



# **NEW POWERS AGAINST ORGANISED AND FINANCIAL CRIME**

**A SUMMARY OF RESPONSES**

November 2006

ISBN 10: 1-84726-117-5  
ISBN 13: 978-1-84726-117-5

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## **Foreword by the Home Secretary**

“Serious and organised crime can bring misery to the lives of those it touches, whether that is in the UK through the damage done to our communities by those dealing in illegal drugs, or more widely beyond our borders by those who prey on the innocent victims of people trafficking.

We have delivered real improvements in recent years, particularly with the creation of the Serious Organised Crime Agency to bring together those fighting serious and organised crime. It is running over 250 operations and, in its first six months, arrested 358 individuals. When SOCA cases have come to court, the success rate has been more than 90%.

However, organised criminals adapt quickly to the methods used against them and we need to ensure that we provide the best possible tools for those in law enforcement to stay one step ahead of those seeking to bring such harm to our communities.

The Green Paper *“New Powers Against Organised and Financial Crime”* set out the Government’s proposals for delivering these tools as part of the overall strategy set out in the 2004 White Paper *“One Step Ahead, a 21<sup>st</sup> Century Strategy to Defeat Organised Crime”*.

I would like to thank all of those who took part in the consultation process on these proposals for the useful input into the development of policy in this area. These comments, of which the key points raised are contained in this response, will help us to deliver improvements in the way in which serious and organised crime is tackled in this country.

To deliver these improvements, we will be introducing legislation, as announced in the Queen’s Speech, which will provide the necessary framework for taking this work forward. We will continue to listen to and work with stakeholders from all areas to ensure that the proposed legislation meets the needs of law enforcement so that we continue to drive down the numbers of people who become victims of organised crime.

The Government is committed to doing everything possible to help the police and the Serious Organised Crime Agency prevent the harm caused by organised criminals; to detect and apprehend them when they do commit such crimes; and to make sure that they do not benefit from the harm they cause to others. This is what the legislation which stems from the Green Paper will achieve.”



**John Reid**  
**Home Secretary**

## **Background**

The consultation document 'New Powers Against Organised and Financial Crime' was published on 17<sup>th</sup> July 2006. The document was published in hard copy and on both the Crime Reduction and Home Office websites and responses were received until 17<sup>th</sup> October 2006.

## **The Responses**

In total we received 118 responses. The overall number of responses was sufficient to provide a good cross section of views on the proposals. The consultation document was well received with respondents generally supporting proposals to enhance the powers available to law enforcement to tackle serious organised and financial crime.

The number of responses from each sector is given in the table below:

<b>SECTOR</b>	<b>NUMBER OF RESPONDENTS</b>
Police	27
Business/Commercial	25
Academic/Professional Association	23
Banking	17
Government Departments	7
Agencies	4
Judiciary	4
NGO/Charity	4
Local Authority/Trading Standards	3
Legal	2
Individual	2
<b>TOTAL</b>	<b>118</b>

## **Executive Summary**

The responses to the Green Paper “*New Powers Against Organised and Financial Crime*” were broadly supportive of the Government’s proposals. Most respondents recognised the need to stay one step ahead of serious criminals and to continue to provide law enforcement with the flexible range of tools necessary to meet the evolving challenge presented by serious and organised crime.

## **Data Sharing**

The Government intends to provide a suite of tools that will benefit the public and private sector in their fight against fraud. Respondents were overwhelmingly in favour of more information sharing to prevent fraud, particularly across both the public and private sectors. Respondents cited problems with the existing data sharing gateways and so the Government intends to legislate to create a general power to allow cross-sector data-sharing on fraudsters to take place. The majority of respondents felt that the most appropriate vehicle for this data sharing would be CIFAS, the UK’s fraud prevention service.

The intention to move towards a situation where all applicants for public services should expect to have their details checked against a fraud prevention database was welcomed. Respondents were clear, though, that the proposed improvements in fraud prevention should be balanced by appropriate safeguards, including a high level of security for the sharing and warehousing of sensitive information and appropriate penalties for the wilful misuse of personal and sensitive data. We have worked closely with the Department of Constitutional Affairs and the Information Commissioner to ensure that the proposals are compliant with both the Data Protection Act and the Human Rights Act.

In addition, respondents were very much in favour of placing the National Fraud Initiative (NFI) on a statutory footing, recognising the proven value of the NFI exercise. The majority of respondents also saw the potential in matching Suspicious Activity Reports against a range of public sector databases – described as a “fundamentally sensible idea” with “clear and tangible benefits”.

On the proposals for using data mining, the main concern expressed was the need to work closely with the Information Commissioner in developing these proposals further. The Government has been doing so and will continue to do so to produce codes of practice to govern data mining exercises.

## **Criminal Law**

The proposals in the Green Paper built on the suggested offences set out by the Law Commission on encouraging and assisting crime. Opinions differed as to the exact behaviour that should be criminalised by clause 2 of the Law Commission proposals – between those who felt that the offence should be

restricted to those who “believe” that an offence “will” be committed and those who thought it should be widened. Though arguments put forward on both sides were strong, slightly more respondents favoured the latter approach.

We are discussing the issues raised during the consultation exercise with prosecutors, investigators and judges. We believe that there are sound policy reasons and practical advantages to changing the law along the lines suggested in the Report and real benefits in relation to organised crime. We therefore intend to accept the Law Commission proposals but will consider carefully the scope of the offence in clause 2.

On the proposal to introduce a new offence aimed specifically at those who assist organised crime, the majority of responses were supportive. There were concerns, however, around for example whether such an offence was necessary alongside the more general offences proposed. The Government believes there could be advantages in an offence that criminalises indirect assistance. We will look closely at whether the Law Commission proposals as they stand or with minor modification might be suitable to capture this behaviour.

#### Serious Crime Prevention Orders

The majority of respondents agreed that the creation of a flexible civil order, as proposed, would provide a useful tool to law enforcement in their fight against serious crime. There was concern from some of those who responded that any such order should be fully compliant with the European Convention on Human Rights in the terms it imposed on individuals. The Government is committed to balancing the rights of the victims of organised crime with those upon whom an order might be imposed in a way which is consistent with the Convention. Only the courts will be able to grant an order and, as public authorities for the purposes of the Human Rights Act, they will only impose such conditions as are compliant with the Convention.

Another concern which was raised was the potential impact of the orders on 3rd parties, i.e. those affected by the order but not subject to it. The comments made have been very helpful in developing policy on how this situation will be handled. We will provide that, as part of the procedure for making an application for an order, prosecutors will have to give consideration to, and bring to the court’s attention, the potential impact on 3rd parties. The courts will then be able to make an informed decision as to what terms of the order might be reasonable.

One issue on which the majority of respondents agreed was that, if the orders were to be useful, there would need to be flexibility in the terms of the order for the courts to be able to respond to the evolving threat posed by organised crime.

## Proceeds of Crime

The Government intends to further enhance the powers within the Proceeds of Crime Act 2002 and asset recovery work as a whole in order to further increase the efficiency of those involved in this area, with a commitment to recover £250m by 2009-10. Respondents were almost completely in favour of extending the powers of civilian financial investigators to equate with those available to constables and officers of HMRC. This was a natural progression of financial investigators powers as financial investigation became more of a core business for many public bodies such as the Serious Fraud Office, the Immigration Service and local authorities. Financial investigators will have a better range of powers to contribute to the overall value of assets recovered.

An area of concern for the Government was the enforcement of confiscation orders once they had been issued by the courts. Respondents were supportive of the proposal to contract out enforcement of confiscation orders and the Government will now consider the detail of this further. We have concluded that the proposal can be achieved administratively without the need for legislation. Respondents were not supportive of the proposal to cancel confiscation orders that cannot be paid. The Government accepts that this proposal could lead to abuse and does not complement other statements about strengthening enforcement measures. We are therefore going to reconsider this issue. Respondents raised many technical concerns regarding the merger of the confiscation and enforcement hearings. We accept that the proposal is a bold and complex one which would require significant more work and so it will not be included in the legislation. The Government is committed to improving collection of proceeds and so other lesser measures to strengthen the enforcement scheme and the Proceeds of Crime Act as a whole are being considered to possibly be brought forward in the legislation.

The invitation to comment on the consent provisions in respect of money laundering elicited a mixed response. The financial industry is supportive of the reporting regime but views on how it can be improved to reduce regulatory burden while still providing valuable intelligence to law enforcement were varied. Due to the complex nature of this issue, the Government is to develop more detailed proposals in slower time with a view to consulting in the future. There will be no legislative change at this time.

## **Detailed Summary of the Responses to Questions 1-11**

### **Q1. (i) Should public sector information on suspected fraudsters be shared more widely within the public sector and with the private sector to prevent and detect fraud?**

The UK economy suffers fraud losses of around £16 billion a year<sup>1</sup>. The Government green paper, *New Powers Against Organised and Financial Crime* (Cm 6875) demonstrated the results of pilot cross sector data matching exercises on fraudsters. It found high levels of matches between those suspected of defrauding service providers in the public sector, and those suspected of defrauding the private sector.

The Government intends to provide a suite of tools that will benefit the public and private sector in their fight against fraud. Decisions on how best to use these tools should be taken by individual agencies and therefore the powers the Government intends to create will be enabling rather than mandatory.

Improving the way the Government shares information will help those departments and agencies which suffer fraud to prevent such losses. Respondents were overwhelmingly in favour of the notion that more information should be shared to prevent fraud, particularly across both the public and private sector. They were keen to see collaboration between public and private partners and believed all participants stood to gain. The recently published *Government Fraud Review* also called for more sharing of information to prevent fraud and saw this as a key tool in the fight against fraudsters.

There are both statutory and cultural barriers preventing the sharing of information which could help to reduce the incidences of fraud and improve the way we deliver public services.

Respondents from both sectors recognised the value in sharing information on fraudsters. Despite the wide variety of services offered by the public and private sector, it was broadly acknowledged that fraudsters do not limit their criminal activity to one particular kind of service provider. Respondents were almost uniformly in agreement that a mechanism through which to share this 'dirty' data and enable service providers to protect their revenue was necessary.

Respondents cited the problems created by the existing Data Protection Act (DPA) gateways and data sharing provisions that exist alongside the DPA. As such, the Government intends to legislate to create a general power to allow cross sector data sharing on fraudsters to take place.

The sharing will take place through a body, or bodies, to be decided, designated by Order. Departments, agencies and organisations retain control of the

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<sup>1</sup> Norwich Union, 2005, *The Fraud Report – Shedding Light on Organised Crime*

information that is shared, and only information on those who are suspected of fraud will be shared.

There is no existing public body capable of handling this data exchange. However, the Government's Fraud Review outlined plans to create a National Fraud Reporting Centre which could assume this function and much more.

Legislative changes alone will not resolve the issues and reduce fraud losses. The Government will encourage its agencies and partners to recognise the benefits of data sharing, not only to protect their revenue but also to the Government as a whole. We will also provide guidance and support to those sharing data to ensure that it is carried out appropriately and legally.

The intention to move towards a situation where all applicants for public services should expect to have their details checked against a fraud prevention database was welcomed.

**Q1. (ii) What sort of safeguards would you expect to see?**

Respondents were concerned that the right safeguards should be in place to allow for this data sharing. The Government is equally concerned that data sharing should be undertaken legally and properly without infringing the rights of individuals. The existing legal framework of the Data Protection Act is established to ensure appropriate and regulated data sharing. The Home Office have worked closely with the Department for Constitutional Affairs and the Information Commissioner to ensure that the new powers are designed to be compliant with the Data Protection Act and the Human Rights Act (HRA)

Respondents emphasised the need to ensure a very high level of security for the warehousing of such sensitive information. They were also keen to ensure that rules of participation with the designated body/bodies are kept confidential so that fraudsters do not have an opportunity to outwit the system. The Government would ensure that any body designated operated to high standards of security.

Respondents agreed that data should be shared in respect of those suspected of fraud but they asked the Government what safeguards would be put in place to prevent innocent people being discriminated against on the basis of the information shared. We will ensure that any sharing is DPA compliant. The new power would enable departments and agencies to be *warned* of potential fraud risks. They would still need to investigate potentially fraudulent applications for services and base their decision to grant or refuse such services on their own risk assessment. Individuals will enjoy the subject access rights to the information held about them as prescribed in the DPA. We will ensure that the designated body provides for individuals to have recourse to compensation if they are unfairly affected by the information held by them.

Many respondents wanted to see measures to share information across Government and with the private sector to be complemented with dedicated fraud detection teams within departments and agencies. The Home Office cannot stipulate how best individual agencies can protect themselves against fraud but we will seek to ensure that a designated body is required to provide adequate training and safeguards to regulate access to data.

Public sector participants were concerned about the onward transmission of their information to the private sector, how it would be used and how it would be protected. The DCA have recently consulted on increasing the penalties for the wilful misuse of personal and sensitive data and some respondents saw such an increase in penalties as a necessary safeguard if such data sharing is to take place. Consideration is being given to whether Departments which already have statutory safeguards in the form of specific offences for onward transmission should have these extended.

Respondents queried what the threshold for reporting information on suspected fraud should be. This will be dependent upon the rules of the body which is designated.

**Q1. (iii) What do you believe the most appropriate vehicle for data sharing would be?**

The majority of Respondents identified CIFAS as the most appropriate vehicle through which to share public and private information to prevent and detect fraud. They recognised the benefits of utilising a function that is already effective, avoiding expensive set up costs and offering the public sector access to an existing database on suspected fraudsters.

There was broad recognition of the benefits of reciprocal data sharing across the sectors and between government departments and agencies and an appetite to see participation across the sectors for data sharing in this way. Respondents were confident of CIFAS' track record on preventing fraud and the secure infrastructure through which it currently shares data. Low participation costs were also attributed to CIFAS.

Those public sector members who do not have legislative barriers to joining CIFAS may now seek to do so and the Government recognises the benefits of a large number of public sector bodies joining.

Some reservations about the CIFAS option were expressed. It was seen by some as a short term option which should be complemented by the proposed National Fraud Reporting Centre should it be established in the future. Public sector bodies were apprehensive of the lack of law enforcement involvement in CIFAS. The intention would be that the NFRC would be established within a police force.

We will work with the Information Commissioner to produce a data matching Code of Practice to govern any information sharing of this kind.

**Q2. Should the scope of the National Fraud Initiative (NFI) be expanded and be placed on a statutory footing in order to increase its capacity to detect fraud within the public sector?**

The proposed expansion of the NFI and placing the fraud detecting regime on a statutory footing will play a vital role in prevention and detection of fraud on the public purse. Respondents to the green paper were overwhelmingly in favour of this change and recognised the proven value of the NFI exercise.

The green paper generated a great number of responses to the question of the NFI, the majority of which agreed that widening the NFI and placing it on a statutory footing will increase public confidence in the scheme as well as widening its abilities. The Information Commissioner also felt that this approach would provide clarity for how information can and should be shared with the NFI. Indeed, a great number of respondents also recognised that the public would expect this sort of necessary data matching to prevent fraud to already take place in order to prevent fraud against public funds.

As respondents recognised the value of sharing information with a designated body on suspected fraudsters, they also wanted to see the results of NFI matching exercises shared with the designated body such as CIFAS. The Government believes this direct data sharing would be an inappropriate use of personal information. The premise of the NFI is to provide agencies with information of potential frauds that have been committed against them, not to assume fraud has been committed and report directly to fraud prevention bodies. The participating agency or organisation could, however, report the NFI findings to the designated body if they were members, and their further investigations discovered evidence of fraud that met the threshold for reporting.

There was a desire to ensure that appropriate safeguards were in place to ensure that data protection principles were not breached and that individuals were given recourse to appeal should they need it. The Government supports this view and any legislation will work within and reflect the protections such principles offer. Respondents also sought clarity on what consent would be needed to perform this data matching and how the Government would ensure that the changes to the NFI would still be compliant with the Data Protection Act.

It was requested that participation in the NFI, particularly for private sector bodies should be voluntary rather than mandatory. When the Government legislates on these proposals, it intends to maintain only those currently subject to mandatory audit by the Audit Commission as those who will *have* to participate with the NFI. Beyond that, the legislation will allow for participation to be voluntary so that agencies and bodies can decide of the value of sharing their information with NFI.

One theme that became apparent from the responses to the paper questioned what departments and other bodies would do with the information provided by the NFI. Some were concerned that information may not be followed up correctly, whilst others highlighted that as this could be resource intensive it may lead to ineffective use of the information provided by the NFI if appropriate resources were not provided to carry out the necessary enforcement. The government recognises this issue. However, it is intended that government departments and others should assess for themselves the business case for participation in the NFI scheme.

In bringing forward legislation the Government will also examine the relationship between the NFI and the proposed National Fraud Strategic Authority and the possibility of usefully combining their functions.

**Q3. We would welcome your views on the Serious Organised Crime Agency (SOCA) matching Suspicious Activity Reports (SARs) received from the regulated sector against a range of public sector databases.**

Respondents virtually universally welcomed the potential matching of SARs against a range of public sector databases. They saw this as a 'fundamentally sensible idea' and were confident that 'clear and tangible benefits could be derived from this'.

With over 200,000 SARs reported to SOCA each year, tools which allow prioritisation of caseload would enhance the ability to prevent and detect serious financial crime.

Concerns were expressed about the mechanism and process of carrying out this matching, and particularly that those participating in the exercise or providing the information should be made aware of the outcomes of the exercise.

The Government will ensure that law enforcement agencies working on SARs will execute such data matching exercises in a transparent and proportionate way. Data will be anonymised/standardised to ensure individuals within reporting institutions cannot be recognised, as provided for in Home Office guidance on the SAR regime.

As with all of the proposals, the Government will continue to work with partners and the Information Commissioner to ensure that any bulk data matching done in this way is proportionate. There was broad recognition of the value of the existing SARs tool. Enhancing this regime will strengthen our ability to prevent and detect serious financial crime.

Legislation is not needed to provide for this matching as SOCA's data sharing gateway (the Serious Organised Crime and Police Act 2005) provides for data to be shared with SOCA for the purpose of exercising its function.

Respondents were concerned about matching public sector information and consequently feeding the results back to the regulated sector because of the sensitivity of the information shared. SOCA will need to ensure that any matching against the SARs database complies with the Data Protection Act and Human Rights Act and that sharing such information is proper.

**Q4. We would welcome your views on what you would regard as appropriate and targeted data mining of public and private sector databases to detect and prevent criminal activity, and what the appropriate safeguards for such exercises should be.**

There was broad consensus from respondents of the value of performing targeted and proportionate mining of data for the prevention and detection of serious organised crime. This was believed to be a potentially valuable tool and an appropriate use of information providing the correct safeguards were in place.

Many respondents recognised the need to involve the Information Commissioner in developing these proposals. Some respondents suggested that an independent panel should be created to oversee and agree any data mining exercises before they take place. We have been working with the Information Commissioner on these proposals and believe that as Guardian of the Data Protection Act, he is best placed to provide clearance. We will work with him to produce codes of practice to govern data mining exercises.

Anonymising or sanitising data before it is mined was seen to be an important way to safeguard data subjects, as was evidentially targeting the information that will be mined. Most importantly, the Information Commissioner explained that the processing of this personal data should be done fairly before any mining can take place.

The Government will ensure that any data sharing exercises or initiatives that take place will be regularly reviewed and audited to ensure they are necessary and proportionate. Advances in technology will not be exploited just because they can, all information sharing will be done with a clear purpose and through proportionate means.

As with the previous questions, SOCA's data sharing gateway provides for data mining and therefore further legislation is not needed to enable this. Further work will however, be done to ensure that any data mining complies with the Data Protection Act and Human Rights Act.

**Q5: Should Clause 2 be restricted to those who believe that an offence will take place or should this be widened?**

Chapter 2 considered whether the current criminal law is sufficient in order to ensure those on the fringes of organised crime are dealt with adequately. It took as a starting point the Law Commission's proposals for new offences set out in their Report "Inchoate Liability for Assisting and Encouraging Crime" (CM6878) published on 11 July. That Report proposed two offences:

- Encouraging and assisting with intent (Clause 1)
- Encouraging and assisting indifferent as to the outcome, but believing that an offence will happen (Clause 2(1)) or that one of a number of offences will happen (but with no knowledge as to which) (Clause 2(2))

The Law Commission also proposed that these offences would be subject to statutory defences.

The Government consulted on whether the offence in Clause 2 should be widened (Question 5). The majority of responses to this question were from police areas and banks and building societies.

A very small number of respondents disagreed with the principle of having an inchoate offence that could be committed where the person who provides encouragement or assistance does not intend that the offence be committed (i.e. the behaviour that the Law Commission proposed should be covered by the Clause 2 offences). One respondent thought that the offences in Clause 2 should be limited to those who assist certain very serious offences. Another thought the offence would be difficult to prosecute in any form as they thought it would be difficult to understand how the offence fits with existing inchoate and secondary liability offences.

However, the majority of respondents thought it was right to criminalise this behaviour. For example, one police area thought that it would provide a "strong tactical option in preventing or disrupting the commission of serious crime".

Opinions differed however as to the exact behaviour that should be criminalised by the Clause 2 offence. Responses were split between those who felt that the offence should be restricted to those who "believe" that an offence "will" be committed (as suggested by the Law Commission) and those who thought it should be widened (as was suggested by the Government). Slightly more respondents favoured widening the offence but the arguments put forward both by those in favour of restricting it and by those in favour of extending it were strong.

The main reasons put forward in favour of restricting the offence to “belief” were concerns about criminalising actions taken by legitimate businesses, concerns about overlaps with existing legislation (for example money laundering offences) and concerns about extending liability too far. Others thought an offence that went too wide would be difficult to prosecute. Some respondents set out their view that “belief” would not equate to certainty and would therefore sufficiently capture all behaviour that should be considered criminal.

The main reason put forward in favour of widening the offence was a concern that “belief” would be difficult to prove. There was a concern that this could be given a narrow interpretation by the courts. As such several respondents put forward alternative suggestions including widening the offence to cover those with “reasonable grounds to believe”, “suspicion” or “wilful blindness”. Others concentrated on the use of the word “will” (i.e. belief that an offence will happen) and suggested this should be replaced with the word “may”.

Several respondents mentioned that although they would support the widening of the offence, they felt that it was important to ensure that the offence does not go too wide and should not criminalise individuals or firms where their actions are determined by legislation. An example given by one organisation responding was a financial institution that opens accounts for a person whom they believe might be involved in money laundering. In this situation the institution would report the suspicious transaction to the Serious Organised Crime Agency but would open further accounts so as to avoid tipping the suspect off. They thought it would be important to ensure this behaviour would not be caught by the new offences.

We are discussing the issues raised during the consultation exercise with prosecutors, investigators and judges. We believe that there are sound policy reasons and practical advantages to changing the law along the lines suggested in the Report and real benefits in relation to organised crime. We therefore intend to accept the Law Commission proposals but will consider carefully the scope of the offence in Clause 2. We do not intend this clause to cover any person who only has the slightest idea that what he does might encourage or assist another to commit an offence, but we wish to ensure that a person who does an act capable of encouraging or assisting cannot avoid prosecution or conviction for the offence claiming that although he had a strong suspicion that the other person would commit an offence, he did not believe that he would.

We do not believe that this would criminalise individuals or organisations who might do an act capable of providing encouragement or assistance but do so because they are required to do so by law (as mentioned above). This behaviour would be covered by the Law Commission’s proposed defence to the Clause 2 offences of “reasonableness” which we also intend to accept. As such a charge in such circumstances would be rare as the prosecution would be aware that the individual or organisation had a defence.

**Q6. Is the Government right to consider extending liability to those who indirectly encourage or assist a person (X) where they suspect this encouragement or assistance will aid X's criminal activities (as against specific criminal offences)?**

The Government included a proposal to introduce a new offence aimed specifically at those who assist organised crime but who might not know which offences they were assisting. The majority of responses were in support of this proposal and thought it would be a useful way of ensuring those more loosely connected with organised criminal groups could not avoid prosecution.

However there were concerns. One respondent felt strongly that criminal liability should not be imposed for legitimate acts unless they could be linked directly with an offence. Some respondents questioned the need for this offence if the Government implements the new offences proposed by the Law Commission. One response felt that an offence of this type would only be appropriate if the Law Commission proposals were implemented as originally proposed (i.e. they were restricted to where a person "believes" that an offence will happen). Another thought that although the offence sounds useful it would be difficult to use in practice.

Many of those in favour of this proposal highlighted the fact that the offence would need to be carefully worded to ensure that a person could not inadvertently commit an offence. Similar concerns were raised as in relation to Question 5 that the offence should be drafted to ensure it does not catch those involved in legitimate business. Most respondents also felt that the offence should be restricted to the most serious offences commonly committed by organised criminals. For example, a number of responses suggested limiting the offence to where a person has provided assistance to a person involved in the lifestyle offences listed in Schedule 2 of the Proceeds of Crime Act 2002. Another suggested it should be limited to offences that are indictable only.

In terms of the level of knowledge required to commit this offence, some of the responses suggested that this should be restricted to belief or knowledge, in line with the Law Commission's original proposals. Some responses suggested there should be an objective test so that a person could only be guilty where the circumstances would have caused a reasonable person to believe or suspect that his encouragement would aid X's criminal activities.

The Government believes there could be advantages in an offence that criminalises indirect assistance. However we will consider the issues raised during the consultation carefully. In particular we believe that it may be difficult to draft an offence that offers sufficient legal certainty on the one hand and captures the desired conduct on the other. We will look closely at whether the Law Commission proposals as they stand or with minor modification might be suitable to capture this behaviour.

**Q7. The Government would welcome views on the kinds of conditions that might be attached to a Serious Crime Prevention Order (SCPO).**

Serious Crime Prevention Orders will improve the ability of law enforcement to tackle serious and organised crime, providing an additional means of preventing such crime before it happens. They will be a flexible tool, able to be tailored by the courts and law enforcement to meet the demands of the fight against serious organised crime. It is this flexibility in the conditions which might be included in an order that the majority of respondents to the consultation process were supportive of.

Balancing this, however, respondents were concerned that, if the orders are to be both workable and proportionate, they would need to be tailored specifically to the individual or organisation concerned and form a part of an intelligence-led and targeted approach to a particular problem.

In line with these concerns, the proposed Bill will provide that the orders can only be applied for by the three prosecuting authorities (the Crown Prosecution Service, the Revenue and Customs Prosecution Office and the Serious Fraud Office). Working with law enforcement, they will ensure that the orders are targeted at those it is necessary to tackle, with the required conditions in place, so as to prevent the harm caused by organised crime to our communities.

Respondents from business, and the financial services sector in particular, saw the potential of SCPOs against both organisations and individuals as a positive step. The sorts of conditions that tended to be suggested often went towards increasing the transparency of the way in which an individual or an organisation involved in serious criminal activity conducted their business dealings. There were concerns raised, though, about the possible effect on 3rd parties that such an order might have. It is important to emphasise that the courts, as public authorities for the purposes of the Human Rights Act, in setting the terms of an order would have to ensure that they were reasonable and proportionate, including taking into account their effects on 3rd parties (see further question 9).

Finally, respondents suggested a wide range of different options for the contents of a Serious Crime Prevention Order. This demonstrates both the potential usefulness of the orders and the importance of giving the courts flexibility. This will allow them to create orders which address the ways in which organised crime rapidly evolves and adapts itself to the efforts of law enforcement.

**Q8. The Government would welcome views on the types of situation where a Serious Crime Prevention Order may prove useful and proportionate in preventing organised criminality.**

Serious and organised crime can cause incredible harm to our communities, through perpetuating the problems associated with the drug trade, gun crime or prostitution for example. The key policy aim here must be to reduce the harm caused by those engaged in serious and organised crime, before it happens, but this cannot be achieved through any single measure. In addition to the options already available to law enforcement and prosecutors, we have proposed that there will be a new option of a civil order – the Serious Crime Prevention Order – which provides law enforcement with a further tool to use to reduce this harm. This will fill the gap which exists where, for example, harm needs to be averted while a prosecution is being prepared or where a prosecution, for several possible reasons, is not appropriate.

A large proportion of those responding to the Green Paper felt that this option would be useful to law enforcement and could readily provide instances in which they thought the use of an SCPO would bring about a more positive outcome than was currently possible. The sorts of situations envisaged included imposing orders:

- on owners of saunas or restaurants which have knowingly employed trafficked persons;
- during investigations into very lengthy or complex fraud cases; or
- where individuals regularly travel to particular locations to conduct illegal activity such as sourcing drugs, money laundering or sex tourism.

This is not to say, though, that there were not concerns raised with regard to the orders and whether there would be the appropriate safeguards in place to ensure that they were not used oppressively or unreasonably by law enforcement.

It should be emphasised that SCPOs will not be used simply as an alternative to prosecution in those types of situation where a prosecution would be the appropriate way of dealing with the matter. The role of the three prosecuting authorities as mentioned above will ensure this.

In developing the policy on these orders, we have always been concerned to ensure that they were fully consistent with the European Convention on Human Rights. The courts will obviously play a central role in ensuring this in practice and we will continue to work with them to ensure that the appropriate guidelines and training are in place.

**Q9. Should the prosecution be required (whether by legislation or court rule) specifically to draw the court's attention to relevant facts about the impact of potential orders upon the interests of 3<sup>rd</sup> parties?**

The overwhelming majority of respondents felt that it was vital to ensure that the rights and interests of 3<sup>rd</sup> parties were properly protected in considering the granting of an order. There was concern, that if this was not the case, then an entirely innocent 3<sup>rd</sup> party could be unreasonably affected by the imposition of an order on an individual or organisation.

In response to these concerns, we plan to amend the Civil Procedure Rules to provide that prosecutors, when applying for a prevention order, must make an assessment of the proposed order's potential impact on 3<sup>rd</sup> parties and draw this to the court's attention. The court will then be bound to consider these facts in considering the application and then to ensure that the terms of the order are such that no 3<sup>rd</sup> party is unreasonably affected by the order.

**Q10: We would welcome your views on new measures to merge confiscation and enforcement hearings, to contract out confiscation of enforcement orders, to cancel orders which cannot be enforced, and to extend certain search and seizure powers to all financial investigators.**

The extension of powers that are currently limited to the Police and HM Revenue and Customs to all accredited financial investigators will improve the ability of law enforcement to tackle both financial and acquisitive crime. The ability to extend powers, such as power of search and of seizure, to all of those that are accredited to investigate such criminality will greatly improve efficiency. The vast majority of respondents to the green paper favoured the proposal and many viewed it as a natural progression from the extension of the roles of police staff and the increase in the number of investigators.

There were concerns expressed over whether the appropriate safeguards and systems, including around training and the protection of staff, would be in place to ensure that these powers were used correctly and safely. The government recognises the vital importance of these concerns and is considering these views thoroughly in further policy development of this area.

Contracting out confiscation orders would provide new means by which to enforce old orders that it has not yet been possible to enforce. The government is committed to doubling the value of the proceeds of crime seized to £250m by 2009-10 and we believe that this could be an important step to ensure delivery of this target. The vast majority of respondents viewed this proposal positively. However, following further consideration we have concluded that these measures may be taken forward on an administrative basis without the need for legislation. We are pursuing this further in consultation with HM Courts Service.

As regards proposals to merge confiscation and enforcement hearings, there was general support for measures which would strengthen and improve the enforcement of confiscation orders. There was also broad support for any measures which would generally bring greater efficiency to the process.

However a number of respondents expressed apprehension that the confiscation hearing itself may become far more complicated and lengthy. There were concerns, expressed most strongly by the Council of Circuit Judges, about the need to ensure all interests of 3<sup>rd</sup> parties were fully taken into account in a merged hearing. In light of these issues, the government will work up more detailed proposals on this measure before introducing legislative change. In the meantime we will look at the scope for bringing forward other measures to improve the confiscation and enforcement process. Work is also continuing with asset recovery front-line agencies to improve enforcement using the powers in the existing legislation and adopting best practices.

A number of respondents expressed worry at the proposal to cancel orders that cannot be paid, instead viewing orders as something that should last a 'lifetime'. Whilst the government proposal in the green paper was only intended to be available in those cases where the enforcement authority had exhausted all available enforcement options and sanctions, thus leaving the order or part of the order unenforceable, we recognise that stakeholders and others have concerns about the introduction of such a measure and the government are taking this opportunity to examine the proposal in more depth. Questions raised included whether such a move might send the wrong signals to criminals and that the measure could potentially be abused by criminals. We have reviewed this issue in the light of responses received and have decided against making legislative change at this time.

**Q11. We welcome views and comments on further amending and improving the consent provisions in the Proceeds of Crime Act 2002 in a way which**  
**a) maintains the existing benefits to law enforcement agencies in terms of seizing and restraining suspect assets and disrupting criminal activity and**  
**b) enabling the reporting sectors in industry to suspend transactions or activity with a client without making him/her suspicious.**

The rationale for amending and improving the consent provisions in the Proceeds of Crime Act 2002 (POCA) is to further strengthen the UK's anti-Money Laundering controls by improving our ability to detect and prevent the activity. Respondents displayed widespread recognition that this was an important but complex area.

Whilst there was agreement from some respondents that the Suspicious Activity Report regime, provided for in the 2002 Act, was operating well, and welcomed recent strides made by SOCA to reduce the length of time taken to deal with consent requests, other respondents saw room for further improvements to be made. This reflected the government's view that more could be done to ensure that money-laundering is traced and dealt with more effectively.

Consent provisions of the legislation provided the main focus of improvements that were highlighted by respondents, however no single solution on the way forward emerged. This difficulty was reflected in the response of one individual who described a solution which met all the needs of SOCA, law enforcement and the reporting sectors as the equivalent of the "Holy Grail". Despite this difficulty the government is committed to continue working with SOCA, ACPO, the reporting sectors and others to identify an agreed and mutually beneficial way forward. We will work up more detailed proposals with a view to consulting further on this issue in the future.

## **Glossary**

ACPO	Association of Chief Police Officers
ARA	Asset Recovery Agency
CIFAS	UK's Fraud Prevention Service
CPS	Crown Prosecution Service
DCA	Department for Constitutional Affairs
DPA	Data Protection Act 1998
DVLA	Driver and Vehicle Licensing Agency
DWP	Department for Work and Pensions
HMRC	HM Revenue and Customs
HRA	Human Rights Act 1998
ICO	Information Commissioner's Office
Lander review	Review of Suspicious Activity reports regime led by Sir Stephen Lander, published March 2006
MISC31	Cabinet committee created to develop the Government's strategy on data-sharing across the public sector
NFI	National Fraud Initiative (run by Audit Commission)
NGO	Non-Governmental Organisation
POCA	Proceeds of Crime Act 2002
SAR	Suspicious Activity Report
SCPO	Serious Crime Prevention Order
SFO	Serious Fraud Office
SOCA	Serious and Organised Crime Agency