

# **ANNEX C**

## **Draft Final Regulatory Impact Assessment**

### **1. Title of Proposal**

**Fraud Bill**

### **2. Purpose and intended effect of measure**

(i) The objective

To introduce a new law of fraud to meet the challenges of the 21<sup>st</sup> century. The key objective is to modernise the existing statutory offences of deception which are currently used to tackle fraud. This will assist prosecution not only of serious and complex fraud (the SFO's field) but also of more routine cases prosecuted by the Crown Prosecution Service and the Department of Trade and Industry.

(ii) The background

In a report for the Home Office and Serious Fraud Office published in 2000, the National Economic Research Associates (an economic consultancy firm) estimated that the annual economic cost of fraud to the UK is about £14billion. The highest level of fraud NERA identified was plastic card fraud.

In 1998 the then Home Secretary asked the Law Commission to examine the existing law on fraud and to consider whether it was easy for juries to comprehend, adequate for cases to be prosecuted effectively, fair to potential defendants and whether it met the needs of developing technology. The Law Commission conducted consultations in 1999 and made their final recommendations in 2002. The Government issued a Consultation Paper in 2004, which elicited broad support for the Law Commission scheme. The Bill will implement that scheme, with some modifications.

(iii) Risk assessment

The main risk being addressed is that developing technology enables fraudsters to exploit gaps in the current provisions, for example covering fraud relating to deceiving machines and the possession, in the home, of personal financial data and computer programmes, etc to carry out frauds. The Attorney General has forecast that the amount of fraud committed in this country will increase. It is estimated that the caseload of the Serious Fraud Office, which covers the most complex and serious frauds, is likely to rise to over 100 cases in the medium term. Their targets for 2003-04 include an average caseload of 110 active cases. This compares with the figure of 85 which formed the basis of their SR2000 submission and thus underlies the resources allocated. The legislation needs to be modernised in order to deal with this rise more efficiently.

The risk of changing the law is that of unforeseen consequences. In the light of reactions to the Consultation Paper, we have reduced that risk to a minimal level by retaining the wide common law offence of 'conspiracy to defraud' (contrary to the Law Commission's original recommendation). This provides a 'safety net' for any cases conceivably not caught by other charges.

### **3. Options**

Option 1 – leave legislation unchanged (i.e. do nothing)

Option 2 – introduce minor adjustments and amendments to existing laws to plug identified loopholes

Option 3 – introduce a general deception offence

Option 4 – reform the law of Fraud, on the lines recommended in Law Commission report of 2002, subject to the changes we propose.

### **4. Benefits**

Option 1 – none, but cost neutral.

Option 2 – introducing minor amendments would allow the law to deal with specific identified problems such as obtaining services by deceiving machines. It might also widen the law on fraudulent trading: the extension of the current provisions on fraudulent trading to non-corporate traders is considered a useful step in dealing with a pattern of activity, allowing multiple acts to be prosecuted within a single count. Option 2 would avoid the costs and processes of a complete overhaul of the law – but fraud law is already seen as over-complex and this is in part due to the adoption of this piecemeal approach to its amendment in the past.

Option 3 – a general deception offence would carry the benefits of Option 2 and also enable the law to be used to respond to unpredictable changes in commercial and other practices. The developments within these areas have led to a far wider range of methods to carry out fraud, some of which do not fit easily within existing definitions. The breadth of the offence would allow conduct to be prosecuted which is not covered by current specific definitions. However the Law Commission's earlier consultations revealed problems with this approach as some conduct which is rightly described as fraudulent does not involve deception.

Option 4 – This option would carry the advantages of options 2 and 3. There was general support by most of those who responded to our Consultation Paper for the focus on the intention rather than the outcome, and the focus on the dishonesty of the perpetrator rather than the deception of the victim. That should simplify prosecution and give fraud trials greater focus and structure. Even a modest saving of court time per case could have an impact as fraud is a common crime. In 2002, 16,202 defendants were proceeded against at the magistrates' courts in England and Wales for the common law crime of conspiracy to defraud and offences which would be consolidated under a single offence of fraud. 11,418 were found guilty.

Most of those who commented on this RIA in consultations anticipated benefits. The British Bankers' Association said that they expected Option 4 would lead to increased efficiency in police investigations and the conviction rate which, combined with confiscation under the Proceeds of Crime Act 2002, would reduce losses from fraud. The Audit Commission and the International Underwriting Association anticipated long-term benefits from raising corporate awareness and the deterrent effect. The Institute of Legacy Management said charities would benefit by up to £2-3m if legacy fraud were prevented. No other specific figures were given and Barclays Bank said it was too early to quantify the benefits.

Business sectors affected – All sectors are covered by the new law of fraud, but in much the same way as by the old law (for the difference as regards non-corporate traders, see below).

## **Issues of equity and fairness**

### *Business*

No particular sector or size of business would be specifically affected by the new law. Non-corporate traders would be newly covered by the law on fraudulent trading, which they are not subject to now. However, non-corporate traders are already subject to the rest of existing fraud law, including conspiracy to defraud. The application to them of provisions on fraudulent trading will make their position equal in this respect to that of corporate traders.

### *Citizens*

Currently, there are differences in the percentage of arrests for fraud and forgery between ethnic groups. An analysis of the most recent figures from *Statistics on Race and the Criminal Justice System* (2003) shows a higher rate of arrests of both Black and Asian people for fraud and forgery. In 2002/2003, Black people were 7.47 times more likely to be arrested for fraud and forgery; and Asian people were 2.64 times more likely to be arrested for such offences than their white counterparts. The handing down of custodial sentences of offenders for property offences (including theft & handling and fraud & forgery offences<sup>1</sup>) was fairly even between different ethnic groups. The only difference being that Asian offenders received more community sentences for these offences.

There is little conclusive evidence to explain the grounds for these differences. However there is no reason to believe that the proposed changes would have an adverse impact on black and minority ethnic (BME) groups. The proposed measures aim to affect technical aspects of the law, rather than investigative practices or powers of arrest, and should not in any way increase any of the existing differences.

As part of the consultation process, numerous organisations including BME groups were asked for views on the race equality impact of the Government's proposed changes. Overall the proposals received broad positive support and were assessed as race neutral. There was clear approval that the law on fraud should apply equally. None of the BME organisations responded to the consultation<sup>2</sup>. We do not recommend any change to these proposals in light of the above assessment. The Home Office will continue to monitor the statistics.

## **5. Costs**

Option 1 – neutral, unless the continued rise in fraud cases exposes serious gaps.

Option 2 – No substantial costs, but continually plugging gaps in the law of fraud on an ad hoc basis cannot keep up with developments in technology and commerce.

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<sup>1</sup> There are limitations on these data. Due to the small numbers involved, figures for theft & handling and fraud & forgery were added together in the publication. Furthermore, court data were only available for the equivalent of 10 police force areas, and these may not be representative of England & Wales as a whole.

<sup>2</sup> Consultation responses were sought from the Race Relations Committee of the Bar Association Law Society, the Commission for Racial Equality, the African Caribbean Finance Forum, and the Black MBA Association (UK) Ltd.

Options 3 and 4 – businesses, in particular those covered by fraudulent trading for first time, may need to revise existing internal guidance on fraud. Shortening of trials could potentially lead to a slightly higher number of prosecutions. But the effect would be marginal.

(i) Compliance costs

In our consultations we sought estimates on compliance costs from stakeholders, for example on the costs of producing guidance. We received no figures but the International Underwriting Association said that large business would face minor short-term costs in educating employees on the changes. The British Cheque Cashiers' Association said they would need to train debt collection staff but the benefits to their members would greatly outweigh the costs.

(ii) Other costs

There may be costs to business which are impossible to measure financially, for example the time costs of producing and reading new guidance. In our consultations we also sought estimates of these costs. We received no figures but the comments above are relevant here too.

(iii) Costs for a typical business

As above.

## **6. Public sector**

### Benefits

The Serious Fraud Office expects a reduction in the scope for legal argument and appeals on technicalities under the proposed legislation. This will lead to a saving of court and prosecution time. The Institute of Counter Fraud Specialists expected court costs, and appeals, to decrease and the London Criminal Courts Solicitors Association anticipated the smoother running of cases would benefit solicitors and clients.

Public sector businesses will benefit from the anticipated deterrent effect of new legislation in the same way as other businesses.

### Costs

Once any legislation is implemented, the greatest impact will be upon police, trading standards officers and prosecutors, who will need to adapt to the new law, which should enable them to operate more effectively. As the law is not being widened in any significant way, we do not expect that more cases of fraud will be brought to their attention. Consultations showed that many respondents believe that insufficient priority is accorded to fraud by law enforcement and that fraud investigation needs more resources. The Bill does not alter the existing position that enforcement depends on the degree of priority accorded to fraud cases. Decisions on police resources will remain an issue for Chief Constables to decide, taking into account the National Policing Plan. However, there is scope for the involvement of the private sector. For example, the banking industry, through APACS, is providing £3m per year to fund the Dedicated Cheque and Plastic Crime Unit. In our consultations the Finance and Leasing Agency, who already fund a Vehicle Fraud Unit, offered to consider supporting another police anti-fraud project and they are discussing that with the police.

Simplification and modernisation of the law should in theory lead to efficiency savings for the prosecution process, including court time, but the expected result will be a higher turnover of successful fraud prosecutions so that any impact will be on disposals rather than court or prosecution time or legal aid.

The new cases picked up should be at the less serious end of the spectrum and would not be likely to lead to imprisonment. However there will be marginal costs for the probation service, offset by benefits to the public purse generally from the use of powers under the Proceeds of Crime Act 2002 to confiscate the assets of fraudsters and from the general deterrent effect of increased prosecutions.

## **7. Consultation with small business: the Small Firms' Impact Test**

The Small Business Service was consulted and the only costs to business that it identified were those to improve any guides and/or training on prevention of internal fraud. We also consulted the Office of Fair Trading and their comments are incorporated in the 'Competition Assessment' section. Apart from minor exceptions, this legislation does not criminalise any activities that were not already against the law, so this should not impose any significant costs on legitimate businesses.

## **8. Competition Assessment**

The proposal will impact on all business sectors. Whilst the proposal might create some minor compliance costs in the form of revisions for business's own internal guidelines, training staff etc, such costs would not be expected to be sufficient to have implications for competition. In addition, the costs would not apply disproportionately to any particular sector or size of business.

The fraudulent trading provisions in the Bill will cover non-corporate traders for the first time. This would make their position equal to that of corporate traders. However, non-corporate traders are already subject to other existing fraud law so this would represent only a technical change in the way the law applies to them.

## **9. Enforcement and Sanctions**

*How will the proposal be enforced?*

By criminal prosecution.

*Who will enforce this legislation?*

The SFO, Police and Trading Standards Officers. They will be able to use their existing powers. Trading Standards Officers can currently carry out prosecutions, the legal basis for which is section 222 of the Local Government Act 1972.

*Will the legislation impose criminal sanctions for non-compliance?*

Yes.

## **10. Monitoring and review**

The proposals for this Bill have been developed as the result of a review by the Law Commission of the existing fraud law. The Home Office will carry out a review of the impact of the changes 3 years after implementation by studying statistics and reported cases and taking stakeholder views.