

Partial Regulatory Impact Assessment: New Powers Against Organised and Financial Crime

Introduction

1. On 17th July 2006 the Home Office published a green paper entitled 'New Powers Against Organised and Financial Crime'. The document is available on the Home Office website:
<http://www.homeoffice.gov.uk/documents/new-powers-paper.pdf>
2. The consultation document and the proposals outlined therein are divided under four chapters, each tackling a defined theme.
3. These are:
 - Data-sharing
 - Criminal Law
 - Organised Crime Prevention Orders
 - Proceeds of Crime
4. This Partial Regulatory Impact Assessment will consider each of the these themes in turn.

CHAPTER 1: DATA SHARING

Objective

5. To reduce the harm caused by fraud committed against the private and public sector. Greater data sharing can help by directly uncovering apparently fraudulent behaviour (for example, comparing mortgage records with housing benefit data) or through enabling organisations to share more information on high-risk individuals and activity.

Background

6. The consultation paper 'New Powers Against Organised and Financial Crime' sets out a series of initiatives to encourage data sharing within the public sector and with the private sector.

Rationale for Government Intervention

7. Government has a duty to protect all citizens, including the taxpayer and the private sector, from fraudsters. Fraud against the exchequer decreases the amount available for public expenditure or results in higher taxes. Fraud against the private sector harms their commercial interests and ultimately leads to higher consumer prices.

Options

Option 1: Do Nothing

Option 2: Grant the National Fraud Initiative Additional Powers

8. This gives additional statutory powers for the National Fraud Initiative (NFI) to enable them to expand into new areas, or back into areas which have moved outside the NFI's remit.
9. Some of the benefits attached to this option are contingent on extra funding being available, to enable data to be collected more regularly.

Option 3: Allow public sector organisations to share more information on suspected frauds between themselves and the private sector

10. One potential vehicle for delivering this in the short term would be for departments and public agencies to become members of CIFAS (the UK's Fraud Prevention Service). CIFAS is a non-profit-making body set up to share information about reported frauds. The threshold for inclusion on the CIFAS database is that sufficient evidence must exist for there to be reasonable grounds to press criminal charges – the grounds must be strong enough for a formal complaint to be made to the police. Members check this database when, for example, processing new applications. CIFAS is funded through member subscriptions. This option may require legislation to clarify or amend the statutory vires of a number of some public sector bodies.

11. This option also involves SOCA checking SARs against a range of relevant non-law-enforcement databases containing information that could have a bearing on crime.

Option 4: Pursue options 2 and 3

Benefits

Option 1: Do Nothing

12. Fraud causes huge harm to the UK every year. NERA¹ estimates that the total gain to fraudsters was between £4.5bn and £10.3bn in 1998-99, with a total economic cost of between £6.8bn and £13.8bn, once expenditure concerning prevention and investigation is accounted for. Even these sums are likely to understate the true scale of the problem: no allowance is made for undiscovered fraud; there are further knock-on costs as individuals and organisations are forced to change their behaviour because of the fear of fraud; and fraud is thought to have increased considerably since 1998-99. Fraud can also cause significant emotional harms, if, for example, somebody is defrauded of their life savings. Deceased person's fraud can also be a particularly harmful crime to the deceased's family. Furthermore, much fraud is thought to be committed by organised criminals, and funds further activities by the criminal groups.
13. There are no reliable estimates concerning future trends in fraud, making it extremely difficult to understand the impact of no further government intervention. But our judgement is that fraud will almost certainly increase over time if government does nothing more to try to stem it.

Option 2: Grant the National Fraud Initiative Additional Powers

14. This option allows the NFI to build on their existing success; in the last NFI cycle of 2004/05, they detected £111m worth of fraud. Reductions in fraud against the public sector saves the taxpayer money and takes the profit out of crime.

Mortgage Records

15. Allowing the NFI to match data from mortgage records with housing benefits will help reduce housing benefit fraud. The NFI will be better able to detect those who claim housing benefit and who are property-owners and therefore ineligible for housing benefit. The NFI conservatively estimates that they can identify additional fraud of **£7m** over an NFI cycle of two years. This is based on assuming they continue to identify around £3,500 worth of overpayments for every 1,000 records they are able to check.

¹ NERA, 2000, The Economic Cost of Fraud.

16. Mortgage lenders will also benefit. They will be able to remove fraudulent landlords from their client portfolio, and be able to detect bank and building society staff involved in mortgage fraud. Mortgage providers will foreclose on fraudulent landlords thereby disrupting their activities.

Public and Private Sector Pension Records

17. The NFI collects 2.1 million public sector and 1.1 million private sector pension records. This option would allow them to disclose matches with housing benefits data. Assuming the NFI maintain their existing rate of return of identifying fraud worth about £1,400 per 1,000 cases suggests an additional housing benefit fraud saving of **£4.4m** over an NFI cycle.
18. In the longer term, if the NFI collects data on all 1,600 private sector pension schemes with over 1,000 members, the NFI estimates they would detect an additional **£17.5m** worth of housing benefit fraud per cycle. We assume that in the first NFI cycle after these new powers are granted, the NFI will collect enough data to generate a third of these longer term savings.

Central Government and Private Sector Payroll

19. Extending the remit of the NFI to incorporate those employed in central government would lead to an estimated further **£0.8m** of housing benefit fraud being identified per cycle.
20. In the longer term, a move to include employment records from all 3,000 private sector organisations employing 500 or more staff would allow an estimated additional **£11m** of housing benefit fraud to be detected. We assume that in the first NFI cycle after these new powers are granted, the NFI will collect enough data to generate a third of these longer term savings.

NHS Foundation Trusts

21. Inclusion of NHS foundation trusts in the NFI remit will prevent a loss of protection of the NHS, and reduction in benefit fraud detected. For example, during the 2004-05 NFI exercise, 327 NHS employees committing housing benefit fraud were detected. The Foundation Trusts are also important for a parallel exercise on NHS Tourism where the NFI can detect those who should be denied services or who should pay for them.

Housing Associations

22. By identifying tenancy fraud, NFI allows social landlords to recover the properties and use them to re-house applicants on the waiting list or in temporary accommodation. The NFI conservatively estimates that this would lead to almost 5,000 properties being released back for re-let to genuine tenants.

Cross-border data matching

23. That the NFI can match data from, for example, Newcastle to Cornwall, but not from Newcastle to Scotland is clearly an anomaly, particularly as much of the fraud detection comes from matches between geographically close organisations. The NFI estimates that such cross-border matching, combined with powers to assist the NIAO, would result in the additional identification of fraud worth **£2.5m** per NFI cycle.

Central Government

24. The addition of Central government creditor and payroll data to the NFI would enable government departments to identify duplicate payments to suppliers and employees acting as directors of supplier companies without declaring their interests.

Former tenants arrears

25. Data matching to provide new contact details for former tenants allows recovery action to be undertaken if they are in arrears. In 2004-05 this matching enabled recovery action on debts worth over £1.3m to be commenced. But legal concerns mean clarification of the Commissions' powers are now needed – this option contains such clarification. This work can be extended to council tax arrears and unpaid court fines.

Identity Fraud

26. By linking the extended NFI databases to information on central government systems such as passports and driving licenses, it may be possible to combat some aspects of identity fraud through negative data matching. For example, a claimant on income support who is not known to the NHS or a range of other systems may be using a false identity. This type of matching can help identify false identities, preventing fraudulent benefit claims in public sector and, for example, credit card losses in private sector. Such negative data matching would require more regular data collection, and the addition of key central applications, and would cost about £2m per NFI cycle.
27. This would represent using techniques new to the NFI and, because of this, these benefits are extremely difficult to estimate. NFI has, on average, typically detected £108 worth of benefits for every £1 spent. Given the uncertainties attached to benefits we have assumed extremely conservatively that the rate of return attached to this form of negative matching would be only one tenth of what is normally achieved. Even under this very cautious assumption, the NFI would detect about **£21.6m** of identity fraud over a two-year cycle, if funding of £1m per annum is provided.

Deterrent benefits

28. Publicity and prosecutions following such data matches should provide a deterrent benefit. It has not been possible to quantify this.

Table 1. Estimated Increase in Fraud Detection Because of New Powers

	Next full NFI cycle (2008-09)	Longer term
Mortgage records	£7m	£7m
Pension records	£10.2m	£21.9m
Central government and private sector payroll	£4.5m	£11.8m
Cross-border data matching	£2.5m	£2.5m
Identity fraud	£21.6m	£21.6m
Total additional fraud detected per NFI cycle	£45.8m	£64.8m

29. We expect that the vast majority of detected fraud would be turned into fraud savings.

Option 3

30. Greater data sharing allows prevention and detection of fraudulent activity – the more information an organisation has, the more able it is to ensure the right public services go to the right people. For example, the recent Police and Justice Bill allows for the timely supply of death registration information from the Registrar General to law enforcement or other organisations specified by order for use in preventing, detecting investigating or prosecution of offences such as fraud. This simple measure is expected to make a big dent in the total amount of deceased person fraud which is estimated by CIFAS to be worth £300m a year. More details on costs and benefits of this measure is included in the regulatory impact assessment of the Police and Justice Bill: Disclosure of Death Registration Information.
31. Data sharing on specific fraudulent activity ensures other agencies can be on the look out for similar types of frauds being committed against them. Similarly, sharing information on who commits fraud can aid self-protection. For example, CIFAS members will treat an application with great care if the applicant appears on the CIFAS database.
32. CIFAS has proved itself to offer large benefits to the private sector. Members reported savings of £682m in 2005; this compares with a cost of operating CIFAS of only £2.4m.
33. To understand the potential benefits of public sector membership of CIFAS the Identity Fraud Steering Committee undertook a data matching pilot project. The HMRC, UKPS, DVLA and DWP each provided in total 1,636 records to match against the CIFAS database. It transpired that of the addresses contained in the records provided, 31% had an address match against an existing record in CIFAS.
34. This demonstrates that many of those who commit fraud against one organisation, also commit fraud against other, meaning public sector

membership of CIFAS is likely to lead to earlier detection of fraudulent activity. Estimating potential fraud savings associated with public sector membership of CIFAS is extremely difficult. Based on the data matching pilot and existing members' experience, CIFAS estimates potential savings to the public sector of between **£137m - £273m** per annum, assuming public sector resources are available to investigate suspected frauds fully. Note that this is (unavoidably) a very approximate estimate, and there is no guarantee that actual savings would be as high as CIFAS estimates. There will also be savings to the private sector, as they will benefit from a more comprehensive database. There may also be deterrent and/or incapacitation benefits if more fraudsters are prosecuted and imprisoned.

Use of Suspicious Activity Reports

35. Prioritising SARs for action and developing the information they contain is a substantial challenge given the very large numbers submitted (over 200,000 per annum). So getting as much information as possible about the subject of SARs is crucial.
36. In the past, incoming SARs were checked only against NCIS' ELMER database of past SARs reports, and against NCIS' own internal intelligence database, while other organisations seconded staff to work in the financial team to identify and pass on SARs likely to be of interest to them.
37. SOCA is currently working to develop an IT approach which will enable SARs to be checked periodically against a series of relevant non-law enforcement databases containing information that could have a bearing on crime. The main ones are those concerned with direct and indirect taxes, with records of births, marriages and deaths, with benefit and state pension payments, with the issuing of passports and with driver and vehicle licensing.
38. SOCA has already piloted a data matching exercise with a sample of some 10,000 SARs. The pilot study came up with some striking findings, including 25% of SARs matching records on the CIFAS database, and around 1% matching records in DWP. When the entire ELMER database was matched against a database of children who died since 1959, 300 names were matched to SARs.
39. These matches potentially enable SOCA and its partners to identify and prioritise those reports which, in addition to the original suspicion, concern subjects who are, for example, unknown to the tax authorities, in receipt of benefits or using what appears to be a false identity. As well as vital criminal leads, this should cast light on a number of cases where other agencies will want to take action, for example withdrawal of benefits or tax action.
40. The realisation of benefits to SOCA, and their partners, of undertaking more data matching of this type is dependent on appropriate funding

being available. This work will thus need to compete with a range of other priorities for such funding.

Option 4: Pursue options 2 and 3.

41. The benefits of this option equal the sum of the benefits attached to options 2 and 3.

Costs

Option 1

42. No further costs.

Option 2

43. The costs of running the NFI is low – its great virtue is its simplicity. To achieve the full level of additional fraud detection set out above, the NFI will need an extra £2m over a two-year cycle. The Department for Communities and Local Government (DCLG) as the sponsoring department for the Audit Commission are currently considering the funding options for the cost of the additional work that extending the Commission's powers will bring about.
44. In some instances the NFI would charge the private sector to cover their costs. This is very low relative to the fraud savings - usually between £2,000 and £13,000 per year. The direct costs associated with providing NFI with the data to all parties are very low.
45. The NFI's work is likely to lead to more investigations for Local Authorities (LAs). A "typical" benefit fraud case costs an LA around £1,000 to investigate (although costs do vary). If the case goes to court, it will cost the LA another estimated £800 for prosecution; legal aid costs would, on average, be around £800, with court costs being around £200.

Option 3

46. Costs of CIFAS membership are low because the infrastructure already exists. CIFAS currently costs around £2.4m to operate. Subscriptions for public sector organisations will be calculated in the same way as existing CIFAS Members, resulting in the smallest such as IPS and DVLA needing to pay approximately £10,000 per annum and the largest such as HMRC having their subscriptions capped in 2007 at £105,000 per annum. If all the public sector organisations who took part in the data matching pilot became members of CIFAS, the total subscription cost would be about £250,000 per year, plus a one-off £125,000 in joining fees.
47. Sharing data with CIFAS may require some public bodies to notify clients of the use which may be made of information supplied to them. This could be achieved by amending existing documentation with the costs varying depending on the department. To the DWP, for example, the costs are likely to be low, as old leaflets can be phased out before

introducing leaflets with the new notifications. And the costs of providing the appropriate data to CIFAS is also likely to be small.

48. Option 2 provides details of the costs attached to more benefit fraud investigations. Costs of other types of fraud cases will vary considerably.
49. There would be IT costs attached to SOCA undertaking more data matching; these costs estimates are being developed.

Option 4: Pursue options 2 and 3.

50. The costs of this option equal the sum of costs attached to options 2 and 3.

Box 1. Summary of key benefits and costs

Benefits

Option 2

Public sector: Reduction of fraud worth an estimated £24.2m per NFI cycle of two years, plus a share of savings associated with a reduction of ID fraud, rising to £43.2m in the longer term.

Allows almost 5,000 properties every two years to be released for genuine tenants.

Private sector: Share of ID fraud savings.

Better enables mortgage lenders to remove fraudulent landlords from their portfolio, and helps landlords recover former tenancy arrears.

Option 3

Public sector: Estimated fraud savings could be worth up to £137m-£273m per year, if sufficient resources exist for investigations.

Better prioritisation of Suspicious Activity Reports.

Private sector: Some fraud savings attached to having access to more data concerning suspected fraudsters.

Costs

Option 2

Public sector: An extra £2m every two years.

Greater costs associated with more investigations by LAs, of up to £2,800 per case.

Private sector: If private sector firms wish the NFI to help them, they will be liable for fees of usually between £2,000 and £13,000.

Option 3

Public sector: Total subscription costs of up to £250,000 per year, plus one-off joining fees of up to £125,000.

Some costs associated with changing forms to notify clients, and providing CIFAS with necessary data.

IT expenditure associated with cross-checking SARS with more databases.

The costs and benefits of option 4 are the sums of those of options 2 and 3.

Small firms

51. We do not anticipate that these proposals will have an adverse impact on small firms.

Competition Assessment

52. We do not anticipate that these proposals will have an adverse impact on competition.

Enforcement and Sanctions

53. It is the responsibility of the defrauded body to follow up a potential fraud detection. Fraud is a criminal offence, punishable by up to ten years in prison.

Monitoring and Evaluation

54. The proposals will be judged by the levels of fraud savings. Participants in NFI are required to complete a proforma at regular intervals to give details of frauds detected and savings achieved. These “savings returns” assist in the monitoring of progress at individual authorities and are used as the basis for a national report produced by the NFI.
55. CIFAS regularly monitor estimated annual fraud savings attributed to membership of CIFAS.

Consultation

56. We have consulted the following:

Attorney General's Office
Audit commission
Department for Communities and Local Government
Department for Constitutional Affairs
Department for Education and Skills
Department for Health
Department for Work and Pensions
Financial Services Authority
GCHQ
Her Majesty's Customs and Excise
Her Majesty's Treasury
Scottish Office
Serious Fraud Office

Race Equality Impact Assessment

57. We do not believe that these proposals will have an adverse impact on race equality.

CHAPTER 2: CRIMINAL LAW

Purpose and Intended Effect

Objective

58. To ensure that the criminal law is able to respond more effectively to organised crime and ensure that the law is consistent in its treatment of those who encourage or assist crime.

Background

59. The Government has been aware for some time that the criminal law may require changes in respect of imposing liability for those who assist or encourage crime, particularly in relation to organised crime. The White Paper “One Step Ahead: A 21st Century Strategy to Defeat Organised Crime” identified the fact that the current law does not provide a practical means of addressing peripheral involvement in serious crime as a concern. As a result the Government committed to keep under review the law of conspiracy; while separately the Law Commission has, since 2001, been considering the law around inchoate liability and assisting crime, following their previous consultation in 1993.
60. The common law offence of incitement already covers much of the conduct that would be caught by the Law Commission proposals as they relate to encouraging crime, however, at present it is not an offence to assist a crime that is not attempted or committed. The Law Commission Report on Assisting and Encouraging Crime sets out in detail the difficulties this has led to, including the distortion of other offences to compensate for the lack of an inchoate offence of assisting crime. The Report also set out the advantages in adopting such an offence, including the use that could be made in the serious, and organised, crime contexts. The Law Commission’s proposals would apply to the criminal law generally.
61. Following the White Paper, law enforcement and prosecution colleagues have been reviewing their experience of conspiracy law and have worked closely to identify problems with law and practice which stand in the way of successful prosecutions. This has led to the proposals put forward on organised crime.

Rationale for Government Intervention

62. The Law Commission Report on Encouraging and Assisting Crime, and discussions between prosecutors and law enforcement, have identified loopholes in the law that allow those who encourage and assist others to commit offences to avoid prosecution.
63. The lack of availability of an inchoate offence of assisting crime means that the police cannot take action against a person who has provided

assistance to a crime unless and until that crime is attempted or committed. This is not the case in respect of encouraging crime.

64. This presents particular problems in the organised crime context.

Options

65. Option 1: Do nothing

66. Option 2: Implement the proposals contained in the Law Commission's Report on Encouraging and Assisting Crime with possibly some minor modifications

67. Option 3: Implement the Consultation Paper proposals relating to assisting organised crime.

Costs and Benefits

Option 1: Do nothing

68. It is difficult, prior to consultation, to have a good understanding of the potential benefits and risks of the proposals included in the consultation paper. These options will be set out in more detail in a full RIA following consultation.

69. One option would be to leave the law as it is. There would be no financial costs involved in this option but the risks involved in doing nothing are considerable.

70. The Law Commission Report has examined in detail the case for reforming the law. It identifies an inconsistent approach in the criminal law and argues that liability is currently a matter of chance and that, as a result, other offences have been stretched to ensure conduct that is generally thought of as culpable has been covered. This is inconsistent with the principle that there should be certainty in the law and doing nothing would send a message that the Government considers those who encourage crime to be blameworthy, but those who assist, not so.

71. Doing nothing leaves gaps in the criminal law that are currently exploited and would mean the opportunity is not taken both: to deal with these offenders and minimise the harm caused by their offending; and to simplify the prosecution of some of those currently charged with the existing offences. This is particularly important given the impact that organised crime has in fuelling volume crime.

72. Changes such as those recommended would require primary legislation; these proposals could not be taken forward in any other way.

Option 2: Implement proposals as set out in the Law Commission Report

73. Implementation of the proposals set out in the Law Commission Report would ensure that those problems identified in the Report could be addressed and would cover the situation whereby a person provides assistance to an organised criminal group (or indeed any person) with knowledge that this would assist a specific offence or one of a list of specific offences. The consultation paper sets out some minor modifications for consultation and the Government will study the full detail of the Report in the coming months.
74. Option 2 would not however address the concerns identified by law enforcement and prosecutors concerning those who facilitate organised crime without knowledge of the offences being committed so the risks involved relate to failure to realise the benefits put forward for these proposals (for example preventing crime in the first place, imposing liability on those who operate on the fringes of organised crime, more successful prosecutions etc).
75. There would be cost implications of extending the criminal law to cover inchoate acts of assistance. These are difficult to quantify as it is not clear at present how large a gap the Law Commission proposals would fill; indeed the Law Commission Report identifies that fact that currently existing offences are sometimes distorted to cover this behaviour and the current law of incitement covers acts of encouragement. Initial discussions suggest that this option could result in around **40-80** prosecutions per year that would not be covered by the current criminal law. We will discuss this further with practitioners and impacted agencies during the consultation period.

Costs and Benefits of Option 2

76. 40-80 additional offences charged per year. We believe there would be very few prosecutions where assistance was given but no subsequent offence was even attempted. The impact on law enforcement and prosecution agencies would therefore be limited as many of these offences would be investigated as part of wider investigations anyway, many of the defendants would be prosecuted as part of larger cases involving those they encouraged or assisted and any extra costs would be offset by savings in a larger number of cases where these simpler offences would be charged instead of using the more complex and sometimes less appropriate offences currently available. Similarly, the aggregate impact on court hearings would be very limited. However, there would be an impact on legal aid costs as a proportion of the individuals charged would be eligible for legal aid. Legal aid costs depend on the length of the case. At the top end, a 10 day Crown Court trial would cost around £35,000 for defendants who plead not guilty.
77. The maximum sentence for the new offences will be the same as for the substantive offence, though the sentences passed will be usually be

lower because of the lower culpability for the inchoate offences. However, some of these offenders would get custodial sentences and we estimate the impact on the prison population to be 5-10 places. It costs an average of £31,140 per year per local prison place and £18,874 per year per open prison place.

78. The benefits would centre around bringing additional offenders involved in criminality to justice and in deterring others from encouraging or assisting crime, as well as in greater clarity and simplicity in cases that would otherwise have been brought.

Option 3: Implement the Consultation Paper proposals relating to assisting organised crime.

79. Option 3 would address the concerns identified by law enforcement and prosecutors concerning those who facilitate organised crime without knowledge of the offences being committed. The risks involved in Option 3 are related to the scope of the criminal law. As the paper points out, the offence in relation to organised crime would need to be carefully drafted in order to ensure it does not extend too widely.
80. Again this is difficult to quantify, but initial discussions with suggest that this could potentially result in an extra **200-300** offences charged per year, though this could be much lower (depending on the exact detail of the offence). We will discuss this estimate further with practitioners and impacted agencies during the consultation period.

Costs and Benefits of Option 3

81. 200-300 additional offences charged per year. As for option 2, the net impacts would be on legal aid and the prison population. Legal aid costs depend on the length of the case. At the top end a 10 day Crown Court trial would cost around £35,000 for defendants that plead not guilty. Our present thinking is that the maximum sentence should be 5 years and we estimate the impact on the prison population to be 60 – 90 places. It costs an average of £31,140 per year per local prison place and £18,874 per year per open prison place.
82. As the costs for option 3 would be greater than for option 2 because of the larger numbers, so too would be the benefits (which are set out in the Consultation Paper). The estimates represent a significant impact on those who organised crime relies upon to facilitate its business. The impact would be on individuals prosecuted, individuals charged who then co-operated in prosecutions against other defendants and in deterring individuals from assisting organised criminals. All of which would have a significant debilitating effect on organised crime and on the wider volume crime it fuels.

Equality and Fairness

83. The Government believes that these offences would not adversely impact on any section of society. This will be tested further during the consultation process to which this partial RIA relates.

Enforcement and sanctions

84. The proposals set out in Options 2 and 3 would be enforced by criminal prosecutions, involving the police, SOCA, the Crown Prosecution Service, Revenue and Customs Protection Officers and the courts. Sanctions for the offences proposed by the Law Commission would match those of the offence that the person providing encouragement or assistance believed or intended he was encouraging or assisting. Our initial view is that the maximum penalty would be for the proposed offence aimed at those who assist or encourage the criminal activities of organised criminal groups should be 5 years, but further work is required on this.

Consultation

85. The Proposals in Option 2 were produced by the Law Commission.
86. In relation to all 3 options, we have consulted the following:

Attorney General's Office
Crown Prosecution Service
Department for Constitutional Affairs
HM Revenue and Customs
Serious Organised Crime Agency

Race and Equality Impact Assessment

87. We do not believe that this policy will have an adverse impact on race equality. This will be tested further during the consultation process to which this partial RIA relates.

Summary and recommendation

88. This partial RIA accompanies a consultation process on wider proposals to tackle organised crime. This consultation exercise will be used to determine the best options for strengthening the criminal law.

CHAPTER 3: ORGANISED CRIME PREVENTION ORDERS

Purpose and Intended Effect

Objective

89. To reduce the harm caused by organised crime, through the prevention and disruption of organised crime activities.

Background

90. The consultation paper 'New Powers Against Organised and Financial Crime' sets out the case for new civil 'prevention orders'.

Rationale for Government Intervention

91. Government has a duty to reduce the harm caused by organised crime, providing the powers necessary to prevent such crimes from occurring. Only government can introduce new powers of this kind.

Options

1) Do nothing

2) Introduce the Serious Crime Prevention Order

92. The Serious Crime Prevention Order is a civil order and would impose conditions on an individual or an entity. It would require a High Court hearing, and be appealable to the Court of Appeal. The court would be able to impose an order if they believed:

93. The subject has acted in a way which facilitated or was likely to facilitate the commissioning of serious crime; and

94. That the terms of the order are necessary and proportionate to prevent such harms in future.

95. The types of conditions that could be imposed are varied, and include, but are not limited to, restrictions on the subject's financial dealings - the consultation document contains case studies of further types of conditions. The intention of the orders would be to prevent harm, and they will not be punitive. We envisage stating on the face of the legislation that to impose an order, the courts should be satisfied on the balance of probability that the above test has been met.

96. Orders could be aimed at companies or other institutions which had been complicit in serious crime. The scope of this kind of order would be broad. It might include restrictions on how the enterprise carries out its business, it could require the removal of certain directors or office holders, or in extreme circumstances it could require the dissolution of the entity altogether. The order may include powers to compulsorily purchase property or assets where this is necessary to prevent serious

crime, and for the court to impose new office holders or a court-ordered administrator at the entity's expense.

Benefits

Option 1 – Do Nothing

97. Organised crime causes huge harm every year. The abuse of Class A drugs, produced by or smuggled into the country by organised criminals, causes economic and social costs of around £15 billion per year. Further billions of pounds of indirect tax fraud is committed by organised criminals each year, and organised immigration crime incurs economic and social costs of an estimated £2bn annually.
98. Organised criminals are also heavily involved in fraud against the private sector; the true scale of this is unknown, but is certainly well over £1bn per year, and may run into several billions of pounds.
99. Little is known about trends in the scale of organised crime activities, making it very difficult to predict what would happen in future without further government intervention. But the nature of organised crime groups mean that they are always on the look out for new criminal opportunities, making it likely that harms would increase over time. If government is to stay ahead, it must be proactive in identifying measures which can prevent or disrupt organised crime activities.

Option 2 – Introduce the Serious Crime Prevention Order

100. The objective of the orders is to reduce harm by preventing organised crime. The discussion paper covers circumstances in which the order might be used;
 - where prosecution is not feasible,
 - alongside prosecution, or
 - as an alternative to prosecution.

Costs

101. Financial costs may be incurred at the following stages:
 - obtaining the order;
 - potentially, appeals against an order;
 - monitoring compliance of the order if an order is made;
 - breach hearings, if the order is breached, and, potentially, appeals against any breach hearings; and
 - potentially, costs of criminal sanctions if the order is breached.
 - orders may be agreed or contested.
102. Below we provide estimates of the average cost of each stage per order in a complex and contested case, except for the monitoring compliance

stage where costs vary too widely to generate a meaningful average. These figures will therefore be very much at the upper end of likely costs of the orders.

103. Orders against both individuals and businesses are designed to make the commissioning of serious crime more difficult, with associated reductions to the overall level of organised crime. They should help deter or divert some individuals and organisations from criminality without the need for criminal investigation.

104. *Table 1 – Costs per Serious Crime Prevention Order*

	Applicant	Legal aid (if applicable)	HMCS
Obtaining the order (1)	£40,000	£40,000	Included in applicant costs
Appeals against the order (1)	£40,000	£40,000	Paid by the subject of the order
Monitoring Compliance against the order	Will vary hugely by order	N/A	N/A
Prosecution for breach (2)	£1,000	£344	£340
Appeal against prosecution for breach (3)	£1,000	£344	£340

Sources:

- (1) Based on discussion with TSOLs. Figures relate to a complicated case involving obtaining an order restricting financial dealings. Costs of other types of cases have not yet been worked through, and may be significantly less.
- (2) Based on unit costs associated with breaches of Anti Social Behaviour Orders.
- (3) Costs assumed to be the same as for a breach prosecution.

105. If the applicant were to lose a case where the subject was not on legal aid, then it may be liable to pay the subject of the order's costs – this could be as much as £100,000 at either the making of the order stage, or at the appeal stage.

106. The costs to the criminal justice system of penalties attached to any breach will depend on the sanction. It costs an average of £31,140 per year per local prison place and £18,874 per year per open prison place.

107. With any orders of this kind there is a risk that an order could be lawfully obtained against an individual or entity who it is subsequently shown was not involved in the suspected activities which led to the order. In this

scenario the applicant would not be liable to compensate the subject of the order, although the subject may incur some cost themselves; in particular, if they are a business there may be damage to their reputation. In the event of an order being obtained unlawfully or in bad faith, the applicant may be liable to pay compensation to the subject of the order.

108. We have not estimated total cost for the new orders, as it is not currently possible to estimate precisely how many times the orders will be applied for. There may be some savings, as some orders will be used instead of prosecution. And, since we expect orders to be preventative, there should be some savings associated with fewer prosecutions, as fewer offences are committed.

Small firms

109. We do not anticipate that this proposal will have an adverse impact on small firms. Orders will only be obtained where the court believes on the balance of probability that the subject is facilitating crime, and the discussion paper explicitly covers the need for the Government to take in account the interests of third parties in making orders.

Competition Assessment

110. There should be no financial costs to uninvolved third parties, except in a small number of cases where the subjects of orders may be precluded from doing business with third parties that they would otherwise have done. There will be no obligation on business to check whether their customers are subject to prevention orders and therefore potentially restricted from doing business.
111. Businesses which act as a legitimate "front" for illegal activities have an unfair advantage over wholly-legitimate businesses, through making more profits, potentially being less likely to comply with regulations and enjoying greater access to capital. Serious crime prevention orders may help reduce this unfair advantage.

Enforcement and Sanctions

112. It is proposed that it will be the responsibility of the applicant to ensure the order is complied with. Breaching the orders would be a criminal offence, punishable by a fine, a community sentence, or imprisonment. Monitoring compliance could range from 'passive' monitoring, occasional 'mystery shopping' style checks to ensure certain types of business are being duly reported, to full scale surveillance. It will be for law enforcement to decide on a case by case basis whether a prevention order or some other tool is the most effective harm reduction method against any given target.

Monitoring and Evaluation

113. The policy will be evaluated against the number of orders made, and its effectiveness as a new tool for law enforcement agencies. This will be

judged via a consultation exercise where we will ask law enforcement agencies:

- How often have you used the order?
- How effective a tool have you found it to be?
- If appropriate: why haven't you used the order?
- What amendments to the powers would make the orders a more effective or efficient tool?

Consultation

114. We have consulted the following:

Association of Chief Police Officers
Attorney General's Office
Department for Communities and Local Government
Department for Constitutional Affairs
Government Communications Headquarters
Her Majesty's Revenue and Customs
Her Majesty's Treasury
Police forces
Scottish Office
Serious and Organised Crime Agency

Race Equality Impact Assessment

115. We do not believe that this policy will have an adverse impact on race equality.

CHAPTER 4: RECOVERING THE PROCEEDS OF CRIME

Purpose and Intended Effect

Objective

116. To improve the asset recovery regime, thereby helping to recover more criminal assets and reducing the harm caused by crime.

Background

117. The discussion paper 'New Powers Against Organised and Financial Crime' sets out a number of proposals for streamlining the asset recovery process.

Rationale for Government Intervention

118. Government action can improve the asset recovery regime, by putting in place a system which recovers the proceeds of crime more quickly and efficiently.

Options

- 1) **Do Nothing**
- 2) **Implement a package of measures designed to improve the asset recovery regime**

This consists of four separate measures.

- Merging of confiscation and enforcement hearings;
- Allowing statutory cancellation of confiscation orders;
- Contracting out of enforcement; and
- Granting civilian financial investigators the same powers as police financial investigators and HMRC officers.

Costs and Benefits

Option 1 – Do Nothing

119. No further costs or benefits.

Option 2 - Implement a package of measures designed to improve the asset recovery regime

Merging of confiscation and enforcement hearings

120. Following a conviction, there are often two separate hearings regarding confiscation. The first, the confiscation hearing, is held in the Crown Court, and decides the total value of the any confiscation order. The second, the enforcement hearing, is held in a Magistrates' Court, and allows the subject of the order and affected third parties to argue their case concerning ownership of assets. This option would merge these two hearings into one to be held at a Crown Court.

Benefits

121. This would remove the sometimes lengthy litigation on ownership of assets that follows a confiscation hearing. There may be some cost savings associated with this, as the preparation for the hearing could be done at the same time. Furthermore, it may speed up the enforcement of orders, helping to send out the signal that orders will be enforced, helping the asset recovery regime to reduce harm.

Costs

122. Merging the hearings would put greater onus on the prosecutors to identify affected third parties in time for the one and only hearing. It may also lead to more appeals as, given the timescales, affected third parties may not have been notified and fully put forward their case in the merged hearing. Finally, it would lead to a transfer of some court time from the Magistrates Court to the (more expensive) Crown Court.

Allowing statutory cancellation of confiscation orders

123. There are cases where confiscation debt remains, but the order is unenforceable. For example:

- the order was based on hidden assets;
- the defendant has absconded or died; or
- all available enforcement methods have been exhausted.

Benefits

124. These unenforceable orders skew year-on-year statistics concerning enforcement performance. Cancelling these unenforceable orders ensures better data exist, meaning we have a better understanding of where performance is good, and where it needs improving.

Costs

125. There is a risk that cancellation of such debts sends out a signal that delaying payment for a long time means the subject of the order can escape paying. Cancellation therefore should only be used as a last resort, once all enforcement avenues have been fully explored.

Contracting Out Enforcement

126. This would involve the public sector paying a private sector firm to collect asset recovery debts, potentially including sharing the value of any assets recovered.

Benefits

127. This option would take advantage of the greater resources the private sector has to offer, utilising their skills and experience in recovering debts. Assuming private firms can keep a share of any assets recovered, they would be incentivised to improve performance. Contracting out can also help to set benchmarks to aid performance management. There is currently £400m worth of uncollected orders, and we believe private firms can assist in recovering a proportion of that.

128. There may be some cost savings to the public sector, although they could be small because some public sector involvement would still be needed even after contracting out. There may be some minor costs involved in agreeing a regulatory/contracted framework for private sector involvement.

Granting all Financial Investigators the Same Powers as Police Financial Investigators and HMRC Officers.

129. The powers include:

- executing search and seizure warrants;
- seizing property subject to a restraint order to prevent its removal from the UK; and
- searching for and seizing cash suspected of being criminally tainted.

Benefits

130. Financial investigators are becoming more independent from police in their work. Currently, they need a police financial investigator to make a seizure or to execute may coercive powers; investigative or otherwise. This imposes an additional burden, and unnecessary cost, on police forces, who may not be able to spare the resource. Furthermore, it is often more appropriate for the financial investigator, who may have been involved in an investigation from the start, to search for and seize cash or evidence, rather than a police investigator. So giving financial investigators these additional powers would make their asset recovery work more effective and efficient.

Costs

131. Using these additional powers will incur no additional costs. No further training would need to be provided – financial investigators are already trained in using the additional powers.

Small firms

132. We do not anticipate that this proposal will have an adverse impact on small firms.

Competition Assessment

133. We do not anticipate that this proposal will have an adverse impact on competition. If the contracting out proposal were to be pursued then we would need to ensure that the tendering process was open and fair.

Enforcement and Sanctions

134. The package of proposals is designed to improve enforcement performance.

Monitoring and Evaluation

135. ARA are under a statutory obligation to monitor the performance of accredited financial investigators. They can withdraw accreditation if the person contravenes or fails to comply with any condition subject to which he was accredited.

Consultation

136. We have consulted the following: ACPO, Assets Recovery Agency, Court Service, CPS, DCA, HMRC, judiciary, Metropolitan Police Service, NIO, RCPO and SOCA.

Race Equality Impact Assessment

137. We do not believe that this policy will have an adverse impact on race equality.