

Regulatory Impact Assessment: Serious Crime Bill

Introduction

This document contains a series of Regulatory Impact Assessments relating to:

- Data sharing
- Criminal Law
- Serious Crime Prevention Orders
- Proceeds of Crime
- Surveillance Powers

We also attach the equality impact assessment and rural proofing statement as Annexes.

Declaration

I have read the Regulatory Impact Assessments and am satisfied that the benefits justify the costs.



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DATA SHARING

Please note: The Serious Crime Bill was amended during the Lords stages to replicate the data matching amendments contained in part 3 to the relevant audit bodies in Northern Ireland and Wales. Regulatory impact assessments relating to these changes will be published on the respective websites of Wales and Northern Ireland in due course.

Objective

1. 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

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

Rationale for Government Intervention

3. The 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 commercial interests and ultimately leads to higher consumer prices.

Options

Option 1: Do Nothing

Option 2: Grant the National Fraud Initiative Additional Powers

4. 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.

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

5. This option requires legislation to clarify or amend the statutory vires of a number of public sector bodies.
6. 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.

7. An alternative vehicle may be the proposed National Fraud Reporting Centre, a recommendation of the Fraud Review. The cost-benefit analysis can be found on pages 292-309 of the Fraud Review¹.
8. HM Revenue and Customs (HMRC) information is protected by a statutory duty of confidentiality. The measures in the Bill ensure that the information is protected by a criminal sanction against wrongful disclosure. Where HMRC information is disclosed through any of these proposed data sharing options it will continue to be equally protected – anyone who receives HMRC information will be bound by the same confidentiality provisions and the same criminal sanction.

Option 4: Pursue options 2 and 3

Benefits

Option 1: Do Nothing

9. Fraud causes huge harm to the UK every year. Economic consulting firm NERA² 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.
10. 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 the government does nothing more to try to stem it.

Option 2: Grant the National Fraud Initiative Additional Powers

11. 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

¹ Available at <http://www.lso.gov.uk/pdf/FraudReview.pdf>

² NERA, 2000, *The Economic Cost of Fraud*.

fraud against the public sector saves the taxpayer money and take the profit out of crime.

12. To get the full benefits outlined below, all Central Government departments would need to sign up to providing the NFI with their data by 2008-09. It is not yet known whether this will happen, so the benefits stated below should be considered a maximum.

Mortgage Records

13. 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 it can identify additional fraud of **£7m** over an NFI cycle of two years. This is based on assuming it continues to identify around £3,500 worth of overpayments for every 1,000 records it is able to check.
14. 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

15. 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 maintains its 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. This would require all central departments to join and so should be considered a maximum.
16. In addition, the NFI will be able to access further private sector pension records. In the short term, the NFI estimates it can collect data on half of those in a pension scheme with over 5,000 members, generating a further **£7.5m** in benefit fraud reduction. In the longer term, this could rise to £17.5m.

Central Government and Private Sector Payroll

17. 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. This would require all central departments to join and so should be considered a maximum.
18. 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. However, this is unlikely to be deliverable in the next NFI cycle.

NHS Foundation Trusts

19. Inclusion of NHS foundation trusts in the NFI remit will prevent the NHS losing their protection and will allow them to continue to detect benefit fraud. 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

20. By identifying tenancy fraud, the NFI would allow 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

21. 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

22. 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

23. 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. 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.

Non Fraud areas

24. The Bill provides capacity for the NFI to be used in non fraud areas in the future. Currently, funding does not exist for these options to be pursued, but the Bill allows the benefits from these areas to be delivered in the future.
25. Having access to the extra data described above, would provide potential for the NFI to work with the police in locating absconders from justice.

Student Loan fraud and immigration fraud

26. A recent pilot between the Student Loan Company and the Home Office Immigration and Nationality Directorate demonstrated a high level of matches between those fraudulently applying for student loans and those without indefinite leave to remain or permission to study in the UK. The results are still being investigated but the benefits to both departments are potentially valuable.

Identity Fraud

27. In the longer term, it is possible that the NFI databases will be extended to include information on central government systems, such as passports and driving licenses. As a result, 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 the public sector and, for example, credit card losses in the private sector. Such negative data matching would require more regular data collection, and the addition of key central applications.
28. More regular data collection would cost about £1m per annum, largely because NFI databases would need to be updated annually to take advantage fully of this technique. This additional funding will not be in place for the next full NFI cycle of 2008-09. This legislation, however, allows for the benefits to be realised in the longer term, if the funding exists.
29. This would mean using techniques new to the NFI and, because of this, the benefits are extremely difficult to estimate. The NFI has, on average, typically detected £108 worth of benefits for every £1 spent. Given the uncertainties attached to benefits we have assumed conservatively that the rate of return attached to this form of negative matching would be only one tenth of what is normally achieved. Under this cautious assumption, the NFI would detect about £21.6m of identity fraud over a two-year cycle. However, this saving remains highly uncertain.

Deterrent benefits

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

Summary

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

	Next full NFI cycle (2008 and 2009)
Mortgage records	£7m
Pension records	£11.9m
Central government and private sector payroll	£0.8m
Cross-border data matching	£2.5m
Total additional fraud detected per NFI cycle	£22.2m

NB These savings assume that all central government departments provide the necessary data, and so should be considered a maximum.

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

Option 3

32. 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. 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.
33. One way of delivering such sharing is through CIFAS. Their members treat an application with great care if the applicant appears on the CIFAS database. CIFAS has proved itself to offer large benefits to the private sector. Members reported savings of £682m in 2005.
34. To understand the potential benefits of public sector membership of CIFAS, the Identity Fraud Steering Committee undertook a data matching pilot project. The Her Majesty's Revenue and Customs, United Kingdom Passport Service, Driver and Vehicle Licensing Agency and the Department of Work and Pensions 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. This demonstrates that many of those who commit fraud against one organisation, also commit fraud against another, meaning public sector membership of CIFAS is likely to lead to earlier detection of fraudulent activity.
35. The following public sector organisations could benefit from joining an organisation like CIFAS:
 - Department for Health (DfH)
 - Department for Work and Pensions (DWP)
 - Her Majesty's Revenue and Customs (HMRC)
 - Identity and Passport Service (IPS)

- Immigration and Nationality Directorate (IND)
 - Local Authorities
 - Student Loans Company
 - Land Registry
36. 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 and all departments join. The vast majority of these savings is likely to be split (roughly equally) between HMRC and DWP.
37. 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 it will benefit from a more comprehensive database.
38. As data is shared more widely, it becomes ever more important that, where appropriate, confidentiality is protected, and wrongful disclosure of data does not occur. This Bill introduces a criminal offence of unlawful disclosure of HMRC information by anyone who is in receipt of that information by virtue of the proposed information sharing provisions. Acting as a deterrent to unlawful disclosure, the criminal sanction represents a visible statement that confidentiality of HMRC information is treated seriously and shows that robust penalties (with the threat of imprisonment) are in place for any breach of that confidentiality. This measure ensures confidentiality is maintained for taxpayers' and other HMRC customers' affairs and that their information is appropriately protected from misuse.
39. The increased sanction for breach of section 55 of the Data Protection Act will also help to protect confidentiality by providing a greater deterrence against the wilful misuse of personal data. This will help increase the willingness of members of the public to share personal data in the interests of legitimate activity including efficient government. More details on the impact can be found in the partial regulatory impact assessment of this proposal³.

Option 4: Pursue options 2 and 3.

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

Costs

Option 1

41. No further costs.

³ Available at http://www.dca.gov.uk/consult/misuse_data/consultation0906.pdf.

Option 2

42. The cost 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 – this will pay for the more regular updating of NFI databases to derive the benefits associated with reduced ID fraud and locating absconders from justice.
43. In some instances the NFI would charge the private sector to cover their costs. This will be 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. The maximum they are likely to charge a public agency participating voluntarily is £2,500.
44. 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). Cases rarely go to court.

Option 3

45. Again we use CIFAS membership as an example. Costs of 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 for existing CIFAS Members, resulting in the smallest, such as Identity and Passport Service and Driver and Vehicle Licensing Agency 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 joining fee.
46. 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. For 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 cost of providing the appropriate data to CIFAS is also likely to be small. No new technology would be required to participate, providing agencies have access to a web browser.
47. In the event of more people being denied benefit, there may be some very small legal aid costs attached to those people seeking legal advice.
48. There will be some small Criminal Justice System costs associated with greater sanctions attached to breach of section 55 of the Data Protection Act. More details are included in the partial regulatory impact assessment of this proposal.

Option 4: Pursue options 2 and 3.

49. 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 £22.2m per NFI cycle of two years, plus potential for a share of identity fraud savings in the future.

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

Private sector: Potential for share of identity fraud savings in the longer term.

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 and all relevant public organisations join.

Better prioritisation of Suspicious Activity Reports.

Private sector: Some fraud savings as a result of having access to more data concerning suspected fraudsters.

Costs

Option 2

Public sector: Greater costs associated with more investigations by LAs, of about £1,000 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: If we follow the CIFAS membership route, total subscription costs of membership of up to £250,000 per year if all relevant public organisations join, 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.

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

Small firms

50. These proposals were included in the green paper 'New Powers Against Organised and Financial Crime'. This consultation lasted for 3 months and generated more than 110 responses, a large number of which were from the financial sector, other businesses and bodies representing the interests of small businesses. The majority of respondees were in favour of the proposals within the green paper and saw the benefits of the new measures.
51. The Home Office has contacted the Small Business Service who were given the opportunity to comment on these measures.
52. We do not anticipate that these proposals will have a disproportionately negative impact on small firms.

Competition Assessment

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

Enforcement and Sanctions

54. 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.

Post Implementation Review

55. The proposals will be judged by the levels of fraud savings. Participants in the 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 by individual authorities and are used as the basis for a national report produced by the NFI.
56. CIFAS regularly monitors estimated annual fraud savings attributed to membership of CIFAS.

Consultation

57. 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 Trade and Industry
 - Department for Transport
 - Department for Work and Pensions
 - Driver and Vehicle Licensing Agency
 - Financial Services Authority

- Her Majesty's Revenue and Customs
- Her Majesty's Treasury
- Northern Ireland Office
- Scottish Office
- Wales Office
- Land Registry
- Defra

Recommendation

58. That option 4 is pursued.

NEW CRIMINAL LAW PROPOSALS CONCERNING SERIOUS CRIME

Objective

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

Background

60. 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 serious 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. Separately the Law Commission has, since 2001, been considering the law around inchoate liability and assisting crime, following its previous consultation in 1993.
61. 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 entitled "Inchoate Liability for 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.
62. 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.

Rationale for Government Intervention

63. The Law Commission Report on Inchoate Liability for Assisting and Encouraging Crime, and discussions between prosecutors and law enforcement, identified loopholes in the law that allow those who encourage and assist others to commit offences to avoid prosecution.
64. 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.

65. This presents particular problems in the organised crime context. As a result, the Government included the Law Commission proposals in its consultation paper entitled “New Powers against Organised and Financial Crime”.

Consultation

66. The Law Commission proposed three new offences:

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

67. The Government welcomed those offences but consulted on some specific elements of them. In particular the consultation paper asked whether the scope of the Clause 2 offences should be restricted to those who “believe” that an offence “will” take place or if it should be widened.

68. The consultation paper also sought views on whether there might be benefits in supplementing these offences with a further offence aimed specifically at those who assist organised criminals.

69. The consultation closed on 17 October and a detailed summary of responses to the consultation is available at:
<http://www.homeoffice.gov.uk/documents/powers-against-org-crime.pdf?version=1>

70. In general, respondents were supportive of both the Law Commission proposals and the proposed new offence aimed at those who assist organised criminals.

Options

71. Three options are identified:

1. Do Nothing
2. Implement proposals as set out in the Law Commission Report
3. Implement proposals as set out in the Law Commission Report but make changes to the law commission clause 2(2) to make it more workable in practice.

Costs and Benefits

72. The options provide a number of benefits: bringing additional offenders involved in criminality to justice; disrupting crimes at an earlier opportunity; deterring others from assisting or encouraging crime; and providing greater clarity and simplicity in cases which could lead to simpler trials.

Option 1 - Do nothing

73. As mentioned above, the overall objective of the package is 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.
74. One option would be to leave the law as it is. There would be no financial costs involved in this option but there are risks involved in doing nothing.
75. 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. Doing nothing would send a message that the Government considers those who encourage crime to be blameworthy, but those who assist, not so.
76. Doing nothing would leave gaps in the criminal law which could be exploited and would prevent the benefits of the proposals from being realised which would have implications for law enforcement and society as a whole. It would also go against the consensus of responses to the consultation paper which was in favour of implementing the Law Commission proposals and including a new offence aimed at those who assist organised criminals.

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

77. Implementation of the proposals set out in the Law Commission Report (as listed above) would ensure that those problems identified in the Report could be addressed and would cover the situation whereby a person provides assistance to a serious criminal group, or indeed any person, believing that this would assist a specific offence or one of a list of specific offences.
78. The vast majority of responses to the consultation were in favour of implementing the Law Commission proposals and criminalising this type of behaviour. In the light of responses to the consultation the Government is convinced of the need for these offences and has decided to proceed with them.
79. The Government has considered carefully the question of whether the scope of the offences in Clause 2 should be widened. Responses on this point were mixed but as these offences are inchoate offences, we consider that they should not extend liability too far. As such the Government has decided to implement the offences as originally proposed by the Law Commission (although we have suggested changes to the operation of their proposed Clause 2(2)-see below).

80. The new offences allow us to simplify the Computer Misuse Act 1990 offences. This will have no regulatory impact.
81. However, although the Law Commission proposals would cover a person who provides encouragement or assistance to a number of offences where he believes that at least one will be committed, the formulation of that offence would require the prosecution to prove that, in relation to one of the offences that the person providing the encouragement or assistance considered might have been committed, he believed that the person committing the offence had the necessary fault element to do so. We have considered this in detail with prosecutors and consider it would be difficult to prove a state of mind in relation to an offence that, by definition, a defendant did not believe would happen. These offences do not therefore cover the situation where a person provides encouragement or assistance to a range of offences and does not consider, or care, which might be committed nor whether they would be committed with the necessary fault, but is happy to assist whatever the principal offender has in mind. This is a particular problem in relation to those who assist serious crime as they frequently distance themselves from the commission of offences. Option 2 would not therefore fully address the concerns identified by law enforcement officers and prosecutors concerning those who facilitate serious crime. The risks therefore of implementing option 2 would be failure to realise the full 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).
82. The Government has therefore decided to proceed with option 3 and implement the proposals as set out in the Law Commission Report but make changes to the clause 2(2) to make it more workable in practice.

Option 3 - Implement proposals as set out in the Law Commission Report but make changes to the law commission clause 2(2) to make it more workable in practice.

83. Implementation of the proposals set out in the Law Commission Report would ensure that those problems identified in the Report could be addressed.
84. The consultation paper sought views on whether there might be benefits in supplementing these offences with a further offence aimed specifically at those who assist serious criminals.
85. The majority of responses to the consultation were in favour of this proposal and thought it would be a useful way of ensuring those more loosely connected with serious criminal groups could not avoid prosecution. However, some responses questioned whether this was necessary if the Law Commission offences could be formulated so as to

cover this behaviour. In light of responses to the consultation and after careful consideration the Government has decided to cover the behaviour that would have been covered by an entirely separate offence by incorporating changes into the Law Commission offence that will ensure that it is able to cover a person who does an act capable of encouraging or assisting a number of offences, but has no belief as to which, where it can be proved that in relation to one of the offences he thought might be committed, he had the necessary fault.

86. Under the new offence, the prosecution will not have to pick a single anticipated offence in order to prosecute the defendant, nor prove that in relation to this one offence, he believed that the principal offender would have the required mental element if he committed the offence.
87. Option 3 addresses the concerns identified by law enforcement agencies and prosecutors concerning those who facilitate organised crime without specific knowledge of the offences being committed. The benefits of doing so are set out above and were stated in the consultation itself.
88. The financial costs to the public sector for Option 3 are set out below. There are no costs to businesses, charities or the voluntary sector.

Measure	Benefits	Cost
<ul style="list-style-type: none"> • Encouraging or assisting with intent • Encouraging or assisting believing that an offence will happen • Encouraging or assisting believing that at least one offence will happen (but with no knowledge as to which) 	<p>Ensures that problems identified in the Law Commission Report are addressed and will cover the situation whereby a person provides assistance to an organised criminal group (or indeed any person) without belief that this would assist a specific offence.</p> <p>We estimate that this option will result in an additional 30-50 prosecutions a year.</p>	<p>Estimated total cost of £950,000 - £1.59m per year.</p>

89. The costs to prosecutors (Crown Prosecution Service (CPS) and Revenue and Customs Prosecution Office) arising from programme costs are estimated to be £117k - £195k. Costs falling to the Department for Constitutional Affairs (DCA) arising from increased court costs and legal aid are estimated to be £693k - £1.18m. An additional estimated 4-6 prison places per year will be needed at a resource cost of £140,000 - £210,000. This results in a total cost estimate of £950,000 - £1.59m.

Small firms

90. These proposals were included in the green paper 'New Powers Against Organised and Financial Crime'. This consultation lasted for 3 months and generated more than 110 responses, a large number of which were from the financial sector, other businesses and bodies representing the interests of small businesses. The majority of respondees were in favour of the proposals within the green paper and saw the benefits of the new measures.
91. The Home Office has contacted the Small Business Service who were given the opportunity to comment on these measures.
92. We do not anticipate that these proposals will have a disproportionately negative impact on small firms.

Competition Assessment

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

Enforcement and sanctions

94. The proposals set out in Options 3 will be enforced by criminal prosecutions, involving the police, the Crown Prosecution Service, the Revenue and Customs Prosecution Office and the courts. Sanctions for the offences proposed would match those of the offence that the person providing encouragement or assistance believed or intended he was encouraging or assisting.

Post-Implementation Review

95. The Home Office will monitor the use of these proposals from implementation. The Home Office will carry out a review of the impact of the changes 3 years after implementation by studying statistics.

Recommendation

96. The consultation and review process has demonstrated strong support and the need for changes to existing legislation relating to assisting and encouraging crime. Responses to the consultation have influenced policy as set out in Option 3.

SERIOUS CRIME PREVENTION ORDERS

Objective

97. To reduce the harm caused by serious crime, through the prevention and disruption of criminal activities.

Background

98. Considerable progress has been made in the fight against serious crime recently. The Serious Organised Crime Agency (SOCA) came into being on 1 April 2006, and major steps have been taken to improve the police response to regional (level 2) serious crime.

99. Nevertheless, law enforcement has fewer levers against serious criminals than, for example, against white collar criminals, or regulators have against businesses in their sector.

100. The widest range of such tools, covering administrative, civil and criminal remedies, tends to rest in the hands of some of the newer agencies like the Financial Services Authority. This wide range of potential disposals gives considerable flexibility and arguably increases the likelihood of voluntary settlement with those subjected to investigation. The purpose of the disposals includes preventing future harms and redressing past ones

101. This approach reflects a general trend in regulation, exemplified in the Hampton Review, which stressed the importance of a risk based approach, targeting the more invasive regulatory tools in the areas where breaches are most likely.

102. In a parallel process, successive Governments over recent years have introduced new categories of civil orders against individuals for harm or crime prevention purposes. There are a range of such orders, covering areas like anti-social behaviour, sexual offences, restraining orders and football banning orders.

103. The consultation paper *New Powers Against Organised and Financial Crime* set out the case for new civil prevention orders.

Rationale for Government Intervention

104. Government has a duty to reduce the harm caused by serious 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

105. The Serious Crime Prevention Order is a civil order and would impose conditions on an individual or an organisation. It would generally require a High Court hearing (but will also be available to the Crown Court, exercising a civil jurisdiction, upon conviction for a serious crime), and be appealable to the Court of Appeal. The court will be able to impose an order if:
- it is satisfied that a person has been involved in serious crime (whether in England and Wales or elsewhere); and
 - it has reasonable grounds to believe that the order would protect the public by preventing, restricting or disrupting involvement by the person in serious crime in England and Wales.
106. 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 paper *New Powers Against Organised and Financial Crime* contains case studies of further types of conditions. The intention of the orders would be to prevent harm and they will not be punitive.
107. Orders could be aimed at companies or other organisations which had been involved in serious crime. In terms of scope, the courts will have the flexibility to include such terms as they consider appropriate for protecting the public from the harm caused by serious crime. They might include restrictions on how an enterprise carries out its business, or could require the removal of certain directors or office holders.

Benefits

Option 1 – Do Nothing

108. Serious crime causes huge harm every year. The abuse of Class A drugs, produced, or smuggled into the country, by serious criminals, causes economic and social costs of around £15 billion per year. Further billions of pounds of indirect tax fraud is committed by serious criminals each year, and serious immigration crime incurs economic and social costs of an estimated £2bn annually.
109. Serious 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.
110. Little is known about trends in the scale of serious crime activities, making it very difficult to predict what would happen in future without further government intervention. But the nature of serious crime groups means that they are always on the look out for new criminal opportunities, making it likely that harms would increase over time. If the

government is to stay ahead, it must be proactive in identifying measures which can prevent or disrupt serious crime activities.

Option 2 – Introduce the Serious Crime Prevention Order (SCPO)

111. The objective of the orders is to reduce harm by preventing and disrupting serious crime. They will provide law enforcement with a flexible means of tackling serious criminals, including those who facilitate serious crime. This flexibility will enable an approach which allows law enforcement to tackle all levels of serious criminality. It will mean that there is significant harm reduction downstream by tackling the catalysts, at the head of serious criminal organisations for much of the criminal activity. It will also mean that it will be less easy for more junior members to simply pick up where others have left off when a major player has an order placed upon them or is prosecuted.

Financial Costs

112. The following types of financial costs may be incurred:

- Legal aid costs associated with pursuing the civil order and any breaches;
- Court costs associated with pursuing the civil order and any breaches
- Monitoring compliance of orders;
- Potentially, costs of criminal sanctions if the order is breached.

113. In total we expect about 30 SCPOs to be applied for annually. Allowing for the fact that most people facing SCPOs will not be on legal aid (we assume 25% will be), we estimate that this will incur **£81,000** in civil legal aid costs. This includes legal aid costs associated with third parties, failed applications, appeals and variation applications, and prosecutions for breach. (We assume a breach rate of 20%).

114. Civil prosecution costs are estimated to total about **£200,000**.

115. Criminal court costs are very low. A guilty plea incurs costs of £356, suggesting total costs of under **£2,000**. Convictions for breaches are likely to require about 1-2 prison spaces, at a cost of about **£35k - £70k**.

116. This suggests a total cost of applying for orders of about **£318,000 - £353,000** per year.

117. Estimating the cost impact of monitoring compliance is not possible. Law enforcement may be monitoring those subject to these orders in which case there will be little in the way of extra costs.

118. There may be cost savings attached to these orders if they result in fewer criminal prosecutions in the future through a deterrent or preventative effect. The cost estimates above do not take any potential savings into account.

Non-financial Costs

119. With any orders of this kind there is a risk that an order could be lawfully obtained against an individual or organisation 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.

Potential impact on legitimate business

120. We expect the impact to be low. We envisage that the majority of orders will be sought against individuals and that these will be highly targeted. Where an order is sought against an organisation of any kind, the applicant authority will have to demonstrate that the order complies with the test as described above.

121. Where an organisation was involved with serious crime through unknowing or unintended facilitation, law enforcement would use an SCPO against the organisation only having engaged with it to seek to resolve the situation without resorting to the courts, or it would seek an order against the individuals involved instead.

122. In addition, there are strong provisions contained in the Bill to protect third parties and to give them the right to apply for variation or discharge of an order where they are significantly adversely affected by it. The applicant authorities will also have to bring to the attention of the courts the potential impact of any order on third parties – allowing the courts to make fully informed decisions as to what terms of an order might be reasonable and appropriate. All of these provisions will help to ensure that any impact of the orders on legitimate business will be minimal and, where there is an impact, reasonable.

Small firms

123. This proposal was included in the green paper ‘New Powers Against Organised and Financial Crime’. This consultation lasted for 3 months and generated more than 110 responses, a large number of which were from the financial sector, other businesses and bodies representing the interests of small businesses. The majority of respondees were in favour of the proposals within the green paper and saw the benefits of the new measures.

124. The Home Office has contacted the Small Business Service who were given the opportunity to comment on these measures.

125. We do not anticipate that these proposals will have a disproportionately negative impact on small firms.

Competition Assessment

126. 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 businesses to check whether their customers are subject to prevention orders and therefore potentially restricted from doing business.
127. 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

128. 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.

Post-Implementation Review

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

Consultation

130. 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

Recommendation

131. That the Serious Crime Prevention Order is introduced.

RECOVERING THE PROCEEDS OF CRIME

Objective

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

Background

133. The Proceeds of Crime Act (POCA) 2002 introduced new powers to seize and recover criminal assets. Over £230m has been recouped from criminals over the last three years; a doubling of performance. The government has set a target of recovering £125m in 2006-07, and is aiming for a further doubling of receipts to £250m by 2009-10.

134. The aim of asset recovery is to reduce the harm caused by crime by recovering the proceeds of crime. Asset recovery can:

- disrupt a criminal's ability to fund further crime;
- create a continued deterrent against further criminality;
- show the public that crime does not pay and improve public perception of criminal justice; and
- remove negative role models and their well-flaunted assets from society.

135. There are three main routes available to recover the proceeds of crime: confiscation (following a criminal conviction), civil recovery and cash forfeiture. The proposals in this RIA concern criminal confiscation and the Asset Recovery Agency's (ARA's) civil asset recovery and taxation powers.

136. Civil Recovery operates exclusively as the preserve of ARA; it empowers the Director to sue in the High Court to recover the proceeds of unlawful conduct and taxation. The burden of proof rests with the applicant (the Director of the ARA) and is based on the civil standard. ARA was set up in 2003 by POCA 2002. ARA enforced about £4m of orders in 2005-06.

137. Confiscation activity is undertaken by a wide range of agencies, including, among others, the police, the Serious and Organised Crime Agency (SOCA), Her Majesty's Revenue and Customs (HMRC), the Crown Prosecution Service (CPS), Revenue and Customs Prosecution Office (RCPO) and the Courts Service.

138. Option 1 below concerns SOCA. SOCA came into being on 1 April 2006 and is a dedicated enforcement agency responsible for tackling organised crime and reducing the harms it causes.

139. Enforcement is a crucial stage in the confiscation process, and is carried out by the Magistrates Courts, CPS, RCPO, or the Enforcement Task Force. Without enforcement, proceeds of crime are not recovered - removing many of the benefits of asset recovery - and funds are not raised to be invested in other harm reducing interventions. Complete

enforcement of all confiscation orders is not possible; nevertheless, there is scope to improve performance in this area.

Rationale for Government Intervention

140. 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) **Merge the Assets Recovery Agency into the Serious Organised Crime Agency (including extending the civil recovery function to certain prosecution agencies)**
- 3) **Implement a package of measures designed to improve the asset recovery regime:**
 - (i) Granting civilian financial investigators the same powers as police financial investigators and HMRC officers;
 - (ii) Enhancing investigation powers; and
 - (iii) Extending the powers to search for, seize and forfeit cash.

Options (i) and (ii) will be included in the provisions on introduction. Option (iii) may be introduced by government amendment.

- 4) **Pursue options 2 and 3**

Costs and Benefits

Option 1 – Do Nothing

141. No further costs or benefits.

Option 2 – Merge the Assets Recovery Agency into the Serious Organised Crime Agency (including extending the civil recovery function to certain prosecution agencies)

Synergies

142. Major synergy benefits can be realised under this option. Civil recovery tools sit logically with other key civil tools, for example the new Prevention Orders being planned in the Serious Crime Bill. The use of civil recovery may be quicker if considered in an integrated way within SOCA. There are also likely to be synergy benefits arising from SOCA's planned work.

143. There will also be both synergy and savings in extending the civil recovery functions currently held by ARA to both SOCA and prosecution agencies. Prosecutors have gained valuable skills in the recovery of the

proceeds of crime. Where prosecutors have done the work to assess whether a case passes the usual tests for prosecution but decide it does not, there will be efficiency advantages if they take on the civil recovery function rather than pass the work to another agency.

144. Co-location in SOCA should also speed up the process of building intelligence cases; SOCA owns a database (ELMER) of Suspicious Activity Reports (SARs); there will be automatic access to the SOCA intelligence database and a much greater critical mass of financial investigation skills. Over time SOCA will develop powerful in house expertise on complex civil cases, which should enable them both to improve the timeliness of cases and the proportion of cases settled satisfactorily out of court.
145. The financial investigator training functions currently lie with ARA. This measure will see these functions being transferred to the National Policing Improvement Agency (NPIA). Such functions lie naturally with the NPIA as they have responsibility for other training issues related to the police.

Financial

146. ARA's finances, funded as they are partly through civil asset recovery receipts, can be very volatile. The receipts of a single large civil case could outweigh all receipts from other civil cases within a given year. Such fluctuations in income make financial management very difficult in a small organisation such as ARA, and there will always be a risk of deficit at the end of a year, potentially because one large case is taking longer to conclude than expected. SOCA, having a larger budget, will be better able to absorb these large fluctuations in income.
147. There will also be savings from "back office" functions through economies of scale. SOCA already has a considerable back office team, who can absorb new staff at relatively low extra cost. Given that ARA reports expenditure of £2m on such back office functions, potential savings here are large.

Costs

148. ARA has successfully acted as a champion for asset recovery work. Stakeholders will need reassuring that a merger with SOCA will not see a reduction in the availability of civil recovery tools for agencies other than SOCA. This risk can be managed through SOCA agreeing protocols for referrals for civil recovery work and ensuring that other law enforcement agencies continue to identify civil recovery as potential tool.
149. There will be some short term project costs associated with aligning IT systems and other processes. It is likely that these costs will be more than outweighed by future savings arising from the need to maintain fewer systems. Finally, there may be some "pay drift" for staff joining SOCA on civil service terms and conditions – we expect this to be small.

Option 3 - Implement a package of measures designed to improve the asset recovery regime

(i) Granting civilian financial investigators the same powers as police financial investigators and HMRC officers

150. 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.

151. 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 many 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. As a result, giving financial investigators these additional powers would make their asset recovery work more effective and efficient.

152. Some further training would need to be provided to civilian financial investigators. However, since they are already trained in the field of proceeds of crime, this extra cost is low; we estimate it to be around £10,000.

(ii) Enhanced investigation powers.

153. This comprises two measures:

- *Detained cash investigations.* Currently law enforcement has no coercive investigation powers to investigate the derivation or intended use of cash which has been seized under POCA. The ability to investigate these cases with specific powers will lead to more timely and fuller cases for forfeiture. There may be some small compliance costs associated with this measure.
- *Investigate a person's assets.* If a person has an outstanding amount unpaid on their confiscation orders there are no powers for law enforcement to investigate their ability to pay. The ability to identify assets which a person holds which can be used to settle their confiscation order will support enforcement action.

(iii) Extend the powers to search for, seize and forfeit cash.

154. Criminals are starting to use commodities in place of cash for criminal transactions, e.g. pre-paid cash cards. This circumvents the current cash

seizure scheme within POCA. This proposal would allow for the seizure of further proceeds of crime or assets used for funding crime.

Option 4 – pursue options 2 and 3

155. The costs and benefits attached to this option are simply the sum of costs and benefits of options 2 and 3.

Small firms

156. We do not anticipate that these proposals will have a disproportionate negative impact on small firms.

Competition Assessment

157. We do not anticipate that this proposal will have an adverse impact on competition.

Enforcement and Sanctions

158. The package of proposals is designed to improve the enforcement performance of confiscation orders.

Monitoring and Evaluation

159. SOCA reports annually to the Home Secretary, through an Annual Report, and also to the Assets Recovery Board.

160. There is an independently appointed person who oversees the operation of the search power in cash forfeiture cases. The agencies operating the other powers are also open to evaluation and are subject to complaints procedures. Many of the powers will be overseen by the judiciary in individual cases. The Government target of recovering £250 million by 2009-10 will require all agencies to monitor closely their effective use of the powers. Experiences will be shared at multi-agency working groups.

Consultation

161. We have consulted the following: Association of Chief Police Officers (ACPO), Assets Recovery Agency, Court Service, CPS, DCA, HMRC, Metropolitan Police Service, Northern Ireland Office (NIO), RCPO, various agencies with accredited financial investigators and SOCA. We have also consulted Scottish and Northern Irish counterparts.

Recommendation

162. That the Assets Recovery Agency is merged into the Serious Organised Crime Agency and the proposed package of measures designed to improve the asset recovery regime is implemented.

SURVEILLANCE POWERS

Objective

163. To provide modern, proportionate, efficient and effective powers, with commensurate safeguards for citizens, for HMRC to use during criminal investigations.

Background

164. Most taxpayers do their best to pay the correct amount of tax. However, experience shows there is a small minority of people whose determination to attack the tax system is part of a wider non-conformance with the law. In particular, criminal gangs are engaged in sophisticated attacks against the tax and tax credit systems designed to extract money from the system by systematically submitting fraudulent claims. This activity goes far beyond failing to pay tax due on genuine commercial activity. It is serious criminal activity such as these attacks that these proposals are concerned with. The numbers of cases is small but the sums at stake can be very large.

165. RIPA (Regulation of Investigatory Powers Act 2000) and some associated legislation (in the Police Act 1997 and Wireless Telegraphy Act 2006) provide certain surveillance powers used to combat serious and organised crime.

166. The powers enable the use of various techniques including intercepting postal and telephone communications and intrusive surveillance (for example using listening devices in residences and cars). There are numerous statutory safeguards around the use of these powers which can only be used for investigations into serious crime. For example, they can only be used where that is necessary and proportionate and they require authorisation by a Surveillance Commissioner or a warrant from a Secretary of State.

167. HMRC already has access to these powers for criminal investigations concerning ex-Customs and Excise matters but not for ex-Inland Revenue matters (other law enforcement agencies also use the same powers). HMRC's experience using these techniques against serious crime involving tax (for example carousel fraud (MTIC)) shows that they can be vital if the people organising the frauds are to be identified, caught and brought to justice.

Rationale for Government Intervention

168. Intervention is needed to bring criminals to justice and protect society and the Exchequer. Changes are needed to the current position as there is increasing evidence of serious criminal attacks on ex-Inland Revenue taxes and tax credits, on occasion involving identity theft. Extension of the powers to ex-Inland Revenue matters will allow those serious crimes to be tackled more effectively.

Options

Option 1: Do Nothing

Option 2: Apply the relevant RIPA, Police Act 1997 and Wireless Telegraphy Act 2006 powers across HMRC

169. The powers are already available to HMRC for investigations concerning ex-Customs and Excise matters. Under option 2 they would be made available to HMRC for investigations into serious crime (where the necessary stringent conditions were met) irrespective of whether this involved an ex-Revenue or ex-Customs and Excise matter. The powers could not be used for HMRC's more routine compliance work such as checking tax returns – this would be prohibited by the law and HMRC's internal controls and organisation prevent an application even being considered.

Benefits

Option 1: Do Nothing

170. No further benefits.

Option 2: Apply the relevant RIPA, Police Act 1997 and Wireless Telegraphy Act 2006 powers across HMRC

171. These powers would ensure that HMRC remained properly equipped across the range of its activity to investigate tax crimes and related money laundering activity effectively, including attacks by organised crime on the tax and tax credit systems.

172. Such powers would reduce both the level of non-compliance through serious criminal activity and the disadvantages to compliant taxpayers through such activities. This would be delivered through successful prosecutions following investigations. It should provide a deterrent benefit through the publicity that prosecutions would attract.

173. Furthermore, these powers would help HMRC to penetrate the criminal gangs undertaking the frauds to identify the controlling minds and take action against them. Covert surveillance would also allow HMRC to obtain details of conversations that reveal the arrangements through which frauds are perpetrated; identify the means through which money is passed on and the bank accounts where it is hidden; obtain proof of contacts between the dispensable 'foot soldiers' who perpetrate the crimes and the criminals who conspire to make them happen and make the big financial gains. The frauds can only be eradicated if the latter are tackled.

174. These powers would also allow proof to be obtained that suspected criminals who are allegedly resident off-shore are operating businesses in the UK. It would improve HMRC's ability to identify suspects and

monitor their movements which is vital where they may be planning to abscond, and to identify corrupt employees helping criminal enterprises by, for instance, obtaining identity information.

Costs

175. There would be no costs involved for any legitimate business sector. For HMRC we anticipate no substantial increase in the use of these powers. Rather, current resources would continue to be used but would be applied to the most serious cases whether they involved ex-Customs and Excise or ex-Inland Revenue matters. So work arising from this measure will be covered from existing budgets.

Small Firms Test

176. There would be no impact on (compliant) small firms. The impact would only be on firms subject to a criminal investigation involving serious crime as such investigations would be made more effective and efficient where it was appropriate to use these powers.

Competition Assessment

177. These powers aim to improve competition by reducing the unfair advantage gained by those taxpayers who commit serious tax and tax credit crimes. So these powers would benefit all compliant taxpayers.

Enforcement and Sanctions

178. There are robust procedures in place to ensure the correct use of these surveillance powers by HMRC: internal authorisation must be sought before a power is used and, external authorisation may be needed too (for example authorisation by a Surveillance Commissioner or a Secretary of State's warrant).

179. These powers do not require any sanctions for non-compliance – they are covert powers so the people under surveillance are unaware of them and are not required to do anything to comply.

Post Implementation Review

180. HMRC's internal audit and professional standards units review the use of powers. Furthermore, external reviews by Her Majesty's Inspectorate of Constabulary for England, Wales and Northern Ireland and Her Majesty's Inspectorate of Constabulary for Scotland are conducted

Consultation

181. The consultation document issued by HMRC in March 2006, *Modernising Powers, Deterrents and Safeguards*, asked for views (paragraphs 5.23 and 5.24) on the extension of these powers (option 2), subject to the same conditions and safeguards, to criminal investigations into serious crime affecting ex-Inland Revenue responsibilities. The majority of respondents who commented were in favour of extending the powers to ex-Inland Revenue responsibilities, provided (as proposed)

that they could only be used in criminal investigations into serious crime, and continued to be subject to the same safeguards and controls.

Recommendation

182. That option 2 is pursued.

Annex A: Equality Impact Assessment

Introduction

183. The purpose of an Equality Impact Assessment is to consider how a new policy will impact different groups within society. This EIA has been produced to support the introduction of the Serious Crime Bill.

Background

184. In July 2006 the Home Office published a consultation paper entitled 'New Powers Against Organised and Financial Crime'. This green paper proposed a package of new powers to strengthen and improve the ability of law enforcement agencies to tackle and prevent serious organised crime, thereby reducing its harm to society. These measures aim to complement the changes introduced by the Serious Organised Crime and Police Act 2005.

185. During the 3 month public consultation period more than 110 responses were received from the Police and other Law Enforcement Agencies, the judiciary, Other Government Departments, local government Trading Standards departments, Charities/Non-Governmental Organisations, representatives from the Banking and Financial sectors and individual members of the public. The vast majority of respondents were in favour of the measures set out in the green paper and many of the views expressed contributed to the development of policies within the Serious Crime Bill.

Serious Crime Bill

186. The Serious Crime Bill, introduced in the House of Lords on 16th January 2007, includes measures to:

- Establish a new Serious Crime Prevention Order to prevent organised criminal activity by individuals or organisations by imposing conditions on them.
- Introduce new offences of encouraging or assisting a criminal act with intent, or encouraging or assisting a criminal act believing that an offence will be committed. Also a new offence aimed to catch those whose acts of assistance are not themselves unlawful but who knowingly facilitate the commission of serious offences, not caring exactly which ones are carried out.
- Improve the sharing of data within the public sector and between both the public and the private sectors in order to help prevent crime, especially fraud.
- Improve the recovery of criminal assets by strengthening the proceeds of crime legislation.
- Make HM Revenue and Customs' existing surveillance powers widely available in order to combat serious and organised tax crime.

Provisions within the Serious Crime Bill

- ***Serious Crime Prevention Orders (SCPOs)***
187. The responses to the Green Paper were overwhelmingly in favour of the creation of SCPOs. They will provide law enforcement with an additional tool with which to prevent serious crime. The purpose of an SCPO will be to enable the courts to make an order in relation to either individuals or organisations (for example companies) placing obligations or restrictions upon that individual or organisation. Breach of an order will be a criminal offence punishable by imprisonment and / or a fine.
188. Serious Crime Prevention Orders are civil orders, similar to Anti-Social Behaviour Orders or Football-Banning Orders. Anti-Social Behaviour Orders were introduced in the Crime and Disorder Act 1998 and are used widely by Police and Local Authorities to tackle low-level crime and disorder. Although SCPOs will also use restrictions and conditions to prevent crime from taking place, SCPOs will not be used to the same extent as ASBOs, as the pool of individuals/organisations to whom they will apply will be much smaller. SCPOs will be attached to the relatively small number of individuals/organisations who are involved in, or facilitate, serious crime.
189. SCPOs will also be different from some civil orders as they will be put in place by the High Court (or by the Crown Court at the time of sentencing for a serious offence), on application from one of the three prosecuting authorities (Crown Prosecution Service, Serious Fraud Office and Revenue and Customs Prosecution Office). This process will ensure SCPOs are a targeted measure used to prevent crime, with such terms as are considered appropriate by the High Court.
190. As mentioned above, Serious Crime Prevention Orders will be used against a relatively small number of individuals and organisations who are involved in, or facilitate serious crime. On applying to the High Court for an order to be put in place, prosecuting agencies will propose appropriate terms of the SCPO. These terms will be designed to be effective in preventing crime in the future. The court, as a public authority for the purposes of the Human Rights Act 1998, is under a duty to ensure that the terms of any order are proportionate, as well as appropriate for the purpose of protecting the public. Therefore, individual terms of the order will be targeted to the specific respondent and his or her needs will be considered. These needs may include the adherence to specific banking practices (for example, Sharia Law), family situation / marital status and necessary access to essential and other services (eg. health and social services). There will also be a route by which those subject to an order, or those significantly adversely affected by the conditions of an order, may apply to the court to vary conditions of the order.
191. It is difficult to research serious crime, and gain insight into the type of individuals and groups involved in this type of criminality. This is, in part at least, the result of the nature of serious crime (it often lacks visibility). Therefore, it is not possible to have a complete picture as to the type of

effect these measures will have on different groups within society. However, research has demonstrated that foreign national and ethnic minority groups are disproportionately involved in serious immigration crime. However, these groups are also more likely to be the victims of such criminals. Therefore, we believe the overall impact of SCPOs is likely to be a positive one, by preventing crime and protecting potential victims.

192. Also, as with ASBOs (where only 13% are given to females and 87% are given to males⁴), the vast majority of those involved in serious crime are male, therefore it is likely that most of those subject to SCPOs will also be men. Women and children can often be the victims of serious crime (for example as victims of human trafficking and organised prostitution) and as these orders are preventative in nature, we believe the policy will have a positive impact on gender equality.
193. As SCPOs will be highly targeted and the restrictions and conditions of the order will take the specific needs of the individual / organisation into account, the Home Office do not believe there will be any disproportionate impact on any specific groups within society. The responses to the public consultation reinforced this view.

▪ ***Criminal Law***

194. The creation of new offences on encouraging and assisting crime was also included in the green paper that was published in July 2006. These proposals arose from a recent Law Commission report entitled “Inchoate Liability for Assisting and Encouraging Crime.” The Law Commission identified a number of concerns with the current law on assisting and encouraging; in particular a person who assists (rather than encourages) another person to commit an offence incurs no criminal liability if, for whatever reason, that offence is not actually committed or attempted.
195. The Law Commission proposed three new offences:
- Encouraging and assisting with intent (Clause 1)
 - Encouraging and assisting believing that an offence will happen (Clause 2(1))
 - Encouraging or assisting believing that at least one of a number of offences will happen (but with no knowledge as to which) (Clause 2(2))
196. The Government welcomed those offences but consulted on some specific elements of them. In particular the consultation paper asked whether the scope of the Clause 2 offences should be restricted to those who “believe” that an offence “will” take place or if it should be widened.

⁴ Court figures as at 30th September 2005.

197. The consultation paper also sought views on whether there might be benefits in supplementing these offences with a further offence aimed specifically at those who assist organised criminals.
198. In general, respondents were supportive of both the Law Commission proposals and the proposed new offence aimed at those who assist organised criminals.
199. On the question of scope of the clause 2 offence put forward by the Law Commission, responses were mixed, but as these offences are inchoate offences, we consider that they should not extend liability too far. As such the Government has decided to implement the offences as originally proposed by the Law Commission.
200. With regard to a further offence aimed specifically at those who assist organised criminals, the majority of responses to the consultation were in favour 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. We have decided to modify the Law Commission clause 2(2) offence to incorporate the advantages offered by a new serious crime offence.
201. These criminal law provisions will apply across the general criminal law. We have considered this and believe that they will not have an adverse impact on any particular stakeholders, charities, trade unions, community groups, or any particular sections of society.
- **Data-sharing**
202. The data sharing proposals also follow directly from those in the consultation paper. These fall into two categories. The first measure will allow the public sector to share data with the private sector to prevent fraud; and the second will put the National Fraud Initiative, run every two years by the Audit Commission, on a statutory footing.
203. The aim of the proposals is to reduce fraud being perpetrated by individuals against both the public and private sectors, through the improved sharing of data. The first measure will allow public sector members to better protect themselves against fraudulent applications for services by sharing knowledge with others in both the private and public sectors and as such will prevent crimes being committed. The potential sharing of information will apply equally to everyone applying for benefits or services. There will be an overall benefit in terms of reducing costs to the service providers, costs which in the end are passed on to legitimate applicants whether in terms of more expensive services or higher taxes.
204. Some groups within society may be more likely than others to apply for services which are liable to fraud. This includes tax benefits and disability allowances. Whilst the sharing of information to combat fraud may apply to those who individuals who apply for services, only those actually suspected by the agency/supplier of committing fraud will be

affected. Crucially, if suspicion exists the service or benefit will only be denied after consideration on the application's merits by the organisation providing the benefit or service. The sharing of data will provide an additional means by which service and benefit providers can prevent defrauding of the public purse. Benefit and other frauds are expensive to society and can be corrosive to communities. Therefore, the improved sharing of data will benefit society as a whole by helping to protect resources for those who need them the most.

205. The expansion of the Audit Commission's National Fraud Initiative will improve the ability of the Commission to detect fraud against Local Authorities and other participating bodies. In line with the measures described above, this will improve fraud detection and prevent crime in the future. Data sets which should be mutually exclusive will be matched to identify possible fraud. Any matches which suggest fraudulent activity will then be investigated further. Both the Audit Commission and participating bodies will be subject to the data destructions requirements of the Data Protection Act which require that data is not held any longer than is necessary. The NFI code of data matching practice also states that participating bodies should discuss with their Auditor which data should be destroyed and when. We do not believe that there will be a significant disproportionate impact on particular demographic groups.

- ***Proceeds of Crime***

- Extending search and seizure powers to a wider range of investigators

206. The Proceeds of Crime Act 2002 (POCA) allowed access to investigation and restraint powers beyond the historic preserve of constables and customs officers to civilian financial investigators, including civilians who are financial investigators working for the police or other agencies. POCA, as originally enacted, stopped short of allowing civilian investigators access to the more invasive powers such as executing search warrants or searching a person for suspected criminal cash. There is now wide support from the asset recovery community, including the Assets Recovery Agency, to extend civilian financial investigators powers further, including having powers to search and seize property. These measures will improve the ability of law enforcement to tackle both financial and acquisitive crime. All bodies employing financial investigators have been consulted and there is wide support for this proposal.

207. Analysis of this measure has indicated that there may be a varying impact on different social groups. This is due to the large number of investigators employed by a range of agencies that may have powers extended to them by their organisation. It will be within the remit of each organisation extending powers to its investigators to ensure that policies have minimal negative impact. Different agencies and individual investigators will need to be aware of equal opportunity issues and act accordingly. These are matters of recruitment, training or awareness.

Organisations should already have the necessary equal opportunity employment policies in place.

208. The extension of investigation powers and investigators is intended to have a wider positive impact on society as a whole. It is intended to promote a visible impact on tackling crime at all levels, regardless of any other factor. The previous situation, where police officers performed searches without the knowledge or experience of the individual case may have led to unintentional negative impacts. The measures will mean the individual investigator will have complete control over his / her own case and will be aware of any potential negative impact or handling issues when executing searches.
209. During the consultation a number of respondents wanted to ensure that appropriate safeguards and complaints procedures were in place for all staff being given these new powers. The government recognises the importance of these concerns. Accountability will be on the same basis as existing complaints procedures in individual agencies. The Independent Police Complaints Commission (IPCC) will continue to deal with police matters, and other bodies will deal with complaints relevant to other organisations (including, Local Authorities, Royal Mail and UK Immigration Service). As with existing accountability procedures, these avenues will be open to all members of the public equally.

Extension of investigation powers in POCA

210. The legislation will also partially extend investigation powers in POCA to allow for the investigation of cash seized on the suspicion that it is the proceeds of crime or intended for use in unlawful conduct (there were no specific investigation powers previously). The production orders and search and seizure warrants under POCA will increase the effectiveness of the cash forfeiture regime to allow for the investigation of the provenance and/or likely destination of seized cash. This would assist in constructing stronger cases in a timelier fashion than exists at the present time and would assist prompt prosecution.
211. We do not believe this will have any particular impact on specific groups within the community. The measures will improve the ability to swift resolution of cases that currently tie up a great deal of time and resource. This will benefit society as a whole.

Merging the Asset Recovery Agency and the Serious Organised Crime Agency

212. The merger of these agencies will allow improve **will provide operational benefits** as well as some savings. We do not believe that this merger will impact on any particular groups within the community.

▪ **Extension of powers of Revenue and Customs**

213. This policy applies to all individuals irrespective of any grouping (e.g. race, gender, age, religion, disability). It is activated on objective

grounds such as suspicion of serious criminal activity. HMRC therefore believes that this policy would not impact adversely on any group.

Recommendations

214. The majority of the provisions outlined above will have no impact on race equality. We have noted the potential for an impact as a result of the individual terms placed on subjects by the prevention orders. However, the terms of an order will be provided for by the court imposing the order and should, therefore, be appropriate, proportionate and non-discriminatory. For example, the terms of an order may need to be applied in line with Sharia banking law.
215. This assessment also notes that the extension of powers to all accredited financial investigators may have an impact on the equality issues as a result of employment practices used by the organisations extending powers to and training its accredited investigators in these additional powers. All employers will need to adhere to relevant employment legislation.
216. The Home Office will ensure that the equality impact is monitored once the bill has been fully implemented and the full impact of the legislation can be demonstrated. The department will seek to encourage delivery partners (for example Law Enforcement Agencies) to follow suit.

Annex B: Rural Proofing Statement

217. In line with government policy on rural proofing of new policies, the Serious Crime Bill has been assessed for any potential disproportionate impact to the countryside or rural communities. This has been undertaken using the rural proofing checklist provided by the Countryside Agency.
218. This assessment has indicated that overall these policies pose no significant disproportionate impact, whether positive or negative on the countryside or the communities living in it. The proposals within the bill will be delivered via existing infrastructure and services, namely the Police and other law enforcement agencies, the Courts service, and local government structure, and no new services to the general public are being created.
219. In particular, the proposals for Serious Crime Prevention Orders (SCPOs) will rely on the current structure of the High Court. The SCPOs will only usually be made by the High Court which is based in London. This may have caused travel difficulties and additional expense for individual respondents based away from London and/or the South East of England. However, given the High Court also uses a number of District Registries (often co-located with county courts) where the applications for the SCPOs may also be heard, we do not envisage any such difficulties.
220. Therefore, after thorough analysis using current guidance on rural proofing, we can conclude that the proposals within the Serious Crime Bill will have no disproportionate impact on the countryside or rural communities.