



Ministry
of Justice



Cabinet Office

Advice on introducing or amending criminal offences and estimating and agreeing implications for the criminal justice system

This guidance is for officials who may be considering creating new criminal offences or amending existing criminal offences, including consolidations, repeals and re-enactments.

The government is committed to preventing the proliferation of unnecessary new offences and to ensuring that any new offences are fit for purpose. In 2015, the government agreed to discontinue the criminal offences gateway and to instead increase the scrutiny on the appropriateness and associated costs of new and amended offences through the Home Affairs Committee write round process.

It remains the responsibility of individual departments to ensure that new behaviour is not criminalised without careful consideration, that alternatives to criminal offences are used where appropriate, and that the impacts and cost to the criminal justice system are accounted for.

The Ministry of Justice and other interested departments will continue to scrutinise the creation of new offences, and impact on the justice system, through the Home Affairs Committee clearance process. Clearance will not be given for offences that are considered unnecessary or disproportionate, or where the cost implications have not been fully estimated and agreed.

To assist in this departments should consider engaging with Ministry of Justice officials on the content and implications of new or amended criminal offences at an early stage through completion of a Justice Impact Test. This guidance provides an overview of key things to consider before seeking Home Affairs Committee clearance for new or amended offences and key contacts at the Ministry of Justice who can assist you in this process.

Section 1: How to assess the proportionality of a new or amended criminal offence

When creating a new offence departments must be satisfied that the creation of a new criminal offence is both proportionate and necessary to the policy objective they are trying to achieve. Considering the following questions will help to establish the proportionality of the proposed new or amended offence:

- Are there existing offences which cover the targeted behaviour?
- Are the penalties proposed for this criminal sanction proportionate?
- Would civil action or sanctions be more appropriate?
- Is the proposed new offence simply for deterrent effect and, if so, is there any evidence to support this approach?
- What is the public interest for criminalising this behaviour?
- Are there associated international or EU obligations and has gold-plating been avoided? If transposing an EU Directive, is the creation of criminal offences necessary?
- Is there an existing government commitment to criminalise a behaviour?
- Could any existing offences be repealed or consolidated?
- How would financial penalties be prioritised alongside existing penalties (such as the victim surcharge)?
- Have other criminal justice departments been consulted (in particular the Home Office, Crown Prosecution Service and Attorney General's Office)?

This is not an exhaustive list. Ministry of Justice officials can provide further advice on appropriate considerations in specific circumstances. See Section 3 for useful contacts.

Section 2: How to assess the implications for the criminal justice system

The implications of any new criminal offences, and associated funding, should be agreed with criminal justice departments in advance of seeking Home Affairs Committee clearance. The Treasury will also scrutinise cost implications and funding arrangements during the Home Affairs Committee process. Write round letters should clearly state the financial and operational implications for each department and that funding arrangements have been agreed.

You should consider the impact on all criminal justice agencies including, but not limited to, the Police, Crown Prosecution Service, Courts, and Prisons and Probation services.

A useful tool is the Justice Impact Test and all departments should consider completing this in advance of the Home Affairs Committee process. This will help you identify the costs and demand implications for each agency. Justice Impact Test guidance can be found here <http://www.justice.gov.uk/legislation/justice-impact-test>.

Section 3: Useful contacts

For advice on the content and proportionality of offences, and a copy of the policy on EU and international criminal law negotiations and criminal extraterritorial jurisdiction, contact - offencesclearance@justice.gsi.gov.uk

The following guidance will be helpful when developing proposals to transpose an EU directive: <https://www.gov.uk/government/publications/implementing-eu-directives-into-uk-law>

For advice on associated penalties, contact sppucorrespondence@justice.gsi.gov.uk

For advice on the justice impact test, contact justiceimpact@justice.gsi.gov.uk

Other useful contacts

Powers of entry (Home Office)

The Home Office has overall responsibility for powers of entry and has set up its own separate gateway to manage proposals to create or amend powers of entry. Contact: PofEGateway@homeoffice.gsi.gov.uk

Consent to prosecution (Attorney General's Office)

The Attorney General's Office must be notified of any proposal to create an offence which requires consent from the Attorney General or the Director of Public Prosecutions to bring a prosecution. Contact: Director of Criminal Law, Attorney General's Office, 020 7271 2492 (correspondence@attorneygeneral.gsi.gov.uk and consents@attorneygeneral.gsi.gov.uk)

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<https://www.gov.uk/guidance/good-law#good-law-champions>

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