



**Home Office**

BUILDING A SAFE, JUST  
AND TOLERANT SOCIETY

# One Step Ahead

A 21st Century Strategy to Defeat Organised Crime



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A 21st Century Strategy to Defeat Organised Crime

Presented to Parliament  
by the Secretary of State for the Home Department  
by Command of Her Majesty

March 2004

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## Foreword from the Home Secretary



Organised crime is big business. It causes untold harm on our streets, damage to our communities and nets billions of pounds each year for those responsible. Our world is becoming smaller through easier international travel and universal electronic communication and the 21st century will be a period of rapid and constant change with enormous potential for wealth creation. The message is not lost on terrorists and organised criminals. This White Paper describes how we plan to stay one step ahead of them.

First, we will create a new Agency tasked with defeating organised crime. It will bring those responsible for dealing with drug and people trafficking and immigration crime together with those dealing with other forms of organised crime and criminal intelligence. The existing divided responsibilities are no longer appropriate in the face of what is increasingly technically sophisticated and international organised crime. The Agency will be more than the sum of its parts. Its activities will be driven by a focus on the harm caused by organised crime, more effective use of intelligence and specialist investigators.

Organised criminals inevitably pose the greatest challenge to law enforcement agencies and the criminal justice system. We have already done much to modernise our police service and reform our criminal justice system – most recently in the Criminal Justice and Sentencing Act 2003. These reforms are already making a difference and we are seeing real success in turning back the tide of crime. But we need to do more to build on this to deliver an equivalent reduction in the overall harm caused by organised crime.

So, second, we have worked closely with prosecutors and investigators to identify the barriers to prosecuting and disrupting organised criminals effectively. As well as ensuring the Agency will be able to make more effective use of existing legislation and powers, we have identified additional powers needed to ensure that organised criminals are not able to frustrate justice unfairly. As organised crime has become more complex and organised criminals more sophisticated, the need for greater powers, for example, to

gather evidence of their activities and more effective incentives for defendants to testify against their criminal associates has increased.

This White Paper sends the strongest possible message to those who commit serious and organised crime that we will be effective in detecting, convicting and properly punishing them. It represents the Government's vision as to how we will make the necessary step change to improve the disruption and prosecution of organised crime to reduce the harm caused in our communities.

We welcome views on the proposals contained in this document and look forward to taking the debate through to action and change.

A handwritten signature in black ink that reads "David Blunkett". The signature is written in a cursive, slightly slanted style.

DAVID BLUNKETT

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## **EXECUTIVE SUMMARY**

**At the heart of any Government's responsibilities lies its obligation to ensure that citizens are and feel safe in their homes and wider communities. Overall, crime has fallen sharply over the last five years. Crime measured by the British Crime Survey is down by 25% since 1997, and the chances of being a victim of crime are now at their lowest level for over twenty years. But there is no reason for complacency. In particular, the threat we face from organised crime, often operating across international frontiers and in support of international terrorism, has probably never been greater.**

**Organised crime is big business. Trafficking in drugs and people, fraud against the Exchequer, counterfeiting and financial crime have a UK turnover of many billions of pounds annually. Underpinning all this illicit activity are sophisticated money laundering operations which turn the proceeds of crime into bankable profits.**

**Organised crime reaches into every community, ruining lives, driving other crime and instilling fear. At its worst, it can blight our most vulnerable communities driving out innocent residents and legitimate businesses. It manifests itself most graphically in drug addiction, in sexual exploitation and in gun crime. Its influence corrupts government and law agencies in many states world-wide which desperately need good and honest government as a foundation for economic prosperity, order, security and political liberty.**

**Organised crime groups share many characteristics with terrorists, including tight knit structures and the preparedness to use ruthless measures to achieve their objectives. In Northern Ireland and many other parts of the world like Colombia, the boundary between the two is increasingly blurred. Many other terrorist groups use the techniques of organised crime to fund their activities.**

**A successful approach to organised crime is therefore inseparable from our wider effort against threats to national security. It involves greater sophistication, particularly in our use of intelligence and technology; it requires better security and closer working at our frontiers; it requires action to prevent the theft of identity; it requires that our police forces, our prosecutors, our national enforcement agencies and our intelligence services work together still more closely.**

**This White Paper looks at how our effort against organised crime can be enhanced. It builds on a comprehensive review, which looked at organisational structures, strategies, skills and capabilities and the case for new powers. It looks at how we can tackle organised crime internationally, nationally and at local level. The changes we are proposing here need to be seen alongside the wider, comprehensive reform programme we are undertaking in the rest of the criminal justice system.**

Recent years have seen considerable success in turning the tide of crime in the UK.

Reforms of the justice system are helping to close the justice gap, provide honesty in sentencing and a better deal for victims. At the same time, we are now consulting on the second stage of a far reaching police reform process which has helped forces throughout the country sharpen their capabilities for the challenges ahead. The relationship between prosecutors and the police has also been transformed since 1997.

We are increasingly using technology and IT to ensure that our law enforcement agencies stay ahead of criminal organisations which are themselves growing in sophistication and capability.

Our effort against organised crime has also scored considerable successes, with rising numbers of criminal groups disrupted and ever-improving co-operation, including within the European Union and internationally. In some areas, for example organised indirect tax fraud, there are real signs that agencies are now turning the tide on the criminals.

But we have not yet seen reductions in the overall harm caused by organised crime on the scale of those seen for volume crime.

The underlying harms caused by this form of criminality are immense. Organised crime groups' activities take place against a backdrop of fear and intimidation, and an increasing resort to firearms. In many areas, organised crime contributes to the problems of volume crime and anti-social behaviour, for example through the illicit markets in drugs and alcohol which it supplies.

Our drugs strategy and work with individual users are beginning to turn the tide. But Class A drug traffickers continue to supply the material for some 280,000 'problematic drug users', themselves victims of the drugs trade, and who are believed in turn to be responsible for more than half of all crime as they seek to fund their drug habits. We have increased investment in identifying problematic drug users and referring them into treatment; more problematic drug users are now going into treatment than ever before.

The recent tragedy at Morecambe Bay brings home vividly the human cost of the international trade in human beings. Illegal immigration facilitated by organised crime results in kidnappings, prostitution and deaths, and threatens the tolerant and diverse society which we value so highly.

Organised crime also damages the economy, impoverishing citizens and reducing the amount of money available to finance key public services.

Trends in society and the world economy suggest that the threat to the UK from organised crime can only increase as criminals seize on new technologies and methods like identity theft and as they forge new alliances with international terrorists. We need to ensure our response not only keeps pace but stays several steps ahead.

So, the Government has set a straightforward objective: to reduce significantly the harm done to the UK and its citizens by organised crime. We shall do this by making the UK one of the least attractive locations in the world for organised crime to operate, but also by strengthening European and other international co-operation to pursue criminals wherever they are based.

This paper sets out and seeks views on the steps the Government proposes to take to achieve this.

### Sharper prioritisation

We need to improve the way we focus our effort and resources on organised crime. We must build on our existing intelligence effort to develop a comprehensive understanding of the scale of the problem, and the working methods of modern criminals.

Armed with this information, we can then agree national priorities to target our effort against the main threats.

The new Ministerial Committee on Organised Crime, set up in September 2003 and chaired by the Home Secretary, is taking the lead in setting the priorities towards which agencies should work.

To achieve the aim of curbing organised crime, we need success on three main fronts

- **Reducing the profit incentive.** We must restrict the opportunities for organised criminals to make money. This means reducing demand for the goods and services trafficked by criminal enterprises. It also means reducing the vulnerability of the public and private sector to attack by organised crime;
- **Disrupting activities.** We must make criminal enterprises unprofitable in the UK by disrupting and dismantling them by all the means at our disposal, including adding to their costs and seizing their assets; and
- **Increasing the risk.** We must raise the personal risks for the criminals, particularly the kingpins of organised crime, by more successful and targeted prosecutions of the major players.

### Delivery: a new organised crime agency

To deliver this strategy, we must make a radical step change in the quality of our effort. Central to this will be the establishment of the Serious Organised Crime Agency, which was announced by the Home Secretary on 9 February.

The new Agency will bring together the National Criminal Intelligence Service (NCIS), the National Crime Squad (NCS), the investigative and intelligence work of Her Majesty's Customs and Excise (HMCE) on serious drug trafficking and the recovery of related criminal assets, and the Home Office's

responsibilities for organised immigration crime. The Serious Organised Crime Agency will be a powerful agency accountable to the Home Secretary. Its strategy will be made by a small board chaired by an independent part-time chair of wide experience. It will be led by a powerful Director General. It will be one of the key international agencies in the field, and the Director General will be a leading figure in law enforcement at home and internationally.

Specialist prosecutors answerable to the Attorney General will co-operate closely with officers in the new Agency and work alongside them wherever this makes good operational sense. They will be available whenever required to provide comprehensive, practical and specialist advice to help shape investigations and to develop strong and well-presented cases for prosecution. The specialist prosecutors will stay with each case from the outset of investigations right through to the point of sentence.

The new Agency will focus our efforts in a new organisation, with new capabilities and new determination and with the ability to work closely with police forces, border agencies and other law enforcement agencies at home and overseas. The creation of the Agency will reduce the number of organisations with which the police and others have to deal, improving efficiency and reducing bureaucracy.

The new Agency's capabilities must be sophisticated and stay one step ahead of the organised criminals and the technologies and methods which they use. This will require expertise in a wide range of areas, from electronics to financial investigation, from economic analysis to forensics. Above all, however, it means building on the intelligence capability already available across the law enforcement and security and intelligence agencies, and providing real incentives for the entire community dealing with organised crime to produce regular and high quality intelligence, share it effectively and use it to drive operational decisions. In all its work, both investigative and intelligence, it needs to drive work forward with partners overseas to ensure our effort is as co-ordinated across borders as that of the criminals.

There are already many examples of good practice in all of these areas. We will be putting in place measures to ensure that this best practice is identified and spread, including through a new benchmarking process for our effort against organised crime.

We will be looking to the new Agency, and the organisations with which it works, to be 'lawfully audacious', acting firmly within the powers granted by Parliament, but ensuring that these powers are also fully understood and exploited. In particular, we will identify areas which need to be clarified further and provide the guidance necessary to ensure law enforcement can be confident in the exercise of its powers.

### **Working with police forces**

Change at national level will not lead to the success we want to see unless our national law enforcement effort is effectively joined up with police forces and other enforcement agencies at local level and on our borders.

The police and NCIS are already building a stronger regional capability to deal with organised crime which works across internal force boundaries. This effort includes the creation of Regional Intelligence Cells (RICs), and Regional Tasking and Co-ordination Groups to direct action.

Improved effort against organised crime needs to be fully tied into our wider reform agenda for the police service, especially the ideas set out in *Policing: Building Safer Communities Together*.<sup>1</sup> In particular, we must examine carefully the case for developing strategic sized police forces across the country, with the skills and capacity to tackle organised crime or, where appropriate, identify lead forces in combating particular types of crime.

At our air and seaports we must move to closer working between the agencies which confront crime and criminals at their point of entry to the UK: the Immigration Service, HMCE and Special Branch. Much has been done, including joint working on common information services to support joint border control, joint intelligence and debriefing teams, joint risk profiles and co-ordinated freight searching operations working to them. But we have concluded that more is needed.

In the light of the creation of the Serious Crime Agency and the opportunity for that new body to establish close working partnerships with the existing border agencies, it is not proposed to create a single border agency. Nonetheless, the Home Secretary and the Chancellor of the Exchequer will be tasking the heads of the border agencies to develop more closely aligned objectives and priorities within their existing business plans. This will ensure co-ordinated, strategically-driven operational activity to protect the borders. These arrangements will not interfere with any existing accountability structures.

We are also simultaneously taking steps to improve the co-ordination of police special branches which support the work of the Security Service in disrupting terrorist activity in the UK and work with HMCE and the Immigration Service to ensure border security.

A new national coordinator of Special Branch was appointed in October 2003 to bring this about. He is Bryan Bell, a former Assistant Chief Constable of Cleveland. A top priority of the co-ordinator will be to press ahead with the development of eight new RICs with central funding of £3 million a year to act as clearing houses for intelligence in their regions. Our national security will be further significantly enhanced through the national co-ordination and prioritisation of Special Branch operations, including surveillance, intelligence and investigations.

### **New powers, new methods of working**

Institutional change, stronger strategic focus and improved skills are, however, only part of the solution. There is also a need for new ways of working and new powers, if we are to combat organised crime effectively. Some will require legislation; others can be achieved through enhanced co-operation between different agencies of Government towards the common aim.

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<sup>1</sup> *Policing: Building Safer Communities*, Crown Copyright 2003. Published by Home Office, Communication Directorate, November 2003.

This paper proposes a number of areas where different agencies could do more by working together. Immigration powers, probation powers and the tax system could all contribute to disrupting organised crime, if those working in different parts of the system were able to see the whole picture. Too often, this is not the case at present.

The powers at agencies' disposal have strengthened considerably in recent years. In particular, the Proceeds of Crime Act 2002 has broken new ground, especially with its radical provisions to enable criminal assets to be confiscated on the civil standard of proof.

This review has looked at the case for further legislative powers. Successful convictions and appropriate punishments are key to long term success against organised criminal groups. Securing those convictions, however, means breaking the tight-knit organisation and intimidation which too often safeguard sophisticated criminals now. It also means a thorough review of the way the criminal justice system operates, including the nature of the evidence that can be brought to bear.

This paper proposes a number of important new powers:

- the extension of Serious Fraud Office (SFO) style powers to compel witnesses to produce documents and answer questions;
- a review of the law on conspiracy;
- putting on a statutory footing Queen's Evidence provisions in order to encourage defendants to plead guilty and to testify against co-defendants;
- a review of the case for a National Witness Protection Programme;
- a review of whether the existing sentencing regime is producing sentences which match the seriousness of the underlying offences; and
- the creation of new licence conditions to ensure that serious and acquisitive criminals' finances are kept under much closer scrutiny after release.

In addition to these areas, we are already reviewing the case for permitting the evidential use of intercept material. The Government has also already published a discussion paper on counter-terrorism powers.<sup>2</sup> Our review of powers against organised crime has obvious read-across to terrorism, and has drawn on experiences in both the organised crime and terrorism fields.

## Conclusion

We believe that the changes outlined in this white paper will substantially improve our ability to combat organised crime. The Government welcomes views. We intend to legislate in those areas requiring it as soon as Parliamentary time allows.

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<sup>2</sup> Counter-Terrorism Powers: Reconciling Security and Liberty in an Open Society

## **1. THE SCALE OF THE PROBLEM**

Taking our effort against organised crime to a new level of effectiveness is a major challenge. This paper sets out radical proposals, particularly on new institutional structures, strategies and powers. But to inform our strategy, we first need a clear vision of the scope of the problem, the strengths and weaknesses of our current effort, and the key areas for action.

### **1.1 What is organised crime?**

Organised crime groups dominate much of the criminality which has most impact on the UK. Their activities range over a vast area, from drugs and organised immigration crime, through evasion of VAT and excise duties, financial and business fraud to intellectual property theft or counterfeiting.

These criminals usually operate across police basic command unit (BCU) or force boundaries and often at national or international level. In conducting their operations, organised criminals frequently resort to extreme violence, intimidation and corruption. They often display detailed awareness of law enforcement methods and use effective counter-measures including sophisticated counter-surveillance techniques and elaborate money laundering arrangements.

For the purpose of this paper, we have taken the definition of organised criminals used by NCIS:

“those involved, normally working with others, in continuing serious criminal activities for substantial profit, whether based in the UK or elsewhere.”

This captures the essential point that many organised crime groups are, at root, businesses and often sophisticated ones. In practice, most criminal groups exist on a spectrum of organisation. There is no clear cut-off point at which any group should be categorised as being involved in organised crime. But those at the top end of the spectrum pose a unique threat.

The more sophisticated and capable groups in every sector of crime are also, not surprisingly, those capable of causing the most harm to the UK. Some of the crimes which these groups commit are straightforward theft, for example fraud against the Exchequer. In addition, however, organised criminals supply a wide range of illegal goods and services. They rely on continuing demand for these goods and services, complex international supply chains, and the ability to launder the proceeds of their crimes.

Organised crime groups and terrorist groups have many similarities in their ways of operating. The powers and approaches outlined in this paper are designed to be effective against both. How much overlap there is in practice between the two types of groups is controversial. But there

is clear evidence in Northern Ireland and many other places of a close link. Similarly, organised crime and terrorist groups have co-existed in a number of weak and failing states, like Afghanistan. Terrorist groups also routinely engage in criminal activities in order to raise funds, though rarely on the same scale as the biggest players in organised crime.

## **1.2 Harm: the scale of the problem**

There has been virtually no work anywhere in the world so far to measure the scale of organised crime and the harm it does. The Home Office has now launched a major new programme of research in this area. The programme is seeking to assess overall harms according to a series of measures:

- First, the economic and social costs of organised crime, ranging from straightforward financial losses to health and crime harms.
- Secondly, the level of public concern about organised crime and the problems it causes. Some issues, like the availability of drugs, are of general concern. But we need to take account of local factors too, like the fear which organised crime can inflict on particular neighbourhoods.
- Thirdly, the size of the criminal market involved. This will help measure the profitability of criminal markets, which poses its own challenge to society and the rule of law.

Preliminary results from this exercise suggest that the losses and harms caused by all forms of organised crime may be up to £40 billion a year, although there is a lot more work to do. We have identified the following key areas of criminality where organised crime's influence is particularly strong and have sought to identify both quantifiable and unquantifiable costs:

- Class A drug trafficking;
- organised immigration crime;
- excise fraud;
- VAT fraud;
- fraud against the private sector (including counterfeiting).

Early estimates suggest that the scale of harm in these areas is very large. The abuse of Class A drugs, produced by or smuggled into the country by organised criminals, has costs of at least £13 billion a year, at a highly conservative estimate. In 2002-03, it is estimated that around £7 billion in revenue was lost from all forms of indirect tax fraud, much of which was the result of organised fraud activity. Intellectual property theft is said to cost up to £9 billion annually. Organised immigration crime may

be responsible for costs of a further £3 billion at least, not including the political and social risk it poses. The scale of fraud against business is also extremely large.

These figures are still being refined, in a process involving Government, academia and organisations representing business. They are based on conservative assessments of the underlying harms. But we also need to do more to strip out the specific contribution of organised crime to the total harms. For example, at present, we have attributed to drug trafficking all the harms associated with the use of illicit drugs, including the crime committed to pay for those drugs. In other areas too, the total harm figures quoted are not all attributable to organised criminals – tobacco smuggling and counterfeiting being good examples.

Even with these qualifications, however, the scale of harm caused is considerable. It falls into a number of main types.

- At its simplest, organised criminals steal directly from the Government and business. This means higher taxes, and costs passed on to consumers.
- Organised criminals also inflict harm on individuals, directly or indirectly. Drug addicts suffer through their dependency, and commit crime in turn to feed their habits. Smuggled and trafficked immigrants face exploitation and even death on their journey to the UK and once they have arrived. Those buying counterfeit goods also face serious risks in using or consuming products not subject to rigorous safety standards.
- There is also evidence, particularly from Northern Ireland, of overlap between organised crime and terrorism, with one being used to fund the other.
- Communities are blighted by the fear of violent organised crime groups. Anti-social behaviour too is exacerbated by the availability of illegal drugs and contraband alcohol.

Organised criminal activity will displace activity in the legitimate economy. So, for example, those manufacturing and selling counterfeit goods are undermining genuine businesses and potentially putting thousands of people out of work.

Left unchecked, organised crime can create an environment of fear and crime, exerting a stranglehold on vulnerable communities, destroying or driving out legitimate businesses and innocent residents.

Ultimately ordinary citizens foot the bill for this. The economy suffers, and tax revenues are lost because illegal activity displaces legitimate enterprise. The taxpayer pays again for increased policing, for the costs to the health service of tackling drug addiction, and for coping with those

asylum seekers who have been brought into the country as a result of organised crime. Ordinary citizens may then pay again through higher insurance premiums, interest rates and prices, as business is forced to pass on to consumers the cost of the crimes where it is the victim.

Finally, the costs of organised crime extend well beyond the borders of the UK. Criminal enterprises, intent on smuggling goods and services to the UK and other western countries, set about corrupting and intimidating government and law enforcement agencies in source and transit countries for illegal trade. This pervasive corruption is itself a major obstacle to the development of the honest and robust governmental and legal institutions essential to prosperity, liberty and international stability.

### **1.3 Threats and opportunities ahead**

Not only is the threat from organised crime high, there is every reason to believe that trends in society, technology and the world economy mean we face a growing challenge over the years ahead. Doing nothing risks falling behind.

Increasing integration in the world economy is reflected in the growth in world trade, which doubles every twelve years. Financial transactions are increasing at an even faster rate, with the number of UK transactions on plastic cards alone having tripled since 1992.

Travel, especially air travel, continues to increase dramatically. UK flights are expected to increase by 40% between 1998 and 2005, while the number of goods vehicles travelling between the UK and mainland Europe increased by 80% between 1992 and 2002 alone.

The ease and availability of all types of trade and travel pose considerable challenges for those policing our frontiers and obvious opportunities for those seeking to enter the country illegally, bring in contraband or move criminal funds. The traditional ways of screening both goods and people will have to change and we will need continuously to refine the process of profiling and targeting to cope with the higher numbers.

The demand internationally for migration is also likely to increase. World population is set to rise by 2 billion, approximately one third, over the next 30 years, with 95% of the increase occurring in the developing world. More than 60 states around the world have per capita incomes *lower* today than 10 years ago and internal migration within developing countries is high. Combined with greater ease of travel and reducing populations in the developed world, factors such as these will increase the pressure and desire to migrate, legally or otherwise.

Political developments, especially in Europe, pose challenges of their own, despite improvements in co-operation within the EU. Improved

communications and increased freedoms to live anywhere in the EU have offered opportunities to criminals to set up base in any jurisdiction and run operations in the UK. The imminent enlargement of the EU to take in 10 new member states poses new challenges.

Recent years have seen an increasing concentration of threat from a small number of problem countries, or “failing states”, with growing recognition of the associated vulnerability to terrorism and organised crime. Future years may see intensified pressure in Africa, in some ‘micro-states’ (for example, in the Caribbean and South Pacific regions), as well as in Afghanistan and countries in the Andean region.

While most organised criminals in the UK are UK nationals, the same globalisation process has made it increasingly easy for foreign organised criminals to set up base in major European cities such as London. The existence of clandestine communities of illegal immigrants can not only help provide cover for their activities, but also a pool of potential victims. Moreover, the increasingly cosmopolitan nature of UK society provides organised criminals with links all over the world. The rapid uptake of better communications technologies makes it easier for criminals to communicate and operate across borders.

Technology offers both threats and opportunities. Both organised criminals and law enforcement have eagerly adopted new technologies over recent years. New technologies provide new and more effective means to commit crime (for example, more effective access to larger markets through the Internet), as well as more secure ways of communicating within criminal groups.

New technologies, however, also offer new opportunities for the police in terms of intelligence and detection. Our proposals to move ahead with the adoption of ID cards, together with the use of biometric identifiers, will in particular remove from the criminal the opportunity to steal or create identities. This technological ‘arms race’ will continue to influence the effort to tackle organised crime in the years ahead.

## 2. A NEW STRATEGY AGAINST ORGANISED CRIME

### 2.1 The basic principles

These new challenges require a wholly new approach to law enforcement. Law enforcement action can no longer be seen in isolation, purely in terms of its own activities like arrests, operations, seizures or convictions. Rather, it needs to be wholly integrated within a wider strategy aimed at reducing underlying harms. To be successful, a harm reduction approach needs to achieve success on three fronts simultaneously.

- **Reducing profit opportunities.** This means reducing demand for the goods and services trafficked by criminal enterprises. It also means reducing the vulnerability of the public and private sector to attack by organised crime.
- **Disrupting the businesses and their markets.** We must make criminal enterprise unprofitable in the UK by disrupting and dismantling their businesses and the markets in which they operate. This means using all the regulatory and other powers at our disposal, including our tax powers, our financial recovery powers and our powers to bear down on money laundering.
- **Increasing the risk.** We must raise the personal risks for the criminals, particularly the leading figures, by prosecuting the key players involved in organised crime. And we must reform the criminal justice system to enable us to bring to bear the evidence which will lead to convictions for involvement in organised crime.

### 2.2 Developing a national strategy

Over recent years we have developed strong strategies in a number of major problem areas. The Government has now commissioned work to pull together a national strategy to link these 'sectoral' strategies together, and in particular has established a new Cabinet sub-committee on Organised Crime. This group, chaired by the Home Secretary, includes all the Ministers with relevant responsibilities in this area. It has been tasked with driving forward a national and international strategy against organised crime.

This strategy is not there to impose a single template to tackle organised crime in all its aspects. Rather, it is there to inform resourcing decisions between the broad areas of threat. The process for this will be informed by the exercise on measuring harms caused by organised crime described above, as well as by the UK Threat Assessment co-ordinated by NCIS for the UK law enforcement community. The Government aims to produce the first such national strategy by the end of 2004.

The Government will also agree policies in areas where a common approach is needed across all sectors: for example on the UK's

international priorities for organised crime, and in developing thinking on legislation against organised crime.

By focusing our strategy on the reduction of harm, we avoid false choices between disrupting criminal enterprises and pursuing the criminals themselves. We must do both. And we shall apply our strategy of prevention, disruption and increasing risk both across different sectors of criminality and in directing our international effort.

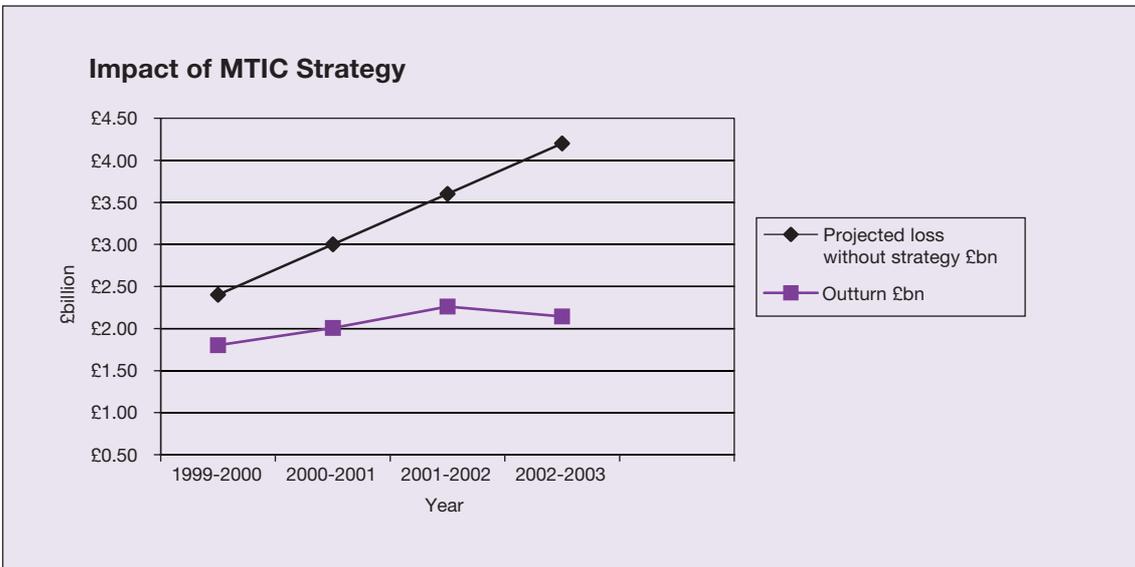
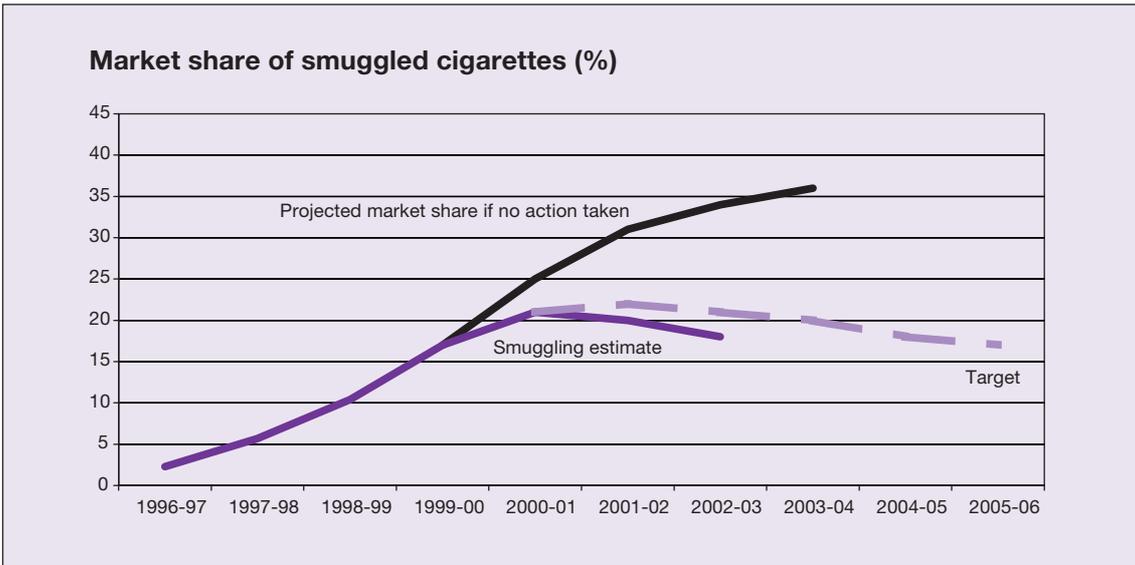
### **2.3 Strategies for the main problem areas**

The bulk of our practical effort against organised crime will continue to be driven by 'sectoral' strategies – that is, strategies against the highest harm criminality and, where relevant, the markets which sustain it. These will be the forums for implementing a practical harm reduction strategy combining enforcement and non-enforcement approaches, launching the three-pronged attack against organised crime described above.

There are good examples of sectoral approaches which are already achieving success in this way. The Treasury and HMCE, for example, have devised strategies against excise evasion and VAT fraud. These have been based on a clear economic analysis of the underlying market to spot trends and set harm reduction targets.

Action has included strong administrative measures to make frauds more difficult to commit, for example, speeding up the process of identifying suspect VAT registrations, giving the courts the power to ban sales of tobacco by individuals for a period of up to six months, and the introduction of fiscal marks on tobacco products. More recently, in the 2004 Budget, the Chancellor announced the Government's intention to introduce tax stamps for spirits. All of the indirect tax fraud strategies combine enforcement action with regulatory and assurance activity coupled with education and public awareness work to help honest businesses and individuals avoid providing inadvertent assistance to, or markets for, the fraudsters.

The results of these strategies have been impressive.



The drugs strategy is also a good example of an integrated strategy. Enforcement work has focused on choking off supply of the most harmful drugs. But this has been combined with measures to reduce demand. These have included education work to prevent drug use in the first place, and programmes to wean users off dependency. The strategy has already seen a substantial increase in investment in drug treatment. We are now rolling out the new Criminal Justice Intervention Programme, designed to help far more drug addicts into effective treatment.

Over recent years, the total numbers using class A drugs in the 16-24 age group appears to have stabilised, although there has been a strong growth in some forms of problematic drug use, notably crack cocaine. The trend in drug prices is harder to assess. But intelligence suggests that wholesale prices of heroin and cocaine over the last two years have held steady or increased. Since 2001, street prices of class A drugs have begun to stabilise.

Reflex, the strategy against organised immigration crime, also sits within the wider UK Government strategy on migration. We have introduced a managed migration policy to reduce the incentive to come to the UK illegally and open up ways for people who have the required skills and experience to come and work here legally in ways that boost the economy.

At the same time, we are speeding up the process of assessing asylum claims and removing unsuccessful claimants, educating those tempted to use the services of traffickers in source countries to the realities of the trafficking business, and focusing enforcement action against the traffickers. These measures are already achieving successes, with monthly asylum claims running at around half the peak level in 2002.

We will be expanding these sectoral or market strategies to ensure they cover all the key areas of threat. For example, the Government will publish by June a strategy on e-crime. The other main gap at present is the lack of an integrated strategy on fraud against business, which many in business argue has not attracted sufficient law enforcement attention over recent years.

Fraud covers a wide range of activity, with varying levels of involvement by organised crime. As work on measuring the harm caused by organised crime develops, the Government will look to identify key areas where business is vulnerable to organised crime, and will explore with industry the potential for developing a combined strategy. As one example, the Department for Trade and Industry (DTI)'s Innovation Review identified Intellectual Property (IP) Crime as an area of growing concern, reflecting similar conclusions in the NCIS's 2003 Threat Assessment. As a result, the Patent Office has been mandated to lead the development of a national strategy for IP Crime, and is working closely with business on both devising the strategy and involving them in its eventual implementation.

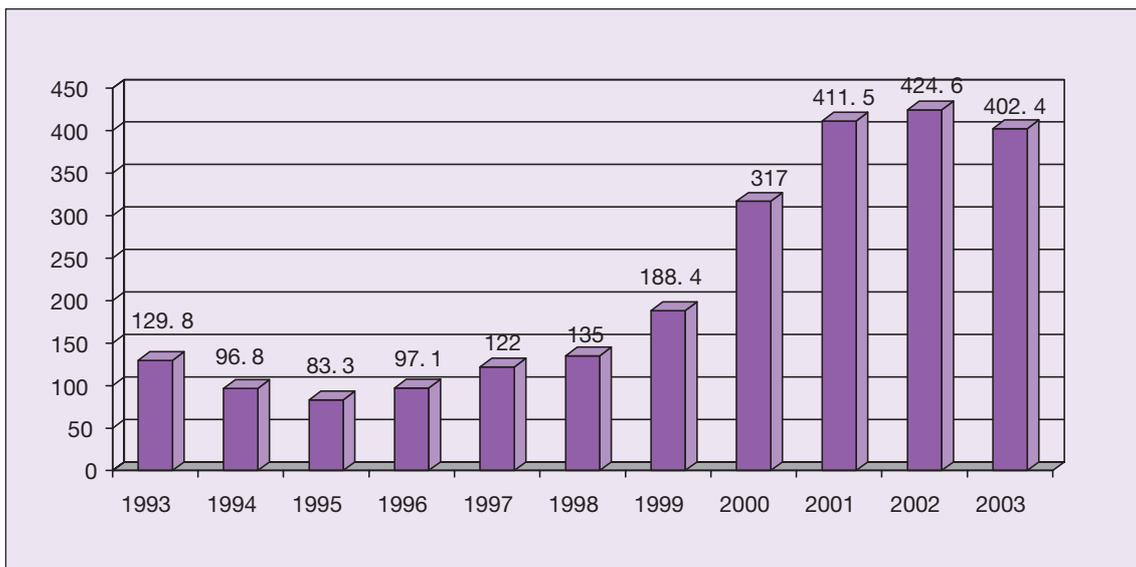
The threat from fraud goes wider than organised crime, however, and Government is working to improve the performance of local forces and other agencies in this area. Initiatives in train include the City of London Police working more closely with the SFO and an innovative approach to expanding the City of London Police's remit to the South East region with a combination of Government money and a contribution from the City of London. Operation Sterling is also a new task force which the Metropolitan police have set up to analyse and target economic crime in the London area. In addition, we are currently working on a consultation exercise on our response to the Law Commission report on Fraud.

Our general principle should be that business fraud is a strong candidate for new approaches between the public and private sector. The new role for the City of London Police is a good example of such an approach, as is the Dedicated Cheque and Plastic Card Unit (DCPCU).

The banking industry has taken a keen interest for some time in reducing card crime. Most recently, the DCPCU was set up as a two year pilot which from April 2002. It works closely with the banking industry to reduce organised cheque and credit card fraud, using intelligence largely provided by the card industry.

The DCPCU offers an important precedent as an example of an area where business has contributed to the cost of law enforcement because law enforcement success can feed directly through to business' own bottom line. This and other initiatives have helped stem the sharp rises in card crime experienced in the late 1990s.

**Plastic card fraud losses on UK-issued cards 1993-2002 (£million)**



Source: APACS

## **2.4 Our international effort**

Much of the organised crime which causes so much harm in the UK cuts across international boundaries. Offences are planned and committed, and have substantial effects, in more than one country. Criminals recognise and exploit the potential of borders to frustrate law enforcement action against them. The criminals' task can be made easier by the low priority given to offences not harming the source or transit country or by lax law enforcement in some countries, particularly those with weak or failing governments.

This poses a challenge, and we need to ensure that our effort overseas matches up to it. At the same time, we also need to recognise that often progress can only be made when our partner countries are as committed to it as we are, and take steps to achieve this.

The continuing importance of engaging foreign governments on matters of international crime is demonstrated in the Foreign and Commonwealth Office (FCO)'s eight strategic priorities, the second of which sets an objective of "protection of the UK from illegal immigration, drug trafficking and other international crime".

In order to deal with the issues effectively, we must first be clear which are the priority countries and regions for bi-lateral and multi-lateral action to combat crime. These will be those countries where organised crime poses the greatest threat to the UK.

Secondly we must develop strategies for those countries and regions in collaboration with their governments and our international partners which reflect local circumstances and opportunities. We need to take into account existing mechanisms, determine how effective they are, identify how they could be improved and where the gaps are. Initiatives launched in isolation or which are poorly co-ordinated can cause confusion amongst our partners, and lead to loss of impact.

Thirdly we must evaluate the impact of our strategy in disrupting supply chains and prosecuting and convicting criminals and be prepared to adjust our strategy in the light of what that evaluation shows.

Much bilateral assistance relies on smooth and effective co-operation between law enforcement agencies, including through the network of Interpol bureaux. In addition, UK diplomatic posts host over 120 UK law enforcement liaison officers who support domestic and enforcement agencies by providing a focus for operational co-operation on drugs, organised crime, illegal immigration and fiscal crime. They work with local law enforcement agencies on operational matters and report on local trends. These networks are an invaluable asset. The forthcoming creation of the new organised crime agency will lead to the merger of the existing NCIS liaison network with the drug liaison network of HMCE. This has the potential for more efficient and joined up working against the whole range of criminal threats to the UK.

There are a number of FCO funds (Drugs & Crime Fund, Global Opportunities Fund, Global Conflict Prevention Fund) on which we draw to help build capacity in weak and failing states. Key recipients so far have been Afghanistan, Colombia, Jamaica and the Balkans.

At the same time as providing assistance, however, we will work to identify any practical obstacles to operational co-operation, and use diplomatic effort to seek to overcome these, and to ensure partner Governments are able fully to deliver their international obligations.

We are also committed to getting best results out of the extensive mechanisms which already exist for multilateral co-operation.

These include the Council of Europe, the Commonwealth, the North Atlantic Treaty Organisation (NATO), the Organisation for Security and Co-operation in Europe (OSCE), the UN Office for Drugs and Crime (UNODC) and the G8, where we work to secure agreement to common standards in international conventions, such as the United Nations Convention on Transnational Organised Crime (UNTOC).

The UK is an active and leading player in developing more effective EU action against organised crime. Significant advances have been made in the last few years in developing an EU framework to tackle organised crime, built on the principle long advocated by the UK of mutual recognition of diverse legal systems.

On 1 January 2004, the European Arrest Warrant entered into force in the UK. This is a major contributor to making the EU a harder place for criminals to operate, and the evidence suggests that criminals are highly aware of the increased risks they are facing. New EU instruments to deliver quick and effective action to seize and confiscate the proceeds of crime should enter into force next year. Other EU legislation will ensure that all Member States have a minimum level of criminal sanctions for key offences involving organised crime, for example, people trafficking. This minimum level of approximation will facilitate operational co-operation and help ensure there are no safe havens in the EU.

The UK will continue to be proactive in driving forward the EU agenda. Work is underway on drawing up a new EU work programme on justice and home affairs. The UK's key priorities will include:

- Improving the operational effectiveness of EU bodies responsible for tackling organised crime, including Europol (the EU's criminal intelligence agency), Eurojust (responsible for co-ordinating prosecutions) and the Police Chiefs Task Force. These bodies have great potential, and UK forces already make more use of Europol than counterparts in any other member state. But more can and should be done.
- Developing an EU criminal intelligence model to improve the exchange and analysis of criminal intelligence, drawing on the experience of the UK's National Intelligence Model.
- Addressing other obstacles to the exchange and use of criminal intelligence within the EU, including legislative action at EU level where necessary (for example, on data protection).
- Developing an operationally effective EU framework for joint investigation teams involving several Member States.
- Improving the operational value of EU IT systems, in particular supporting the second generation of the Schengen Information System, which will enable immediate access to data of relevance to the fight against organised crime.

With our EU partners, we are seeking to develop common policies to tackle organised crime through capacity building and EU Action Plans, such as in new and candidate Member States and in the Balkans. EU membership is a key objective of these countries and it is essential that their ability to tackle serious crime reaches EU standards.

The UK will also continue active participation in other international forums. The Financial Action Task Force on money laundering, for example, has set new world standards of regulation in this field with its new 40 Recommendations and 8 Special Recommendations on terrorist financing. The G8 group of leading industrialised countries has also made a distinctive contribution, by for example promulgating best practice standards on asset tracing, freezing and confiscation and the use of DNA evidence.

### **Successful international co-operation**

A container profiling course in Bolivia funded by FCO contributed directly to the seizure of five tonnes of cocaine hidden in shipments of therapeutic mud and potato powder. The cocaine would have had a street value of £300 million in Europe. The course cost £3,000.

Project IMMFACT in Bosnia involved Immigration Service training and operational support to the Bosnian state border service, leading to a 90% reduction in illegal immigrants arriving at Sarajevo airport en route to the UK.

A customs officer in Dubai made use of skills he had learned on a passenger profiling course delivered by an FCO-funded UK Customs adviser. Not convinced by a passenger's answers to routine questioning at Dubai airport, the officer searched the passenger's baggage and found £300,000 worth of heroin sewn into the fabric of some clothing. This seizure was one of many, totalling over £2 million, arising from the deployment of this adviser to the UAE.

Ultimately, international co-operation can lead directly to action in court cases in this country. Yet the handling of evidence obtained from overseas continues to be a problem.

The Government has continued to seek improvements in judicial co-operation. Modernisation and streamlining of legal procedures, for example, in extradition cases and requests for foreign evidence, are essential for effective investigation and prosecution of organised international crime, and for tracing and seizing criminal assets. The framework for such co-operation must also include as many countries as possible.

The Crime (International Co-operation) Act 2003 has been passed to give effect to EU arrangements to simplify the procedures for Mutual

Legal Assistance. We are seeking to establish whether the difficulties of operating across different jurisdictions might be alleviated by further legislation (relating, for example, to the approach to be taken to the admission of evidence obtained overseas or the inconsistencies in different disclosure regimes), and welcome views on this issue.

The UK is committed to combating corruption internationally. Bribery overseas can be a factor which supports corrupt governments, with widespread destabilising consequences. We are duty-bound to promote high standards of fairness and integrity and to ensure that UK citizens do not contribute to corruption either at home or abroad. The Anti-Terrorism, Crime and Security Act 2001 allows UK nationals and incorporated bodies to be tried in the UK for crimes of bribery committed abroad, and new legislation which will consolidate and clarify the criminal law on corruption will be introduced to Parliament as soon as Parliamentary time permits. The bribery provisions in part 12 of the 2001 Act will only be repealed once a Corruption Act has come into force. The Corruption Bill has similar provision on extra-territorial jurisdiction.

### **Afghanistan**

Afghanistan is the source of 70% of the world's heroin and supplies, and of 95% of heroin used in the UK each year. At a G8 meeting on Afghan security sector reform in Geneva in April 2002, it was agreed that the UK would co-ordinate international anti-narcotics assistance in Afghanistan. The UK is committed to this lead role.

The UK has worked closely with the Afghan government, other donors and international agencies (in particular, the United Nations Office on Drugs and Crime) to develop a National Drug Control Strategy for Afghanistan to achieve the sustainable elimination of opium poppy cultivation by 2013. The strategy is based upon the following key elements: improved drugs law enforcement; alternative livelihoods for poppy farmers; capacity building for Afghan drugs institutions; and public awareness campaigns/treatment programmes to help reduce demand.

The UK is supporting implementation of the Afghan National Drug Control Strategy by deploying a specialist counter narcotics team to Afghanistan, which will number up to eight staff by the end of the financial year. Significant resources support our effort. The UK plans to spend over £70 million in the first three years.

### **3 DELIVERING CHANGE: THE SERIOUS ORGANISED CRIME AGENCY AND ITS PARTNERS**

Setting clear strategic priorities will provide vital clarity and focus to enforcement agencies' effort, directing it against the most harmful targets. But there is also scope to improve the effectiveness of our own effort, helping to deliver the step change in performance which we are seeking.

The keys to success in delivering a successful strategy will be:

- a. the creation of a new organised crime agency to bring a new clarity of approach, with enhanced capabilities and skills;
- b. a radical improvement in the use of intelligence throughout the system;
- c. strong partnership working with individual police forces and other partners, domestically and internationally, ensuring that best practice is identified and spread and delivering a co-ordinated approach to security at the frontier;
- d. a drive for more concerted use of existing powers and effective relations between investigators and prosecutors; and
- e. new powers to equip the criminal justice system to defeat the most serious criminals and criminal enterprises.

#### **3.1 The Serious Organised Crime Agency**

To get the better of highly organised criminal enterprises, we need to organise ourselves so that we create the critical mass we need in the key areas of competence and focus our efforts on front-line intelligence and investigation. That is why the Government launched a review of the organisational structure for tackling organised crime.

This took as its starting point the question of whether, given the challenges ahead, we could achieve the improved performance and bear down on the threat from organised crime with the structures and the organisations currently at our disposal.

The review found that the UK's law enforcement agencies are effective and well respected amongst their international peers. Co-operation has improved immeasurably over recent years, with co-ordinating groups like CIDA on drugs and REFLEX on immigration crime, while the co-operation between intelligence and law enforcement agencies is almost unique internationally. There are frequent accounts from other jurisdictions of overlapping investigations leading to obstruction and even 'blue on blue' clashes between rival enforcement bodies. It is much to our agencies' credit that these problems are rare in the UK.

Nonetheless, the dividing line between institutional responsibilities remains unclear in several areas, putting a high premium on good relations between agencies. The review of our institutional structures found a general consensus that if we were starting again, we would not design the institutions in the way they have developed over time. In particular, the review noted the areas of overlap between some of the key players, notably the fact that both HMCE and NCS have roles to play in combating top level drug traffickers, and the unclear lines of accountability on both drugs and fraud against business.

Coupled with what appears to be duplication in some areas, the current fragmented effort against organised crime can make co-ordination difficult, and lead to a lack of critical mass in some less traditional but important skill areas. This has proved a particular problem in tackling financial crime.

Against this background, the Home Secretary announced on 9 February that the Government would be creating a new Serious Organised Crime Agency to bring together the NCS, NCIS, HMCE's investigation and intelligence work on serious drug trafficking and recovering related criminal assets and the Immigration Service's work on organised immigration crime. Specialist prosecutors, answerable to the Attorney General, will work closely alongside the Agency's staff.

The new Agency will be much more than the sum of its parts. Its creation should lead to greater consistency of approach; a critical mass in key skill areas, address current problems of duplication and co-ordination, limit bureaucracy, provide opportunities for economies of scale, and represent a 'one stop shop' for our international partners. In particular, it should address some of the key weaknesses in the generation, dissemination and use of intelligence material.

The Agency will be a major player in international law enforcement, building on the acknowledged expertise of its component organisations.

Immediately after the Home Secretary's statement, a Taskforce, including representatives of those who will form part of the new organisation, began to consider what arrangements should be put in place for the Agency's governance, consulting the key stakeholders. In response to its recommendations, the Government has decided that the Agency should take the form of a Non-Departmental Public Body.

The Government believes this approach sets a clear and appropriate framework for this important new body.

The Agency's overall priorities will be set by the Home Secretary, in line with the Government strategy on organised crime outlined above. As the Agency will have a role in Northern Ireland and Scotland, the Home Secretary will be obliged in statute to consult the Scottish First Minister and the Secretary of State for Northern Ireland before promulgating its

objectives. The Agency will be required to report annually to all three Ministers, though the Home Office will be the sponsoring department, and the Home Secretary will be accountable to Parliament for the Agency's performance.

The Agency will enjoy full operational independence from Ministers and will have the freedom to employ the people and skills it needs. This will be balanced, however, with the need for appropriate Ministerial and Parliamentary oversight, and for management to be held clearly accountable for the agency's performance. We will be considering ways of achieving this.

Developing a strategy to deliver the objectives set for the Agency will be the responsibility of a small board in which non-executives will be in a clear majority. These independent board members will be chosen for their personal contribution.

The board will be chaired by a part-time non-executive chair, who will drive strategy and manage the Agency's all-important relationship with its stakeholders. It will be led operationally by a full-time Director General.

The Government's intention is to introduce legislation to establish the Agency as soon as Parliamentary time allows.

Pending the establishment of the new Agency, the Government will work with the existing agencies and their staffs to promote closer working and the development of the capabilities needed to tackle organised crime.

### **3.2 Developing partnerships within border agencies and a co-ordinated approach to border security**

The new Serious Organised Crime Agency will need to establish close links with our UK border agencies (HM Customs and Excise, National Ports Police and the UK Immigration Service). But as border controls are exercised for a wide variety of reasons, many of them distinct from organised crime, they will not be subsumed within the new organisation. The UK border agencies will, however, play a crucial role in assisting delivery of the new organisation's agenda. The threats detailed in Section 1.5 emphasise the importance of proactively managing our borders in the face of increasing international travel and migratory pressures.

Over 90 million passengers and 4.5 million freight units arrive at UK air and sea ports and by rail each year. The overwhelming majority are legitimate movements and are part of the lifeblood of the UK economy. At the same time each year smugglers attempt to move millions of pounds worth of illicit goods through our ports and airports; many people pay to be smuggled through ports – often at grave risk to their lives; and terrorists are ever alert to weaknesses in our controls. At the frontier, we have therefore to process legitimate trade and travel with the minimum of

inconvenience whilst using our border controls to contribute to reducing the harm caused by organised crime.

Confronting these threats, we have three principal border agencies each with its own distinct and essential responsibilities and each doing an effective job in discharging them. There is already considerable successful integrated working at both a local and national level between the border agencies for example:

- shared use of freight vehicle scanners, and co-ordinated freight searching operations based on jointly developed intelligence priorities;
- joint intelligence cells at ports comprising officers from the agencies working side by side;
- exchange of liaison officers to improve profiling and targeting;
- shared accommodation and use of interview and search facilities such as the new custody facilities being built at Heathrow;
- the establishment of close links with HM Customs and Excise National Co-ordination Unit, allowing appropriate data sharing opportunities to be maximised to ensure full and effective risk management;
- the establishment of Multi-Agency Threat and Risk Assessments (MATRAs) at major airports; and
- Joint operations to interdict suspect vessels.

In light of the creation of the Serious Organised Crime Agency and the opportunity for that new body to establish close working partnerships with the existing border agencies, it is not proposed to create a single border agency.

Nonetheless, the Government is committed to ensuring that HMCE, Special Branches and the Immigration Service work together far more effectively. The Home Secretary and the Chancellor have tasked the Director-General of the Immigration and Nationality Directorate, the Director-General of HMCE Law Enforcement and representatives of ACPO to develop more closely aligned objectives and priorities within their individual business plans. The group will report periodically to the Minister of State for Citizenship, Immigration and Terrorism, and the Economic Secretary to the Treasury.

This will ensure co-ordinated, strategically driven operational activity to protect our borders. Effort is likely to focus on:

1. **Traffic data capture and sharing:** improving this is fundamental to the ability of all the frontier agencies to identify and separate from

the mass of legitimate traffic crossing our borders, that which poses a risk. It makes sense – both for effective control and for trade facilitation – for Government to capture that data once and to make it readily available for all frontier control purposes. The three agencies have themselves already been taking practical steps to establish a joint operations support centre, joint intelligence units at key frontier locations and in addition to IT systems, there is a need to identify and overcome other obstacles to maximising the potential for joint data capture and sharing, including legal constraints and the commercial concerns of some transport operators – these are components of a multi-agency vision to secure our borders.

2. **Risk analysis techniques:** analysing risk trends from the wide array of information and experience that should be available to officers acting on behalf of all the border agencies, rather than specific intelligence, provides a large number of the tangible successes in intercepting contraband, illegal immigrants and money laundering at the frontier. Whilst each of the frontier agencies has its own risk analysis capabilities, there can often be a great deal of commonality in the factors that help to distinguish the illegal from the innocent. The agencies need to take further steps to develop their risk analysis together and to establish mechanisms for its integration with the intelligence arm of the new Serious Organised Crime Agency.
3. **Selective interventions at the frontier:** each of the agencies has distinct roles but at times, these can overlap. There is a need to consider whether more can be done to utilise the economies of scale and core expertise provided by one of the agencies for the benefit of all the agencies in performing certain functions. Both HMCE and the Immigration Service exercise regulatory functions at our frontiers. However, notwithstanding dealing with the same traffic and some commonality in risk identification and assessment, they utilise and are expert in different procedures to effect different priorities and outcomes. For example, in order to discharge current responsibilities, HMCE do not have cause to interact, other than with a small proportion of arriving passengers, but do conduct the overwhelming majority of physical examinations, searching for most forms of illicit concealment. Conversely, the Immigration Service, in regulating entry to the UK, comes into contact with the vast majority of arriving passengers but its physical searching capability is largely confined to the detection of clandestine entrants. More work needs to be done to consider whether, in certain circumstances, these sorts of roles might sensibly be adjusted to provide more effective and efficient coverage.

## **Changes to Special Branch**

This new model for border co-operation will also be assisted by the improved co-ordination of Special Branch efforts regionally and nationally. A National Co-ordinator of Special Branch was appointed by ACPO last autumn to provide a national focus for Special Branch work, promulgate policy, set standards, develop codes of practice and quality assure Special Branch activity. He will draw together ports policing (including uniformed officers) with other aspects of Special Branch work with the support of his deputy, the National Co-ordinator of Ports Policing.

Special Branch Regional Intelligence Cells (RICs) have been set up in 8 ACPO regions in England and Wales to support the co-ordination of Special Branch activity on a regional basis. This is in accordance with the general principles of the National Intelligence Model, which supports the identification and prioritisation of business.

These regional structures will make Special Branch partnerships with other national bodies and agencies more dynamic, whilst crucially supporting the essential community based work of local Special Branches.

The RICs are now well advanced, both in respect of their establishment and operating procedures. They will comprise of officers involved in source management; surveillance; technical support and financial investigations.

Managers of RICs have been meeting regularly with the National Co-ordinator of Special Branch to discuss Standard Operating Procedures and strategy and are working on a common Manual of Guidance.

Special branches assist the Security Service in carrying out its statutory functions, they also work closely with uniform ports police and immigration and HMCE officers. Work is ongoing in developing the relationships between these bodies, and part of the NCSB role will be to ensure this work continues and is improved. Several RICs are already sited alongside NCIS offices and joint intelligence units at ports containing HMCE and immigration staff.

### **3.3 Building partnerships with police forces**

The Serious Organised Crime Agency and, until it is established, the existing agencies dealing with organised crime will continue to need to work in partnership with individual police forces, other law enforcement agencies, other arms of Government, and with international partners.

Of these, the relationship with individual forces will be particularly important. At the most basic level, there will need to be regular interchange between agencies dealing with organised crime and forces.

Local forces with their links to local communities should be providing the majority of all our criminal intelligence. But just as forces provide intelligence material which should contribute towards building the national picture, so they need to be confident that their own requirements are being addressed. They need intelligence products to tackle serious and organised crime at force level, and specialist support for particularly complex operations.

The will to act against organised crime certainly exists among individual forces now. We have identified ways in which the performance regime can be adjusted to recognise and encourage this co-operation. Central here are the Policing Performance and Assessment Framework (PPAF) process and Her Majesty's Inspectorate of Constabulary (HMIC)'s 'Baseline Assessment' of forces' performance against level 2 crime (crime crossing BCU and force boundaries). Forces' particular contribution can include their strong local focus, understanding of particular local communities and their ability to work with local Crime and Disorder Reduction Partnerships to strengthen local cohesion and contribute towards diverting vulnerable youth away from crime.

At the same time, we will consider how the provision of support to police forces is itself reflected in the performance regime of national agencies. Both national and local agencies need to see mutual support as part of their core business.

The discussion paper *Policing: Building Safer Communities Together* builds on recent thinking by the Association of Chief Police Officers (ACPO) and other bodies on the need to examine and, where necessary, develop the strategic capacity of existing police forces. This is important if forces are to have the flexibility to address organised crime which crosses force and regional boundaries.

We need also to ensure that individual forces have the right skills, knowledge and resources to tackle this problem. As noted in the discussion paper, one option may lie in developing fewer, more "strategic" forces across the country and identifying forces to act as "lead" forces on specific issues, so acting as a focal point for intelligence and expertise. The Government will be considering carefully the responses to the consultation paper and working closely with the police and other partners to take this thinking forward.

### **3.4 Developing partnerships with other stakeholders**

The Proceeds of Crime Act 2002 and the Money Laundering Regulations 2003 have resulted in a major extension of the scope of suspicious activity reporting to NCIS. The Government has recognised, through commissioning a review of the regime by KPMG and acting to follow up on its recommendations, the significance of the regime to the fight against crime, particularly the asset recovery strategy. The Government recognises that this regime imposes considerable costs on the private sector. We also recognise the broader effort that the private sector makes

in seeking to deter and to identify fraud, money laundering and other financial crime.

We will seek to work closely with the various parts of the regulated sector to maximise the benefits to the fight against organised crime that result from their contribution. We will also explore with regulators such as the Financial Services Authority (which has a statutory objective to reduce the scope for financial crime in the financial sector) how the national strategy on organised crime might inform their work.

## **4. ENHANCING OUR CAPABILITY**

The process of moving towards a unified organised crime agency holds out the prospect of a step change in our overall capability, not least by learning from best practice in the agencies involved.

### **4.1 Better use of intelligence**

There is nothing more important in the fight against organised crime than high quality intelligence. Most organised crime groups can only successfully be tackled by an intelligence led investigation. But the importance of good intelligence goes much deeper than that. Good intelligence is also vital to prioritise which targets to work on in the first place, by assessing the scale and importance of the threats posed by different targets.

For volume and reported crime, the relative importance of any investigation is likely to be clear from the start – a murder is obviously higher priority than a break-in. For organised crime, on the other hand, the priority to be given to any specific operation has to be based on an intelligence assessment of the capability of an organised criminal. Without such an assessment, we cannot know for certain if apparently successful operations are actually hitting the right targets.

We still need, for example, a better intelligence understanding about the operation of the illegal drugs trade – in particular, routes into the UK, the workings of the domestic market and the key players involved – and similar issues arise for organised immigration crime.

We also need to ensure that when intelligence is obtained, its value is fully recognised, shared and exploited. If this does not happen, there is a high risk that we are not always targeting the key figures in organised crime.

There are many encouraging signs that our performance is beginning to catch up with stronger intelligence areas like national security. The historical under-investment in this field is now gradually being redressed. The growing role of NCIS reflects the increasing weight which Government and law enforcement have given to filling intelligence gaps.

NCIS has developed the National Intelligence Model, which sets a framework for tackling crimes at all levels on the basis of a clear threat assessment. This has been adopted in turn by ACPO and roll-out of the model will be complete by June 2004, meaning that for the first time there will be a standard template for the collection and dissemination of intelligence in all 43 forces in England and Wales. But at present, intelligence flows can also be held up by cultural or legal blockages. During 2002, for example, some enforcement agencies sent proportionately up to five times more intelligence to NCIS than others.

We need to ensure that the performance measurement regime does not provide perverse incentives for short-term operational results at the expense of building a stronger intelligence picture which will enable better results over the long term. The establishment of the Serious Organised Crime Agency holds out a great deal of promise for improved performance on intelligence. A clearer system of information flows, the removal of duplication and concentration of critical skills will be valuable. In particular, we will now be able to achieve clarity on the relationship between central strategic intelligence resources and the tactical and operational intelligence teams working with individual investigations.

In addition to the impact which SOCA will have, we have identified five urgent actions which can be taken over the next few months, and which will begin filling the most significant gaps in our effort.

- First, a national intelligence requirement will be drawn up and set by a multi-agency group, led by NCIS. This group will include intelligence and operational agencies working in partnership. There are over 138,000 operational police officers and 7,000 customs officers alone, any of whom could possess essential intelligence material. A national intelligence requirement would ensure that all those with an intelligence collection capability, whether in operational or intelligence agencies, collect information to support the priorities Ministers have set. The intelligence requirement will be in place by June 2004.
- Secondly, an intelligence target should be formulated for sectoral groups to ensure that the importance of intelligence is not overlooked and that the results are shared appropriately. This will take place as part of the general review of our performance indicators, and should be in place by June 2004 (see below).
- Thirdly, we need urgent clarification of the legal issues relating to the generation, retention, sharing, and dissemination of intelligence. Information sharing between police forces and the application of the Data Protection Act or agencies' interpretation of it are now widely recognised as a problem, and is being examined, for example, by Sir Michael Bichard. We will ensure that organised crime agencies have full and clear guidelines on this. We will work with the various reviews already in train to achieve the best resolution of this issue.
- Fourthly, we will urge the intelligence and police community to report back urgently on practical steps which could be taken to improve the sharing of intelligence data over IT systems.
- Finally, for this approach to be successful, organisations need to share a common understanding of and approach to intelligence. The National Intelligence Model sets the benchmark for the type of intelligence products needed. NCIS has now completed and made available a common "doctrine" to inform criminal intelligence activity. Its aim is to standardise intelligence processes, command

and control procedures and intelligence products for effective harm reduction based action plans against serious and organised crime. In addition, over the next 12 months, the National Centre for Policing Excellence will be working with NCIS and ACPO to link together the intelligence processes at regional and national levels.

#### **4.2 Strengthening skills**

A good intelligence picture will set out the scale of the problem, including who are the major criminal figures against whom action should be concentrated for maximum effect. This will give investigators an important head start. But the ultimate success of the investigation relies on the skills of those conducting it.

The past few years have seen major changes in law enforcement's approach to investigations. The old idea of the 'omni-competent' police officer is fading. Core investigation skills will obviously remain central in the new agency. But at the same time, the contribution from specialist disciplines will be enhanced.

This process has already begun. The Police Reform Act 2002 created new categories of investigators who could exercise a range of police powers. Section 38 of the Act enabled chief officers to designate suitably skilled and trained civilians to exercise powers and undertake duties in carrying out specific functions. Staff can be designated to perform functions in four categories: community support officer, investigating officer, detention officer and escort officer.

These developments are taking root throughout the police service and other agencies. But nowhere are they more needed than against organised crime, where the enforcement response has to reflect the sophistication of the targets.

We are well on our way to developing a new type of effort against organised crime. It will be intelligence driven, working within while making the most of the legal powers available, and drawing on a range of specialist and technical skills, from economists to linguists, from electronic engineers to forensic experts.

Intelligence officers are likely to be the largest single such group within the new agency. Within the wider intelligence community, there has been in recent years a considerable expansion in the number of specifically trained analysts in each enforcement agency.

But the range of skills which are needed does not stop there.

We must ensure that law enforcement have the right resources and skills to conduct financial investigations, not just into criminals' assets and money laundering, but also as a technique for fighting any acquisitive crime. The Asset Recovery Agency's Centre of Excellence has already

trained 1,400 financial investigators since its launch in autumn 2002 and is beginning to have an impact on the training of other investigators outside the financial investigation field. This is a promising start on which we must now build.

The financial skills which these investigators will have are essential tools to combat criminals who are capable of considerable sophistication in the techniques they use to disguise illicit money flows, and who may often take advantage of the opportunities fraud provides to fund other criminal activity. SOCA will include a cadre of financial investigators capable of working closely with colleagues in SFO and forces' fraud squads to ensure pressure can be maintained at all points in organised criminals' operations.

These intelligence analysts and financial investigators are signs of the new face of law enforcement.

In the past, 'support' or 'civilian' staff have sometimes appeared to enjoy a lesser status, or be seen as a cheaper alternative to 'real' police or enforcement officers. Fortunately, this attitude is now being left behind. The Government is clear that in future the route for promotion within the agencies dealing with organised crime will be open to all, subject only to the criterion of merit.

#### **4.3 Closer links with the prosecution and making the most of the law**

Agencies tackling organised crime are often operating in areas of considerable legal complexity, against targets who are aware of the law and are adept at exploiting it to thwart enforcement action.

More needs to be done, therefore, to build on the recent successes in strengthening the relationship between those conducting investigations and prosecutions.

Recent pilots in England have built on what has, of course, always been the practice in Scotland. They have comprehensively demonstrated the case for closer and earlier links between the police and prosecution lawyers. In the pilots, the Crown Prosecution Service (CPS) provided early advice to the police and took over, in most cases, the responsibility for charging defendants.

These pilots saw conviction rates improved by 15%; an increase in guilty pleas and pleas at first hearing of 30%; a reduction in discontinuance rate of 69% and a reduction of 10% in rate of ineffective trials. As a result, similar arrangements have been put on to a statutory footing in the Criminal Justice Act 2003, and are in the process of being rolled out nationally.

We have considered whether there is a case for putting prosecutors and investigators together in the new agency. We have concluded, however,

that separation is essential in order to ensure the independence of both groups. This is consistent with the recent creation of the HMCE Prosecutions Office (CEPO), accountable to the Attorney General and independent of the investigation process. Further work in this area will embed this independence on a statutory basis.

While we do not therefore want to see prosecutors and investigators in the same organisation, we do expect an increasingly close relationship between the two.

For the agency to operate to its maximum potential, we see a need for a new cohort of dedicated specialist prosecutors answerable to the Attorney General working closely alongside the agency's investigators, co-located where appropriate, so as to provide comprehensive legal advice on the course of cases.

Prosecutors must provide comprehensive pre-charge advice to investigators in order to negotiate legal pitfalls, maximise evidential opportunities and develop strong, robust and well presented cases. Prosecutors must provide specialist legal services such as extradition, obtaining evidence from abroad, robustly pursuing asset recovery, providing targeted victim and witness care and presenting more cases in trial as trial advocates.

Both the CPS and the CEPO successor will operate clear gateway arrangements in order to ensure that cases are dealt with by the right prosecuting authority at the right location based on acknowledged specialisms and agreed criteria. The CPS and CEPO successor will work closely together on joint training and development for specialist prosecutors to deal with new and emerging forms of organised crime, including the new investigatory powers proposed in this paper.

This will amount to a radical change in the relationship between the police and prosecutors as it emerged from the 1980s. For maximum benefit to be obtained, we see the need for an internal culture in the new agency which is comfortable with legal concepts, and with the problems and opportunities which the law poses. It is essential that these complex investigations remain fully within the law, and are properly risk assessed at every stage to identify possible problems as soon as possible.

It is also crucial, however, that organisations do not adopt an over-defensive interpretation of the law, shying away from fully using powers which Parliament has given them. To avoid this, they will need high quality legal advice from prosecutors building on the early advice and charging model and pilot arrangements with the NCS. There appear to be a number of areas where legal uncertainty may be holding back operations. In addition to the issues around the retention and sharing of intelligence information discussed above, other uncertainties relate to the use of informants, of surveillance, and the handling of suspects who may have privileged material. The Attorney General will be providing

guidelines over the course of the year to give agencies confidence in the exercise of their powers in these areas.

#### **4.4 Identifying and spreading best practice**

The various law enforcement agencies tackling organised crime are often engaged on similar tasks, whether it be using surveillance, undercover officers or informants, handling sensitive or privileged material or witness protection.

Over the years, agencies have developed different approaches to tackling the same problems. As a result, each agency has developed areas of expertise and specialism. Overall performance against organised crime would improve immensely if each agency were able to work to the standard of the best in every aspect of its work.

To decide on best practice, there needs to be an agreed understanding of the goals of enforcement activity. We need to get beyond a simple focus on output measures like quantities of drugs seized or numbers of criminals prosecuted and start to measure underlying harms. The implications of this for the performance regime and the incentives it sets are discussed below.

Identifying and sharing of best practice also need to involve rigorous impact evaluation work on individual operations to identify what works, with a mechanism for ensuring that these lessons can be incorporated into common approaches to training and guidance on investigative and intelligence techniques.

Impact evaluation is already being made a standard feature of investigations in organisations dealing with organised crime but we need to go beyond internal evaluation to ensure all agencies dealing with serious and organised crime learn from best practice.

Both NCS and NCIS are currently outside the regular inspections of HMIC, although HMIC has the power to make inspections. HMCE is subject to different external review arrangements primarily by the National Audit Office, with further changes being implemented following the recent Butterfield Review. Benchmarking of current practice would represent a useful first step and we will examine the scope for instituting and then building on this, including through common doctrines and training.

## **5 MORE CONCERTED USE OF EXISTING POWERS**

These reforms should deliver a leaner and more effective effort against organised crime. At the same time, the Government has also been considering the sort of powers the new agency will need.

This paper has already considered a number of areas where the law needs to be clarified. The possibility of new powers is discussed below. But we have also identified a number of areas where existing powers could be used more widely.

These include a number of areas where various agencies have powers which could seriously disrupt the business of organised crime, even where prosecution is not an option. An innovative approach to these sort of powers can be a powerful tool in reducing the harm which organised crime can cause.

One key objective is to ensure that all the arms of the state work together effectively. The tobacco smuggling strategy<sup>3</sup>, for example, has made real inroads into illicit markets through the UK duty paid regime. Operations to counter drug trafficking have been able to use the haulier licensing system against unscrupulous hauliers who knowingly allow contraband to be carried in their vehicles. But there are several areas where we can, and should, do more.

### **5.1 Asset recovery:**

The Proceeds of Crime Act 2002 provides radical new powers to deprive criminals of their assets. Using the Act to its full potential is a key law enforcement objective.

The Act presents new opportunities to reduce the available capital that organised crime needs to finance its activities and divert criminal assets into new crime reduction initiatives, while strengthening public confidence in the rule of law.

Early successes with the Act have been the new power to seize cash which is reasonably considered to be the proceeds of crime or to be intended for use in crime. In its first year of operation the cash seizure powers have been used to take around £1 million a week of criminal money off the streets. This represents a huge loss of working capital for criminals, including organised criminals. The impact will increase from 16 March 2004 following the reduction in the threshold for seizing cash from £10,000 to £5,000.

Other important provisions of the Act include the new money laundering offences aimed at more easily prosecuting those who deal with or hold criminal assets, and the power to restrain criminal assets at any time from the commencement of an investigation preventing their dissipation.

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<sup>3</sup> [www.hm-treasury.gov.uk/media/BAA80/433.pdf](http://www.hm-treasury.gov.uk/media/BAA80/433.pdf)

The legislation also provided for the establishment of the ARA in February 2003.

Possibly the most promising provisions in the Act in the fight against crime are the Agency's civil recovery powers. These enable it to sue for the recovery of the proceeds of crime, where prosecution and/or application for a confiscation order is not appropriate. Other provisions include the power to confiscate the assets of those criminals considered by the courts to have a 'criminal lifestyle' – whether or not particular assets can be linked to specific crimes.

As well as its civil recovery powers, the ARA can issue tax assessments, conduct criminal confiscation investigations and has a training wing specialising in financial investigation techniques. The ARA was inspired by the successes of similar bodies in other jurisdictions such as the Irish Criminal Assets Bureau, and similar bodies in Australia.

The ARA's business plan requires it to make a substantial contribution to the Government's 2001 Manifesto commitment of doubling recovered asset receipts to £60 million by 2004-05. It has already assisted law enforcement in 18 criminal confiscation cases with a value of £35 million, of which £4 million is under restraint. By the end of February 2004, it also had 62 civil recovery cases in litigation, with High Court Orders restraining assets of over £12 million having been served in 20 cases. The underlying criminality in many of these is drug related, while in Northern Ireland, 80% of cases have paramilitary links. The ARA has also issued three tax assessments to the value of £600,000.

The first successful civil recovery action was taken in Scotland by the Scottish counterpart of the ARA, the Civil Recovery Unit. The respondent, who had been acquitted of drugs charges, had made regular deposits totalling nearly £46,000 into a bank account while on benefits with no other known legitimate income. It was successfully argued in the Court of Session that, on the balance of probabilities, the money involved (£24,000) represented the profits of drug trafficking and was therefore recoverable under the Proceeds of Crime Act. This case is a good example of how the Act is already proving a success, and the overall sums recovered so far compare very favourably with comparable regimes in other countries. But the total size of the criminal markets remains enormous, and pressure must continue to be stepped up using asset recovery as a weapon.

Under the Recovered Assets Incentive Fund £15.5 million a year from confiscated assets is re-cycled to the police, HMCE and other front-line agencies to build capacity to do more. Under a new asset recovery incentivisation scheme to be introduced in 2004-05, the police will receive extra funding.

## **5.2 Immigration powers**

While the majority of organised criminals are UK nationals, there are also a large number of foreign nationals active in this area, many of whom are subject to immigration control and some are in the UK illegally. Clearly, if an organised crime suspect has no right to be in the country in the first place, the high cost of investigations can be avoided.

For this to happen, agencies need to be aware of the opportunities, and be clear on basic issues such as how to determine the immigration status of a suspect. The Immigration Service is building links with the police throughout the country to speed up responses to their queries and the Home Office is working with the National Crime and Operations Faculty to provide guidance on using immigration powers as a means of disrupting serious crime.

Following changes to the Nationality, Immigration and Asylum Act in 2002, the Special Immigration Appeals Commission (SIAC) can now be used in cases where the Secretary of State has certified that information relating to that case should not be made public for reasons of public interest. This will enable sensitive intelligence information to be used to inform a decision in respect of the immigration status of a foreign national involved in organised crime, without fear of its disclosure.

## **5.3 Probation powers**

The existing licensing system already provides clear sanctions against criminals who resume their activity after release. It is important that the law enforcement agencies keep track of the prisoners in whom they have an interest and so feed into the formulation of licence conditions. The Home Office will provide by the end of 2004 guidance on the more effective use of probation powers and on improving the system for notifying the law enforcement agencies of imminent release.

The full range of possible licence conditions is rarely being used against organised crime figures. It is a well established principle that licence conditions can include restrictions on association or travel, so long as these are proportionate to the risk of re-offending which the offender poses, as well as notification of address.

In the case of drug dealers and organised criminals, we are looking to impose licence conditions which would pose a real difficulty for released offenders tempted to revert to criminality. These may include association and foreign travel restrictions, such as an obligation only to use pre-notified forms of communication, transport etc, where these are proportionate and relevant to the way in which they operate.

We expect to impose the first of these tailored licences on released organised crime figures by August 2004.

## **5.4 Tax powers**

The Inland Revenue also has a key role to play against organised crime, and is already doing so in a range of ways, including providing advice and secondments, and using the new gateway provision, introduced in the Anti-Terrorism Crime and Security Act 2001, to share confidential taxpayer information with the law enforcement agencies.

The Inland Revenue has extensive powers to raise tax assessments. Its own prosecution policy, however, is selective and used primarily as an exemplary measure in order to encourage compliance with the tax law. This policy is correctly primarily revenue-focussed. As a result, the Revenue cannot always take into account the wider public good which might ensue from pursuing even relatively minor infractions of tax obligations by those earning income from organised crime activity.

The Inland Revenue and NCS are reviewing jointly the use of the gateway, and have identified a number of improvements which can be made to raise awareness among staff on both sides. Combining information in the possession of the police and the Inland Revenue can produce a formidable new tool for the disruption of organised crime groups.

The criminal evasion of tax need not only be a matter for the Revenue, however. Recent court rulings have confirmed that the CPS is entitled to prosecute for tax offences. The Inland Revenue and the NCS are currently jointly reviewing the arrangements for co-operation and advice, with the aim of building up understanding of the tax law within NCS with a view to supporting prosecutions for tax offences of serious and organised criminals. Building on these links will be an important task for the new agency.

Under the Proceeds of Crime Act 2002, the Director of the Assets Recovery Agency has a number of powers in relation to tax where there are reasonable grounds to suspect that income or other benefits are derived as a result of criminal conduct. There will need to be a strong relationship between SOCA and ARA.

In addition, the Recovered Asset Incentivisation Fund has provided funding for five Regional Asset Recovery Teams throughout the country, to enable multi-agency working. The Inland Revenue is supporting a number of them.

## **6 NEW POWERS AGAINST ORGANISED CRIME**

While alternative disruption techniques hold out considerable promise, the Government believes that prosecution will remain central to the successful disruption and dismantling of organised crime groups, and hence to long term harm reduction.

Agencies combating organised crime have had considerable success in securing prosecutions against the most significant crime figures in the UK. During 2002, around 9,000 people were indicted in the Crown Court for drug offences. Some 73% pleaded guilty, with 55% of those pleading not guilty also convicted, giving 87% convicted in total.

While international comparisons in this area are notoriously difficult to make, the system in England and Wales may have lower conviction rates for organised crime than some similar jurisdictions. For example, Australian upper courts typically see guilty plea rates for illicit drug offences of over 80%, while in the USA the figure is over 90%. Similarly, while the ratio of convictions to acquittals in defended drug trafficking cases in England and Wales is about 2:1, the ratio in Australia is nearer 3:1, and in the USA around 4:1.

The criminal justice process in England and Wales is also extremely expensive, reflecting both the high quality of the evidence required to secure conviction, the fairness and transparency of the process and the cost of preparing for trial after investigations which may have continued for several years, with all the implications for quantities of disclosable material which this implies.

The cost of the average HMCE investigation which gets to court is close to £0.5 million. The burden of disclosure and preparing for trial is a major part of this. NCS estimates that fully 25% of its officers' time is spent preparing cases for trial.

When the time spent in court is added, the prosecution process is currently consuming nearly 30% of available time in the NCS. Investigators need to spend the right amount of time to build and present strong cases. Closer working with prosecutors will reduce duplication and allow this figure to be reduced. This will free up time which could otherwise be spent developing and pursuing new operations.

It is obviously right that defendants enjoy the full protection of the law. It is equally incumbent on Government to ensure that strong cases can be progressed as quickly as possible, through encouraging guilty pleas and strengthening the powers at agencies' disposal.

The Government has been engaged in an extensive consultation with law enforcement and prosecuting agencies to identify the key barriers to the prosecution of organised crime groups. As a result, it has found a number of areas where the current legal framework appears not to be fit for purpose in combating organised crime and has developed a series of proposals for enhanced powers to be targeted on those who cause most harm. Such new

powers should not only prove effective against organised crime, but several of them should also be valuable tools in the fight against terrorism.

We believe the proposals outlined below are significant in their own right. But to have the maximum impact, they should be seen as a unified package. We welcome views on whether the combined impact of these proposals will create a fairer but more effective framework in which to prosecute organised crime.

## **6.1 Conspiracy and participation offences**

There is a strong view within the criminal justice community that we may need to consider changes to the criminal law in order to address modern sophisticated criminality more effectively. It is commonly believed that the existing conspiracy legislation may not always reach the real ‘Godfather’ figures, does not provide a practical means of addressing more peripheral involvement in serious crime and does not allow sentencing courts to assess the real seriousness of individual offences by taking into account the wider pattern of the accused’s criminal activities.

In recent years, there have been calls for the introduction of laws modelled on the USA’s Racketeer Influenced and Corrupt Organisations (RICO) statutes. RICO has been an important tool in the specific circumstances of the US. For example, it has enabled trials to be moved and heard by Federal courts, taking advantage of the longer sentences this allows. RICO has enabled prosecutors to link a series of otherwise unrelated offences to set them in the context of racketeering conduct. Probably most powerful of all, the civil use of RICO legislation has been particularly effective in enabling courts to impose external control over racketeering influenced organisations like businesses, union branches and even pension funds.

Against this background, the Government has carefully considered the case for RICO style legislation to be introduced here. We are not convinced of the need at this stage. To work, RICO still needs sufficient evidence to convict on the underlying ‘predicate’ offence before these can be set in the wider racketeering context. It does not, therefore, help against those targets who have evaded detection altogether. RICO appears to be more useful against traditional ‘racketeering’ organisations than the sort of large scale trafficking groups which are the main threat in the UK. The latter tend to be prosecuted in the US, as in the UK, for standard conspiracy and trafficking offences.

Civil RICO is less relevant in the UK, as we do not face the same difficulties of organised crime infiltration of legitimate institutions as the US. Moreover, the Proceeds of Crime Act 2002 already provides a robust framework for dealing with criminal assets.

We are assessing, however, the potential scope for improvements which could be made to existing law, particularly as it affects major organised crime cases. At present, the criminal law provisions most likely to be invoked against organised criminals require proof of a specific act of supply of a commodity. The evidential importance of seizing the commodity can tend to the prosecution of couriers and minor players rather than the organisers. A number of specific changes have been suggested, including creating a membership offence of belonging to an organised crime group, a new offence of trading in proscribed goods, changing the link between conspiracy and specific predicate offences, relaxing the 'mens rea' requirements for liability as a secondary party, and ways of admitting evidence of wider criminality to inform sentence.

The Home Office is considering in detail the law of conspiracy and secondary participation in order to assess the potential that these and other changes may have in enhancing the prospects of investigators and prosecutors in tackling modern organised crime, as well as the scope for making better use of existing provisions. We are looking to identify effective solutions focusing on organised criminality and would welcome views and examples of where the existing legislation could be improved. We are particularly interested in the area of secondary participation, where a defendant may be aware he or she is engaging in organised crime, but can argue they are unaware of the precise nature of the criminality.

## **6.2 New powers to collect evidence**

Organised crime investigations rarely affect individuals who are not involved in one way or other in the crime. If the conspirators themselves or those who aid them are not willing to talk, the burden of proof is entirely on the investigators to find the necessary evidence.

This obviously means prosecutions will rely heavily on catching criminals red-handed, or the use of highly intrusive and expensive surveillance techniques.

But in every case, the authorities are likely to know of individuals who could assist them in their investigations. The sophistication and breadth of much organised crime activity mean it is often surrounded by a wider circle of people with some knowledge of the group's activities. There are often professional facilitators, particularly those involved in money laundering and fraud (including excise fraud) cases or where illegitimate business is mixed with legitimate business.

There is seldom likely to be enough evidence to charge these individuals on the fringes. Nor is there any incentive on them to share with the police information on criminal activity. Although those who come forward voluntarily with information materially useful to the prosecution can be

compelled to give evidence in court<sup>4</sup>, they have no obligation to answer any questions. While existing police powers enable the police to question and order the production of documents once there are reasonable grounds for suspicion, nothing can compel individuals to answer questions.

### **6.2.1 Compelling individuals to give evidence**

Faced with similar problems during the 1980s, in the context of white collar crime, the Government established the SFO and gave the Director powers to compel individuals to co-operate with investigations by producing documents or answering questions – with safeguards to ensure that any self-incriminating material cannot be used, and nor can material subject to Legal Professional Privilege.

Similar powers are enjoyed by a number of regulatory bodies like the Financial Services Authority and Companies Act Inspectors. The Director of the Asset Recovery Agency was also given powers of this sort in respect of civil recovery and confiscation investigations.

There are also similar powers for use against organised crime in a number of other countries.

In Australia, so-called ‘Royal Commission’ powers have been steadily expanded since the 1980s. Under the Australian Crime Commission Act 2002, the Australian Crime Commission (ACC) now runs a system of ‘Examiners’ who are appointed for a maximum period of five years. These are legal practitioners appointed by the Governor General on the recommendation of the Cabinet. The Examiners have access to a number of special powers which include the power to require individuals to produce documents and to appear and answer questions. In both cases, refusal to comply is an offence, as is disclosing the existence of the order to anyone other than legal representatives.

In the first six months of 2003, the ACC’s Examiner alone issued 103 notices for the production of documents, and 119 individuals were summoned to examinations. As well as the Federal ACC, the powers are used by State Crime Commissions, and a number of standing Royal Commissions and Police Integrity Commissions. These powers are widely seen as having turned the tide against corruption in the police service, and as essential tools in the fight against organised crime. They are particularly powerful in securing useful testimony from peripheral players in major investigations, and in identifying and holding defendants to given lines of defence.

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<sup>4</sup> The recent Home Office consultation paper, *Securing the attendance of witnesses in court*, published in October 2003, sought views on a proposal to introduce a greater element of compulsion in securing witness attendance in court.

In the US, a similar role is played by the Grand Jury system, where the powers to subpoena individuals and documents, exercised by prosecutors, have developed to become a powerful tool in the investigative process, particularly in organised crime cases. All organised crime cases will be brought before a Grand Jury to secure a Federal indictment. Here too, the existence of an offence of refusing to testify seems to have been powerful in ensuring co-operation.

Rulings of the European Court of Human Rights have established that evidence gained under compulsion may not be used in criminal proceedings against the individual who provided that evidence. Evidence is, however, used against co-conspirators.

We are minded to propose a similar system to the Australian one, with enhanced powers to require the production of documents and to answer questions.

There are a number of important policy issues which need to be addressed. The first is what sort of cases these powers might be used for. One option might be all cases of serious crime, which already has a statutory definition. This may be felt to be too broad, however.

An alternative approach would be to link the exercise of the powers to the sort of investigations which are particularly likely to need them. Complex organised crime or terrorism conspiracies, potentially involving money trails and extensive use of facilitators with varying degrees of complicity in the underlying criminality, are obvious candidates.

This might be achieved by linking the exercise of these powers to a series of listed offences such as drug trafficking, terrorism, people smuggling, serious tax fraud and money laundering.

The second issue is where any such powers should rest. While they could theoretically be entrusted to investigators themselves, or lawyers based in investigating agencies, we prefer the model of putting powers of this significance in the hands of specialised prosecutors. This would introduce an important check and balance into the use of any such powers. By analogy, the SFO power rests in the Director, who is also responsible for investigation and prosecution. This approach would bring English practice more closely into line with that in both continental Europe and the USA.

## **6.2.2 Evidential use of intercept material**

Under the Regulation of Investigatory Forces Act 2000, the evidential use of intercept material in court proceedings is not permitted in the UK. This is unusual internationally. The prohibition on evidential use is currently subject to a Home Office led review, commissioned by the Prime Minister.

Ministers fully recognise the importance of ensuring that a decision about whether or not to change the law is based on evidence that the benefits of doing so must clearly outweigh the risks.

The main arguments for and against are clear. On the one hand, the evidential use of intercept may hold out the prospect of prosecutions in some cases where they would not otherwise have been possible, and might encourage earlier guilty pleas. On the other hand, there is a concern that the evidential use of intercept would reveal capabilities which could undermine the effectiveness of intercept and damage the co-operation between our intelligence and law enforcement agencies in tackling and preventing terrorism and serious crime.

It is important to get this right. Work underway involves devising and testing a model for using intercept evidentially that is compatible with the European Convention of Human Rights. Experience of what works in other jurisdictions, the implications of developing technology and resource implications are also being assessed.

The Home Office led review is expected to conclude by June 2004. If Government were satisfied that adequate safeguards can be designed to prevent the disclosure of sensitive capabilities, and that the review had concluded that the benefits of this move would clearly outweigh the costs, then it would bring forward legislation to allow the evidential use of intercept material.

## **6.3 Reforming criminal trials**

The right to a fair trial is the most fundamental right of any citizen in a free country. Nobody could doubt that the range of reforms in this area since the 1980s, and most recently the introduction of the Human Rights Act 1998 have given defendants in UK courts more protection than ever before.

While welcome, a balance has obviously to be struck. Justice demands that the innocent are protected – but also that the guilty are convicted. There has been a growing belief over recent years that the law has emerged in a way that has tilted the balance excessively towards the defence. No category of defendant is able to make better use of this than organised criminals, with access often to the best legal advice.

The Criminal Justice Act 2003 and other reforms hold out considerable promise for removing some of the most obvious anomalies which have arisen. Giving the prosecution the right to appeal against terminating and potentially terminating rulings will remove an obvious anomaly in the law which has permitted many cases to be dropped without the jury having a chance to give their verdict and without any recourse for the prosecution.

Similarly, the Act contains provisions to enable trials to take place before a judge alone, where there is a substantial risk of jury tampering, or to proceed before a judge alone, where the jury has had to be discharged because jury tampering has occurred. Separately, the judiciary have moved to ensure more active management of complex trials and that the most complex trials are allocated to judges with the most relevant experience. However, none of this diminishes the importance of rigorous and effective case preparation by the prosecution.

Organised criminals become particularly adept at frustrating the trial process in their attempts to evade justice. Examples include, the systematic use of the pre-trial process to seek to undermine prosecution evidence and ideally have it rendered inadmissible. Tactics here have included extensive 'voire dire' hearings, challenging every aspect of the prosecution case, and looking for every reason to exclude prosecution evidence. The Sentencing Guidelines Council are reviewing what discount is appropriate for guilty pleas entered after the trial process has begun. Views on how else defence tactics simply to frustrate the trial process can most effectively be tackled would be most welcome.

### **6.3.1 Reduced sentences: 'plea bargaining'**

It has long been the practice of the courts to recognise the benefits to the criminal justice system which result from a defendant's entering a timely guilty plea by reducing the sentence imposed. This practice was placed on a statutory basis by section 48 of the Criminal Justice and Public Order Act 1994.

In his *Review of the Criminal Courts of England & Wales*, Lord Justice Auld recommended the introduction, by way of a judicial sentencing guideline of 'a system of sentencing discounts graduated so that the earlier the tender of plea of guilty the higher the discount for it . . .' The Sentencing Advisory Panel published a consultation paper in 2003 about sentence reduction for early guilty pleas, and it will shortly submit advice to the Sentencing Guidelines Council with a view to the issue of guidelines to the courts.

Although a guilty plea is by far the commonest reason for defendants being given a reduction in sentence, other factors (such as co-operation with the authorities in the prosecution of a co-accused) may also be recognised in this way.

Discussion between defence counsel and judge about a defendant's likely sentence in the event of a guilty plea has for many years been constrained by the judgment of the Court of Appeal in *R v Turner* (1970) 2 WLR 1093. In this case, the Court took the view that an indication by the judge of the likely sentence in the event of a guilty plea would place undue pressure on the defendant and should not therefore take place. This judgment has subsequently been questioned, in 1993 by the Royal Commission on Criminal Justice, which recommended removing the *R v Turner* prohibition, and more recently by Lord Justice Auld, who recommended that there should be "a system of advance indication of sentence for a defendant considering pleading guilty."

The Government announced in *Justice for All* that it was in favour of allowing defendants to seek an indication of the sentence they would be likely to receive if they were to plead guilty at that point, as Auld recommended, although the Government doubted whether it would be appropriate for the judge (if he chose to give an indication) also to state what the sentence would be, if the defendant were convicted following a contested trial.

Arrangements for sentence indication to be given would not require legislation but could be established by the judiciary. A system of 'plea bargaining' might work in a number of different ways. But the following options could well form the basis for a new approach.

- The defendant could seek a sentence indication, but the judge would not be obliged to give one. An application could be made at any point, although the Plea and Direction Hearing was perhaps the most likely stage.
- A defendant should not be allowed to seek an indication on the basis of a plea to part only of an indictment unless the prosecutor was prepared to accept that plea.
- Where the judge believed he would be assisted by a pre-sentence report (PSR), he would have either to proceed on the basis of an abbreviated PSR and err on the side of caution in giving an indication, or to decline to offer one.
- The procedure would take place 'in chambers' (although a court room might be used), the prosecution case and defence mitigation being presented in outline; it would be for the judge to determine the level of detail, and whether or not the defendant should be present.
- Where a defendant accepted the sentence indicated, the normal procedure for a plea of guilty would then follow. If this disclosed new information, the judge could pass a lower sentence than

the one indicated, but he could not increase it without giving the defendant the opportunity to change his plea.

- It would be for consideration whether it should be open to either the defendant or the Crown to appeal against a sentence passed on a guilty plea entered after an indication.
- If the defendant decided to plead not guilty after being given a sentence indication, the case would proceed to trial in due course in the usual way. It would be for consideration whether the judge who had given the indication should be disqualified from presiding, but this would certainly be necessary in a trial proceeding without a jury under Part 7 of the Criminal Justice Act 2003 (when it is implemented).

### 6.3.2 *Reduced sentences: Queen's Evidence*

Getting defendants to plead earlier will obviously make the system run more smoothly. But the real prize is to encourage defendants not only to plead guilty, where they are indeed guilty, but to co-operate with the prosecution. This will speed up trials, increase the impact of prosecutions on wider networks, drawing in major players, and increase the level of mistrust within criminal gangs.

Over the years, the courts have been open to the idea of sentence reductions in return for co-operation. The key case is *R v King* (1985)<sup>5</sup>. Summing up Lord Lane CJ and Cantley J commented

“One of the most effective weapons in the hands of the detective is the informer . . . It is to the advantage of law-abiding citizens that criminals should be encouraged to inform upon their criminal colleagues. They know that if they do so they are likely to be the subject of unwelcome attention, to say the least, for the rest of their lives. They know that their days of living by crime are probably at an end. Consequently, an expectation of some substantial mitigation of what would otherwise be the proper sentence is required in order to produce the desired result, namely the information. The amount of that mitigation, it seems to us, will vary . . . from about one half to two thirds reduction”

Despite this clear case law, however, Queen's Evidence is currently underused in serious and organised crime cases. HMCE, for example, had five cases (with six defendants in total) turning Queen's Evidence in 2003. This is a fraction of 1% of all defendants. This contrasts considerably with the 26% of defendants in US drug trafficking cases who receive sentence

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<sup>5</sup> *R v King* (1985) 7 Cr. App. R (S.) 227. See also *R v Sivan* (1988); *R v Debbag and Izzet* (1991); *R v Wood* (1997) and *R v A and B* (1999).

reductions as a result of 'substantial co-operation' with the investigation, and the 10-15% of defendants in serious drug trafficking cases in Australia who take advantage of similar provisions.

The position in England also contrasts with continental jurisdictions. Italy has a well-established system for 'legislazione premiale' (reward regulations) including 'pentiti' and 'testimoni di giustizia'. These have led to considerable successes against both the Mafia and historically against terrorists also. In 2002, 64 state witnesses and 1,162 'pentiti' were used. Typical reductions which may be granted include conversion of life sentences to 12-20 years, or a one to two thirds reduction in determinate sentences.

It is not entirely clear why co-operation, which used to be commonplace in English courts, is now so rarely used. The key problems seem to be juries' suspicion of the character of co-operating defendants, and defendants' reluctance to submit to the process, when the incentives are not seen as clear or substantial enough.

Currently, defendants in organised crime cases typically use the pre-trial period to seek to exclude prosecution evidence. Only where this does not work, will they then change their plea to guilty, and still enjoy to some extent the benefit of a guilty plea in terms of lower sentences. It is possible that the additional discount from co-operating does not look attractive compared to the risks involved, given the length of sentences typically imposed for trafficking offences.

The Government believes that Queen's Evidence can be strengthened by enshrining the existing case law in statute, and introducing a system of binding co-operation agreements between the prosecution and defendants. This would build on existing UK precedents. Section 190(4) of the Enterprise Act 2002 has broken new ground in making provision in the context of cartel offences for full immunity from prosecution in return for substantial co-operation.

We would see two main advantages in such a system. First, defendants are likely to be more prepared to co-operate when they have the binding assurance that the prosecution will apply to the judge for a reduced sentence in return for co-operation. We would see the prosecution having the option to suggest a discount, or simply to set out the scale of co-operation. In either case, the final decision would obviously rest with the judge.

We believe such a system would also enhance the credibility of the testimony, and go some way towards addressing legitimate defence concerns that co-operation can be abused. Most

jurisdictions with a similar system, for example, the US and Australia, make it clear that the agreement is only binding, if the defendant has been entirely truthful in his testimony.

In the Australian legislation, for example, the judge indicates what the sentence would have been without co-operation. If the prosecution believes the co-operation was not forthcoming, either wholly or in part, as a result of refusal to testify or misleading testimony, the Director of Public Prosecutions (DPP) is free to appeal against the sentence. If co-operation has been refused absolutely, the judge is obliged to impose the higher sentence. If co-operation has been partial, and less than expected, the judge has the discretion to impose a higher sentence up to the indicated maximum.

On balance, we think the reductions recommended in the *King* case are likely to be right in most circumstances. It is worth considering, however, whether judges should be given discretion to offer discounts of even more than two thirds in wholly exceptional circumstances.

There is obviously a difference in this respect between offering full immunity and sentence reduction but the Government wishes to explore whether both should be available in some cases, depending on the circumstances.

In Australia, the DPP has a power to offer complete immunity. Section 9(6) of the Director of Public Prosecutions Act gives the DPP power to give an undertaking to a potential witness in Commonwealth proceedings that any evidence the person may give and anything derived from that evidence will not be used in evidence against the person, other than for perjury. Section 9(6D) empowers the DPP to give an undertaking to a person that he or she will not be prosecuted under Commonwealth law in respect of a specified offence or specified conduct. Section 9(6) powers tend to be used reasonably widely, with numbers indemnified equivalent to around 5% of all those indicted on Federal charges.

The assumption will always be, however, that the majority of co-operating defendants would be offered sentence reduction rather than full immunity.

There are a number of different models for putting Queen's Evidence on a statutory footing. One thing we are clear of is that it is essential that the prosecution, rather than the investigating agency, has the sole right to accept an offer of co-operation. This is an important exercise of the independent discretion of the prosecution.

As for the form of the agreement with the defendant, international practice and procedures vary. There is a range of approaches some involving the prosecution and the defence alone, and some involving the judge giving an indication.

The most common approach, however, appears to be for the prosecution to set out to the judge the degree of cooperation, leaving the precise discount to be decided by the judge. On balance, this looks like the right approach.

Prosecutors in jurisdictions which use this technique have the power to adopt different approaches to when the defendant is sentenced. Some believe prior sentencing demonstrates that the defendant has not escaped justice altogether, enhancing his credibility in the eyes of the jury. Others feel this approach can reduce the incentive on the defendant to deliver on the co-operation promised. Moreover, there is always the risk that the trial identifies new factors which should have been taken into account in sentencing.

Holding over sentencing until the co-operation and testimony have been delivered appears to be the more common approach, although there are always likely to be cases where continuing co-operation post sentence is required. This makes all the more important the existence of the prosecution's right to appeal against sentencing, if the co-operation is not forthcoming or the testimony turns out to have been false or misleading.

There is a separate issue in respect of those prisoners who do not co-operate during their trial, but subsequently give the authorities significant information leading to the prevention or detection of serious crime. There have been attempts in such cases to ask the Court of Appeal to reduce sentences. In *R v A and B*<sup>6</sup>, Lord Bingham CJ, Turner and Penry-Davey JJ ruled

“the Court of Appeal Criminal Division will not ordinarily reduce a sentence to take account of information supplied to the authorities by the defendant after sentence. . . .The Court of Appeal Criminal Division is a court of review; its function is to review sentences imposed by courts at first instance, not to conduct a sentencing exercise of its own from the beginning. A defendant who has denied guilt and withheld all co-operation before conviction and sentence cannot hope to negotiate a reduced sentence in the Court of Appeal by co-operating with the authorities after conviction. In such a situation, a defendant must address appropriate representations to the Parole Board or the Home Office”

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<sup>6</sup> *R v A and B* (1999) 1 Cr. App. R. (S) 52

The only exception to this ruling is cases where the true value of co-operation offered at trial only became clear after sentencing had occurred.

We welcome views on whether it would be in the interests of transparency and justice to create a new power for the prosecution to be able to refer cases back to the original trial judge for consideration of re-sentencing, where a convicted criminal provided material assistance after conviction.

#### **6.4 A national witness protection programme**

If defendants are to co-operate against their co-conspirators, they need strong assurances in respect of their safety. Law enforcement agencies often experience difficulty in getting witnesses to co-operate in organised crime trials partly because of a lack of confidence in the authorities' ability to protect them. Whether justified or not, this concern can have a major impact on the effectiveness of the criminal justice system at all levels.

Witness protection arrangements currently differ from agency to agency. Many forces and agencies have first class programmes. Others need to improvise, as the requirement to protect witnesses is not an everyday occurrence for some of the smaller forces.

There are obvious advantages in adopting a national witness protection programme, which should ensure higher and more consistent standards. It could also result in substantial efficiency savings in that witnesses would be handled by the local offices nearest to their point of relocation, rather than by officers from their original force areas.

The Home Office is working with ACPO and the Witness Support Network on overseeing a pathfinder review which is looking at the case for a national witness protection scheme. The review team will look at the costs, benefits and risks associated with moving to a national scheme, and make detailed recommendations on how a national scheme might be delivered. The review began in January 2004, and is due to report in the autumn.

#### **6.5 Making the punishment fit the crime**

A recent Home Office report on the sentencing framework<sup>7</sup> concluded that the severity of sentences should take account of three main factors;

- severity of punishment should reflect the seriousness of the offence (or offences as a whole) and the offender's criminal history;

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<sup>7</sup> Making Punishments Work; Home Office, 2001

- the seriousness of the offence should reflect its degree of harm, or risked harm, and the offender’s culpability in committing the offence;
- in considering criminal history, the severity of sentence should increase to reflect a persistent course of criminal conduct, as shown by previous convictions and sentences.

The work on assessing the harm caused by organised crime discussed earlier in this paper suggests that the sentencing framework for organised criminals needs to be reviewed. It is likely that the Sentencing Guidelines Council will take an early opportunity to establish general principles for assessing the seriousness of an offence. The extent to which a crime arises from organised criminality and the extent to which it causes harm will be factors in that.

Typical sentences for Class A drugs conspiracies range from 5-14 years, with convictions for trafficking as much as 100 kg leading to sentences in the range of 12-16 years, although sentences of 20 years and over are also known. Typical sentences for organised immigration crime have been considerably lower. Actual time served will be around half of the headline sentence, meaning time served will typically be in vicinity of 7 years even for major traffickers.

This contrasts starkly with the USA, where significant traffickers are likely to serve over 20 years, and Australia where conviction for 10kg or more of heroin or cocaine is likely to mean a minimum sentence of 12 years.

We need to consider if the typical sentences currently imposed in England and Wales are appropriate, given the seriousness of the offence. There may be a case for reviewing organised criminals’ overall sentences, but also the relative weight given to different offences.

For example, if a gang of armed robbers are convicted of offences involving detailed planning, the use of disguises, and involving attacks on security guards or the like, the ruling in *Turner (1975)*<sup>8</sup> suggest that sentences of up to 18 years or more are appropriate.

Work within the Home Office suggests that a single import of 100 kg of heroin could be indirectly responsible for two or three drug-related deaths. In order to buy this 100kg of drugs, users on the street could be responsible for further costs of some £25 million to the country through drug-related crime alone. Even if the trafficker has no involvement in selling drugs at street level, that one shipment alone is likely to have realised profits of over £1 million.

We will engage with the Sentencing Advisory Panel and the Sentencing Guidelines Council on taking this forward.

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<sup>8</sup> Turner (BJ) (1975) 61 Cr. App. R. 67.

Setting sentences in the proper harm context will enable judges to make clear and consistent decisions in accordance with generally agreed principles of sentencing.

## **6.6 Enhanced licensing powers**

Existing sentences could be made more effective in curbing the activity of organised criminals, if licence conditions bit harder on potential criminal activity post-release. Plans are already in train to tailor licence conditions more closely to the circumstances of organised criminals on release.

There may, however, be a case for a new type of sentence disposal for serious acquisitive criminals to enable the authorities to monitor their financial affairs after release.

In cases of serious acquisitive criminals whom the authorities believed posed a long term threat, the prosecution could apply to the trial judge for imposition of a new type of order. This could constitute a requirement to file every six months after release detailed returns setting out income, assets and expenditure. Released offenders would be obliged to report all bank accounts, credit cards etc being used, and be forbidden to carry out financial transactions using any other route.

Non-compliance or false returns would be punishable by revocation of licence, or by a separate term of imprisonment. We would envisage these obligations running for the remainder of the standard licence period or beyond, perhaps for as long as 5-10 years post release. The prosecution might apply to the court for such a requirement to be an additional component of the sentence, in the same way as it can currently apply for asset restraint.

Such an obligation would inevitably impose a considerable burden on the released prisoner but one which is fully compatible with the normal goal of probation to encourage those released to turn away from crime. In the event that offenders returned to unlawful activities, the returns would provide a vein of information for law enforcement, while the criminal offence of non-compliance would offer a valuable tool in pursuing investigations.

## **7. MEASURING SUCCESS**

This white paper sets out radical proposals for strengthening our effort against organised crime. It involves clarifying responsibilities between agencies, giving them clear strategic priorities, and improving their capability to deal with serious and organised crime investigations.

These enhancements should make a marked difference to the impact of agencies' effort. At the same time, we also need to ensure that the performance regime reinforces this effort, and provides the right incentives to drive the reform process forward.

The recent reviews of our effort against organised crime have demonstrated that agencies are highly responsive to incentives set by the performance regime. This makes it all the more crucial that performance measures set the right incentives, including that the measures mesh together and encourage collaborative working.

Just as measuring harm done by organised crime is complex, so is assessing performance. It is unlikely that we will ever be able to identify a single performance indicator which will provide a useful picture of the level of our performance.

Sir Robert Peel, the founder of modern policing, rightly argued that 'the absence of crime and disorder, not the visible evidence of police dealing with them' is the real measure of enforcement success. But measuring the absence of crime here is difficult.

Only in a minority of cases do organised crime investigations tackle conventional recorded crime. Several important areas of organised crime, for example, fraud against the Exchequer and organised immigration crime, do not fall within the standard British Crime Survey (BCS) crime definition at all. In many cases, UK organised crime activity is concerned with illicit markets. Individual transactions in these markets are all crimes, but they will not be recorded, and their existence will only be revealed when investigators look for them.

Even those crimes which would fall within the BCS definition are likely to be very few in number relative to volume crime. As a result, the number of reported or recorded crimes likely to be "cleared up" as a result of organised crime investigations will be small, compared to the level of resources such investigations are likely to require. For as long as effort is measured by simple numbers of recorded crimes, the incentive will inevitably be to tackle easier ones.

The national agencies dealing with organised crime have accordingly been set their own targets, either as organisations or for multi-agency groups like CIDA. These targets originally focused on numbers of criminals prosecuted. Now they mainly concern numbers of groups disrupted, or the proportion of commodity targeted on the UK which is successfully taken out.

The relationship of these to real harm reduction is unclear. If misused, all these targets would be capable of creating perverse incentives. The link between quantities of drugs seized and the underlying availability is controversial, for example.

In the case of disruption, more work needs to be done to ensure the measure takes proper account of the significance of the group and the seriousness of the disruption which enforcement action has caused.

For individual police forces, the Government has increased the priority given to organised crime in the National Policing Plan, recognising it as one of the four top priorities for the police service. Performance is currently being assessed by HMIC which is performing a 'baseline assessment' of forces' performance in this area.

This exercise consists of self assessment on the basis of a questionnaire, peer review by other forces and stakeholders, and structured interviews. Ultimately, HMIC will come up with a scoring for forces' performance. The exercise will be repeated annually, with particular focus on those forces seen to be weaker performers.

It may be that this approach will also be useful at the national level. The Government will be reviewing the performance regime for organised crime over coming months, with a view to developing a new regime by the autumn. Whatever the outcome, we are clear that targets should be unambiguous, not provide perverse incentives, and should encourage demonstrably successful approaches to tackling harms.

At a global level, a successful outcome would constitute:

- a reduction in the total harm caused by organised crime;
- a reduction in the number of recorded crimes (eg armed bank robbery) attributable to organised crime;
- real evidence that illicit markets are being disrupted, ideally nationally, but also locally. This will mean looking at economic indicators, including the price of services organised criminals supply, whether drugs or facilitation to the UK.
- an improved strategic picture of the threat from organised crime, with an enhanced ability to prioritise targets for action.

Some of these indicators will be hard to measure. Others may rely on the performance of non-enforcement agencies. For example, the level of drugs harms can be closely linked to the level of demand, and thus be strongly influenced by the success of treatment programmes.

The overarching strategies against problems like drugs will be judged against these underlying harms. But operational agencies will need specific measures to assess their performance on the enforcement parts of these strategies. Many of these may be outputs, rather than outcomes. This is not a problem as long as their contribution to the preferred outcome is clear, and they do not provide perverse incentives. As with the HMIC system, the Government is likely to look at performance across a range of areas. These might include:

- evidence of economic impact on criminal markets as measured by, for example, the prices of drugs, the level of facilitation of migrants to the UK, or of other illicit goods and services;
- an increase in the number of high level groups successfully brought to justice or otherwise disrupted;
- improved performance on recovering criminal assets;
- increased revenue/tax gains;
- enhanced public confidence;
- the quality of the intelligence picture and agencies' contributions to filling the gaps; and
- the quantities of contraband recovered.

## **8. THE CONSULTATION: YOUR VIEWS**

### **How to comment**

This White Paper sets out the Government's plans for a new strategy against organised crime, and the new Serious Organised Crime Agency. In addition, however, it includes provisions on possible new powers on which we would welcome views. Responses and comments are required by 30 July 2004.

We want this to be a genuine consultation in which everybody – the public, law enforcement and prosecuting agencies and all other organisations, have an opportunity to get involved in the debate.

The Government will want to take careful account of the views expressed in framing any resulting legislation.

Key questions on which the Government would particularly welcome views are:

### **Conspiracy law**

- We welcome views on potential changes to conspiracy legislation to make it more effective against organised criminals, including whether existing conspiracy law is fit for purpose, whether it could be reformed, or whether we need a new offence to cover participation in organised criminal conduct.

### **Compelling witnesses to give evidence**

- We welcome views on the proposal to extend SFO style powers to other organised crime, including on the mechanics of the proposed new powers, and where they should be vested.

### **Reforming Criminal Trials**

- Views on how defence tactics simply to frustrate the trial process can most effectively be tackled would be most welcome.

### **The pre-trial and trial process**

- We welcome views on how we can increase the number of defendants who plead early, and particularly who then go on to co-operate against other defendants. Specifically, we are interested in views on possible approaches to plea bargaining, and how to make the process of Queen's Evidence more transparent, with clear safeguards. We are also interested in views on how the reduction in sentence might be decided.

## **Sentencing and post-release conditions**

- We welcome views on current sentencing and on ways in which post-release conditions could be more effective in preventing organised criminals continuing their activities on release.

There are a variety of ways in which you can provide us with your views.

You can email us at:

oc.consultation@homeoffice.gsi.gov.uk

Or you can write to us at:

OC Consultation  
Policing Organised Crime Unit  
Home Office  
Room 402  
50 Queen Anne's Gate  
London SW1H 9AT.

The Government will also be organising a number of events for key stakeholders to explore in more detail the issues and themes outlined in this paper.

This consultation paper is being conducted in line with the Code of Practice on Consultation issued by the Cabinet Office. The Code criteria are set out in Annex A.

### **What happens then?**

The responses we receive to this consultation will help to inform the development and implementation of the strategy, new agency and additional powers. Some changes may require legislation and we will seek to introduce these when Parliamentary time allows. Others, not requiring legislation, could potentially be put into place sooner. It is possible that some issues may require further discussion and consultation.

A summary of consultation responses will be published within three months of the closing date. Names and addresses of respondents may be made public, unless confidentiality is specifically requested.

## ANNEX A

### Consultation criteria

The Code of Practice on Consultation issued by the Regulatory Impact Unit, Cabinet Office, recommends the following six criteria:

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
3. Ensure that your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

**Further information on the consultation process can be found at:**

<http://www.cabinet-office.gov.uk/regulation/Consultation/Code.htm>

## ANNEX B

### Glossary

**Assets Recovery Agency (ARA)** – The Agency was established under the Proceeds of Crime Act 2002 to co-ordinate activity across the UK in recovering unlawfully obtained assets from those with no right to hold them. The agency became operational in February 2003.

More information can be found at: [www.assetsrecovery.gov.uk](http://www.assetsrecovery.gov.uk)

**Association of Chief Police Officers (ACPO)** – The Association of Chief Police Officers exists to promote leadership excellence by the chief officers of the Police Service, to assist in setting the policing agenda by providing professional opinion on key issues identified to the Government, appropriate organisations and individuals and to be the corporate voice of the Service.

More information on the police service can be found on: [www.acpo.gov.uk](http://www.acpo.gov.uk); [www.police.uk](http://www.police.uk)

**Australian Crime Commission (ACC)** – This was established to position Australia better to meet the threats posed by nationally significant crime. The agency commenced operations on 1 January 2003, replacing the National Crime Authority, Australian Bureau of Criminal Intelligence and Office of Strategic Crime Assessments. It aims to enhance Australian law enforcement's capacity to reduce the incidence and impact of serious and organised criminal activity.

More information can be found at: [www.crime.commission.gov.au](http://www.crime.commission.gov.au)

**Basic Command Unit (BCU)** – The building blocks of police forces in England and Wales. These cover smaller geographical areas within forces such as a town or district. They are usually commanded by a superintendent or chief superintendent and consist of several hundred police officers and staff. Most of the officers will be involved in tackling local crime and disorder problems and responding to the varied demands made on them by the public. They will also usually have some specialist units such as a Criminal Investigation Department (CID) and officers dealing with community liaison and Crime and Disorder Reduction Partnerships.

**Crown Prosecution Service (CPS)** – The CPS is responsible for prosecuting people in England and Wales charged by the police with a criminal offence.

More information can be found at: [www.cps.gov.uk](http://www.cps.gov.uk)

**Dedicated Cheque and Plastic Crime Unit (DCPCU)** – This was launched in April 2002 to fight the organised crime syndicates behind steep rises in UK plastic card fraud losses. It was created by the Association for Payment Clearing Services (APACS) and the Home Office and is comprised mainly of officers seconded from the Metropolitan and City of London Police forces. It works with other law enforcement agencies across England and Wales using intelligence provided largely by the banking industry. [www.dcpcu.org.uk](http://www.dcpcu.org.uk)

**Department for Trade and Industry (DTI)** – The DTI drives the Government's ambition of 'prosperity for all' by working to create the best environment for business success in the UK. It helps people and companies become more productive by promoting enterprise, innovation and creativity. It champions UK business at home and abroad, investing heavily in world-class science and technology. The DTI protects the rights of working people and consumers, protecting fair and open markets in the UK, Europe and the world. [www.dti.gov.uk](http://www.dti.gov.uk)

**Financial Services Authority (FSA)** – The FSA is an independent non-governmental body, given statutory powers by the Financial Services and Markets Act 2000. It regulates the financial services industry in the UK to maintain confidence in the UK financial system; promote public understanding of the financial system; secure the right degree of protection for consumers; and help to reduce financial crime.

More information can be found at: [www.fsa.gov.uk](http://www.fsa.gov.uk)

**Foreign and Commonwealth Office (FCO)** – The purpose of the FCO is to work for UK interests in a safe, just and prosperous world. The FCO is responsible for the conduct of business with other governments and international organisations; for the protection of British citizens abroad; and for promoting the UK, its commercial and other interests, across the world. It does this through a network of 224 Posts worldwide.

More information can be found at: [www.fco.gov.uk](http://www.fco.gov.uk)

**G8** – The G8 is an informal group of eight countries: Canada, France, Germany, Italy, Japan, Russia, the United Kingdom and the United States of America. The European Union also participates and is represented by the President of the European Commission and by the leader of the country that holds the presidency of the European Council at the time of the G8 Summit.

**Her Majesty's Customs and Excise (HMCE)** – UK Customs & Excise is a Government department with responsibility for collecting billions of pounds in revenue each year in VAT, other taxes and customs duties. They have a vital front-line role in protecting our society from illegal imports of drugs, alcohol and tobacco smuggling and tax fraud.

More information can be found at: [www.hmce.gov.uk](http://www.hmce.gov.uk)

**Her Majesty's Inspectorate of Constabulary (HMIC)** – HMIC is responsible for examining and improving the efficiency of the Police Service in England and Wales. The statutory duties of the Inspectors (HMIs) are described in the Police Act 1996. In addition, the Home Secretary lays before Parliament a clear statement of the duties and responsibilities which the Inspectorate is expected to fulfil.

More information can be found at: [www.homeoffice.gov.uk](http://www.homeoffice.gov.uk)

**Home Office** – The Home Office is the Government department responsible for internal affairs in England and Wales. We work to build a safe, just and tolerant society, to enhance opportunities for all, and to ensure that the protection and security of the public are maintained and enhanced.

More information can be found at: [www.homeoffice.gov.uk](http://www.homeoffice.gov.uk)

**Missing Trader Intra-Community (MTIC)** – MTIC fraud is a particular type of VAT fraud. It is a systematic criminal attack on the VAT system which has been detected in many EU states.

**National Crime Squad (NCS)** – The National Crime Squad was established in April 1998. It targets criminal organisations committing serious and organised crime which transcends national and international boundaries. Typically, this focuses on drug trafficking, immigration crime, illegal arms trafficking, money laundering, counterfeit currency, kidnap and extortion.

More information can be found at: [www.ncs.police.uk](http://www.ncs.police.uk)

**National Criminal Intelligence Service (NCIS)** – NCIS works on behalf of all UK law enforcement agencies in the fight against serious and organised crime. NCIS provides strategic and tactical intelligence on serious and organised crime, nationally and internationally. It is the gateway for UK law enforcement enquiries overseas via Interpol, Europol and the overseas liaison officers networks. It is also the co-ordinating authority on behalf of police forces in the UK for the tasking of the Security Service, in accordance with the Security Service Act 1996.

More information can be found at: [www.ncis.gov.uk](http://www.ncis.gov.uk)

**National Specialist Law Enforcement Centre (NSLEC)** – NSLEC is part of the Central Police Training and Development Authority (a Home Office NDPB providing a central resource to define, develop and promote policing excellence). It develops research, operational support and training solutions in the context of covert investigations. In a partnership agreement, it aims to develop common standards and improve joint operational effectiveness in tackling serious and organised crime.

More information can be found at: [www.centrex.police.uk](http://www.centrex.police.uk)

**North Atlantic Treaty Organisation (NATO)** – NATO is an alliance of 19 countries from North America and Europe committed to fulfilling the goals of the North Atlantic Treaty 1949. Its fundamental role is to safeguard the freedom and security of its member countries by political and military means. It plays an increasing role in crisis management and peacekeeping.

More information can be found at: [www.nato.int](http://www.nato.int)

**Northern Ireland Office (NIO)** – The role of the NIO is to support the Secretary of State for Northern Ireland in securing a lasting peace, based on the Good Friday Agreement in which the rights and identities of all traditions in Northern Ireland are fully respected and safeguarded and in which a safe, stable, just, open and tolerant community can thrive and prosper.

More information can be found at: [www.nio.gov.uk](http://www.nio.gov.uk)

**Organisation for Security and Co-operation in Europe (OSCE)** – The OSCE is the largest regional security organisation in the world with 55 participating States from Europe, Central Asia and North America. It is active in early warning, conflict prevention, crisis management and post-conflict rehabilitation. It deals with a wide range of security-related issues including arms control, preventative diplomacy, security-building measures, human rights, democratisation, election monitoring and economic and environmental security. All participating States have equal status, and decisions are based on consensus.

More information can be found at: [www.osce.org](http://www.osce.org)

**Policing Performance and Assessment Framework (PPAF)** – The PPAF is a joint initiative of the Home Office, the Association of Chief Police Officers and the Association of Police Authorities. It reflects policing as a whole, including the contribution made by local communities and other organisations, as well as the police service itself. It focuses on operational effectiveness, public satisfaction, overall trust and confidence in the police and performance in terms of efficiency and organisational capability. It demonstrates success in achieving the priorities of the National Policing Plan.

More information can be found at: [www.police.reform.gov.uk](http://www.police.reform.gov.uk)

**Racketeer Influenced Corrupt Organisations (RICO)** – The RICO Act was passed by the United States Congress in 1970 to enable persons financially injured by a pattern of criminal activity to seek redress through the state or federal courts. It was originally aimed at reducing and eventually eliminating the influence of the Mafia and other organised criminal syndicates over the United States economy. It has since been used against corporations, political protest groups and labour unions. A RICO claim can be based on the activities of any group or organisation whose members pursue a criminal goal.

**Scottish Executive** – The Scottish Executive was established in 1990, and is the devolved government for Scotland. It is responsible for most of the issues of day-to-day concern to the people of Scotland, including health, education, justice rural affairs and transport.

More information can be found at [www.scotland.gov.uk](http://www.scotland.gov.uk)

**Serious Fraud Office (SFO)** – The SFO is a the government department that investigates and prosecutes serious or complex fraud. It aims to deter fraud and maintain confidence in the probity of business and financial services in the UK.

More information can be found at: [www.sfo.gov.uk](http://www.sfo.gov.uk)

**UN Office on Drugs and Crime (UNODC)** established in 1997, UNODC has approximately 500 staff worldwide. UNODC is mandated to assist Member States in their struggle against illicit drugs, crime and terrorism.  
**[www.unodc.org](http://www.unodc.org)**

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