

Criminal Finances Bill – disclosure orders

Home Office

RPC rating: fit for purpose

Description of proposal

The proposal is to amend the Proceeds of Crime Act (2002) so that senior appropriate officers from organisations, including the National Crime Agency (NCA) and the Serious Fraud Office (SFO), have the relevant authority to make disclosure order applications. At present, disclosure order applications can be made only by a prosecutor at the request of an appropriate officer. Disclosure orders require individuals to provide information that is relevant to an investigation relating to confiscation, civil recovery and exploitation proceeds. The proposals would also bring money laundering investigations into the scope for which disclosure orders may be sought.

Impacts of proposal

The impact assessment (IA) explains that no increase in business costs is expected as a result of the proposals. This is because businesses are already required to provide information for production orders, which would be replaced by disclosure orders under the proposal. While there would be an administrative burden placed upon businesses responding to a high number of disclosure orders, this is not expected to exceed the current cost associated with production orders, which also cover money laundering investigations. Furthermore, the department has provided information highlighting that the current use of disclosure orders is very low, with approximately seven disclosure orders made each year based on estimates provided by the NCA and SFO. The IA explains that switching from production orders to disclosure orders would impact on public sector bodies such as the NCA and SFO, including minimal one-off familiarisation costs of using senior appropriate officers in making disclosure order applications.

The IA also states that, while there would be no direct benefit to businesses from the proposals, investigators would benefit from the power to deploy disclosure orders without having to make applications through a prosecutor. The reduction in public sector burden resulting from this is estimated as a total saving of £4,000 - £7,000 per year, based on seven disclosure orders per year each taking between ten and fifteen hours needed to make a disclosure order application, in addition to the investigator's time. These estimates are based upon discussions with stakeholders, such as the

NCA. Law enforcement agencies are also expected to benefit from no longer needing to apply for production orders on every occasion new material is required for an investigation. However, this impact has not been monetised.

Quality of submission

Although the department provides a limited analysis of the proposal, the IA presents proportionately sufficient information to enable validation of an equivalent annual net direct cost to business (EANDCB) of zero. This is on the basis that the department has presented evidence that the number of disclosure orders would be very low and that providing information for investigations is already a requirement for businesses issued with production orders. However, prior to publication, the IA should be amended to include further information on how production orders compare to disclosure orders, in terms of the requirements they place on businesses and the associated cost. The department's explanation should address whether the lower burden to public authorities of disclosure orders compared to production orders could result in a significant rise in their use in money laundering investigations. To support this, the IA should consider whether there is evidence from other examples where the exercise of investigative powers of LEAs has been streamlined.

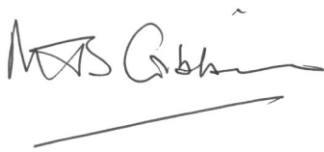
The department's small and micro business assessment (SaMBA) explains that small and micro businesses would not experience an increase in net direct costs as a result of the measure, as these businesses are already subject to production orders in the same way that all businesses are. The SaMBA also explains that exempting small and micro businesses from the policy would not be appropriate, as they may possess information relevant to an investigation. Although the impact of the proposal to legitimate small business activity appears minimal, the IA would benefit from presenting information on how many production and disclosure orders currently affect small businesses.

Departmental assessment

Classification	Qualifying regulatory provision
Equivalent annual net direct cost to business (EANDCB)	Zero
Business net present value	Not monetised
Societal net present value	Not monetised

RPC assessment

Classification	Qualifying regulatory provision
EANDCB – RPC validated	Zero
Business impact target score	Zero
Small and micro business assessment	Sufficient



Michael Gibbons CBE, Chairman