

# Serious Crime Prevention Orders, Trafficking Exploitation Prevention Orders and Trafficking Exploitation Risk Orders

National Guidance

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Contents

[Serious Crime Prevention Orders, Trafficking Exploitation Prevention Orders and Trafficking Exploitation Risk Orders 1](#_Toc156827178)

[Notice: 1](#_Toc156827179)

[1. Purpose and Introduction 4](#_Toc156827180)

[Purpose 4](#_Toc156827181)

[Introduction 4](#_Toc156827182)

[2. Governance 5](#_Toc156827183)

[3. What is an SCPO? 5](#_Toc156827184)

[4. What is a TEPO? 6](#_Toc156827185)

[5. What is a TERO? 6](#_Toc156827186)

[6. Criteria for granting an application 7](#_Toc156827187)

[Specified restrictions and conditions 7](#_Toc156827188)

[Application Process 9](#_Toc156827189)

[Referrals 9](#_Toc156827190)

[Practical considerations before making a referral 10](#_Toc156827191)

[Orders granted at Court 10](#_Toc156827192)

[Service of Notice 11](#_Toc156827193)

[7. Monitoring an Order 11](#_Toc156827194)

[Scottish Prison Service 12](#_Toc156827195)

[Criminal Justice Social Work 12](#_Toc156827196)

[Risk Management Meeting 12](#_Toc156827197)

[Initial Interaction with Subject 13](#_Toc156827198)

[ViSOR 14](#_Toc156827199)

[Change of address 15](#_Toc156827200)

[Notification of changes 15](#_Toc156827201)

[Requirement to Report 15](#_Toc156827202)

[Notification of Income 16](#_Toc156827203)

[Delivery of Correspondence 16](#_Toc156827204)

[8. Three Levels of Monitoring 17](#_Toc156827205)

[Level 1 – Passive Monitoring 17](#_Toc156827206)

[Level 2 – Active Monitoring 18](#_Toc156827207)

[Level 3 – Pro-active Monitoring 19](#_Toc156827208)

[9. Disclosure 19](#_Toc156827209)

[10. Limitations of an Order 19](#_Toc156827210)

[11. Breaches of an Order 20](#_Toc156827211)

[Dealing with breaches 20](#_Toc156827212)

[Charge code and detail 21](#_Toc156827213)

[Communication Strategy 23](#_Toc156827214)

[Alter or Vary an SCPO / TEPO / TERO 23](#_Toc156827215)

[Power of Search 24](#_Toc156827216)

[Examination of Devices 24](#_Toc156827217)

[Multi-Agency Public Protection Arrangements (MAPPA) and similar processes 24](#_Toc156827218)

[Compliance record 26](#_Toc156827219)

[Version control table 26](#_Toc156827220)

[Feedback 26](#_Toc156827221)

## Purpose and Introduction

### Purpose

This Guidance supports the Police Service of Scotland (Police Scotland) Serious and Organised Crime Policy, Human Trafficking SOP, Crime Investigation SOP and Cyber Kiosk Toolkit.

Serious Organised Crime (SOC) and trafficking and exploitation presents significant threat and risk of harm to communities in Scotland. Those who reoffend upon release from prison present a credible risk to the safety of communities in Scotland.

This document provides Police Officers and Police Staff with an understanding of how Serious Crime Prevention Orders (SCPOs) and Trafficking Exploitation Prevention Order (TEPOs) operate.

There are separate processes for Trafficking and Exploitation Risk Orders (TEROs). If you need advice on how to obtain a TERO you should contact the National Human Trafficking Unit or your local Human Trafficking Champion.

### Introduction

In 2015, the Scottish Government introduced the Serious Crime Bill. This created the Serious Crime Act 2015 which was part of the Scottish Governments Serious and Organised Crime (SOC) Strategy. The Human Trafficking and Exploitation (Scotland) Act 2015 was also passed by Scottish Parliament in 2015.

In 2016, Police Scotland created the Serious Crime Prevention Order Unit (SCPOU) within Specialist Crime Division. The SCPOU supports Divisions with regards to the referral, application, and monitoring of both SCPOs and TEPOs. The unit acts as a conduit between Police Scotland and the Crown Office & Procurator Fiscal Service (COPFS) and other agencies.

## Governance

SCPOs / TEPOs / TEROs will feature within relevant SOC Governance and Management meetings at a local, regional and national level.

A National Support Group also takes place on a bi-monthly basis.

The purpose of the group is to provide communication and education to best deliver the SCPO / TEPO / TERO process within Police Scotland and provide a platform for Divisions to share best practice, discuss emerging threats, troubleshoot and network in relation to Orders.

The aim is to enhance capability and operational delivery in relation to the policing of Subjects and encourage a whole system response that utilises capabilities effectively.

Delivery is further supported by;

* A Police Scotland and Scottish Prison Service (SPS) quarterly SCPO Review Group. The aim of the Group is to share information and discuss risks in relation to those offenders nearing their release from prison and to effectively manage their transition in the community.
* A Police only Risk Management Meeting. The meeting is scheduled in advance of upcoming prison releases and supports Divisions with Risk Management Plan (RMP) considerations.

## What is an SCPO?

SCPOs are Civil Court Orders and used to protect the public by preventing, restricting and/or disrupting a Subject’s involvement in serious crime and can last up to 5 years. SCPOs can be granted in two circumstances:

1. An application is made by the Lord Advocate to the relevant Court where the criminal case is heard at the point which the Accused is convicted of the relevant offence(s). This is referred to as an “on conviction Order”.
2. In Civil High Court proceedings, a Standalone application can be made by the Lord Advocate where it outlines proof of a Subject’s involvement in serious crime and is presented for consideration where no criminal conviction has taken place. This is referred to as a “Standalone Order”.

Standalone SCPOs can also be applied to organisations who facilitate criminal activity.

Information has been removed due to its content being exempt in terms of the Freedom of Information (Scotland) Act 2002: Section 35, Law enforcement.

## What is a TEPO?

TEPOs are similar to SCPOs, in so far as they are intended to protect the public from those that would cause harm, by means of serious criminality – in this case, trafficking and exploitation offences.

A TEPO can be granted at Court after an application is made by the Crown. There is no “standalone” option with regards to TEPOs.

The conditions that can be set out within a TEPO are the same as those that can be made through an SCPO. The only meaningful difference being that in a TEPOs conditions will last for at least five years (except foreign travel restrictions).

A Sheriff may grant an interim TEPO on receipt of a TEPO application for a fixed period or until a decision is made on the full TEPO application. An interim TEPO should be treated as if it were a ‘full’ TEPO for the duration that it is in place.

## What is a TERO?

TEROs are similar to TEPOs. They do however vary from a TEPO and SCPO in that no conviction for a relevant offence is required. An application may be made by police where they can demonstrate a person presents a risk of committing a relevant Human Trafficking (HT) offence and each provision is necessary.

For more information on TEROs contact the National Human Trafficking Unit.

## Criteria for granting an application

The relevant Court having heard the criminal case and convicted the individual will consider granting such an application, if the charge is a ‘serious offence’ as specified within the meaning of Serious Crime Act 2007 or falling within the description specified in Part 1 of Schedule 1 Serious Crime Act 2007.

Any person who is convicted of Section 41(1) of the Counter-Terrorism Act 2008 (Part 4) is also eligible for an SCPO.

Where the offence libelled is not specified but is considered to be serious enough, SCPOU can provide advice on a case by case basis on whether an application would be suitable and if required will liaise with Serious and Organised Crime Division (SOCD), Crown Office.

The Court also considers the specified terms and conditions requested within the application and whether the Order is necessary and proportionate.

SCPOU can provide advice on the conditions that may be appropriate on a case by case basis.

The criteria for granting a TEPO and TERO is set out within the Human Trafficking and Exploitation (Scotland) Act 2015. There are many similarities in terms of threshold compared with SCPOs.

It may be possible to apply for either an SCPO or a TEPO. In these instances the SCPOU will be able to provide guidance as to which approach is most appropriate.

It is possible to change the type of Order being applied for during the drafting process if required.

### Specified restrictions and conditions

Orders are designed to prevent, prohibit, restrict and/or disrupt the activity of the Subject from participating in certain types of activity which could be connected to crime.

Terms of the Order must be necessary and proportionate and must relate to the specific facts of the case. It should be justified as appropriate for the purposes of protecting the public by preventing or disrupting the Subjects future involvement in serious crime. Consideration of a condition/restriction should also be measured against the capability to monitor the subject on a particular condition/restriction.

The following provides some examples of restrictions/conditions but is not exhaustive:

* Communication devices (e.g. mobile telephones, computers, tablets etc.);
* Submit communication devices for examination;
* Email accounts;
* Travel Documents;
* Employment (Employer and/or business interests);
* Notification of business interests;
* Associations (both professional and personal);
* Bank accounts;
* Restrictions on physical possession of cash;
* Borrowing of cash;
* Vehicles owned or used (both personal and business / employment);
* Places of residence;
* Notification on property owned or associated with;
* Use of telephone kiosks/internet cafes/libraries etc.;
* Use of surveillance/counter-surveillance equipment;
* Foreign travel;
* And/or arrange, facilitate the travel, employment or accommodation of another.

SCPOs can also be designed to prohibit and/or restrict activity of a company or corporate body including the requirement to report on activity. The following provides some examples but are not exhaustive:

* Notification on their financial, property or business transactions or holdings;
* Prohibition on the types of agreements to which they may be a party;
* Restrictions on the provision of goods or services by them;
* Restriction on employment of staff;
* Restrictions on their use of any premises or item.

It is important to emphasise that Orders are not punitive. Each condition must be in place in order to promote a “preventative effect” – not punish the person to whom it applies.

Where required, an innovative approach is encouraged in relation to this objective and engagement from all stakeholders in terms of how conditions can best be formulated is welcomed.

### Application Process

The SCPOU (Information has been removed due to its content being exempt in terms of the Freedom of Information (Scotland) Act 2002: Section 30, Prejudice to effective conduct of public affairs.), is the single point of contact in relation to the process of referrals and applications for SCPOs and TEPOs. Advice regarding TERO applications should be sought from the National Human Trafficking Unit (NHTU).

Orders are designed to be used only for those Subjects who are considered to be involved at the highest levels of Serious Organised Crime and Human Trafficking or other sufficiently serious criminality worthy of an application to the Court.

### Referrals

The Referral Form 130-016 allows Senior Investigating Officers (SIO’s) to outline the circumstances of the case including specified restrictions/conditions for consideration. Suitable cases may also be identified by SCPOU and COPFS.

On receipt of a referral, SCPOU will carry out a review and consult with COPFS. In general, TEROs relate to live enquiries, after initial contact with the NHTU, the SIO should consult with COPFS.

Referrals should be sent to Information has been removed due to its content being exempt in terms of the Freedom of Information (Scotland) Act 2002: Section 30, Prejudice to effective conduct of public affairs.

A decision will then be taken as to whether an application is progressed or not. The rationale for any decision will be fed back to the Officers making the referral.

If progressed the SCPOU will complete relevant paperwork to COPFS for SCPOs and TEPOs. NHTU should be consulted in relation to TERO applications which are prepared by Legal Services.

In order to compile SCPO / TEPO application the SCPOU will require access to material from the investigation. Information has been removed due to its content being exempt in terms of the Freedom of Information (Scotland) Act 2002: Section 35, Law enforcement.

### Practical considerations before making a referral

It is important that referrals are made in good time prior to the Subject’s first appearance at Court. Information has been removed due to its content being exempt in terms of the Freedom of Information (Scotland) Act 2002: Section 35, Law enforcement.

The following should form part of the SIO’s consideration prior to a referral:

* Does the subject already have an Order? (A person cannot have more than one SCPO / TEPO / TERO running concurrently).
* Is the subject aged 18 or over?
* Has the statutory criteria under relevant legislation been fulfilled? If not, is the offence serious enough to warrant consideration? (liaise with SCPOU);
* Is the subject directing or involved in serious organised crime?
* Has the subject had a specialist function or knowledge of the crime group?
* Is there a significant risk of harm to the community and likelihood that the subject will re-offend upon release from prison?

### Orders granted at Court

An Order is considered by the Court following the conviction of the offender.

If granted, notification of the Court’s ruling is passed to the SCPOU who will make the SIO aware. A copy of the Order is sent to Information Resources and details are then placed on the Police National Computer (PNC).

Copies are sent to SCPOU and Scottish Prison Service (SPS). Information has been removed due to its content being exempt in terms of the Freedom of Information (Scotland) Act 2002: Section 35, Law enforcement.

If for any reason a “certified” copy of an Order is required the requestor should contact the Court that granted the Order.

### Service of Notice

An Order is “served” to the Subject at the point it is granted in Court. The Police do not have any role in this. The Subject is not required to sign or otherwise endorse the SCPO for it to be considered as served.

Serious Crime Act 2007 however sets out the procedure for serving SCPOs if the above did not take place. The notice may be served on them:

1. by delivery to ‘him’ in person; or
2. sending it by recorded delivery to ‘him’ at his last known address (whether residential or otherwise).

The powers of the Order will take effect upon the Subject’s release from prison (including release under home detention curfew or released on licence, but not temporary release).

## Monitoring an Order

It is highly likely that a person who is the Subject of an SCPO / TEPO will undertake a period of imprisonment. The Order does not become ‘live’ (and the Subject is not bound by the restrictions/conditions) until they have been released from prison.

If the Subject is returned to prison for any reason (e.g. remanded) after the Order has gone live, the Order will remain ‘live’ for this period in prison. For this reason a Prison Entry Form 130-022 should be submitted to provide awareness of the Order and the conditions/restrictions.

### Scottish Prison Service

SPS play a vital role in relation to offender reform. Their awareness of the Order may be factored into their rehabilitation programme.

SCPOU work closely with the SPS in order to manage the movement of Subjects between custody and the community.

### Criminal Justice Social Work

Criminal Justice Social Work (CJSW) will be a key partner in relation to the rehabilitation process for the Subject. Engagement between the relevant Divisions and CJSW is encouraged. There is no impediment to full details of Orders being shared with CJSW.

### Risk Management Meeting

Approximately one month prior to the Subject’s Parole Qualifying Date (PQD) and in preparation of the Subject’s release from prison, a Risk Management Meeting (RMM) is convened by SCPOU (NHTU will also be present in relation to TEPOs and TEROs).

In most cases Local Policing Divisions (LPDs) will take ownership of the management and monitoring of Orders, Information has been removed due to its content being exempt in terms of the Freedom of Information (Scotland) Act 2002: Section 35, Law enforcement.

The meeting is to inform the Division (where the Subject is likely to be resident) of the potential upcoming release, provide antecedent information and details of the Order to assist the Division in completing a RMP.

Prior to this meeting the Division will be provided with a completed Monitoring Guidance Form (for SCPOs form 130-024, TEPOs form 130-023 and TEROs 130-025) and a RMP template 130-017.

The Monitoring Guidance Form will outline the circumstances which led to the Subject’s conviction and a summary of the conditions/restrictions on their Order as well as information on how to respond to some of the practicalities of policing an Order.

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### Initial Interaction with Subject

Below provides a guide to working practices that have previously been found beneficial when interacting with a Subject immediately following their release from Prison.

1. Information has been removed due to its content being exempt in terms of the Freedom of Information (Scotland) Act 2002: Section 35: Law enforcement.
2. Inform the Subject that they may be required to attend a police station on two occasions during a calendar year.
3. Provide the Subject with dedicated Divisional mail box to inform Police of any changes to notifications.

### ViSOR

ViSOR is the nationally agreed platform for the effective management of offenders who are subject of SCPO / TEPO / TERO.

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### Change of address

If the Subject moves to another Division within Police Scotland then the monitoring of the Order will transfer to that Division.

If the Subject moves to another force area, the Order will transfer to that force.

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### Notification of changes

The Subject as part of the Order is required to give the Police notifications.

The Division will provide a dedicated email address to the Subject so that notifications can be communicated by the Subject direct to the Division.

The Subject also has the option of sending any notifications to Police by mail, recorded delivery to the designated address. The Subject can also report changes directly at a Police Station. A solicitor acting on behalf of the Subject can also provide details of any notification via the approved methods.

### Requirement to Report

The Subject of an Order may have a requirement to report to a Police station twice in a calendar year.

The Subject must be notified in writing using form 130-021 by a Constable and be provided the notice required by their Order. It should be noted that whilst the Order will be worded that a Constable provides notice to the Subject – this can in reality be provided by an Officer of any rank and from any Police Service in the UK.

The notice must be served in the manner specified by the Subject’s Order.

### Notification of Income

An Order may contain a requirement to notify Police of income. Information has been removed due to its content being exempt in terms of the Freedom of Information (Scotland) Act 2002: Section 35, Law enforcement.

### Delivery of Correspondence

It is preferable to hand deliver any correspondence to the Subject Information has been removed due to its content being exempt in terms of the Freedom of Information (Scotland) Act 2002: Section 35, Law enforcement.

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## Disclosure

SCPOs, TEPOs and TEROs are granted in open Court. The conditions/restrictions within the Orders are not secret. In many cases their details can be obtained through an open source search.

Any proactive disclosure of the existence of an Order, relating to a particular subject and its conditions/restrictions outside of Law Enforcement and Partners to the community should be carefully considered.

Any decision regarding disclosure should be proportionate to its aim and must be made by an Officer of at least the rank of Inspector.

## Limitations of an Order

Orders cannot require a person:

* To provide oral answers to questions;
* To answer questions or provide information or documents which are covered by legal privilege;
* To produce excluded material;
* To disclose any information or produce any document held by them in confidence as part of a banking business unless:
	+ There is consent from the person to whom confidence is owed or;
	+ The order specifically requires disclosure of such information or documents;
	+ To provide information or documents or answer questions if it would involve a disclosure prohibited by another enactment;
	+ Submit to a search of their person, vehicle or premises. Other powers of search (drugs, weapons, Proceeds of Crime Act (POCA) etc, must be relied upon instead).

## Breaches of an Order

A breach of any condition is a criminal offence with;

* Maximum penalty of up to 5 years imprisonment or;
* A fine;
* Or both.

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### Dealing with breaches

The legislation that creates SCPOs / TEPOs / TEROs is silent with regards to powers of arrest.

Officers should utilise powers of arrest under Criminal Justice (Scotland) Act 2016 where they suspect that a Subject has breached their Order. Where there is corroborative evidence of a breach it should be reported to COPFS by means of a Standard Prosecution Report in all cases.

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If advice is required on reporting a breach this should be sought from the SCPOU.

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### Charge code and detail

When reporting the circumstances to COPFS, it should be highlighted in the Remarks section of the SPR2 for the breach of the Order to be marked for the attention of Information has been removed due to its content being exempt in terms of the Freedom of Information (Scotland) Act 2002: Section 30, Prejudice to effective conduct of public affairs.

In such circumstances the SCPOU should also be notified of any action taken.

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### Alter or Vary an SCPO / TEPO / TERO

It is possible to petition the Courts to alter or vary Orders.

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### Power of Search

There is no power of search within an Order. Other powers of search afforded to Police should be utilised where appropriate; Section 23 Misuse of Drugs Act, Sections 48/50 Criminal Law Consolidation (Scotland) Act 1995 etc.

### Examination of Devices

An Order may have a requirement for the Subject to provide Police their mobile devices etc. for examination. Form 130-019 should be sent to the subject to inform them of the requirement.

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## Feedback

All Police Scotland service delivery Policies, Standard Operating Procedures (SOPs) and National Guidance are subject to regular reviews. It is important that user feedback is considered when documents are reviewed.

If any officer / staff member wishes to provide comment, or make suggestions for improvements to this or any associated document, a Service Delivery Policy and Procedure Feedback Form (Form 066-014) should be used.