

# Impact Assessment, The Home Office

<b>Title:</b> Reform to the identification doctrine <b>IA No:</b> HO IA 0436 <b>RPC Reference No:</b> Not known <b>Other departments or agencies:</b> Department for Business and Trade, Ministry of Justice, HM Revenue and Customs, HM Treasury, Serious Fraud Office, Crown Prosecution Service, and Attorney General's Office.	<b>Date:</b> 13 June 2023
	<b>Stage:</b> FINAL
	<b>Intervention:</b> Domestic
	<b>Measure:</b> Primary Legislation
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<b>RPC Opinion:</b> Awaiting Scrutiny	<b>Business Impact Target:</b> Qualifying Regulatory provision

## Cost of Preferred (or more likely) Option (in 2020 prices)

<b>Net Present Social Value NPSV (£m)</b>	<b>-0.3</b>	<b>Business Net Present Value BNPV (£m)</b>	<b>-0.3</b>	<b>Net cost to business per year EANDCB (£m)</b>	<b>0.0</b>
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### What is the problem under consideration? Why is government intervention necessary ?

Corporate liability laws for economic crime are not fit for purpose. The existing common law does not reflect business structure and decision-making in modern-day organisations. The Government must legislate to ensure that the law on corporate criminal liability for economic crimes is clear and proportionate to all corporations.

### What is the strategic objective? What are the main policy objectives and intended effects?

The strategic objective is to formulate in legislation a legal test – the identification doctrine - to attribute acts of criminal conduct to corporations, as entities in their own right. This will enable corporates to be prosecuted for economic crimes and deter instances where senior managers use their authority granted under the corporation to commit economic crimes.

### What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

**Option 1:** (Do-nothing) this does not meet the Governments objectives  
**Option 2: Reform of the Identification Doctrine (IDD):** create a statutory model for the IDD to provide legislative certainty, ensuring senior management are in scope of the regime.  
**Option 2 is the Government's preferred option** and meets government objectives.

<b>Main assumptions/sensitivities and economic/analytical risks</b>	<b>Discount rate (%)</b>	<b>3.5</b>
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The main uncertainties relate to the scale of the potential benefits, which are only qualitatively described due to limitations in available evidence.

**Will the policy be reviewed? It will be reviewed. If applicable, set review date: October 2026**

*I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.*

Signed by the responsible Minister:  Date: 13 June 2023

# Summary: Analysis & Evidence

# Option 2

Description: Reform to the IDD and introducing a failure to prevent fraud offence covering all large organisations

## FULL ECONOMIC ASSESSMENT

Year(s):	Price Base	2022	PV Base	2023	Appraisal	10	Transition	1
Estimate of Net Present Social Value NPSV (£m)						Estimate of BNPV (£m)		
Low:	-0.1	High:	-1.0	Best:	-0.4	Best BNPV	-0.4	

COSTS, £m	Transition Constant Price	Ongoing Present Value	Total Present Value	Average/year Constant Price	To Business Present Value
Low	0.1	0	0.1	0	0.1
High	1.0	0	1.0	0.1	1.0
Best Estimate	0.4	0	0.4	0	0.4

### Description and scale of key monetised costs by 'main affected groups'

Set-up costs consist of familiarisation costs for the private sector and are estimated to be between £0.1 – £1.0 million in year 1 only.

There are no estimated ongoing costs.

### Other key non-monetised costs by 'main affected groups'

Ongoing costs are expected for the public sector. The reform is expected to result in more corporate prosecutions and therefore increased criminal justice system costs: Through consultation with the Crown Prosecution Service (CPS) and Serious Fraud Office (SFO), additional court cases are expected to be low and therefore any additional costs are expected to be modest.

BENEFITS, £m	Transition Constant Price	Ongoing Present Value	Total Present Value	Average/year Constant Price	To Business Present Value
Low	N/A	N/A	N/A	N/A	N/A
High	N/A	N/A	N/A	N/A	N/A
Best Estimate	N/A	N/A	N/A	N/A	N/A

### Description and scale of key monetised benefits by 'main affected groups'

None.

### Other key non-monetised benefits by 'main affected groups'

The Identification Doctrine (IDD) reform provides a clearly formulated legal test for the attribution of economic crime acts to corporations. The legal test will enable their prosecutions for those acts and ensures the IDD reflects complex ownership structures, which have made previous prosecutions unavailable.

This is expected to reduce the level of economic crime.

## BUSINESS ASSESSMENT (Preferred option)

Direct impact on business (Equivalent Annual) £m:									
Cost, £m	0.4	Benefit, £m	N/A	Net, £m	-0.4				
Score for Business Impact Target (qualifying provisions only) £m:					0.2				
Is this measure likely to impact on trade and investment?					N				
Are any of these organisations in scope?		Micro	Y	Small	Y	Medium	Y	Large	Y
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)				Traded:	N/A	Non-Traded:	N/A		

## PEOPLE AND SPECIFIC IMPACTS ASSESSMENT (Preferred option)

Are all relevant Specific Impacts included?	Y	Are there any impacts on particular groups?	N
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# Evidence Base (for summary sheets)

## A. Strategic objective and overview

### A.1 Strategic objective

1. The strategic objective is to formulate in legislation a legal test to attribute acts of criminal conduct to corporates, as entities in their own right. Criminal activity can be enabled and perpetuated by corporations, as it is by individuals. The current ability in common law to hold organisations criminally responsible in recent years has raised concern that parts of the law are not fit for purpose. This has hindered the successful prosecution of corporations for economic crimes. The deficiencies in the law make it particularly challenging to hold large business with complex governance and decision-making structures to account.

### A.2 Background

#### Corporate liability

2. Under the common law, a corporation is considered to have a distinct legal personality from its owners or officers and is considered a separate non-natural “legal person” in itself. As such, corporations are liable for their actions and can be subject to both criminal and civil penalties if they fall foul of the law. The current common law has enabled the prosecution of corporations for committing offences. In the year to September 2020, there were over 5,000 convictions of non-natural persons, representing around 0.6 per cent of all convictions<sup>1</sup>. However, this is primarily due to breach of regulations, particularly for environmental, trading or health and safety offences. The law is less adequate at holding corporates liable for serious offences requiring proof of “fault” on behalf of the corporate, such as intentional wrongdoing or dishonesty.
3. The common law requires urgent improvement for corporate economic crime offences. Fraud accounted for an estimated that around 40 per cent of all crime experienced by adults in England and Wales in the year ending September 2022.<sup>2</sup> The harmful activity of corporate bodies committing economic crimes has caused the public loss that extends beyond financial harm, eroding public confidence that the UK is a safe space to invest and conduct business. The National Crime Agency (NCA) assesses it is a realistic possibility that over £100 billion is laundered every year through the UK or through UK corporate structures using High End Money Laundering methods.<sup>3</sup>

#### Review of the law

4. In recent years, the problems with criminal corporate liability laws have been subject to extensive debate. Government committed to looking at the rules on establishing corporate liability in the UK Anti-Corruption Plan in 2015<sup>4</sup>. In 2017, the Ministry of Justice launched a Call for Evidence<sup>5</sup> to seek views from industry and the public on the case for change.
5. The Call for Evidence produced a list of options for reforming corporate liability. Government then commissioned the Law Commission in 2020 to examine the issue and publish a paper providing an assessment of different options to reform corporate criminal liability. In June 2022, the Law

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<sup>1</sup> [https://www.lawcom.gov.uk/project/corporate-criminal-liability/\\_page\\_1](https://www.lawcom.gov.uk/project/corporate-criminal-liability/_page_1) - Ministry of Justice, Criminal Justice system statistics quarterly, September 2020, Table Q5.1. The need for caution arises because, according to the Ministry of Justice, ambiguity in the status of small business owners can lead to individual defendants being recorded as corporations, and, by implication, vice versa (for instance, some corporations were recorded as having received sentences only available to natural persons, such as community or custodial sentences. Figures up to September 2020, as opposed to more recent figures, have been used because of the disruption caused to prosecutions due to COVID-19.

<sup>2</sup> Economic Crime Plan 2: [Economic Crime Plan 2 2023-26 \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk)

<sup>3</sup> Economic Crime Plan 2: [Economic Crime Plan 2 2023-26 \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk)

<sup>4</sup> [UK anti-corruption plan - GOV.UK \(www.gov.uk\)](https://www.gov.uk)

<sup>5</sup> [Corporate liability for economic crime: call for evidence - Ministry of Justice - Citizen Space](#)

Commission published their options paper on Corporate Criminal Liability<sup>1</sup> setting out ten options ranging from civil penalties to criminal prosecutions.

6. The Government has considered the options and is introducing the following measures as the strongest options for reform that meet the objectives of improving corporate liability in criminal law (see Options, section D):
  - a) *Reforming the model that attributes criminal liability to organisations – “the identification doctrine”*
  - b) *An offence of failure to prevent fraud by an associated person.*

### Identification Doctrine

The identification doctrine is the legal test in deciding whether the actions and mind of a natural person<sup>6</sup> can be regarded as those of a legal person<sup>7</sup>, in this instance a corporation. The current law requires that the natural person be senior enough to be considered the “directing mind and will” of the corporation itself. If the person(s) identified as the “directing mind and will” of the corporation commits a criminal offence acting in that capacity, that offence, including the guilty mind to commit the offence, is considered that of the corporation. The corporation will be prosecuted as if they were the individual identified as the “directing mind.”

7. Prosecuting authorities generally seek to identify someone with the status, for example, of a director, who has committed the criminal offence and there would be reasonable grounds for such individuals to have the necessary authority to constitute the directing mind and will of the organisation. This legal principle has developed over time in case law since *Tesco v Nattrass* in 1971.
8. In recent years, concern has been expressed that a principle devised in the 1970s does not adequately deal with misconduct carried out by and on behalf of modern-day corporations. This is because:
  - a) It is too narrow – only a small number of persons are considered the “directing mind and will” of a corporation
  - b) It does not reflect the reality of decision-making in complex corporations – decision-making can be dispersed across multiple directing minds leading different areas of a corporation
  - c) It makes it too difficult to convict corporations for offences committed for their benefit – corporates are gaining financially from economic crimes and should be prosecuted accordingly
  - d) It is unfair between small and large companies – the “directing mind and will” is easier to identify in small organisation that may have 1-2 directors controlling the business
  - e) It does not always bring certainty – the current law has developed through the courts and has not got legislation underpinning it
  - f) It does not incentivise good corporate governance and may disincentivise it – a corporate could escape liability under the common law by making their governance artificially difficult to determine a singular “directing mind and will”
9. The reform proposed is to place the identification doctrine on a statutory footing (for economic crimes), providing certainty that senior managers are in scope to better capture large ownership structures. The corporation will be prosecuted as if they were the senior manager themselves. Economic Crime will be defined according to a schedule of associated offences.

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<sup>6</sup> A living human being

<sup>7</sup> An entity or body which has an existence separate and distinct from the persons (legal or natural) comprising that entity or body.

10. A test to define senior management will be introduced that replicates the definition of “senior manager” in the Corporate Manslaughter and Corporate Homicide Act 2007 (CM&CHA 2007)<sup>8</sup>. This model will look at what the senior manager’s roles and responsibilities are within the organisation – the level of managerial influence they might exert – rather than their job title. This will have the advantage of providing greater clarity on the parameters of the legal test and enable prosecutions to progress in more cases where senior level employees, who do exert decision-making power, are found to be involved in the offending.
11. If a corporation is successfully prosecuted under the offence, it will receive a criminal conviction and fine, in addition to any sentences imposed on individuals involved in the offending. The criminal conviction can impact on other parties, including investors, other employees, and even customers.
12. Any decision to pursue a case must be made in accordance with the Code for Crown Prosecutors: is there enough evidence against the defendant? And is it in the public interest to prosecute?<sup>9</sup> The CPS has published legal guidance on how this extends to corporate prosecutions through the identification doctrine.<sup>10</sup>
13. The identification doctrine reform will closely mirror the Law Commission’s proposals but applies the reforms to economic crimes only. However, Government understands that the identification doctrine in law applies more widely than economic crimes so the legislation will be extended to all criminal offences when a bill arises that enables reform for all crimes. Government has committed to this in Economic Crime Plan 2<sup>11</sup> and the Fraud Strategy.<sup>12</sup>

### **A.3 Groups affected**

14. The main groups affected by the measures are:
  - Corporations and partnerships with employees.
  - Senior managers who fit the new test based on their roles and responsibilities within the prosecuting company.
  - Victims of crime committed by organisations.
  - Prosecution agencies, such as the Crown Prosecution Service (CPS) and the Serious Fraud Office (SFO).
  - HM Courts and Tribunal Service (HMCTS).
  - Lawyers and legal academics.

### **A.4 Consultation**

#### **Consultation within government**

15. The following Government departments and agencies were consulted during the development of this policy:
  - Department for Business, Energy and Industry Strategy (BEIS).
  - HM Revenue and Customs (HMRC).
  - HM Treasury (HMT).
  - Ministry of Justice (MoJ).
  - Serious Fraud Office (SFO).

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<sup>8</sup> Corporate Manslaughter and Corporate Homicide Act 2007 ([legislation.gov.uk](https://www.legislation.gov.uk))

<sup>9</sup> The Code for Crown Prosecutors 2018: <https://www.cps.gov.uk/publication/code-crown-prosecutors>

<sup>10</sup> Corporate Prosecutions | The Crown Prosecution Service: <https://www.cps.gov.uk/legal-guidance/corporate-prosecutions>

<sup>11</sup> Economic Crime Plan 2: [Economic crime plan 2023 to 2026 – GOV.UK \(www.gov.uk\)](https://www.gov.uk/economic-crime-plan-2023-to-2026)

<sup>12</sup> The Fraud Strategy: [Fraud Strategy - GOV.UK \(www.gov.uk\)](https://www.gov.uk/fraud-strategy)

- Crown Prosecution Service (CPS).
- Attorney General's Office (AGO).
- Cabinet Office (CO).
- Department for Education (DfE).
- Department for Health and Social Care (DHSC).
- The Charity Commission.
- Department for Levelling Up, Housing, and Communities (DLUHC).
- Supporting operational partners and executive bodies with a role in the Governments economic crime agenda, such as National Crime Agency (NCA), Office

### **Public consultation**

16. The question of how to apply the core requirements of a criminal offence to a corporate defendant has been subject to extensive consultation.

### **Ministry of Justice Call for Evidence 2017**

17. Ministry of Justice launched a Call for Evidence on corporate liability January-March 2017 as to whether there should be a change to the existing laws. The Ministry of Justice Call for Evidence determined that a significant majority of respondents (75.9 per cent) agreed that the identification doctrine inhibits holding companies to account for economic crimes committed in or on their behalf, with many noting the difficulties particularly presented by large and multi-national companies. Most respondents (61.8 per cent) expressed the view that deficiencies in the identification doctrine could not be effectively remedied by legislative or non-legislative means, other than the creation of a new offence.
18. The Government response to the Call for Evidence, published in 2020, set out five possible options for reform. This included an option to replace the current common law rules – this option envisages legislation that, for example, might establish corporate criminal liability in economic crime cases arising from complicity of persons from a much broader range of functions within a corporate management structure than the identification doctrine.

### **Law Commission discussion paper**

19. In June 2021, the Law Commission published a discussion paper considering the present law relating to corporate criminal liability and options for reform.<sup>13</sup> The discussion paper set out the law relating to several areas of corporate criminal liability, including the identification doctrine. Separately, the Law Commission also assessed the existing “failure to prevent” offences, for bribery and the facilitation of tax evasion, and the possibility of expanding this regime. The Law Commission’s consultation received 45 responses alongside direct engagement with a number of additional stakeholders during the consultation period. The results of the targeted consultation were not made public but some of the findings were included in the Law Commission’s options paper. The Law Commission concluded that reforming the identification doctrine should be considered.

### **Further consultation**

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<sup>13</sup> <https://www.lawcom.gov.uk/law-commission-see-views-on-corporate-criminal-liability/>

20. The Home Office established a corporate liability working group with other government departments and practitioners in June 2022 to determine the direction of reform and its drafting. The Law Commission have also been engaged extensively on the legislative drafting. Additionally, business sector representatives were engaged for their input on the proposal.

## B. Rationale for intervention

21. In its current form, the identification doctrine is an obstacle to holding large companies<sup>14</sup> criminally responsible for economic crimes. This hinders successful prosecutions for criminal conduct. This policy places the identification doctrine on a statutory footing for economic crimes, extending the common law “directing mind and will” model to include senior management of the corporation.
22. **The rationale for this policy is to address the disparity between small and large organisations:** the current corporate criminal liability model makes it difficult for prosecutors to successfully pinpoint the directing mind and will of a large organisation as who have multiple directing minds across different areas of the business. By contrast, directors in a smaller organisation are closer to the level at which misconduct took place and therefore more likely to have the knowledge needed to satisfy the directing mind and will test, creating an equity failure. For example, by explicitly or implicitly authorising the commission of a criminal offence. The Government agrees with the Law Commission’s assessment that a rule which impacts disproportionately on smaller companies but fails to deal satisfactorily with similar conduct in larger firms is likely to be seen as unfair. The reforms will address this equity failure and increase confidence in the criminal law.
23. The proposed reform of the identification doctrine is not intended to add to the legal and regulatory burdens which are already imposed on businesses. Breaches of existing obligations would be more effectively sanctioned under the criminal law, resulting in a better-functioning criminal justice system.

## C. Policy objective

24. The intended outcome of these measures is to ensure fair and proportionate liability is placed on corporates for wrongdoing, committed by senior management and other employees, regardless of size. This reform has the following objectives:
25. **Deter instances where corporations are used as vehicles for corrupt senior actors to conduct economic crime:** economic crime is growing rapidly. Extending the circumstances under which a corporation is prosecuted in its own right for the actions of their senior management, and subsequently fined, increases the costs to conduct crime, providing a clear message that corporates cannot be used to enable economic crime and go unpunished.
26. **Better enable prosecutions of corporate defendants:** large companies tend to have complex governance and management with various teams and subsidiaries that control different aspects of business. *SFO v Barclays* set a very high bar for prosecutors to prove “directing mind and will” of the company. The SFO argued that Barclays PLC and its subsidiary Barclays Bank PLC, through its Chief Executive, Chief Finance Officer and three others, had conspired to commit fraud by false representation during a capital raising exercise in the early stages of the financial crisis of 2008. The High Court rejected that these persons sufficiently met the test for directing mind and will to attribute liability. The extension of the rule to a defined class of senior management would reflect how decision-making is often dispersed across multiple controlling minds, mitigating the ability to artificially transfer, remove or create titles to escape liability.
27. **Provide legislative certainty:** the current common law model lacks certainty beyond the general principle that the individual must be its “directing mind and will” at the relevant time. This has resulted in mixed success of prosecutions. Placing the identification doctrine on a statutory footing will provide legislative certainty as to in what circumstances the identification doctrine applies. This will better enable the prosecution of corporates for criminal acts.

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<sup>14</sup> Following the Companies Act 2006 definition – that is they meet two out of the following three criteria: more than 250 employees, more than £36 million turnover, more than £18 million in total assets.



## D. Options considered and implementation

28. The Government has two options:
- **Option 1:** Do nothing, this does not meet the Government's objectives.
  - **Option 2:** Reform the Identification Doctrine as applied to economic crime offences. This is the Government's preferred option.
29. **Option 2** creates a statutory model for the identification doctrine for economic crimes to provide legislative certainty and overcome the narrowness of the current case law by ensuring senior management are in scope of the power. The organisations in scope are corporations<sup>15</sup>, and partnerships<sup>16</sup>. Corporate bodies are separate entities under the law to the natural persons that are associated with it (employees or similar), enabling a chain of attribution from one to another. Partnerships can also be liable for criminal acts as entities in their own right.
30. The new model enables the prosecution of organisations where previous prosecutions have been unavailable. Introducing a standard test based on the Corporate Manslaughter and Corporate Homicide Act 2007<sup>17</sup> definition, which looks at the relative authority of the person within the organisation, reduces the ability for organisations to transfer or rename specific directing titles to avoid liability. By looking at their decision-making power rather than title, it better ensures complex governance and management structures are in scope of prosecution. This will ensure organisations cannot avoid liability for criminal offences through the use of opaque governance structures.
31. It is intended that these provisions will create a new route to liability additional to the relevant common law principles and provisions upon which the present identification doctrine is founded. The case law principles will remain the default model for attribution as far as non-economic crime offences are concerned.

### Preferred option and implementation date

32. **Option 2 is the Government's preferred option** as it should bring significant benefits, outlined below, compared with **Option 1** (do-nothing) that does not enhance the common law model. **Option 2** intends to mitigate the lack of certainty implementing the doctrine beyond the general principle that the individual must be its "directing mind and will" at the time. It should overcome the narrow interpretation of corporate liability established by case law. Without the reform, the UK could fall behind international standards in the prosecution of organisations for economic crime activity. In particular, the UK may lack an ability to bring proceedings in high-profile cross-border economic crime cases in support of partner agencies such as the US Department of Justice. Recognising that a wider reform of the law is required, the Government has committed to extending this to all crimes when Parliamentary time allows in Economic Crime Plan 2 and the Fraud Strategy.
33. The measures are expected to be implemented 2 months after Royal Assent.

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<sup>15</sup> 'Corporation' includes a number of legal structures. Two key characteristics of corporations are that they are recognised as a separate legal entity from their owners and that shareholders are not personally liable for any debts or claims against the business.

<sup>16</sup> A partnership is the merger of several legal entities that pursue a common goal. These legal entities can be natural persons, legal bodies (usually corporations), or other partnerships. Under this legislation, a partnership will be defined as a partnership within the meaning of the Partnership Act 1890; (b) a limited partnership registered under the Limited Partnerships Act 1907; (c) a firm or other entity of a similar character to one within paragraph (a) or (b) formed under the law of a country or territory outside the United Kingdom.

<sup>17</sup> Corporate Manslaughter and Corporate Homicide Act 2007: [Corporate Manslaughter and Corporate Homicide Act 2007 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

## E. Appraisal

### General assumptions and data

34. The analysis is based on the following general assumptions:
- 2023 – 2032, a 10-year appraisal period: The analysis assumes that the measures come into force in 2023 and costs and benefits arise from that point onwards.
  - 2023 price year and 2022 price base year.
  - 3.5 per cent discount rate per the Green Book (2022)<sup>18</sup>.
35. Key data sources used for this analysis:
- a) Business Population Estimates 2022<sup>19</sup> used to inform numbers of organisations in scope.
  - b) Annual Survey of Hours and Earnings 2022<sup>20</sup> used to inform wage costs.
  - c) Readingsoft.com used to calculate familiarisation costs.

### COSTS

#### Reform of the Identification Doctrine (IDD):

##### Set-up costs

##### Private sector

##### Familiarisation costs

36. Upon introduction of the reform, it is assumed that large organisations will take steps to familiarise with it. This analysis assumes that company secretaries in large organisations will familiarise themselves with the reform.
37. The length of the legislation and the number of people required to familiarise themselves with it are Home Office estimates. The length is assumed to be 1000, 2000 and 3000 words in the low, central and high scenarios, respectively.
38. Company numbers are taken from the Business Population Estimate (BPE) and the staff required to read the guidance is assumed by the Home Office.

**Table 1: Organisations in scope of Identification Doctrine reform**

Organisation size	Companies and Partnerships	People required to read
Large	11,038	4
Largest	11,018	5

Source: BPE and Home Office internal assumptions

39. The analysis uses a median wage for a company secretary, valued at £23.06 per hour<sup>21</sup>.

<sup>18</sup> [The Green Book \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk)

<sup>19</sup> [Business population estimates for the UK and regions 2022: statistical release \(HTML\) - GOV.UK \(www.gov.uk\)](https://www.gov.uk)

<sup>20</sup> [Earnings and hours worked, occupation by four-digit SOC: ASHE Table 14 - Office for National Statistics \(ons.gov.uk\)](https://ons.gov.uk)

<sup>21</sup> Annual Survey of Hours and Earnings (ASHE), Table 14.5a, Standard Occupational Code (SOC) 4214

40. This is then uplifted by the non-wage share of costs (22 per cent) using Eurostat figures to reflect the marginal product of labour<sup>22</sup>, resulting in a total hourly cost of £28.13.
41. To estimate the familiarisation cost of this measure, the Reading Soft calculator was used to estimate the time taken to read the legislation. This was then multiplied by the cost of time and the number of people required to read the legislation.
42. The IDD familiarisation costs are estimated to be between **£0.1 million to £1.0 million**, with a best estimate of **£0.4 million** (2023 prices) in year 1 only. These are presented in Table 3 by organisation size.

**Table 2, Total IDD familiarisation costs by organisation size, £ million (2023 prices), 2023.**

Organisation size	Low	Central	High
Large	£0.06m	£0.19m	£0.46m
Largest	£0.08m	£0.23m	£0.31m
<b>Total</b>	<b>£0.1m</b>	<b>£0.4m</b>	<b>£1.0m</b>

Source: Home Office internal estimates, 2023.

### Non-monetised set-up costs

43. It is expected that costs to SMEs will be negligible. As SMEs can currently be effectively prosecuted under the current Identification Doctrine, it is unlikely this measure will have an impact on SMEs.
44. As a part of their day-to-day business, SMEs may read advice issued by trade bodies or industry organisations however it is expected that this opportunity cost is negligible.

### Public sector

45. No public sector set-up costs have been identified

### Total set-up costs

46. Total set-up costs are estimated in a range of **£0.1 to £1.0 million**, with a best estimate of **£0.4 million** (2023 prices) in year 1 (see Table 2).

**Table 3, Total set-up costs for IDD, £ million (2023 prices), year 1 only, 2023.**

	Low	High	Best
IDD	0.1	1.0	0.4

Source: Home Office internal calculations, 2023.

### Ongoing costs

#### Private sector

47. No ongoing costs have been identified.
48. There are unlikely to be additional costs to business because:
  - a. Organisations can already be prosecuted under the common law model, but the reform means a greater number of cases could see a higher likelihood of successful prosecution

<sup>22</sup> Non-wage cost is 17.9 per cent (from Eurostat), take  $18/(100-18) = 18/82 = 22$  per cent and uplift by this amount.  
[https://ec.europa.eu/eurostat/databrowser/view/LC\\_LCI\\_LEV\\_\\_custom\\_2052124/default/table?lang=e](https://ec.europa.eu/eurostat/databrowser/view/LC_LCI_LEV__custom_2052124/default/table?lang=e)

- b. The IDD attributes liability to an organisation for an existing criminal offence which organisations should be familiar with on the introduction of that offence into law.
- c. Organisations may incur costs if they choose to put measures in place to increase transparency and control with senior management, such as economic crime awareness training, to minimise their liability if criminal conduct takes place. However, there is no requirement in the legislation for them to do so.

### **Public sector**

49. The public sector is expected to incur costs as a result of the legislation enabling a greater number of corporate prosecutions, and therefore increase the burden on law enforcement and the criminal justice system. This cost has not been quantified due to a lack of evidence for the likely scale of the increase. Through consultation with the Crown Prosecution Service (CPS) and Serious Fraud Office (SFO), additional court cases are expected to be low and therefore any additional costs are expected to be modest.
50. It is likely that corporate prosecutions will be dealt with by a Deferred Prosecution Agreement and, where corporate prosecution is desirable, the corporation might be tied to the same proceedings as the manager.

### **Total costs**

51. Total costs are estimated in a range of **£0.1 to £1.0 million**, with a best estimate of **£0.4 million** (2023 prices) in year 1. There are unlikely to be additional ongoing costs.

### **Benefits**

52. There is a general lack of data on the incidence and associated losses of corporate economic crime, which makes it difficult to quantify benefits for the measures. As a consequence, this IA only provides a qualitative assessment of benefits.
53. This legislation aims to reduce the incidence of corporate criminality through behavioural and cultural changes. This reform will help to enable the prosecution of low incidence, high harm offences.
54. The main benefit is that a clearly formulated legal test for the attribution of economic crimes will enable corporates to be prosecuted if they break the law. The benefits this will bring are presented below.

### **Non-monetised benefits**

55. This reform is expected to reduce economic crime. This is primarily benefit as the greater risk of prosecution, and the corresponding penalties (detailed below), will impact on the corporates' incentives to commit economic crimes. This is expected to result in deterrence. The penalties can include:
  - Corporate criminal conviction will result in a monetary penalty.
  - Criminal convictions can exclude organisations from public procurement processes and domestic and international contracts. This can have negative impacts on investors, other employees, and even customers, should the corporate suffer financially because of the conviction.
  - Beyond a fine, there are other available methods of punishing wrongful corporate behaviour such as granting a Serious Crime Prevention Order, implementing a monitor in a Deferred Prosecution Agreement (DPA), seeking a disgorgement of profits, or making a confiscation order to pay back the proceeds of crime. All of these are expected to increase deterrence and therefore result in reduced economic crime.

56. The reform can increase the UK's ability to support international partners. In some cases, it has not been possible for the UK to bring parallel proceedings (for example in support of the US) to address corporate financial misconduct. The reforms will significantly improve the ability to cooperate with international partners in high-profile cases against global organisations. This may increase international and public confidence in the UK's criminal justice system, and therefore increase deterrence,

**Table 4, Summary of monetised costs and benefits, £ million (PV) 2023 prices**

<b>Description</b>	<b>Low</b>	<b>High</b>	<b>Best</b>
<b>Total set-up cost</b>	<b>0.1</b>	<b>1.0</b>	<b>0.4</b>
<b>Total ongoing cost</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Total cost</b>	<b>0.1</b>	<b>1.0</b>	<b>0.4</b>
<b>Benefit</b>			
<b>Total benefit</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>
<b>NPSV</b>	<b>-0.1</b>	<b>-1</b>	<b>-0.4</b>
<b>BNPV</b>	<b>-0.1</b>	<b>-1</b>	<b>-0.4</b>
<b>EANDCB</b>	<b>0.0</b>	<b>0.1</b>	<b>0.0</b>

Source: Home Office and BEIS, own estimates, 2023.

### **Place based analysis**

57. No distributional effects are expected.

### **Impact on small and micro-businesses**

58. The identification doctrine will apply to corporations and partnerships. Previously, small and micro-organisations were at a disadvantage as they are more likely to have one or a low number of directors with responsibility for and oversight of everything in the corporation that are more easily identifiable to hold the corporate liable. This is an unfairness in the operation of the law. The new model intends to level the playing field by better applying the identification doctrine in instances where a company is large with multiple directing minds across varied business functions.

### **Proportionality**

59. Costs arising from this measure are expected to only fall to familiarisation for companies and partnerships.
60. The legislation is not expected to have any significant impacts on government, businesses or the general public, therefore, the limited level of analysis is proportionate.

### **Risks**

## Economic and analytical risks, and uncertainties

61. As organisations can already be prosecuted for the identification doctrine under common law, extending the principle slightly and codifying it in statute would not attract any new risks. Criminal Justice System costs have not been estimated due to a lack of evidence on potential volumes. Following engagement with the CPS and SFO, Home Office expects the number of additional court cases to be low, and therefore Criminal Justice System costs to be low.

## Main assumptions in the analysis

62. The only costs identified are familiarisation costs. The analysis assumes these will be incurred as opportunity costs for the time of company secretaries in large companies.
63. The analysis assumes that SMEs will not take significant steps to familiarise themselves with the legislation as it is highly unlikely they will be directly impacted.

**Table 5: Reform to the Identification Doctrine: EANDCB and NPSV by option (2023 prices)**

Option	Best		High		Low	
	EANDCB	NPSV	EANDCB	NPSV	EANDCB	NPSV
Option 1: Do nothing	£0	£0	£0	£0	£0	£0
Option 2: Reform the Identification Doctrine	£0.0 million	-£0.4 million	£0.1 million	-£1.0 million	£0.0 million	-£0.1 million

## F. Direct costs and benefits to business calculations

**Table 6, Option 2 direct costs and benefits to business £ million (2023 prices), 2022.**

Best scenario	BIT scope	Direct / Indirect	Option 2
Set-up costs		Direct	6.5
On-going costs		Direct	0.0
Benefits <sup>1</sup>		Indirect	0.0
NPSV		Indirect	<b>-0.4</b>
BNPV		Direct	<b>-0.4</b>
EANDCB		Y	Direct

Source: Home Office, own estimates, 2022.

Note: 1. Qualitative assessment only for benefits. Estimates of NPSV and EANDCB assume that the measure comes into force in 2023 and the costs arise from that point on.

## G. Wider impacts

### Statutory Equality Duty

64. The Equality Act 2010 protects against unlawful discrimination based on the following protected characteristics:
- Age.
  - Disability.

- c. Gender reassignment.
  - d. Marriage and civil partnership.
  - e. Pregnancy and maternity.
  - f. Race.
  - g. Religion or belief.
  - h. Sex and sexual orientation.
65. The Government is subject to the Public Sector Equality Duty 2011 (PSED 2011) set out in the Equality Act 2010 (EA 2010). It requires public bodies to have due regard to the need to:
- Eliminate unlawful discrimination, harassment, victimisation and any other conduct prohibited by the EA 2010.
  - Advance equality of opportunity between people who share a protected characteristic and those who do not.
  - Foster good relations between people who share a protected characteristic and those who do not.
66. An equality analysis is an important mechanism for ensuring that data has been gathered to enable identification of the likely positive and negative impacts that policy proposals may have on certain groups and to estimate whether such impacts disproportionately affect such groups. The Home Office will continue to regard the aims of the public sector equality duties and, at this stage, make the following assessment of the proposals against each of the three aims.

## **Background**

67. This Equalities Impact Assessment relates to the prospective government amendments to the Economic Crime and Corporate Transparency Bill to reform the identification doctrine.
68. Due regard to the need to eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010 can be demonstrated in the following ways.
69. The identification doctrine holds a corporation liable for an economic crime offence where the offence is committed by a certain class of persons – senior manager – acting in the scope of their authority. The outcome is a corporate conviction and fining up to an unlimited fine depending on the criminal offence committed. This sentence is placed on the corporation rather than the individual. However, corporate convictions can impact individuals, including investors, other employees, and even customers, should the company suffer financially because of the conviction.
70. Although senior management are the group disproportionately affected by the extension in holding the corporation liable, it is justified on the following basis:
- Attribution of criminal liability to the company can only take place if the senior manager has committed a criminal offence and is liable for criminal prosecution in their own right.
  - Senior managers take important decisions of corporate policy and strategy of the company. This includes taking on the responsibility on how the business is managed and conducted, including delegating and supervising responsibilities to other employees.
  - In large companies, decision-making responsibility can be decentralised and held across multiple areas of business. The extension of corporate criminal liability to senior managers can apply corporate criminal liability to more cases, better reflecting the complex governance structures of large business.
71. The majority of business owners in the UK, are UK nationals, at 84.7 per cent.<sup>23</sup> Under the current common law model, the identification doctrine disproportionately applies in practice to smaller

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<sup>23</sup> <https://www.finder.com/uk/business-owners-uk>

business as it is easier to identify their “directing mind and will” which is proportionately higher in businesses with a lower headcount and centralised management structures.

72. In the UK, 85.6 per cent of small and medium-sized business with employees is led by ‘white’ person(s), 5.1 per cent is ‘other than white’ and 9.3 per cent is ‘unknown’.<sup>24</sup> Of all the people whose gender could be identified from their title (such as Mr. or Mrs.), 72.92 per cent were male and 27.1 per cent were female. In other words, the people controlling a company are almost three times as likely to be a man than a woman.<sup>25</sup>
73. The extension to senior management aims to better capture and prosecute larger businesses compared to medium and smaller-sized business. Larger businesses traditionally have more employees with different levels of responsibility and experience. By having a larger headcount, it could be assumed that these businesses are more diverse compared with smaller businesses that sometimes employ family and friends of similar background.
74. Safeguards exist in relation to the prosecution of a company that governs the use of the identification doctrine for all business-types. Prosecutors must act in accordance with the Code for Crown Prosecutors – prosecutors can only start prosecutions if satisfied that the case has meets both limbs of the Full Code test:
  - The prosecutor is satisfied that there is sufficient evidence to provide a realistic prospect of conviction.
  - The prosecutor is satisfied that the prosecution is required in the public interest.
75. Guidance has been published by the CPS that requires all prosecutions to take place in accordance with the two-code tests for prosecutions. This places specific requirements on prosecutors to consider certain factors before pursuing a corporate prosecution<sup>26</sup>. This includes, but is not limited to:
  - a. Evidential: identifying the correct corporate from the outset that is accurately named; the employer/employee relationship is outlined; the directing mind must be clearly identified and their status and functions established.
  - b. Public interest: for prosecution: a history of similar conduct by the corporation, the alleged conduct is part of the practices of the company; failing to report the conduct; or, against prosecution: a positive approach to remedial action; the existence of a proactive and effective compliance programme; the offending represents the isolated actions by one individual.

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<sup>24</sup> [Leadership of small and medium enterprises - GOV.UK Ethnicity facts and figures \(ethnicity-facts-figures.service.gov.uk\)](https://www.gov.uk/government/statistics/ethnicity-facts-and-figures)

<sup>25</sup> [5 million of the UK's business owners, analysed \(finder.com\)](https://www.finder.com/)

<sup>26</sup> <https://www.cps.gov.uk/legal-guidance/corporate-prosecutions>



**Table 7, Protected characteristic group and mitigating actions, 2023.**

Group	Explanation	Action to address negative impact
<b>Age</b>	Those with a higher age have been identified as more in scope of senior management based on current available information. <sup>27</sup> The application of the identification doctrine to senior management is however justified based on the responsibility held at that position.	N/A
<b>Disability</b>	Those with a disability have been identified as less likely to be in scope of senior management based on current available information. <sup>28</sup> The application of the identification doctrine to senior management is however justified based on the responsibility held at that position.	N/A
<b>Gender Reassignment</b>	Those who have undertaken gender reassignment have been identified as less likely to be in scope of senior management based on current available information. <sup>29</sup> The application of the identification doctrine to senior management is however justified based on the responsibility held at that position.	N/A
<b>Marriage and civil partnership</b>	There is insufficient information available to determine if those who are married are more in scope of senior management. Based on current available information on sexual orientation, those who are in a civil partnership may be less in scope of senior management. <sup>30</sup> The application of the identification doctrine to senior management is however justified based on the responsibility held at that position.	N/A
<b>Pregnancy and maternity</b>	Those who have been pregnant and taken maternity leave have been identified as less likely to be in scope of senior management. <sup>31</sup> The application of the identification doctrine to senior management is however justified based on the responsibility held at that position.	N/A
<b>Race</b>	Those who are white have been identified as more likely to be in scope of senior management based on current available information. <sup>32</sup> The application of the identification doctrine to senior management is however justified based on the responsibility held at that position.	N/A
<b>Religion or belief</b>	There is insufficient information available to determine if those who of a certain religion or belief are more in scope of senior management. The application of the identification doctrine to senior management is however justified based on the responsibility held at that position.	N/A
<b>Gender</b>	Those who are male have been identified as more likely to be in scope of senior management based on current available information. <sup>33</sup> The application of the identification doctrine to senior management is however justified based on the responsibility held at that position.	N/A
<b>Sexual orientation</b>	Those who are LGBTQ+ have been identified as less likely to be in scope of senior management based on current available information. <sup>34</sup> The application of the identification doctrine to senior management is however justified based on the responsibility held at that position.	N/A

<sup>27</sup>Senior managers are more often experienced individuals and are more likely than not to have more years working. There is therefore a higher average age among senior management who will be captured by the identification doctrine provisions. For instance, at the FTSE 100 companies, the average age of a male executive director is 54.1 years for male and 50.3 years for female (FTSE 100 executive directors' age by gender 2019 statistic | Statista).

<sup>28</sup> [Disability and employment, UK - Office for National Statistics \(ons.gov.uk\)](https://ons.gov.uk)

<sup>29</sup> Although there is limited statistics on this, the findings of the National LGBT Survey revealed that 23 percent of LGBT persons had experienced a negative or mixed reaction from others in the workplace due to being LGBT, or being thought to be LGBT (National LGBT Survey: Summary report - GOV.UK ([www.gov.uk](http://www.gov.uk))).

<sup>30</sup> [National LGBT Survey: Summary report - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

<sup>31</sup> People who have taken maternity or paternity leave may be proportionately less likely to be captured by these provisions. Although there is limited statistics on this, those who have taken maternity or paternity leave could have a slightly slower career development to senior management due to their time taken out of work than those who do not take maternity or paternity leave.

<sup>32</sup> [Employment by occupation - GOV.UK Ethnicity facts and figures \(ethnicity-facts-figures.service.gov.uk\)](http://ethnicity-facts-figures.service.gov.uk)

<sup>33</sup> [Financial Services – senior jobs are still mostly for the boys | FCA Insight](https://www.fca.gov.uk)

<sup>34</sup> [National LGBT Survey: Summary report - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

76. On this basis, seeking further evidence to support this assessment, or to recommend any changes to the existing plans should be considered unnecessary or disproportionate. The Government does not intend to monitor in relation to Public Sector Equality Duty specifically, but the Home Office is required to carry out a Post-Implementation Review of the measure five years after it comes into force.

### **Competition and Innovation Test**

77. The proposed reforms affect all companies across sectors, and we thus have not identified any specific competition and innovation impacts. The proposals will help strengthen the position and protect consumers and businesses who are the target of fraud from those who aim to abuse the current corporate framework.

### **Justice Impact Test**

78. The Justice Impact Test determines the number of cases to be “minimal” beyond the common law at 0-3 cases per year.

## **H. Trade Impact**

79. This measure will apply to any corporate body or partnership, whether registered in the UK or under similar arrangements overseas. The senior manager must commit an offence under UK law, but they might not necessarily have a UK branch or subsidiary.

## **I. Monitoring and evaluation plan**

80. As this measure is significant the Home Office will take a high evidence approach to evaluating this measure and any subsequent secondary legislation. The RPC guidance<sup>50</sup> and both the Green Book and Magenta Book sets out best practice and what a high evidence approach requires. This includes:
- A clear statement as to whether the measure has met the obligation.
  - A thorough approach to consultation and research, normally including formal and wide-ranging consultation of the affected agents and analysis of published data sources, and commissioning of bespoke research if necessary. A comprehensive survey with high response rates to capture outcomes for business should be employed, as should an empirical impact evaluation with well-designed counterfactual.
  - A thorough explanation for the recommendation to renew, revise, remove or replace.
  - A rigorous scrutiny of all key assumptions underpinning the original assessment and a detailed analysis of the counterfactual, aimed at identifying methodological errors which might have influenced original impact estimates.
  - Detailed considerations of the scope for the amending regulations, especially if the original measure was costly to business, and a discussion of the feasibility and purpose of the proposed amendments.
  - Conclusions with reference to evidence from a wide range of stakeholders, including industry groups, civil society organisations and independent experts.
  - Evidence from a wide variety of data sources e.g. survey/desk research/academic literature/studies etc.
  - Considerations and discussion of unintended consequences and the wider effects of the policy.

- A discussion of the limitations and uncertainties related to analysis identified in the original IA.
- For implementing EU requirements, a discussion of other nations' experiences, and evidence sought in relation to this.
- A discussion of the level of compliance with regulations under review.
- A consideration of lessons for future IAs and, if considered necessary, a re-calculation of the estimates of benefits to business.

81. To address this, the Home Office will:

- Use a mix of primary and secondary data sources to assess the impact of the measure on businesses.
- Seek feedback from law enforcement on the impact from the regulatory change on fraud investigations and prosecutions.
- Carry out a survey of stakeholders exploring, inter alia, whether there have been any unintended consequences from the measure.

## Specific Impact Test Checklist

Mandatory specific impact test Statutory Equalities Duties	Complete
<p><b>Statutory Equalities Duties</b></p> <p>These measures reform the identification doctrine with the aim of punishing corporate offending for economic crimes.</p> <p>Any outcome is placed on the corporate entity and not directly on individuals. Individuals may be impacted indirectly in a professional capacity due to their role in the company and may be prosecuted separately to the measures.</p> <p>Reforms to the identification doctrine aims to capture and prosecute larger businesses compared to medium and smaller sized business. Larger businesses traditionally have more employees with different levels of responsibility and experience. By having a larger headcount, it could be assumed that these businesses are more diverse compared with smaller businesses that sometimes employ family and friends of similar background.</p> <p>The measures will disproportionately impact senior managers. This is justified on the following basis:</p> <ol style="list-style-type: none"> <li>1. Attribution of liability can only take place if the senior manager has committed a criminal offence and is liable for criminal prosecution in their own right.</li> <li>2. Senior managers take important decisions and responsibility of corporate policy and strategy of the company.</li> <li>3. The changes better reflect the complex governance structures of large business, addressing an inequality of the common law.</li> </ol> <p>Safeguards exist in relation to the prosecution of a company that governs the use of both measures for all business-types. Prosecutors must act in accordance with the Code for Crown Prosecutors – prosecutors can only start prosecutions if satisfied that the case meets both stages of the two-code test:</p> <ol style="list-style-type: none"> <li>1. The prosecutor is satisfied that there is sufficient evidence to provide a realistic prospect of conviction. Factors that could be considered include identifying the correct corporate from the outset that is accurately named; the employer/employee relationship is outlined; the directing mind must be clearly identified and their status and functions established.</li> <li>2. The prosecutor is satisfied that the prosecution is required in the public interest. Factors that could be considered include: a history of similar conduct by the corporation; the alleged conduct is part of the practices of the company; failing to report the conduct; or, against prosecution: a positive approach to remedial action; the existence of a proactive and effective compliance programme; the offending represents the isolated actions by one individual.</li> </ol> <p><b>The SRO has agreed these summary findings from the Equality Impact Assessment.</b></p>	<p><b>Yes</b></p>

Any test not applied can be deleted except **the Equality Statement**, where the policy lead must provide a paragraph of summary information on this, which must be agreed by the SRO.

The Home Office requires the **Specific Impact Test on the Equality Statement** to have a summary paragraph, stating the main points. **You cannot delete this and it MUST be completed.**