by the benefit to be derived from it. Include reference to the defendant's specific circumstances and consideration of the proportionality of engaging any articles of the Human Rights Act. Also include consideration of the wider impact of any restrictions on others and explain why this is also proportionate.*

Defendant	Restriction	Justification

ANNEX B: Standard Authorisation Document – High Court



REQUEST FOR AN APPLICATION FOR A HIGH COURT SERIOUS CRIME PREVENTION ORDER (SCPO)

PROPOSED SUBJECT OF ORDER

[Forename, Surname, DOB]

DETAILS OF INVOLVEMENT IN SERIOUS CRIME [SECTION 1(1)(a)] ⁱ
<p>Please include here details of the nature of the involvement (e.g. has the subject committed an offence; facilitated an offence; or is likely to facilitate an offence in England and Wales OR elsewhere); include full particulars of conduct and details of what evidence it is intended to rely upon, including if there will be reliance on a foreign conviction. If reliance is to be placed upon offences not contained within schedule 1 part 1, set out why it is suggested that the court should consider the offence sufficiently serious to be treated as such [sections 2(3)]</p> <p>Note: Although these will be civil proceedings, it is anticipated that the standard of proof will be equivalent to the criminal standard of beyond reasonable doubt. Because these are civil proceedings hearsay evidence can be relied upon.</p>

EVIDENCE OF REASONABLE GROUNDS TO BELIEVE AN SCPO WILL PROTECT THE PUBLIC BY PREVENTING, RESTRICTING OR DISRUPTING INVOLVEMENT IN SERIOUS CRIME [SECTION 1(1)(B) AND 19(2)]ⁱⁱ

Please include evidence upon which it is suggested that there is a continuing risk that the subject of the proposed order will be “involved” in serious crime in the future from which the public require protection.

PROVIDE DETAILS OF WHY THE CASE IS NOT APPROPRIATE FOR PROSECUTION.

PROVIDE DETAILS OF POSSIBLE THIRD PARTY INTERESTS (I.E. ANYONE WHO IS LIKELY TO BE ADVERSELY AFFECTED BY THE SCPO) [SECTION 9]ⁱⁱⁱ

WHAT ARE THE PROPOSED TERMS OF THE SCPO SOUGHT, INCLUDING PROPOSED DURATION (START AND END DATES) OF THE SCPO?^{iv}

Prohibitions etc are not limited to England and Wales and can extend outside the jurisdiction so long as they are aimed at preventing, restricting or disrupting involvement in serious crime in England and Wales.

For each proposed term set out how it will prevent, restrict or disrupt conduct which would facilitate serious crime.

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PROPOSALS FOR MONITORING AND COMPLIANCE OF SCPO, INCLUDING DETAILS OF PROPOSED AUTHORISED MONITOR IF APPROPRIATE.

An “authorised monitor” may be appointed to monitor compliance of an SCPO by a body corporate, partnership, or unincorporated association. The SCPO can require the body corporate, etc to pay some of all of the costs of the monitoring service.[s 39(10)]

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OTHER CONSIDERATIONS. FOR EXAMPLE, TIMING ISSUES, POTENTIAL OF ENTERING INTO THE SCPO BY CONSENT, CURRENT RESIDENCE OF PROPOSED SUBJECT (FOR PURPOSES OF SERVING CLAIM).

ⁱ Schedule 1 of the Serious Crime Act 2007 provides a list of serious offences.

A person has been involved in serious crime in England and Wales or elsewhere if he has committed a serious offence in England and Wales or elsewhere if he has committed a serious offence in England and Wales or in a country outside England and Wales; he has facilitated the commission by another person of a serious offence in England and Wales or in a country outside England and Wales or he has conducted himself in a way that was likely to facilitate a serious offence in England and Wales or in a country outside England and Wales. [s2(1) and s2(4)]

ⁱⁱ Implicit in the statutory test is a requirement that there are also reasonable grounds to believe that there is a real risk that the person will be involved in the future in serious crime in England and Wales.

ⁱⁱⁱ For High Court SCPO's under section 9(1) the High Court must give a third party an opportunity to make representations in the proceedings about the making of an SCPO if the third party makes an application to be heard, and the court considers the making of the SCPO would have a "a significant adverse effect" on the third party. Note that an undertaking was given to Parliament during the debates on the Bill that the application for the SCPO will contain details of the potential impact of the proposed order upon third parties. It is not evident from the Civil Procedure Rules that when the claim form applying for a High Court SCPO is served on any relevant third party at the same time as it is served on the subject. It is then up to the third party to make an application to the court to make representations in the proceedings.

^{iv} Examples of conditions which may be sought in both a High Court or Crown Court SCPO include (but are not restricted to):

- Prohibitions, restrictions or requirements in relation to an individual's financial property or business dealings; an individual's working arrangements; the means by which an individual communicates or associates with others, or the persons he communicates or associates with; the premises the individual has access to; the use of any premises or item by an individual; an individual's travel. [s5(3)]
- Prohibitions, restrictions or requirements on body corporates, partnerships and unincorporated associations in relation to financial, property or business dealings; the types of agreements to which such persons may be a party; the provision of goods or services by such persons; the premises to which such persons have access; the use of premises or item by such persons; the employment of staff by such persons [s5(4)]
- Requirement to make a person answer questions or provide information or to produce documents specified in the SCPO [s5(5)]. [Note the person required to answer questions or produce documentation does not necessarily need to be the subject of the SCPO]
- Prohibitions, restrictions or requirements in relation to an individual's private dwelling [s5(6)]

Note that an SCPO cannot require a person to do the following:

- Provide oral answers to questions or requirements to provide information [s11]
- Answer questions or provide information or documents covered by legal professional privilege [s12]
- Produce excluded material as defined by s11 PACE [s13(1)(a)]
- Disclose any information or produce any document held by him in confidence as part of a banking business, unless consent is obtained from the person to whom the confidence is owed, or the order specifically required disclosure of information/ documents of this kind.

Note that a statement made by a person in response to an SCPO requirement cannot be used in evidence in criminal proceedings against him unless the offence is failure to comply with an SCPO or if the person makes a statement in other criminal proceedings which is inconsistent with the statement he made in response to the SCPO requirement. [s15]

ANNEX C: Best Practice Documents

<p style="text-align: center;">NOTICE OF</p> <p style="text-align: center;">INTENTION TO APPLY FOR A SERIOUS CRIME PREVENTION ORDER IF THE DEFENDANT IS CONVICTED OF A SERIOUS OFFENCE</p> <p style="text-align: center;"><u>AND</u></p> <p style="text-align: center;">PROPOSED APPLICATION</p> <p style="text-align: center;"><i>(Criminal Procedure Rules 2005, Rule 50.3)</i></p> <p>R. v</p> <hr/> <p style="text-align: center;">Case reference number:</p> <p>In the Crown Court at</p> <p>1. THIS NOTICE is to tell <i>(name and address of the defendant against whom the prosecutor intends to apply to the court for a serious crime prevention order)</i></p> <p>that if you are convicted of one or more serious offences,⁴ the prosecutor intends to apply to the court for a serious crime prevention order to be made against you.</p> <p>2. THE TERMS OF THE ORDER the prosecutor wants the court to make are:⁵</p> <p>3. THIS NOTICE is also to tell <i>(enter here the name and address of any person(s) on whom the proposed order would be likely to have a significant adverse effect)⁶</i></p>
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⁴ “Serious offence” is defined in section 2(2) of the Serious Crime Act 2007 (the 2007 Act).

⁵ See sections 5 and 39 of the 2007 Act as to the terms that may be included in the order.

⁶ See section 9(4) of the 2007 Act.

that if the defendant is convicted of one or more serious offence(s), the prosecutor intends to apply to the court for a serious crime prevention order.

4. NOTICE

If you are named in section 1 of this notice as the defendant, you may make representations at a hearing about the proposed order. (Written notice of any evidence you rely on needs to be served on the court officer and the prosecutor.)⁷

If you are named in section 3 of this notice as a person on whom the order would be likely to have a significant adverse effect, you may make an application to the court to be allowed to make representations at a hearing about the proposed order.

5. Name and address of prosecutor:

Name

Address

Prosecuting authority⁸

6. Serious offence(s) with which the defendant is charged / has been convicted:

⁷ See rules 50.3(4) and 50.6.

⁸ See section 8 of the 2007 Act for limited class of applicants for such orders.

7. Third party rights and interests to be drawn to the attention of the court:

Attachments in support of the proposed application:

The prosecutor attaches the following material upon which the application will be based (*attach items (i) and (ii) in every case and (iii) and (iv) where applicable.*):

(i) **Description of behaviour** (a list, or lists, with dates, of the specific facts upon which the prosecutor will rely in making this application.)

(ii) **Evidence to be relied on** (e.g. witness statements, any previous convictions):

(a) a list, or lists, of such evidence that has already been served;

(b) a list, or lists, of such evidence that has not yet been served and is attached to and served with this notice.

(iii) **Notice of any hearsay evidence to be relied on.**⁹

(iv) **Other documents served with this notice** (*the prosecutor is required to list below and attach all other documents now served.*)

Signed (Prosecutor)

Date

This notice and proposed application must be served, with the listed attachments upon which the application will be based, as soon as possible (without waiting for a verdict) on the court officer, the defendant and any person on whom the order would be likely to have a significant

⁹ See rule 50.6.

adverse effect.

IN THE CROWN COURT AT INNER LONDON

BETWEEN

REGINA

V

XXXXXX

SERIOUS CRIME PREVENTION ORDER

Sections 1 and 19 of the Serious Crime Act 2007

UPON XXXXX ('the Offender') having been convicted on the at XXXXXXXX of one or more serious offences: XXXXXX AND UPON THE COURT having reasonable cause to believe that an Order under section 19 of the Serious Crime Act 2007 would protect the public by preventing, restricting or disrupting involvement by the Offender in serious crime in England and Wales

IT IS ORDERED AS FOLLOWS:-

For a period of 5 years beginning with the date upon which the Offender is

released from prison on Home Detention Curfew or on Conditional Release (but not released on temporary licence), in relation to his serving the prison term imposed on by the Crown Court at Inner London, and notwithstanding and without prejudice to the terms of any such release or licence upon which he may be released:

[EXAMPLE OF SCPO PRECEDENT BELOW]

Restriction on Employment within Airports or the boundaries of an Airport & notification of all business or social contact with employees within the airline industry.

1. The Offender shall not be employed in any capacity that requires him to enter an airport or the boundaries of any airport. This includes, but is not limited to, employment as a Baggage Handler.
2. The Offender must notify the *[relevant law enforcement authority]* immediately he becomes aware he is conducting any business with or having continued social contact with any person employed within the air industry.
3. For the purpose of this Order business with does not include arranging or conducting any personal travel through an airport.
4. For the purpose of this Order continued social contact would exclude a first meeting with or introduction through mutual friends, but is taken to include; exchanging telephone numbers, addresses, arrangements to meet.
5. For the purpose of this Order, employee of the air industry is taken to include any person employed either by an airline in any capacity and in any person employed by the airport. It excludes persons who merely work at the airport but are employed by another company including but not exclusively, cleaners, shop staff or involved in catering.
6. Any such notice required at clause 4.2 must include:
 - i. full name of the air industry employee;
 - ii. address of the air industry employee, where known;
 - iii. contact details of the air industry employee, where known; and
 - iv. details of the employment of the air industry employee.

Any application by the Offender to vary or discharge this Order must be made by the Offender to the High Court and also served, in accordance with the rules of court, on the Deputy Chief Crown Prosecutor, Crown Prosecution Service London, Rose Court, 2 Southwark Bridge, London SE1 9HS.

Signed:..... Dated:.....

IMPORTANT NOTICE: A person who without reasonable excuse fails to comply with this Order commits an offence punishable by up to 5 years imprisonment and/or an unlimited fine.

Issued by _____

An officer of the Crown C

ANNEX D: Precedent Library

An SCPO precedent library, containing examples of successful SCPOs is available to assist prosecutors in drafting orders and is published on the CPS website [here](#).